

SACRAMENTO COUNTY BAR ASSOCIATION

STANDARDS OF PROFESSIONAL CONDUCT

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PREAMBLE

Every attorney who practices law in Sacramento County is responsible for the quality of justice in this community. Each of us impacts the judicial system in some way, either litigating cases in our courts, advising clients in our offices and corporate legal staffs or working in the community. Each of us reflects the quality and character of the legal profession as perceived by those whom we serve.

A key element in the efficiency and fairness of the justice system is the professional relationships we have with each other, with our clients and with the courts. Practicing law in accordance with these Standards of Professional Conduct ("Standards") will reduce the cost of litigation in most cases, conserving judicial resources and financial resources of our clients.

The Standards are designed to define the quality of those professional relationships. The Standards are not new; most of the ideas are included in the canons of ethics and codes of conduct with which we are familiar. But unfortunately, the intensity of our professional lives, particularly in litigating cases which lapse into "hardball" tactics, often seems to bring out the worst in some of us. The rising level of distrust, discourtesy and rancor between counsel results in rude, unprofessional conduct. Such conduct is a disservice to the interests of our clients and results in public outcry for the reform of the legal profession.

The Standards are designed to provide specific guidance as to how to maintain an acceptable standard of professional conduct. High standards of professional conduct have always been the goal of the Sacramento County Bar Association where the standards of professional conduct have always exceeded the minimum standards required in the canons of ethics. The Standards serve as an educational vehicle for younger lawyers and reminders for those who have practiced for many years. If adopted as rules of court, the Standards will provide guidance for acceptable conduct in our courts.

The Standards are structured to provide a general guiding principle in each area addressed followed by specific examples which are not intended to be all encompassing. While the examples reflect conduct primarily in traditional civil and criminal court venues, they are equally applicable to all alternative dispute resolution processes.

Lawyers are encouraged to comply with the spirit of the Standards and not simply blindly adhere to the strict letter of the Standards. The goals stated herein are equally applicable to all lawyers regardless of area of practice.

The Standards should be read against the context of the lawyer's underlying duty to zealously represent the lawyer's client. Nothing in the Standards should be read to denigrate the lawyer's duty of zealous representation.

SECTION 1

RESPONSIBILITIES TO THE CLIENT

Lawyers shall work to achieve their client's lawful and meritorious objectives as expeditiously and economically as possible:

Examples - Lawyers shall:

- a. Be committed to their client's cause, but shall not permit that loyalty to interfere with giving the client objective and independent advice.
- b. Advise their client against pursuing litigation (or any other course of action) that does not have merit.

SECTION 2

RESPONSIBILITIES TO THE PUBLIC

Lawyers should always be mindful that the law is a learned profession and that among its goals are devotion to public service, improvement of the administration of justice, and the contribution of uncompensated time and civic influence on behalf of persons who cannot afford adequate legal assistance.

Examples - Lawyers shall:

- a. Contribute time on a pro bono basis to community activities.
- b. Become actively involved in organized activities designed to improve the courts, the legal system and the practice of law.
- c. Donate legal services to individuals unable to afford those services.

SECTION 3

RESPONSIBILITIES TO THE COURT AND THE BAR

Lawyers shall always act toward other members of the bar in a professional, courteous, dignified, and civil manner, mindful that all lawyers are officers of the court and members of a learned profession, and that every lawyer has a duty to the justice system to act with integrity and to set a high standard of civility. In keeping with these responsibilities, lawyers should, for example, act in the following ways:

3A. SCHEDULING

Lawyers shall understand and advise their client that civility and courtesy in scheduling meetings, hearings, and discovery are expected and not to be equated with weakness.

Examples - Lawyers shall:

- a. Make reasonable efforts to schedule meetings, hearings, and discovery by agreement whenever possible and shall consider the scheduling interests of opposing counsel, the parties, witnesses, and the court. To avoid misunderstandings, formal notice shall be sent after agreement is reached.
- b. Not arbitrarily or unreasonably withhold consent to a request for scheduling accommodations.

- c. Not engage in delay tactics in scheduling meetings, hearings or discovery.
- d. 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, immediately after so that he or she can promptly notify the court, or other tribunal, and opposing counsel of any likely problems.
- e. Notify opposing counsel and, if appropriate, the court or other tribunal as early as possible when scheduled meetings or other matters must be canceled or rescheduled.

3B. CONTINUANCES AND EXTENSIONS OF TIME

Consistent with existing law and court orders, lawyers shall agree to reasonable requests for extensions of time when the legitimate interests of his or her client will not be adversely affected.

Examples - Lawyers shall:

- a. Agree to reasonable requests for extensions of time or continuances without requiring motions or other formalities.
- b. Be committed to and advise clients that the strategy of not agreeing to reasonable requests for time extensions simply to appear tough is inappropriate.
- c. Not seek extensions or continuances for the purpose of harassment or extending litigation.
- d. 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.
- e. Not, by agreeing to extensions, seek to cut off an opponent's substantive rights, such as his or her right to move against a complaint.

3C. SERVICE OF PAPERS

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

Examples - Lawyers shall:

- a. Attempt not to 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, such as late on Friday afternoon or the day preceding a secular or religious holiday.
- b. Serve papers on the individual attorney known to be responsible for the matter and at their principal place of business.

3D. PUNCTUALITY

Lawyers shall be punctual in communications with others and in honoring scheduled appearances.

Examples - Lawyers shall:

- a. Arrive sufficiently in advance of trials, hearings, meetings, depositions, or other scheduled events so that preliminary matters can be resolved.
- b. Timely notify all other participants when, for a reason beyond their control, they will be unavoidably late.
- c. Timely notify the other participants when they are aware that a participant will be later for a scheduled event.

3E. WRITINGS SUBMITTED TO THE COURT

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

Examples - Lawyers shall:

- a. Not use facts that are not properly brought before the court or part of the record in written briefs or memoranda of points and authorities.
- b. 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.

3F. COMMUNICATIONS WITH ADVERSARIES

- a. Not draft letters assigning to an opposing party a position that party has not taken or creating a record of events that have not occurred.
- b. Sparingly use letters intended only to make a record and then only when they think it is necessary given all the circumstances.
- c. Not send a letter addressed to opposing counsel to the judge unless specifically permitted or invited by the court.
- d. Promptly respond to telephone calls on pending matters.
- e. When redlining, clearly identify for other counsel or parties, all changes that have been made in documents.

3G. ELIMINATION OF BIAS

Lawyers shall always act impartially with respect to all persons including opposing counsel, clients, witnesses, and the public. Lawyers shall not engage in any act of bias based on race, gender, age, national origin, religion, sexual orientation or disability while engaging in the practice of law, and should work toward the elimination of bias in all aspects of the justice system.

Examples - Lawyers shall:

- a. Treat opposing counsel with respect and courtesy regardless of race, gender, age, national origin, religion, sexual orientation or disability.
- b. Not attempt to take advantage of or intimidate another lawyer on account of race, gender, age, national origin, religion, sexual orientation or disability.

- c. Not tolerate bias or prejudice by another attorney or by the court and should take appropriate steps to prevent an occurrence of such behavior in the future.
- d. Refrain from making any statement or comment, whether publicly or privately, which serves to denigrate any other lawyer, judicial officer or member of the public on the basis of race, gender, age, national origin, religion, sexual orientation or disability.

SECTION 4

DISCOVERY

Lawyers shall 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.

Examples - Lawyers shall:

- a. As to Depositions:
 - (1) Take depositions only when actually needed to learn facts or information or to preserve testimony.
 - (2) In scheduling depositions, reasonably accommodate schedules of opposing counsel and the deponent, when it is possible to do so without prejudicing the client's rights.
 - (3) Make reasonable efforts to schedule discovery by agreement whenever possible and consider the scheduling interests of opposing counsel, the parties, witnesses, and the court. To avoid misunderstandings, send formal notice after agreement is reached.
 - (4) When a deposition is scheduled and noticed by another party for the reasonable near future, ordinarily not schedule another deposition for an earlier date without the agreement of opposing counsel.
 - (5) Not delay a deposition for bad faith purposes but only if necessary to meet real scheduling problems.
 - (6) Avoid questions asked solely for purposes of harassment.
 - (7) When representing a deponent or representing another party, limit objections to those that are well founded and necessary for the protection of the client's interest. (Lawyers shall 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) When an objection is necessary, state it succinctly, concisely, free of argument or colloquy.
 - (9) Once a question is asked, not use objections for the purpose of coaching the deponent or suggesting answers.
 - (10) Not direct a deponent to refuse to answer a question unless the question seeks privileged information or is manifestly irrelevant or calculated to harass.
 - (11) Refrain from self-serving speeches during depositions.

- (12) Not engage in any conduct during a deposition that would not be allowed in the presence of a judicial officer.
- (13) Conduct all argument and colloquy between counsel in a professional manner and, where appropriate, outside the presence of the deponent.
- b. As to Document Demands:
 - (1) Limit demands for production of documents to documents actually and reasonably believed to be needed for the prosecution or defense of an action and not to make demands which harass or embarrass a party or witness or to impose an inordinate burden or expense in responding.
 - (2) Not draft demands for document production so broadly that it encompasses documents clearly not relevant to the subject matter of the case.
 - (3) In responding to document demands, not interpret the request in an artificially restrictive manner in an attempt to avoid disclosure.
 - (4) Not produce documents in a way calculated to hide or obscure the existence of particular documents.
 - (5) Not wait to produce documents until the scheduled production date to prevent opposing counsel from inspecting documents prior to scheduled depositions or for any other tactical reason.
- c. As to Interrogatories:
 - (1) Use interrogatories sparingly and never to harass or impose undue burden or expense on the opposing party.
 - (2) Not read or respond to interrogatories in an artificial manner designed to assure that answers are not truly responsive.
 - (3) 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, lawyers shall answer the unobjectionable portion.

SECTION 5

MOTION PRACTICE

Motions are expensive and consume valuable judicial resources, contributing to delay and often creating side issues which make the case more complex. Motions should be filed sparingly, only in good faith and when the issue cannot be otherwise resolved without court intervention. Prior to filing any motion, the moving party should make a reasonable and good faith effort to resolve the substantive issues raised by the motion and, if resolution is not possible, to coordinate hearing dates with any opposing parties.

Examples - Lawyers shall:

- a. Before filing a motion, engage in more than a pro forma good faith effort to resolve the issue.
- b. Not engage in conduct which forces opposing counsel to file a motion and then not oppose the motion.

SECTION 6

DEALING WITH NONPARTY WITNESSES

Dealings with non-party witnesses shall be courteous and designed to leave that witness with a good impression of the legal system.

Examples - Lawyers shall:

- a. Not issue subpoenas to non-party witnesses except in connection with their appearance at a hearing, trial or deposition in the pending action.
- b. Ensure that deposition subpoenas are accompanied by notices of deposition with copies to all counsel.
- c. Where lawyers obtain documents pursuant to a deposition subpoena, make copies of the documents available to all other counsel at their expense even if the deposition is canceled or adjourned.

SECTION 7

EX PARTE COMMUNICATIONS WITH THE COURT

Except as permitted by law, lawyers shall avoid ex parte communications on the substance of a pending case with a judge (or his or her law clerk) before whom such case is pending.

Example - Lawyers shall:

Even where applicable laws or rules permit an ex parte application or communication to the court, before making such an application or communication, make diligent efforts to notify the opposing party or a lawyer known to represent or likely to represent the opposing party and make reasonable efforts to accommodate the schedule of such lawyer to permit the opposing party to be heard; except 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 8

SETTLEMENT AND ALTERNATIVE DISPUTE RESOLUTION

Alternative dispute resolution is not only a collection of techniques but a way of thinking -- a continual search for ways to overcome obstacles, to create a process, to take some positive step -- to enhance the possibility of resolving a dispute. Lawyers shall raise and explore settlement and alternative dispute resolution possibilities in every case as early in the case as possible, and continue to explore those possibilities as the case unfolds.

Examples - Lawyers shall:

- a. Always attempt to resolve any controversy and bring the parties together.
- b. Not falsely hold out the possibility of settlement as a means for terminating discovery or delaying trial.
- c. In every case, 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.
- d. Advise the client at the outset of the availability of alternative dispute resolution and explain in simple language what the effects of the various ADR techniques, e.g., mediation, neutral evaluation or mini-trial might have on the case.

SECTION 9

TRIALS AND HEARINGS

Lawyers shall conduct themselves in trial and hearings in a manner which promotes a positive image of the profession, assists the court in properly deciding the case, and displays respect for the justice system.

Examples - Lawyers shall:

- a. Be punctual and prepared for all court appearances.
- b. Always deal with parties, counsel, witnesses, jurors or prospective jurors, court personnel and the judge with courtesy and civility.
- c. In making objections during a trial or hearing, do so for legitimate and good faith reasons and not make objections for the purpose of harassment or delay.
- d. Honor requests made by opposing counsel during trial which do not prejudice his or her client's rights or sacrifice tactical advantage.

SECTION 10

SOCIAL RELATIONSHIPS WITH JUDICIAL OFFICERS OR COURT APPOINTED EXPERTS

Lawyers shall avoid even the appearance of impropriety or bias in relationships with judicial officers and independent, court appointed experts.

SECTION 11

PRIVACY

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

Examples - Lawyers shall:

- a. Not attempt to use, nor threaten to use, facts about the private lives of any party or other individual which are not relevant to the matters at issue 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 and as reasonably possible.
- b. If it is necessary to use such information, 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.

SECTION 12

COMMUNICATIONS ABOUT THE LEGAL SYSTEM AND WITH PARTICIPANTS

Lawyers shall conduct themselves with clients, opposing counsel, judges, jurors, parties, and the public in a manner consistent with the high respect and esteem which they shall have for the courts, the civil and criminal justice systems, and the legal profession and its members.

Examples - Lawyers shall:

- a. When making public communications shall 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. Not make false or misleading statements.
- c. Not fail or refuse without justification to respond promptly to the calls and letters of their clients and/or opposing counsel.
- d. When serving as a prosecutor or defense counsel, conduct themselves in a manner that shows respect for the important functions that each plays within the criminal justice system.