



# Contra Costa County Bar Association

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## Standards of Professional Courtesy

### PREAMBLE

Attorneys are most often retained to represent their clients in disputes. The practice of law is largely an adversarial process. Attorneys are ethically bound to zealously represent and advocate their clients' interest. Nonetheless, there exist certain standards of professional courtesy that are observed and certain duties of professionalism are owed by attorneys to their clients, opposing parties and their counsel, the courts and other tribunals, and the public as a whole. Members of the Contra Costa County Bar Association have practiced law with a level of professionalism that goes well beyond the requirements of the State Bar mandated Code of Professional Conduct. The following standards of professional courtesy describe the conduct preferred and expected by a majority of attorneys practicing in Contra Costa County in performing their duties of civility, professional integrity, personal dignity, candor, diligence, respect, courtesy, cooperation and competence. These standards are not meant to be exhaustive. They should, however, set a tone or guide for conduct not specifically mentioned in these standards.

These standards have been codified to make the level of professionalism reflected in them the standard of practice within Contra Costa County and with the hope that their dissemination will educate new attorneys and others who may be unfamiliar with the customary local practices. They have received approval of the Board of Directors of the Contra Costa County Bar Association. They have also been endorsed by the Judges of the Superior and Municipal Courts of Contra Costa County, who expect professional conduct by all attorneys who appear and practice before them. They will be considered by those judges in their rulings pursuant to California Code of Civil Procedure § 128, 177, and 177.5, as provided for in the Contra Costa County Superior Court Rules, Rule 30.

All attorneys conducting any practice of law in Contra Costa County are encouraged to comply with the spirit of these standards and not simply blindly adhere to the strict letter of them. The goals stated and inherent herein are equally applicable to all attorneys regardless of area of practice.

This Code is, of course, not a substitute for the statutes and rules. No provision of this Code is intended to be a method to extend time limitations of statutes and rules, including fast track time limitations, without appropriate court order.

### I. SCHEDULING:

- A. (1) Attorneys should communicate with opposing counsel prior to scheduling meetings, depositions, hearings and other proceedings and make reasonable efforts to schedule such meetings, hearings, depositions, and other proceedings by agreement whenever possible. At all times, attorneys should endeavor to provide opposing counsel, parties, witnesses and other affected persons, sufficient notice thereof.  
(2) Where such advanced efforts at scheduling are not feasible (for example, in an emergency, or in other circumstances compelling more expedited scheduling, or upon agreement of counsel) an attorney should not arbitrarily or unreasonably withhold consent to a request for scheduling accommodations that do not prejudice their clients or unduly delay a proceeding.
- B. In all cases, attorneys should endeavor to reserve sufficient time for the completion of the proceeding to permit a complete presentation by counsel for all parties.

- C. An attorney should not engage in delay tactics in scheduling meetings, hearings and discovery; nor should they seek extensions or continuances for the purpose of harassment or solely to extend litigation.
- D. Attorneys should notify opposing counsel, the court and others affected of scheduling conflicts as soon as they become apparent and shall cooperate in canceling or rescheduling. Attorneys should also notify opposing counsel and, if appropriate, the court or other tribunal as early as possible of any resolution between the parties that render a scheduled hearing, deposition or meeting unnecessary or otherwise moot.
- E. Consistent with existing law and court orders, attorneys should grant reasonable requests by opposing counsel for extensions of time within which to respond to pleadings, discovery and other matters when such an extension will not prejudice their client or unduly delay a proceeding.
- F. Attorneys should cooperate with opposing counsel during trials and evidentiary hearings by disclosing the identities of all witnesses reasonably expected to be called and the length of time needed to present their entire case, except when their clients' material rights would be adversely affected. Attorneys should also cooperate with the calling of witnesses out of turn when the circumstances justify it.
- G. The timing and manner of service of papers should not be calculated to disadvantage, overwhelm or embarrass the party receiving the papers. Attorneys should not serve papers simply to take advantage of an opponent's known absence from the office or at a time or in a manner designed to inconvenience the adversary, such as late in the day (after normal business hours), so close to a court appearance that it inhibits the ability of opposing counsel to prepare for that appearance or to respond to the papers (if permitted by law), or in such other way as would unfairly limit the other party's opportunity to respond to those papers or other matters pending in the action.

## **II. DISCOVERY:**

- A. Attorneys should pursue discovery requests that are reasonably related to the matter at issue. Attorneys should not use discovery for the purpose of harassing, embarrassing or causing the adversary to incur unnecessary expenses as a means of delaying the timely, efficient and cost effective resolution of a dispute, or to obtain unfair advantage.
- B. Attorneys should ensure that responses to reasonable discovery requests are timely, organized, complete and consistent with the obvious intent of the request. Attorneys responding to document demands and interrogatories should not do so in an artificial manner designed to assure that answers and responses are not truly responsive or solely to attempt to avoid disclosure.
- C. Attorneys should avoid repetitive or argumentative questions, questions asked solely for purposes of harassment or questions that are known to the questioner to be an invasion of the rights of privacy of third parties not present or represented at the deposition.
- D. Attorneys should bear in mind that depositions are to be taken as if the testimony was being given in court. Therefore, they should not engage in any conduct during the deposition that would not be allowed in the presence of a judicial officer. Attorneys should avoid, through objections or otherwise, improper coaching of the deponent or suggesting answers.
- E. Attorneys should meet and confer on discovery requests in a timely manner and make good faith attempts to actually resolve as many issues as possible before proceeding with motions concerning the discovery. Before filing a motion concerning discovery, or otherwise, attorneys should engage in more than a mere pro forma effort to resolve the issue(s).

## **III. CONDUCT TOWARDS OTHER ATTORNEYS, THE COURT AND PARTICIPANTS:**

- A. Attorneys must remember that conflicts with opposing counsel are professional, not personal, that vigorous advocacy is not inconsistent with professional courtesy, and that they should not be influenced by ill feelings or anger between clients in their conduct, attitude or demeanor toward opposing attorneys.
- B. Attorneys should never use the mode, timing or place of serving papers primarily to embarrass a party or witness.
- C. Motions should be filed sparingly, in good faith and when the issue(s) cannot be otherwise resolved. Attorneys should not engage in conduct that forces opposing counsel to file a motion and then not oppose the motion, or provide information called for in the motion only after the motion is filed.

- D. Attorneys should refrain from disparaging or denigrating the court, opposing counsel, parties or witnesses before their clients, the public and the media.
- E. Attorneys should be courteous and respectful (not rude or disruptive) with the court, court personnel, opposing counsel, parties and witnesses (and should encourage their clients and witnesses to do the same).
- F. Attorneys should make an effort to explain to witnesses the purpose of their required attendance at depositions, hearings or trial. They should further attempt to accommodate the schedules of witnesses when setting or resetting their appearance and promptly notify them of an cancellations. Dealings with nonparty witnesses should always be courteous and designed to leave them with an appropriately good impression of the legal system. Attorneys should instruct their clients and witnesses that they are not to communicate with the court on the pending case except with all counsel and/or parties present in a reported proceeding.
- G. Where applicable laws or rules permit an exparte application or communication to the court, before making such an application or communication, attorneys should:
  - 1. make diligent efforts to notify opposing party or opposing counsel known to represent or likely to represent the opposing party;
  - 2. make reasonable efforts to accommodate the schedule of such attorney or party to permit the opposing party to be represented;
  - 3. avoid taking advantage of an opponent's known absence from the office.
- H. Attorneys should draft agreements and other documents promptly so as to fairly reflect the true intent of the parties.
- I. No attorney shall engage in any act of age, gender, sexual orientation, physical or mental impairment, religion or race bias while engaging in the practice of law in Contra Costa County.

#### **IV. CANDOR TO THE COURT AND OPPOSING COUNSEL:**

- A. Attorneys should not knowingly misstate, misrepresent or distort any fact or legal authority to the court or to opposing counsel and shall not mislead by inaction or silence. Written materials and oral argument to the court should accurately state current law and fairly represent the party's position without unfairly attacking the opposing counsel or opposing party.
- B. If, after all briefing allowed by law or the court has been submitted, an attorney locates new authority that s/he desires to bring to the court's attention at the hearing on the matter, a copy of such new authority shall be provided to both the court and to all opposing counsel in the case at or prior to the hearing.
- C. Attorneys should draft proposed orders promptly. The orders should fairly and adequately represent the ruling of the court. When proposed orders are submitted to counsel for approval, attorneys should promptly communicate any objections to the party preparing the proposed order to encourage good faith discussions concerning the language of the proposed order.
- D. Attorneys should respect and abide by the spirit and letter of all rulings of the court.
- E. Attorneys should not draft letters assigning to opposing party or counsel a position that party or counsel has not taken or to create a "record" of events that have not occurred.

#### **V. EFFICIENT ADMINISTRATION:**

- A. Attorneys should refrain from actions which cause unnecessary expense or delay the efficient and cost-effective resolution of a dispute.
- B. Whenever appropriate, attorneys should stipulate to all facts and legal authority not reasonably in dispute.
- C. Attorneys should encourage principled negotiations and efficient resolution of disputes on their merits.
- D. Attorneys should be punctual in communications with others, as well as prompt and prepared for all scheduled appearances.

- E. As soon as every case can be reasonably evaluated, attorneys should consider whether the client's interest could be adequately served and the controversy more expeditiously and economically disposed of by settlement, arbitration, mediation or other form of alternative dispute resolution.
- F. Attorneys making objections during a deposition, trial or hearing should do so for legitimate and good faith reasons. Attorneys should not make such objections only for the purpose of making a speech, harassment or delay. All remarks, argument, objections and requests by counsel during trial shall be addressed to the court rather than directly to adversaries. Objections should be in legal form and without argument, unless directed to make argument by the court.
- G. Attorneys shall arrange for the appearance of witnesses during presentation of their case so as to eliminate delay caused by waiting for witnesses who have been placed on call.

**APPROVED BY THE BOARD OF DIRECTORS OF THE CONTRA COSTA COUNTY BAR ASSOCIATION IN JUNE OF 1993 (updated October 2009). ADOPTED AND APPENDED TO THE RULES OF CONTRA COSTA COUNTY SUPERIOR COURT.**