

# **DALLAS BAR ASSOCIATION GUIDELINES OF PROFESSIONAL COURTESY**

## **PREAMBLE**

A lawyer's primary duty is to the client. But in striving to fulfill that duty, a lawyer must be ever conscious of the broader duty to the judicial system that serves both attorney and client.

A lawyer owes, to the judiciary, candor, diligence and utmost respect.

A lawyer owes, to opposing counsel, a duty of courtesy and cooperation, the observance of which is necessary for the efficient administration of our system of justice and the respect of the public it serves.

A lawyer unquestionably owes, to the administration of justice, the fundamental duties of personal dignity and professional integrity.

**In furtherance of these fundamental concepts, the following Guidelines of Professional Courtesy are hereby adopted.**

## **COURTESY, CIVILITY AND PROFESSIONALISM**

### **1. General Statement**

- (a) Lawyers should treat all people, including but not limited to other lawyers and the opposing party, and if a matter involves litigation, the court and the members of the court staff with courtesy and civility; lawyers must conduct themselves in a professional manner at all times.
- (b) The client has no right to demand that counsel abuse the opposite party or indulge in offensive conduct. If representation involves litigation, a lawyer shall always treat adverse witnesses and suitors with fairness and due consideration.
- (c) In any matter, though ill feeling may exist between clients, such ill feeling should not influence a lawyer's conduct, attitude, or demeanor towards opposing lawyers.

### **2. Discussion**

- (a) A lawyer should not engage in discourtesies or offensive conduct with opposing counsel, whether at hearings, depositions or at any other time when involved in the representation of clients. In contacts with the court and court personnel, counsel should treat the court and its staff with courtesy and respect and without regard to whether counsel agrees or disagrees with rulings of the court in any specific case. Further, counsel should not denigrate the court or opposing counsel in private conversations with their own client. We should all remember that the disrespect we bring upon our fellow members of the Bar and the judiciary reflects on us and our profession as well.
- (b) Lawyers should be punctual in fulfilling all professional commitments and in communication, whether with the court or fellow lawyers.

## **DEPOSITIONS, HEARINGS, AND DISCOVERY MATTERS**

### **1. General Statement**

- (a) Lawyers should make reasonable efforts to conduct all discovery by agreement.
- (b) A lawyer should not use any form of discovery, or the scheduling of discovery, as a means of harassing opposing counsel or his client.
- (c) Request for production should not be excessive or designed solely to place a burden on the opposing party, for such conduct in discovery only increases the costs, duration, and unpleasantness of any case.

2. **Scheduling** Lawyers should, when practical, consult with opposing counsel before scheduling hearings and depositions in a good faith attempt to avoid scheduling conflicts.

3. **Discussion**

(a) **General Guidelines**

- (1) When scheduling hearings and depositions, lawyers should communicate with the opposing counsel in an attempt to schedule them at a mutually agreeable time. This practice will avoid unnecessary delays, expense to clients, and stress to lawyers and their secretaries in the management of the calendars and practice.
- (2) If a request is made to clear time for a hearing or deposition, the lawyer to whom the request is made should confirm that the time is available or advise of a conflict within a reasonable time (preferably the same business day, but in any event before the end of the following business day).
- (3) Conflicts should be indicated only when they actually exist and the request time is not available. The courtesy requested by this guideline should not be used for the purpose of obtaining delay or any unfair advantage.

(b) **Exceptions to General Guidelines**

- (1) A lawyer who has attempted to comply with this rule is justified in setting a hearing or deposition without agreement from opposing counsel if opposing counsel fails or refuses promptly to accept or reject a time offered for hearing or deposition
- (2) If opposing counsel raises an unreasonable number of calendar conflicts, a lawyer is justified in setting a hearing or deposition without agreement from opposing counsel.
- (3) If opposing counsel has consistently failed to comply with this guideline, a lawyer is justified in setting a hearing or deposition without agreement from opposing counsel.
- (4) When an action involves so many lawyers that compliance with this guideline appears to be impractical, a lawyer should still make a good faith attempt to comply with this guideline.
- (5) In cases involving extraordinary remedies where time associated with scheduling agreements could cause damage or harm to a client's case, then a lawyer is justified in setting a hearing or deposition without agreement from opposing counsel.

4. **Minimum Notice for Depositions and Hearings**

- (a) Depositions and hearings should not be set with less than one week notice except by agreement of counsel or when a genuine need or emergency exists.
- (b) If opposing counsel makes a reasonable request which does not prejudice the rights of the client, compliance herewith is appropriate without motions, briefs, hearings, orders and other formalities and without attempting to exact unrelated or unreasonable consideration.

5. **Canceling Depositions, Hearings and Other Discovery Matters**

(a) **General Statement** Notice of cancellation of depositions and hearings should be given to the court and opposing counsel at the earliest possible time.

(b) **Discussion**

- (1) Calling at or just prior to the time of a scheduled hearing or deposition to advise the court or opposing counsel of the cancellation lacks courtesy and consideration.
- (2) Early notice of cancellation of a deposition or a hearing avoids unnecessary travel and expenditure of time by opposing counsel, witnesses, and parties. Also, early notice of cancellation of hearings to the Court allows the time previously reserved to be used for other matters.

## **ORDERS AND JUDGMENTS**

1. **General Statement** Proposed Orders to be submitted to the court should be prepared promptly, and should be submitted to opposing counsel before or contemporaneously with submission to the Court.

2. **Discussion**

(a) **General Rule**

- (1) Unless the Order or Judgment is to be immediately submitted to the Court, the attorney charged with preparing the proposed Order should prepare it promptly, generally no later than the following business day, and should mail it to the court for entry, simultaneously mailing a copy to the opposing counsel.
- (2) The transmittal letter to the court should advise the court to enter the order unless the court has heard an objection from opposing counsel within five days from the receipt of the Order or Judgment.

(b) **Exception**

- (1) In the event an Order or Judgment must be entered immediately, and hand delivery of the Order or Judgment to the Court is contemplated, the lawyer charged with preparing the Order or Judgment should have a copy of the Order or Judgment hand delivered to opposing counsel the same day it is delivered to the court.
- (2) If hand delivery of the proposed Order or Judgment cannot be accomplished, then opposing counsel should be called and the proposed Order or Judgment read to the opposing counsel.

## **SERVICE OF PAPERS FILED WITH THE COURT**

1. **General Statement** Lawyers should not attempt to unfairly gain advantage by delay in service of pleadings or correspondence upon opposing counsel.

2. **Discussion**

- (a) When pleadings or correspondence are mailed to the court, copies should be mailed the same day to all other counsel of record, both local and out of town.
- (b) When pleadings or correspondence are hand delivered to the court and a response is due or a hearing is scheduled within seven (7) days, or a ruling by the court is expected promptly, such papers should be hand delivered the same day to all counsel of record in Dallas County, and should be sent by overnight delivery to counsel residing in other cities.

## **AGREEMENTS AND STIPULATIONS OF UNDISPUTED MATTERS**

1. **General Statement**

- (a) Lawyers should stipulate to undisputed matters not inconsistent with the client's interests.
- (b) Lawyers should abide by all promises and agreements with opposing counsel, whether oral or in writing.

2. **Discussion**

- (a) Lawyers should be willing to agree to and stipulate to undisputed matters to avoid unnecessary utilization of court time and inconvenience. In doing so, the counsel seeking a stipulation should request a stipulation in writing.
- (b) Opposing counsel should promptly inform the counsel requesting the stipulation whether the stipulation is agreeable or not so that a decision can be made by the party seeking a stipulation as to whether a hearing will be necessary.
- (c) A reasonable time to respond to the request generally would require no more than one week from the time the request for stipulation is received.
- (d) In the preparation of agreements, achievement of a jointly desired common goal is often hindered by the practice of preparing draft agreements which include terms neither desired nor insisted upon by the party. When preparing a draft of an agreement,

a lawyer should attempt to state the true anticipated agreement of the parties and avoid inclusion of terms which would hinder the finalization of the agreement.

- (e) It is appropriate to honor requests of opposing counsel made during trial which do not prejudice the rights of the client or sacrifice tactical advantage. To this end, counsel could disclose the identity of the next witness to be called, the next depositions to be read, sharing of a projector or video tape screen, estimates of time and other matters of this nature routinely encountered in trial by trial counsel.
- (f) I will attempt to prepare documents that correctly reflect the agreement of the parties. I will not include provisions that have not been agreed upon or omit provisions that are necessary to reflect the agreement of the parties without advising the other party.

### **TIME DEADLINES AND EXTENSIONS**

- 1. **General Statement** Reasonable extensions of time should be granted to opposing counsel where such extension will not have a material, adverse effect of the rights of the client.
- 2. **Discussion**
  - (a) Because we all live a world of deadlines, additional time is often required to complete a given task.
  - (b) Traditionally, members of this bar association have readily granted any reasonable request for an extension of time as an accommodation to opposing counsel who, because of a busy trial schedule, personal emergency or heavy work load, needs additional time to prepare a response or comply with a legal requirement.
  - (c) This tradition should continue; provided, however, that no lawyer should request an extension of time solely for the purpose of delay or to obtain any unfair advantage.
  - (d) Counsel should make every effort to honor previously scheduled vacations of opposing counsel which dates have been established in good faith.

### **COMMUNICATION WITH THE JUDGE AND COURT PERSONNEL**

- 1. **General Statement**
  - (a) Only lawyers should communicate with the judge or appear in court on substantive matters.
  - (b) Non-lawyers may communicate with court personnel regarding scheduling matters and other nonsubstantive matters.
- 2. **Discussion**
  - (a) Lawyers should make no attempts to obtain an advantage in a case by an ex parte communication with the court.
  - (b) Lawyers should avoid arguments or posturing through unnecessary inclusion of the Court in correspondence. If a matter does not merit the filing of a motion or of an agreed order, it probably does not warrant involving the judge or clerk in correspondence or with copies of correspondence to the opponent. Only correspondence which has been requested by the Court, or is merely filed to record the service of documents, should be sent to the Court.

### **CONCLUSION**

**The conduct of the lawyer before the Court and with other lawyers should at all times be characterized by honesty, candor, and fairness.**

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