

ASSOCIATION OF BUSINESS TRIAL LAWYERS
ETHICS, PROFESSIONALISM AND CIVILITY GUIDELINES
(Updated February 2015)

Introduction

The Los Angeles Chapter of the Association of Business Trial Lawyers has adopted Ethics, Professionalism and Civility Guidelines. These guidelines identify principles of conduct for lawyers engaged in litigation. The goal of the guidelines is to eliminate unnecessary conflict and to reduce the level of contentiousness and inefficiency in the resolution of legal disputes.

The ABTL, as a voluntary bar association, does not intend these guidelines to provide a basis for further litigation, or for sanctions or penalties. While some of the following guidelines are based on statutes or existing rules of professional conduct, others go beyond any requirement of current law. Lawyers are encouraged to apply the spirit of the guidelines, as appropriate, in circumstances that are not specifically addressed in any of the guidelines' specific provisions. For example, communications via social media should be consistent with the guidelines set forth herein. In this regard, counsel also should understand and appreciate the ethical issues judges face with respect to social media.

Nothing in the guidelines is intended to inhibit a lawyer's zealous representation of his or her client's interests. The guidelines are, however, based on the belief that zealous representation is compatible with professional and civil conduct. The ABTL encourages firms and individuals to abide by these guidelines in their everyday practice.

Ombudsmen Civility Program

Every law firm's reputation is affected by the professional conduct of its lawyers acting in the name of the firm. Law firms should include the subject of professional and civil conduct in their programs for the training of new lawyers and their continuing legal education programs. Law firms also should identify a lawyer within the litigation practice group to whom questions regarding compliance with these ABTL guidelines may be addressed. In the absence of such a designee, each ABTL Board Member is expected to assist in this respect.

As part of each member firm's commitment to civility, each ABTL Board Member or their designee will facilitate compliance with ABTL's Civility Guidelines by being available to receive and assist in the resolution of issues concerning conduct raised against his/her firm which purportedly contravenes the guidelines set forth herein. The ABTL believes that the process could be facilitated if such issues were presented by a disinterested member of the complaining law firm. The goal of the process would be to resolve differences by inter-firm discussion, and the intervention of disinterested and responsible members of each firm, rather than through escalating untoward behavior on each side and motions and counter-motions for sanctions.

Responsibilities to the Public.

1. A lawyer should not engage in derogatory or prohibited conduct on the basis of race, religion, gender, sexual orientation, physical condition, disability or other immutable characteristics of any person.

2. A lawyer always should 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.

Responsibilities to the Client.

3. A lawyer must work to advance the lawful and legitimate interests of his or her client. This duty does not include an obligation or any effort to act abusively or discourteously. Zealous representation of the client's interests should be carried out in a professional and civil manner.

4. A lawyer should not behave in an offensive, derogatory or discourteous manner even when his or her client so desires. If necessary, a lawyer should advise the client that civility and courtesy are the marks of professionalism and not signs of weakness.

5. The client's best interests are often served by alternatives to litigation. A lawyer should consider the possibility of settlement or alternative dispute resolution in every case and, when appropriate, bring such alternatives to the client's attention.

Litigation Conduct.

6. A lawyer should be punctual and prepared for all court appearances so that all matters may commence on time and proceed efficiently. Lawyers should treat judges, counsel, parties, witnesses and court personnel in a civil and courteous manner, not only in court but in depositions, conferences and in all other written and oral communications.

7. Where an alternative manner of service would not prejudice the client's legitimate interests, a lawyer should not use the timing and manner of service to embarrass or disadvantage the party or person on whom the papers are served.

8. A lawyer should consider the opposing counsel's legitimate calendar conflicts when scheduling or postponing hearings, depositions, meeting or conferences, unless to do so would be contrary to the legitimate interests of his or her client. A lawyer should not arbitrarily or unreasonably refuse a reasonable request for an extension of time. In considering a request for an extension of time, a lawyer may appropriately take into account the interests of his or her client, whether there have been prior requests for extensions, the time required for the task, the nature of the adversary's scheduling difficulty, and whether the adversary will grant reciprocal

reasonable requests. A lawyer should not engage in delay tactics in scheduling meetings, hearings, or discovery.

9. A lawyer should try to verify the availability of key participants and witnesses before a meeting, hearing, or trial date is set. If that is not feasible, a lawyer should try to do so immediately after the meeting, hearing, or trial date is set so that he or she can promptly notify the court and opposing counsel of any likely problems.

10. A lawyer should (i) notify opposing counsel and, if appropriate, the court as early as possible when scheduled meetings, hearings, or depositions must be cancelled or rescheduled, and (ii) provide, when possible, alternate dates for such meetings, hearings, or depositions.

Discovery.

11. A lawyer should not use discovery to harass opposing counsel or the opposing party or for the purpose of delaying the efficient resolution of a dispute. A lawyer should explore with opposing counsel alternatives to formal discovery that will achieve the same objective at lower cost. Lawyers should be willing to agree to mutual stipulations of genuinely undisputed facts.

12. A lawyer should take depositions only when actually needed to learn facts or preserve testimony, and should not engage in any conduct during a deposition that would not be appropriate in the presence of a judge.

13. Written discovery should be limited to seeking such information and documents that a lawyer reasonably believes are necessary for the prosecution or defense of an action. A lawyer responding to written discovery or complying with court rules requiring disclosure should not employ artificially restrictive interpretations to avoid disclosure of relevant and non-privileged information or documents.

14. ABTL strongly encourages lawyers to engage in an extensive and good faith meet and confer process before bringing a discovery motion. Whenever possible, counsel should meet in person to discuss discovery disputes. A discovery motion should only be brought as a last resort. Lawyers are encouraged to seek the court's assistance through an informal discovery conference prior to filing a discovery motion.

Electronic Discovery.

15. Electronic discovery should be conducted with the goal of limiting the cost, burden and time spent, while ensuring the information subject to discovery is preserved and produced to allow for fair adjudication of the merits.

16. To assure reasonableness and proportionality in discovery, parties should consider factors that include the burden or expense of the proposed discovery compared to its likely benefit, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in adjudicating the merits of the case. To further the application of the proportionality

standard, discovery requests for production of electronically stored information (ESI) and related responses should be reasonably targeted, clear and as specific as practicable.

17. Opportunities should be utilized to reduce costs and increase efficiency and speed, such as by conferring about the methods and technology used for searching ESI to help identify the relevant information and sampling methods, to validate the search for relevant information, and by reaching agreements for truncated or limited privilege logs.

18. ABTL strongly encourages an informal discussion about the discovery of ESI (rather than initially by deposition) at the earliest reasonable stage of the discovery process. Counsel, or others knowledgeable about the parties' electronic systems, including how potentially relevant data is stored and retrieved, should be involved or made available as necessary.

Court Submissions.

19. A lawyer's submissions to the court should be professional in tone. A lawyer should at all times strive to be concise and to state accurately the law, the facts and the parties' positions. Briefs and pleadings should not be written in an unnecessarily inflammatory manner.

20. A lawyer should avoid personal attacks on all court officers, including judges and opposing counsel, and should not comment adversely on the intelligence, integrity, motive or conduct of judges or opposing counsel, except in the rare circumstance when such matter is legitimately in issue. Even when the zealous representation of a client may necessitate allegations of improper conduct, a lawyer should carefully review such allegations to ensure that they are justified and supported by the evidence. A lawyer should bear in mind that ad hominem comments frequently are unpersuasive, increase the level of personal antagonism, and tend to diminish public respect for lawyers and the courts.

21. A lawyer should not seek sanctions against a party or opposing counsel without first conducting a reasonable investigation and participating in an in person good faith meet and confer dialogue. ABTL also strongly encourages the use of the Ombudsmen Civility Program discussed above.

RESOURCES

Below are links to civility guidelines and ethics opinions prepared by California courts and bar associations. This list is intended to be helpful but is not exhaustive.

COURTS

- Los Angeles Superior Court
<http://www.lacourt.org/courtrules/ui/index.aspx?ch=ChapAppdx&tab=2>
- Orange County Superior Court
<https://www.google.com/url?q=http://www.occourts.org/directory/civil/complex->

[civil/department-guidelines.pdf&sa=U&ei=yfi3VLvyDliWuAS3soLQDQ&ved=0CAUQFjAA&client=internal-uds-cse&usg=AFQjCNEfLgBWu8QegkBYPAVaxBceXr1PEw](#)

- Santa Clara Superior Court: <http://www.sccba.com/?page=professionalism>
- San Francisco Superior Court: <http://www.sfsuperiorcourt.org/general-info/guidelines-professional-conduct>
- Sacramento Superior Court: <https://www.saccourt.ca.gov/local-rules/docs/standards-professional-conduct.pdf>
- CD Cal: <https://www.cacd.uscourts.gov/attorneys/admissions/civility-and-professionalism-guidelines>
- ND Cal: http://www.cand.uscourts.gov/professional_conduct_guidelines

E-DISCOVERY

- ND Cal e-discovery: <http://www.cand.uscourts.gov/eDiscoveryGuidelines>
- Delaware e-discovery: <http://www.ded.uscourts.gov/court-info/local-rules-and-orders/guidelines>

ETHICS OPINIONS

- LACBA Ethics page <http://www.lacba.org/showpage.cfm?pageid=427>
- CA Bar Ethics page <http://ethics.calbar.ca.gov/Ethics/AttorneyCivilityandProfessionalism.aspx>
- ABA Ethics page http://www.americanbar.org/groups/professional_responsibility/publications/ethics_opinions.html