

ASSOCIATION OF BUSINESS TRIAL LAWYERS
ETHICS, PROFESSIONALISM AND CIVILITY GUIDELINES

Introduction

The Northern California and San Diego Chapters of the Association of Business Trial Lawyers have 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 stress in the resolution of legal disputes.

The ABTL, as a voluntary 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.

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 adopt these guidelines as their own. As part of that commitment, firms are also encouraged to subscribe to the voluntary inter-firm resolution process discussed below.

Guidelines

1. A lawyer must work to advance the lawful and legitimate interests of his or her client. This duty does not include an obligation to act abusively or discourteously. Zealous representation of the client's interests should be carried out in a professional manner.
2. A lawyer should not engage in derogatory or prohibited conduct on the basis of race, religion, gender, sexual orientation or other immutable characteristics of any person.
3. 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 not signs of weakness.

4. 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.

5. 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.

6. 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.

7. 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.

8. Discovery is an important and appropriate litigation tool, and lawyers are expected to pursue such discovery as is appropriate in order to evaluate and establish the client's position in litigation. A lawyer should not, however, 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.

9. Depositions are generally conducted by lawyers without direct judicial supervision and are frequently the most uncivil phase of litigation. 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.

10. 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.

11. 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 style.

12. 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.

13. A lawyer should not seek judicial sanctions against a party or opposing counsel without first conducting a reasonable investigation and unless the lawyer is convinced that sanctions would be fully justified.

14. 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 guidelines (either by an attorney in the firm or by opposing counsel) may be addressed.

Dispute Resolution

The ABTL encourages law firms subscribing to the principles of these guidelines to confirm their willingness to participate in a voluntary inter-firm dispute resolution process where opposing counsel whose firm has also subscribed to the principles of these guidelines believes that there has been a violation of the standards set forth in the guidelines or other applicable rules of professional conduct.

Participating firms would each designate an experienced member of the firm for this purpose. The designated lawyer would be available to receive, investigate and assist in the resolution of complaints of unprofessional or uncivil conduct. The ABTL believes that the process would be facilitated if complaints 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 abrasive behavior on each side and motions and counter-motions for sanctions.