

Oklahoma Bar Association

*Guidelines for
Professional Courtesy*

Preamble

A lawyer's primary responsibility is to the client. Yet, in striving to fulfill that responsibility, as an officer of the court a lawyer should be ever mindful of a higher duty to the judicial system, which serves the ends of justice and fairness.

Accordingly:

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

A lawyer owes to the opposing counsel,

duties of courtesy and cooperation, necessary for the efficient administration of justice;

A lawyer owes to the profession and the bar, by way of example, duties of personal dignity and professional integrity.

In furtherance of these fundamental principles, the following Guidelines For Professional Courtesy hereby are adopted.

Courtesy, Civility and Professionalism

1. General Statement

- a. A lawyer should treat other lawyers, the opposing party, the court and the members of the court staff with courtesy and civility and conduct business 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. A lawyer always should treat adverse witnesses and suitors with fairness and due consideration.
- c. In adversary proceedings, clients are litigants and though ill feelings may exist between clients, such feelings should not influence a lawyer's conduct, attitude or demeanor toward opposing lawyers.

2. Discussion

- a. A lawyer should not engage in discourtesies or offensive conduct with opposing counsel, whether at hearings,

depositions or any other time when involved in the representation of clients. In all 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 a client. We should remember that the disrespect brought upon members of the Bar and the judiciary reflects on us and our profession as well.

- b. A lawyer should be punctual in fulfilling all professional commitments and in communicating with the court and other lawyers, including the returning of telephone calls.



Depositions, Hearings and Discovery Matters



1. General Statement

- a. A lawyer 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 anyone.
- c. Requests 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. A lawyer 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, a lawyer should communicate with opposing counsel in an attempt to schedule them at mutually agreeable times. This practice will minimize unnecessary delays, expense to clients, and stress to lawyers and their secretaries.
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 requested time is not available. The courtesy requested by this guideline should not be used for the purpose of obtaining delay or advantage.

b. Exceptions to General Guidelines

1. A lawyer who has attempted to comply with the above is justified in setting a hearing or deposition without agreement 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 consistently has failed to comply with the above guidelines, 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 the above guidelines appears impractical, a lawyer still should make a good faith effort to comply with the above guidelines.
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. Cancelling 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. This should be avoided.
 2. Early notice of cancellation of a deposition or a hearing avoids unnecessary travel and expenditures of time by opposing counsel, witnesses, and parties. In addition, early notice of cancellation of hearings to the court allows the time previously reserved to be used for other matters.





Service of Papers Filed with the Court



1. General Statement. A lawyer should not attempt to gain advantage by delay in service of pleadings or correspondence upon opposing counsel.
2. Discussion
 - a. When pleading 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 delivered the same day to all counsel of record in the same city and should be sent by a means reasonably calculated to bring them to the immediate attention of opposing counsel in other cities.

Agreements and Stipulations of Undisputed Matters

1. General Statement
 - a. A lawyer should stipulate to undisputed matters not inconsistent with the client's interests.
 - b. A lawyer should abide by all promises and agreements with an opposing counsel, whether or not in writing.
2. Discussion
 - a. A lawyer should be willing to agree to and stipulate to undisputed matters to avoid unnecessary use of court time and inconvenience. In doing so, the counsel seeking a stipulation should request a stipulation in writing.
 - b. Opposing counsel promptly should inform the counsel requesting the stipulation whether the stipulation is agreeable.
 - 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 actual anticipated agreement of the parties and avoid inclusion of terms which would hinder the finalization of an 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. For example, counsel could freely share estimates of time, disclose the identity of the next witness to be called or the next deposition to be read, share a projector or video tape screen, and cooperate in other matters of this nature routinely encountered in trial by trial counsel.

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 on the rights of the client.
2. Discussion
 - a. Because we all live in a world of deadlines, additional time is often required to complete a given task.
 - b. Traditionally, members of the bar have readily conceded to 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.





☞ *Communications 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. A lawyer should make no attempt to obtain an advantage in a case by an ex parte communication with the court. Any

appearance of such a communication should be scrupulously avoided.

- b. A lawyer should avoid 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. 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.

☞ *Fundamental Courtroom Decorum* ☞

1. General Statement

- a. In open court a lawyer should demonstrate courteous, respectful behavior at all times.

2. Discussion

- a. A lawyer should stand while talking to or

being addressed by any judge.

- b. A lawyer should not approach the bench unless permission to do so is granted by the court.
- c. All Argument should be directed to the court, not to opposing counsel.

☞ *Guidelines Comment* ☞

Most of the guidelines set forth above deal with situations where the courts will be affected, directly or indirectly, by the actions of the attorneys involved. Therefore, Oklahoma attorneys are urged to comply with the Guidelines in the interests of judicial economy, professional harmony and, ultimately, enhancement of the public's perception of the system and the profession. By design, the Guidelines are not exhaustive. Many aspects of attorney conduct are not covered. For example, attempts to intimidate through surly remarks or behavior, baseless motions, needlessly extended deposition hearings, threats of sanctions and refusals to deal with other attorneys except

through secretaries are too obvious or subjective to lend themselves to specific treatment in such guidelines or are dealt with in existing court rules. In addition, "Fundamental Courtroom Decorum" only includes *basic* courtesies attorneys should extend in open court; other requirements for the most part have been set forth in District Court Rules, statewide and local. If a specific guideline is not involved in a transaction which is troubling or offensive, the lawyers involved are urged to apply the Golden Rule to guide their actions: Do unto attorneys (and judges) as you would have them do unto you.

Enacted by OBA Board of Governors
November 17, 1989

