

# GUIDELINES OF CIVILITY & PROFESSIONALISM



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# **MONTEREY COUNTY BAR ASSOCIATION GUIDELINES OF CIVILITY & PROFESSIONALISM**

*2015 Edition*

## **PREAMBLE**

Members of the Monterey 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. To make that level of professionalism the standard for practice in Monterey County, these Guidelines of Civility & Professionalism are adopted to apply to all lawyers who practice in Monterey County. As lawyers, we owe duties of professionalism to our clients, opposing parties and their counsel, the courts and other tribunals, and the public as a whole. Those duties include among others: civility, professional integrity, personal dignity, candor, diligence, respect, courtesy, cooperation, and competence.

These Guidelines are structured to provide a general guiding principle in each area addressed followed by specific examples that are not intended to be all encompassing.

Lawyers are encouraged to maintain their competence through continuing education and professional development. Lawyers are further encouraged to comply with both the spirit and letter of these Guidelines. The goals stated herein are equally applicable to all lawyers regardless of area of practice. Individual lawyers and law offices are encouraged to make these Guidelines their personal standard for practice.

These Guidelines should be read in the context of the lawyer's underlying duty to zealously represent the lawyer's client. Nothing in these Guidelines should be read to denigrate the lawyer's duty of zealous representation. However, all lawyers are encouraged to represent their clients within the highest bounds of professionalism. The legal profession must strive for the highest standards of lawyer behavior to elevate and enhance our service to justice.

**SECTION 1  
RESPONSIBILITIES TO THE PUBLIC**

A lawyer should always be mindful that the law is a learned profession and that among its goals are devotion to public service and improvement of the administration of justice.

*For example:*

- a. A lawyer should contribute time on a pro bono basis to community activities.
- b. A lawyer should become actively involved in organized activities designed to improve the courts, the legal system and the practice of law.
- c. A lawyer should encourage new members of the bar to adopt these Guidelines of Civility & Professionalism and mentor them in its application.

**SECTION 2  
RESPONSIBILITIES TO THE CLIENT**

A lawyer should work to achieve his or her client's lawful and meritorious objectives expeditiously and as economically as possible in a civil and professional manner.

*For example:*

- a. A lawyer should be committed to his or her client's cause, but should not permit that loyalty to interfere with giving the client objective and independent advice.
- b. A lawyer should advise his or her client against pursuing litigation (or any other course of action) that does not have merit.

**SECTION 3  
SCHEDULING**

A lawyer should understand and advise his or her client that professional conduct entails civility and courtesy in scheduling meetings, hearings, and discovery.

*For example:*

- a. A lawyer should make reasonable efforts to schedule meetings, hearings, and discovery by agreement whenever possible, and should consider the scheduling interests of opposing counsel, the parties, witnesses, and the court. Misunderstandings should be avoided by sending formal notice after agreement is reached.
- b. A lawyer should not arbitrarily or unreasonably withhold consent to a request for scheduling accommodations.

- c. A lawyer should not engage in delaying tactics in scheduling meetings, hearings and discovery.
- d. A lawyer should try to verify the availability of key participants and witnesses either before a meeting, hearing or trial date is set or, if that is not feasible, as soon as possible thereafter that he or she can promptly notify the court, or other tribunal, and opposing counsel of any likely problems.
- e. A lawyer should notify opposing counsel and, if appropriate, the court or other tribunal as early as possible when scheduled meetings, hearings or depositions must be cancelled or rescheduled and provide alternate dates when possible.

#### **SECTION 4 CONTINUANCES AND EXTENSIONS OF TIME**

Consistent with current law, rules of court, and court scheduling orders, a lawyer should agree to reasonable requests for extensions of time when the legitimate interests of his or her client will not be adversely affected.

*For example:*

- a. A lawyer should agree to reasonable requests for extensions of time or continuances without requiring motions or other formalities.
- b. A lawyer should agree as a matter of courtesy to first requests for reasonable extensions of time unless time is of the essence and even if the counsel requesting it previously refused to grant an extension.
- c. A lawyer should, after agreeing to a first extension, consider any additional requests for time by balancing the need for prompt resolution of matters against the consideration that should be extended to an opponent's professional and personal schedule, 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.
- d. A lawyer should be committed to, and advise clients that, the strategy of not agreeing to reasonable requests for an extension of time is inappropriate.
- e. A lawyer should not seek extensions or continuances for the purpose of harassment or extending litigation.
- f. A lawyer should not condition an agreement to an extension on unfair and extraneous terms except those a lawyer is entitled to impose, such as preserving rights that an extension might jeopardize or seeking reciprocal scheduling concessions.
- g. A lawyer should not, by agreeing to extensions, seek to cut off an opponent's substantive rights, such as his or her right to challenge the sufficiency of a complaint.
- h. A lawyer should agree to reasonable requests for extensions of time when new counsel is substituted in for prior counsel.

- i. A lawyer should be aware that many court dates and deadlines cannot be modified by stipulation of counsel absent court approval, and should therefore fashion stipulations as “requests” to the court for modification.

## **SECTION 5 SERVICE OF PAPERS**

The timing and manner of service of papers should not be calculated to disadvantage or embarrass the party receiving the papers.

*For example:*

- a. A lawyer should not serve documents, pleadings, or motions on the opposing party or counsel at a time or in a way that would unfairly limit the other party's opportunity to respond.
- b. A lawyer should not serve papers 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.
- c. A lawyer 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 an adversary.
- d. A lawyer should serve papers by personal delivery, or by facsimile transmission or e-mail if agreed upon in advance, when it is likely that service by mail, even when allowed, will prejudice the opposing party.
- e. A lawyer should serve papers on the individual lawyer known to be responsible for the matter and should do so at his or her principal place of work.
- f. A lawyer should never use the mode, timing or place of serving papers primarily to embarrass or inconvenience a party or witness.

*For example:*

- 1. A lawyer should not serve papers directly on a party if that party is represented by counsel.
- 2. Unless the service of process or subpoena pertains to a family law or other personal matter rather than a business matter, a lawyer should not personally serve a party or witness at home without first attempting service at that individual's business address.

## **SECTION 6 PUNCTUALITY**

A lawyer should be punctual in communications with others and in honoring scheduled appearances.

*For example:*

- a. A lawyer should arrive sufficiently in advance of trials, hearings, meetings, depositions, or other scheduled events so that preliminary matters can be resolved and the lawyer will have adequate time to confer with clients before entering the courtroom or deposition room.
- b. A lawyer should notify promptly all other participants when, for a reason beyond his or her control, the lawyer unavoidably will be late.
- c. A lawyer should promptly notify the other participants when he or she is aware that a participant will be late for a scheduled event.
- d. A lawyer should not intentionally delay responding to a request for a stipulation.

## **SECTION 7 WRITINGS SUBMITTED TO THE COURT**

Written materials submitted to the court should always be factual, concise, and accurately state current law, and fairly represent the parties' position without unfairly attacking the opposing party or opposing counsel.

*For example:*

- a. Facts that are not properly introduced in the case and part of the record should not be used in written briefs or memoranda of points and authorities.
- b. Lawyers should always cite check their authorities.
- c. Lawyers should refrain from citing new facts or raising new legal arguments for the first time in a reply brief.
- d. A lawyer should avoid degrading the intelligence, ethics, morals, integrity, or personal behavior of the opposing party, counsel, or witness unless such matters are at issue in the proceeding.

## **SECTION 8 COMMUNICATIONS WITH ADVERSARIES**

A lawyer should at all times be civil, courteous, and accurate in communicating with adversaries, whether in writing or orally.

*For example:*

- a. A lawyer should not draft letters assigning to an opposing party a position that party has not taken or to create a “record” of events that have not occurred.
- b. A lawyer should not copy the court on any letter between counsel unless permitted or invited by the court.
- c. A lawyer should avoid ad hominem attacks on opposing counsel or the opposing party when communicating with adversaries.

## **SECTION 9 DISCOVERY**

A lawyer should conduct discovery in a manner designed to ensure the timely, efficient, cost effective, and just resolution of a dispute.

A lawyer should promptly and completely comply with all discovery requirements of the Civil Discovery Act.

In a criminal case, a lawyer should comply with all relevant case law and statutes, including Penal Code Sections 1054 - 1054.10.

*For example:*

- a. As to Depositions:
  1. A lawyer should take depositions only where actually needed to learn facts or information, to preserve testimony, or to develop admissible evidence for use at trial or in motion practice.
  2. In scheduling depositions, a lawyer should, within reason, accommodate schedules of opposing counsel and the deponent where it is possible to do so without prejudicing one’s client’s rights.
  3. When a deposition is scheduled and noticed by another party for the reasonably near future, a lawyer ordinarily should not schedule another deposition for an earlier date without the agreement of opposing counsel.
  4. A lawyer should not delay a deposition for bad faith purposes, but only if necessary to address genuine scheduling problems.

5. A lawyer should not ask questions about a deponent's personal affairs or question a deponent's integrity where such questions are irrelevant to the subject matter of the deposition.
6. A lawyer should avoid repetitive or argumentative questions or those asked solely for purposes of harassment.
7. A lawyer representing a deponent or representing another party should limit objections to those that are well founded and necessary for the protection of the client's interest. A lawyer should remember that most objections are preserved and need be made only when the form of a question is defective or privileged information is sought.
8. Once a question is asked, a lawyer should not, through objections or otherwise, coach the deponent or suggest answers.
9. A lawyer should not direct a deponent to refuse to answer a question unless the question seeks privileged information or is manifestly irrelevant or calculated to harass.
10. Lawyers for all parties should refrain from self-serving speeches during depositions.
11. Lawyers should not engage in any conduct during a deposition that would not be allowed in the presence of a judicial officer.
12. Lawyers should refrain from asking repetitive or cumulative questions or otherwise extending the time necessary to conduct a deposition solely or primarily to harass or "wear down" deponents and their counsel.
13. Lawyers should avoid asking questions seeking to elicit information that they know or should know is privileged.

b. As to Document Demands:

1. A lawyer should limit demands for production of documents to documents actually and reasonably believed to be needed for the prosecution or defense of an action. Demands should not be made to harass or embarrass a party or witness or to impose an inordinate burden or expense in responding. With regard to discovery of electronically stored documents ("e-discovery"), the parties should engage in meaningful, good faith negotiation regarding issues such as the format in which documents will be produced, which key words will be used in searches, and whether it will be necessary to search legacy systems or other difficult-to-access media.
2. A lawyer should not draft demands for document production so broadly that they encompasses documents clearly not relevant to the subject matter of the case.

3. In responding to document demands, a lawyer should not interpret the request in an artificially restrictive manner in an attempt to avoid disclosure.
  4. A lawyer responding to document demands should withhold documents on the grounds of privilege only where appropriate.
  5. A lawyer should not produce documents in a disorganized or unintelligible fashion, or in a way calculated to hide or obscure the existence of particular documents.
  6. A lawyer should not delay producing documents to prevent opposing counsel from inspecting documents prior to scheduled depositions or for any other tactical reason.
- c. As to Interrogatories:
1. A lawyer should use interrogatories sparingly and never to harass or impose undue burden or expense on the opposing party.
  2. A lawyer should not read or respond to interrogatories by ascribing unreasonably narrow definitions to terms, or otherwise responding in an artificial manner designed to assure that answers are not truly responsive.
  3. A lawyer should not object to interrogatories except when a good faith belief exists in the merit of the objection. Objections should not be made for the purpose of withholding relevant information. If an interrogatory is objectionable only in part, a lawyer should answer the unobjectionable portion.

## **SECTION 10 MOTION PRACTICE**

Motions should be filed or opposed only in good faith and when the issue cannot otherwise be resolved.

*For example:*

- a. Before filing a motion, a lawyer should engage in a good faith effort to resolve the issue. In particular, civil discovery motions should be filed sparingly.
- b. A lawyer should not engage in conduct which forces opposing counsel to file a motion and then not oppose the motion.
- c. In complying with any meet and confer requirement in the California Code of Civil Procedure, a lawyer should speak personally with opposing counsel or a self-represented party and engage in a good faith effort to resolve or informally limit an issue.
- d. Where rules permit an ex parte application or communication to the court in an emergency situation, a lawyer should make such an application or communication (including an application to shorten an otherwise applicable time period) only where

there is a bona fide emergency such that the lawyer's client will be prejudiced seriously if the application or communication were made with regular notice. In such circumstances, the lawyer should make reasonable, good faith efforts to provide meaningful notice to opposing counsel or an unrepresented opposing party as far in advance as possible.

## **SECTION 11 DEALING WITH NONPARTY WITNESSES**

It is important to promote high regard for the profession and the legal system among those who are neither lawyers nor litigants. A lawyer's conduct in dealings with nonparty witnesses should exhibit the highest standards of civility and be designed to leave the witness with an appropriately good impression of the legal system.

*For example:*

- a. A lawyer should be courteous and respectful in communications with nonparty witnesses.
- b. Upon request, a lawyer should extend professional courtesies and grant reasonable scheduling accommodations, unless to do so would materially prejudice the client's lawful objectives.
- c. A lawyer should take special care to protect a witness from undue harassment or embarrassment and to state questions in a form that is appropriate to the witness's age and development.
- d. A lawyer should not issue a subpoena to a nonparty witness for inappropriate tactical or strategic purposes, such as to intimidate or harass the nonparty.
- e. As soon as a lawyer knows that a previously scheduled deposition will or will not, in fact, go forward as scheduled, the lawyer should notify all counsel.
- f. A lawyer who obtains a document pursuant to a deposition subpoena should, upon request, make copies of the document available to all other counsel at their expense even if the deposition is canceled or adjourned.

## **SECTION 12 EX PARTE COMMUNICATIONS WITH THE COURT**

A lawyer should not communicate ex parte with a judicial officer or his or her staff on a case pending before the court, unless permitted by law.

*For example:*

- a. Even where applicable laws or rules permit an ex parte application or communication to the court, before making such an application or communication, a lawyer should make diligent efforts to notify the opposing party or a lawyer known to represent or likely to

represent the opposing party and should make reasonable efforts to accommodate the schedule of such lawyer to permit the opposing party to be represented.

- b. Even if a lawyer may legitimately communicate with a judge's clerk or other court staff, for example regarding scheduling matters or to confirm the receipt of filed documents, a lawyer should refrain from discussing the merits of the case or similar substantive issues with court staff.

### **SECTION 13 SETTLEMENT AND ALTERNATIVE DISPUTE RESOLUTION**

A lawyer should raise and explore the issue of settlement and alternative dispute resolution in every case as soon as the case can be evaluated.

*For example:*

- a. A lawyer should always attempt to de-escalate any controversy and bring the parties together unless doing so could be detrimental to the lawyer's client.
- b. A lawyer should not falsely hold out the possibility of settlement as a means for terminating discovery or delaying trial. In every case, a lawyer should consider whether the client's interest could be adequately served and the controversy more expeditiously and economically disposed of by arbitration, mediation, or other form of alternative dispute resolution.
- c. A lawyer should advise the client at the outset of the availability of alternative dispute resolution.
- d. A lawyer involved in an alternative dispute resolution process should participate in good faith, and should not use the process for purposes of delay or for other improper purposes.

### **SECTION 14 TRIALS AND HEARINGS**

A lawyer should conduct himself or herself in trial and hearings in a manner that promotes a positive image of the profession, assists the court in properly reviewing the case, and displays appropriate respect for the judicial system.

*For example:*

- a. A lawyer should be punctual and prepared for all court appearances.
- b. A lawyer should always deal with parties, counsel, witnesses, jurors or prospective jurors, court personnel, and the judge with courtesy and civility.

- c. A lawyer in making objections during a trial or hearing should do so for legitimate and good faith reasons and should not make such objections only for the purpose of harassment or delay.
- d. A lawyer should honor requests made by opposing counsel during trial which do not prejudice his or her client's rights or sacrifice tactical advantage.
- e. While appearing before the court, a lawyer should address all arguments, objections and requests to the court, rather than directly to opposing counsel.
- f. While appearing in court, a lawyer should demonstrate sensitivity to any party, witness, or other lawyer who has requested, or may need, accommodation of a physical, mental, or emotional disability, to foster full and fair access of all persons to the court.

### **SECTION 15 DEFAULT**

A lawyer should not seek an opposing party's default to obtain a judgment or substantive order without giving that opposing party sufficient advance written warning to allow the opposing party to cure the default.

### **SECTION 16 SOCIAL RELATIONSHIPS WITH JUDICIAL OFFICERS OR COURT APPOINTED EXPERTS**

A lawyer should avoid even the appearance of impropriety or bias in relationships with judicial officers, arbitrators, mediators, and independent, court appointed experts.

*For example:*

- a. When a lawyer assigned to appear before a judicial officer with whom the lawyer has a social relationship or friendship beyond normal professional association, the lawyer should notify opposing counsel (or a self-represented party) of the relationship.
- b. A lawyer should disclose to opposing counsel (or a self-represented opposing party) any social relationship or friendship between the lawyer and arbitrator, mediator, or any independent, court-appointed expert taking a role in the case, so that opposing counsel or party has the opportunity to object to such arbitrator, mediator, or expert receiving the assignment.

### **SECTION 17 PRIVACY**

All matters should be handled with due respect for the rights of privacy of parties and non-parties.

*For example:*

- a. A lawyer should not inquire into, attempt to use, or threaten to use, facts about the private lives of any party or other individuals for the purpose of gaining an unfair advantage in a case. This rule does not preclude inquiry into sensitive matters which are relevant to an issue, as long as the inquiry is pursued as narrowly as is reasonably possible and with due respect for the fact that an invasion into private matters is a necessary evil.
- b. If it is necessary for a lawyer to inquire into such matters, the lawyer should cooperate in arranging for protective measures designed to assure that the information revealed is disclosed only to those persons who need it in order to present the relevant evidence to the court.
- c. A lawyer should refrain from communicating via social media with any individual with whom communication would be prohibited or circumscribed if the communication were conducted via more traditional media.

## **SECTION 18 COMMUNICATION ABOUT THE LEGAL SYSTEM AND WITH PARTICIPANTS**

Lawyers should conduct themselves with clients, opposing counsel, parties and the public in a manner consistent with the high respect and esteem which lawyers should have for the courts, the civil and criminal justice systems, the legal profession, and other lawyers.

*For example:*

- a. A lawyer's public communications should at all times and under all circumstances reflect appropriate civility, professional integrity, personal dignity, and respect for the legal system. This rule does not prohibit good faith, factually based expressions of dissent or criticism made by a lawyer in public or private discussions having a purpose to motivate improvements in our legal system or profession.
- b. A lawyer should not make statements that are false or misleading, or that exaggerate, for example, the amount of damages sought in a lawsuit, actual or potential recoveries in settlement or the lawyer's qualifications, experience, or fees.
- c. A lawyer should not create a false or misleading record of events or attribute to an opposing counsel a position not taken.
- d. A lawyer should not fail or refuse without justification to respond promptly by returning phone calls or otherwise responding to the calls, letters, and other communications of his or her clients,' opposing counsel, and/or self-represented parties.
- e. A lawyer who is serving as a prosecutor or defense counsel should conduct him or herself publicly and within the context of a particular case in a manner that shows respect for the important functions that each plays within the criminal justice system, keeping in mind that the defense of an accused is as important and valuable to society as is the

prosecution.

- f. A lawyer should refrain from engaging in conduct that exhibits or is intended to appeal to or engender bias against a person on account of that person's race, color, religion, gender, national origin, sexual orientation, disability, or other characteristic protected by federal or state law, whether that bias is directed to other counsel, court personnel, witnesses, parties, jurors, judges, judicial officers, or any other participants.

## **SECTION 19 NEGOTIATION OF BUSINESS TRANSACTIONS**

A lawyer should ensure that all business transactions and agreements are negotiated, documented, and consummated in an atmosphere of cooperation and with informed authority of the client. Lawyers engaged in a transactional practice have unique responsibilities because much of the practice is conducted without judicial supervision.

*For example:*

- a. In non-confrontational transactional settings, with client approval, lawyers should consider giving each other permission to contact the employees of the other party for the purpose of obtaining promptly and efficiently the information and documents necessary to complete the transaction. When granted such permission, a lawyer should not use the contact to communicate on any issue in controversy or to gain any advantage “against” that party or that party’s lawyer.
- b. A lawyer should not encourage a party with superior knowledge or negotiating position to take unfair advantage of the other party.
- c. A lawyer should avoid negotiating tactics that are abusive, not made in good faith, threaten inappropriate legal action, or do not accurately reflect the client’s wishes.
- d. A lawyer should not participate in an action or in the preparation of a document that is intended to circumvent or violate applicable laws or rules.
- e. A lawyer should avoid entering into a business relationship with a client, or acquiring an interest in an enterprise about which the lawyer is advising the client, without obtaining the client’s fully informed written consent.

## **SECTION 20 REDLINING**

A lawyer should clearly identify, for other counsel or parties all changes that a lawyer makes in documents.

**SECTION 21**  
**ADDITIONAL PROVISION FOR FAMILY LAW PRACTITIONERS**

In addition to other applicable sections of these Guidelines in family law proceedings, a lawyer should seek to reduce emotional tension and trauma and encourage the parties and lawyers to interact in a cooperative atmosphere, and keep the best interest of the children in mind.

*For example:*

- a. A lawyer representing a parent should consider the welfare of a minor child and seek to minimize the adverse impact of the family proceeding on the child.
- b. A lawyer should not participate in a child custody or visitation dispute motivated by financial or tactical objectives of the client.
- c. A lawyer for one of the parents should not meet with, confer with either in person or by telephone, or discuss the litigation with, the minor child or children of the parent/client.
- d. A lawyer for one of the parents should not encourage or permit a client to commence or obtain a psychiatric or psychological evaluation of the child or children, which evaluation is intended to be used in the course of the litigation, without prior stipulation of the parties or other court order.

**SECTION 22**  
**ADDITIONAL PROVISION FOR CRIMINAL LAW PRACTITIONERS**

In addition to other applicable sections of these Guidelines, criminal law practitioners have unique responsibilities. Prosecutors are charged with seeking justice, while defenders must zealously represent their clients even in the face of seemingly overwhelming evidence of guilt. In practicing criminal law, a lawyer should appreciate these roles.

*For example:*

- a. A prosecutor should not question the propriety of a defense lawyer defending a person accused of a crime.
- b. Appellate defense counsel and trial defense counsel should communicate openly, civilly and without rancor, endeavoring to keep proceedings in a manner that is deemed professional.