

VENTURA COUNTY BAR ASSOCIATION GUIDELINES ON PROFESSIONAL CONDUCT AND CIVILITY

PREAMBLE

The Ventura County Bar Association is committed to the highest standards of professional courtesy and ethics for all attorneys. In recognition of our commitment, the following Code of Civility is adopted as a guide for professional conduct. These guidelines are not exhaustive; they illustrate, however, recognized principles to which this Bar enthusiastically subscribes to as a means of promoting professional and equitable relations in all circumstances and regardless of reciprocity, not only among colleagues and the courts, but with clients, staffs and the public.

Therefore, in addition to abiding by the rules of Professional Conduct codified by the California State Bar, attorneys practicing or appearing in Ventura County are expected to adhere to the following guidelines for professional behavior.

Section 1. Scheduling

Civility and courtesy in scheduling meetings, hearings and discovery are expected, are not equated with weakness, and are not inconsistent with zealous representation of clients. Accordingly, professional courtesy and civility requires all lawyers to:

- a. Make reasonable efforts to schedule meetings, hearings, and discovery by agreement whenever possible and to consider the schedule of opposing counsel, the parties, and witnesses before scheduling any matter.
- b. Refrain from arbitrarily or unreasonably withholding consent to a request for scheduling accommodations.
- c. Refrain from engaging in delaying tactics when scheduling meetings, hearings and discovery.
- d. Verify the availability of key participants and witnesses before scheduling a meeting, hearing or trial date, or if not feasible, at the first opportunity thereafter so that others can promptly notify the court, parties, and witnesses of any scheduling problems.
- e. Notify other counsel, and as appropriate, the court or other tribunal, as early as possible, when scheduled meetings, hearings, or depositions are being canceled or rescheduled.

Section 2. Continuances and Extensions of Time

- a. First requests for reasonable extensions of time to respond to litigation deadlines, whether relating to pleadings, discovery or motions, should ordinarily be granted as a matter of courtesy unless time is of the essence. A first extension should be allowed even if the counsel requesting it has previously refused to grant an extension.
- b. After a first extension, any additional requests for time should be dealt with by balancing the need for expedition against the deference one should ordinarily give to an opponent's schedule of professional and personal engagements, the reasonableness of the length of extension requested, the opponent's willingness to grant reciprocal extensions, the time

actually needed for the task, and whether it is likely a court would grant the extension if asked to do so.

- c. A lawyer should advise clients against the strategy of granting no time extensions for the sake of appearing "tough".
- d. A lawyer should not seek extensions or continuances for the purpose of harassment or prolonging litigation.
- e. A lawyer should not attach to extensions unfair and extraneous conditions. A lawyer is entitled to impose conditions such as preserving rights that an extension might jeopardize or seeking reciprocal scheduling concessions. A lawyer should not, by granting extensions, seek to preclude an opponent's substantive rights, such as the right to demurrer.

Section 3. Service of Papers

- a. The timing and manner of service of papers should not be used to the disadvantage of the party receiving the papers.
- b. Papers should not be served sufficiently close to a court appearance so as to inhibit the ability of opposing counsel to prepare for that appearance or, where permitted by law, to respond to the papers.
- c. Papers should not be served in order to take advantage of an opponent's known absence from the office or at a time or in a manner designed to inconvenience an adversary, such as late on Friday afternoon or the day preceding a secular or religious holiday.
- d. Service should be made personally or by facsimile transmission when it is likely that service by mail, even when authorized, will prejudice the opposing party.

Section 4. Punctuality

A lawyer should be punctual in performance of all obligations and duties. Accordingly, professional courtesy and civility requires all lawyers to:

- a. Arrive in advance of trial, hearing, meeting, deposition or other scheduled event so that preliminary or procedural matters may be resolved.
- b. Timely notify all other participants and the court when the lawyer or other participant will be late.

Section 5. Communications

Memoranda, declarations, and other written materials submitted to the court should be factual, concise and accurately state the current law without personally attacking the opposing party or opposing counsel. A lawyer should be civil, courteous and as accurate as possible when communicating with adversaries and the court. Accordingly, professional courtesy and civility requires all lawyers to:

- a. Argue only that which is clearly supported by the law or the facts of the case.

- b. Show respect and dignity to all judicial officers, parties, counsel and witnesses.
- c. Accurately recite positions taken by a party or counsel.
- d. Promptly respond to telephone calls, letters or other communications.
- e. Comply with all local and state rules regarding ex parte communications with the court.

Section 6. Discovery

A lawyer should not use any form of discovery, including the scheduling of discovery, to harass, delay, increase the cost of litigation, or to obtain an unfair advantage. Accordingly, professional courtesy and civility requires all lawyers to:

- a. Timely respond to discovery requests.
- b. Fully and accurately respond to discovery requests with all information relevant to the discovery request, and to provide discovery responses, including the production of documents, in an organized manner.
- c. Conduct discovery in good faith and not to harass another or to unduly invade the rights of privacy of others.
- d. Conduct discovery with the same degree of professionalism as expected in a courtroom.
- e. Timely and in good faith, meet and confer on discovery disputes to resolve as many issues as possible before discovery motions are prepared or required.
- f. As to document requests, a lawyer should refrain from
 - 1. Requesting production of documents which are not reasonably believed to be needed for the prosecution or defense of an action or which are not reasonably calculated to lead to the discovery of admissible evidence.
 - 2. Conducting discovery designed to harass or to embarrass another, or which is intended to impose an inordinate burden or expense.
 - 3. Asserting privileges which cannot, in good faith, be supported by the law or the facts of the case.
 - 4. Seeking to invade known and valid privileges.
 - 5. Producing documents in such a disorganized or unintelligible fashion calculated to hide or to obscure the existence of a document or information.
 - 6. Withholding or delaying the production of documents when such delay is solely intended to obtain a tactical or unfair advantage.
- g. As to interrogatories, a lawyer should refrain from

1. Serving interrogatories intended solely to harass or to impose an undue burden or expense.
2. Responding to or interpreting interrogatories in an artificial manner designed to avoid providing relevant or accurate information.
3. Posing objections to interrogatories when not supported by the facts and the law.

Section 7. Motion Practice

Motions should be filed in good faith and only if the issue cannot otherwise be resolved. Accordingly, professional courtesy and civility requires all lawyers to:

- a. Engage in more than a mere pro forma effort to resolve the issue before the motion is filed or responded to;
- b. Refrain from engaging in conduct which forces opposing counsel to file a motion unless intending to oppose such motion in good faith or unless the relief sought affects the interests of the court or of persons or parties other than the lawyer's client.

Section 8. Communicating with Non-Party Witness

All communications with non-party witnesses should be courteous and respectful and designed to protect the dignity and integrity of the judicial system. The lawyer should explain to unrepresented witnesses the purpose of the required attendance. The lawyer should attempt to accommodate the witnesses' schedule when setting or rescheduling the witnesses' appearance and should promptly notify them of any changes in scheduling.

Section 9. Ex Parte Communications with the Judge or Hearing Officer

Lawyers should avoid ex parte communication regarding the substance or merits of a pending case with the court before whom such case is pending. Where applicable rules or laws permit an ex parte communication, before making such application or communication, the lawyer should make diligent efforts to notify the opposing party or opposing counsel known to represent or likely to represent the opposing party, should make reasonable efforts to accommodate the schedule of counsel or opposing party and should avoid taking advantage of an opponent's known absence or unavailability.

Section 10. Candor to the Court and Opposing Counsel

Professional courtesy and civility requires all lawyers to:

- a. Accurately state the facts and legal authority to the court and to opposing counsel. Written materials and oral argument should accurately state current law and should fairly represent the party's position without unfairly attacking the opposing counsel or party.

- b. Draft proposed orders promptly, fairly and accurately representing the ruling of the court. When proposed orders are submitted for approval, the opposing lawyer or party should promptly communicate any objection to the party preparing the proposed order so that good faith efforts are undertaken to resolve the dispute.
- c. Respect and abide by the spirit and letter of all rulings.

Section 11. Settlement and Alternative Dispute Resolution

Lawyers should consider and explore the potentials of settlement or alternative dispute resolution as soon as the case can be evaluated, and if appropriate, such alternatives to litigation should be encouraged. Accordingly, professional courtesy and civility requires all lawyers to:

- a. Advise the client at the outset of the availability of alternatives to litigation and in good case to determine whether some alternative to litigation should be pursued.
- b. Engage in good faith efforts to settle disputes and not as a means of adjourning, terminating discovery, or delaying the proceeding.
- c. Accurately inform clients of the strengths and weaknesses of the client's case.

Section 12. Trials and Hearings

Lawyers should at trial and during hearings, conduct themselves in a manner consistent with promoting the positive image of the profession and with respect and dignity to the judicial process. Accordingly, professional courtesy and civility requires all lawyers to:

- a. Be punctual and prepared for all court appearances.
- b. Extend courtesy, civility and respect to anyone involved in the judicial process.
- c. Make objections during a proceeding for legitimate and good faith reasons and not solely for the purpose of harassment, delay, or any other improper purpose.
- d. Honor reasonable requests made by an opponent to enter into stipulations, for the admission of evidence, the coordination of the presentation of evidence, and other such matters, taking into account the client's legitimate concerns and without compromising any tactical advantage.

Section 13. Privacy

All matters should be handled with due respect for the rights and privacy of parties and non-parties. Accordingly, professional courtesy and civility requires all lawyers to:

- a. Refrain from inquiring into, attempting to use, or threatening to use, private matters of any party or other individual so as to gain an advantage in a case, where such information is not relevant to the specific issues at hand. In the event sensitive and private matters are relevant and probative within a proceeding, the lawyer should use such information only to the extent necessary.

- b. Maintain privacy and confidentiality.

Section 14. Diversity

Our society is diverse. As our profession grows to mirror the diversity in society, we must commit ourselves to advancing tolerance and respect for diverse cultures, opinions and views, and expand opportunities to those who have traditionally been excluded. Our profession includes men and women of various races, ethnicity, political views, cultural and economic backgrounds, religions, disabilities and sexual orientation. It also includes a wide variety of specialties, affiliations and professional relationships. Professional courtesy and civility requires lawyers to respect diversity and to uniformly honor these rules of civility without discrimination and with equal dignity.

Section 15. The Courts

Our judicial system is a cornerstone of our democracy. In order for our courts to serve their constitutional function, the public and the legal profession must have confidence in them. Respect for the institution of the judiciary, the judicial officers, administrators and court support staff is essential in maintaining public confidence in our judicial system. At the core of our legal system is the acceptance of our courts as the adjudicator of criminal and civil disputes. Professional courtesy and civility requires lawyers to recognize the importance of the judicial office and to refrain from disparaging the judiciary, and those holding the office.