

The following guidelines of Professional Courtesy and Civility have been adopted by the Riverside County Bar Association, Desert Bar Association, and Riverside County Courts as representing accepted terms of professional behavior upon which the successful functioning of the judicial system and the practice of law depends.

## Section I: Scheduling

Civility and courtesy in scheduling meetings, hearings, and discovery are not to be equated with weakness, and are not inconsistent with zealous representation of the client.

Specifically, a lawyer who manifests professional courtesy and civility:

1. Makes reasonable efforts to schedule meetings, hearings, and discovery by agreement whenever possible and considers the scheduling interests of opposing counsel, the parties, witnesses and the court. Misunderstandings are avoided by sending formal notices.
2. Does not arbitrarily or unreasonably withhold consent to a request for scheduling accommodations.
3. Does not engage in delay tactics in scheduling meetings, hearings and discovery.
4. Tries 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, immediately after so that he or she can promptly notify the court, or other tribunal, and opposing counsel of any likely problems.
5. Notifies opposing counsel and if appropriate, the court or other tribunal as early as possible when scheduled meetings, hearings or depositions must be canceled or rescheduled.

## Section II: Continuances and Extensions of Time

Consistent with existing law and court 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.

Specifically, a lawyer who manifests professional courtesy and civility:

1. Agrees to reasonable requests for extensions of time or continuances without requiring motions or other formalities. First requests for reasonable extensions of time to respond to litigation deadlines, whether relating to pleading, discovery or motions, should ordinarily be granted as a matter of courtesy unless time is of the essence, or the client would be disadvantaged. A first extension should be allowed even if the counsel requesting it has previously refused to grant an extension.
2. Considers any reasonable request for time in light of the need for prompt resolution of matters, the consideration which 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.
3. Does not engage in the strategy of not agreeing to reasonable requests for time extensions simply to appear "tough," and advises clients against such a strategy.
4. Does not seek extensions or continuances for the purpose of harassment or prolonging litigation.

5. Does not condition extensions on terms which alter the rights of the parties in the litigation, such as the right to demur or move against a complaint or the right to object to discovery.
6. (Criminal Law Guidelines to be added)

### Section III: Service of Papers

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

Specifically, a lawyer who manifests professional courtesy and civility:

1. Does 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.
2. Serves papers by personal delivery or facsimile transmission when it is likely that service by mail, even when allowed, will prejudice the opposing party.
3. Serves paper on an individual attorney known to be responsible at his or her principal place of work.
4. Refrains from using the mode, timing or place of serving papers primarily to embarrass a party or witness.

### Section IV: Punctuality

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

Specifically, a lawyer who manifests professional courtesy and civility:

1. Arrives sufficiently in advance of trials, hearings, meetings, depositions or other scheduled events so that preliminary matters can be resolved.
2. Timely notifies all other participants and the court when, for a reason beyond his or her control, the lawyer will be unavoidably late.
3. Timely notifies the other participants and the court when he or she is aware that a participant will be late for a scheduled event.

### Section V: Communications

Memoranda, declarations and other written materials submitted to the court should always be factual and concise and should accurately state the current law and fairly represent the parties' position without unfairly attacking the opposing party or opposing counsel. A lawyer should at all times be civil, courteous, and as accurate as possible in communication with adversaries and the court, whether in writing or orally.

Specifically, a lawyer who manifests professional courtesy and civility:

1. Does not use facts not properly introduced in the case and in written briefs or memoranda of points and authorities.
2. Does not orally or in writing degrade or disparage any judicial officer, the opposing party, counsel or witness(es) unless such matters are specifically at issue in the preceding.
3. Does 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.

4. Makes sparing use of letters intended only to make a record and then only when the lawyer thinks it is necessary given all the circumstances.
5. Does not send a copy of a letter addressed to opposing counsel to the judge unless specifically invited by the court.
6. Does not fail or refuse, without justification, to respond to the phone calls and letters of opposing counsel.

*(This list is not intended to be all inclusive.)*

## Section VI: Discovery

A lawyer should not use any form of discovery, the scheduling of discovery, or any other part of the discovery process as a means of harassing opposing counsel or the opposing party or as a means of delaying the timely, efficient and cost-effective resolution of a dispute.

Specifically:

1. **As to depositions**, a lawyer who manifests professional courtesy and civility:
  - a. Takes depositions only where needed to ascertain facts or information or to preserve testimony.
  - b. Accommodates the schedules of opposing counsel and the deponent in scheduling depositions, where it is possible to do so without prejudicing the client's rights.
  - c. Ordinarily shows deference to a deposition scheduled first and noticed by another party for the reasonable near future by not scheduling another deposition in the same case for an earlier date without the agreement of opposing counsel.
  - d. Does not delay a deposition for dilatory or bad faith purposes but only if necessary to meet real scheduling problems.
  - e. Does 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.
  - f. Avoids repetitive or argumentative questions or those asked solely for purposes of harassment.
  - g. Limits objections to those that are well founded and necessary for the protection of the client's interest, and remembers that most objections are preserved and need be made only when the form of a question is defective or privileged information is sought.
  - h. Does not direct a deponent to refuse to answer a question unless the question seeks privileged information, is manifestly irrelevant and/or is calculated to harass.
  - i. Does not, while a question is pending, through objections or otherwise, coach the deponent or suggest answers.
  - j. Does not engage in any conduct during a deposition that would not be allowed in the presence of a judicial officer.
2. **As to document requests**, a lawyer who manifests professional courtesy and civility:
  - a. Limits requests for production of documents to documents actually and reasonably believed to be needed for the prosecution or defense of an action and does not make demands to harass or embarrass a party or witness or to impose an inordinate burden or expense in responding.

- b. Does not draft requests for document production so broadly that they encompass documents clearly not relevant to the subject matter of the case.
  - c. Does not interpret the request in an artificially restrictive manner in an attempt to avoid disclosure
  - d. Withholds documents on the grounds of privilege only where appropriate.
  - e. Does not produce documents in a disorganized or unintelligible fashion or in a way calculated to hide or obscure the existence of particular documents.
  - f. Does not delay producing documents to prevent opposing counsel from inspecting documents prior to scheduled depositions or for any other tactical reason.
3. **As to interrogatories**, a lawyer who manifests professional courtesy and civility:
- a. Uses interrogatories sparingly and never to harass or impose undue burden or expense on the opposing party.
  - b. Does not interpret or respond to interrogatories in an artificial manner designed to assure that answers are not truly responsive.
  - c. Does not object to interrogatories except when a good faith belief exists in the merit of the objection and, if an interrogatory is objectionable only in part, answers the unobjectionable portion.
4. (Criminal Law Guidelines to be added)

#### Section VII: Motion Practice

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

Specifically, a lawyer who manifests professional courtesy and civility:

- 1. Engages in more than a mere pro forma effort to resolve the issue before filing a motion and, where appropriate, will certify in the motion the efforts to resolve the issue.
- 2. Does not engage in conduct which forces opposing counsel to file a motion unless intending to oppose such motion in good faith.

#### Section VIII: Dealing with Nonparty Witnesses

Dealings with nonparty witnesses should be courteous and designed to leave the witness with an appropriately good impression of the legal system.

Specifically, a lawyer who manifests professional courtesy and civility will have a copy of the notice of deposition, or a substantial equivalent, served with the subpoena, and will serve a copy of the subpoena upon all counsel.

#### Section IX: Ex Parte Communications with the Court

A lawyer should avoid ex parte communications on the substance or merits of a pending case with a judge (or his or her researcher) before whom such case is pending. Specifically, a lawyer who manifests professional courtesy and civility:

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

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

2. Where rules permit an ex parte application or communication to the court in an emergency situation makes 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 seriously prejudiced if the application or communication were made with regular notice.

## Section X: Settlement and Alternative Dispute Resolution

In every case, a lawyer should raise and actively explore the potentials of settlement or alternative dispute resolution as soon as the case can be evaluated (and, if feasible, mediation should be encouraged).

Specifically, a lawyer who manifests professional courtesy and civility:

1. Advises the client at the outset of the availability of alternative dispute resolution.
2. Does not falsely hold out the possibility of settlement as a means for determining discovery or delaying trial.
3. Considers whether the clients' interest could be adequately served and the controversy more expeditiously and economically disposed of by arbitration, mediation or other forms of alternative dispute resolution.

## Section XI: Trials and Hearings

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

Specifically, a lawyer who manifests professional courtesy and civility:

1. Is punctual and prepared for all court appearances.
2. Always deals with parties, counsel, witnesses, jurors, prospective jurors, court personnel and judicial officers with courtesy, civility and respect.
3. Makes objections during a trial or hearing for legitimate and good faith reasons and does not make such objections only for the purpose of harassment or delay, to coach witnesses, or for other improper purpose.
4. Honors requests made by opposing counsel during trial which do not prejudice his or her client's rights or sacrifice tactical advantage.

## Section XII: Privacy

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

Specifically, lawyer who manifests professional courtesy and civility:

1. Does not inquire into, attempt to use or threaten to use, facts about the private life of any party or other individual for purpose of gaining an advantage in a case, where not relevant to the specific issues, and where sensitive matters are relevant to an issue, will pursue such inquiry as narrowly as reasonably possible.

2. Cooperates, if it is necessary to inquire into such matters in arranging for reasonable protective measures.