

only when the form of a question is defective or privileged information is sought.

h. While a question is pending, a lawyer should not, through objections or otherwise, coach the deponent or suggest answers.

i. A lawyer should not direct a deponent to refuse to answer questions unless he or she has a good faith basis for claiming privilege or for seeking a protective order.

j. A lawyer should refrain from self-serving speeches during depositions.

k. A lawyer should not engage in any conduct during a deposition that would not be allowed or would be inappropriate in the presence of a judicial officer or a jury.

6. Interrogatories

a. Interrogatories should not be used to harass or impose undue burden or expense.

b. Interrogatories should not be read by the lawyer in an artificial manner designed to assure that answers are not truly responsive.

c. Objections to interrogatories should be based on a good faith belief in their merit and not be made for the purpose of withholding relevant information. If an interrogatory is objectionable only in part, the unobjectionable portion should be answered.

7. Document Demands

a. Demands for production of documents should be limited to documents actually and reasonably believed to be needed for the prosecution or defense of an action and not made to harass or embarrass a party or witness or to impose an inordinate burden or expense in responding.

b. Demands for document production should not be so broad as to encompass documents clearly not relevant to the subject matter of the case.

c. In responding to document demands, a lawyer should not strain to interpret the request in an artificially restrictive manner in order to avoid disclosure.

d. Documents should be withheld on the grounds of privilege only where there is a good faith basis for asserting privilege.

e. A lawyer should not produce documents in a disorganized or unintelligible fashion, or in a way calculated to hide or obscure the existence of particular documents.

f. Document production should not be delayed to prevent opposing lawyers from inspecting documents prior to scheduled depositions or for any other tactical reason.

8. Motion Practice

a. Absent justification to do otherwise, before filing or serving a motion, a lawyer should engage the opposing lawyer(s) in more than a mere pro forma discussion of its purpose in an effort to resolve the issue.

b. A lawyer should respond in good faith to any request for an assent to a motion.

9. Dealing with Non-Party Witnesses

a. A lawyer should not issue subpoenas to non-party witnesses except in connection with their appearance at a hearing, trial or deposition.

b. Deposition subpoenas should be accompanied by notices of deposition with copies to all lawyers.

c. Where a lawyer obtains documents pursuant to a deposition subpoena, copies of the documents should be made available to each other lawyer at his or her expense even if the deposition is canceled or adjourned.

10. Ex Parte Communications With the Court

a. A lawyer should avoid ex parte communication on the substance of a pending case with a judge (or his or her law clerk) before whom such case is pending.

b. Even where applicable laws or rules permit an ex parte application or communication to the court, before making such an application or communication, a lawyer should make diligent efforts to notify the opposing party and should

reasonable efforts to accommodate the schedule of such lawyer to permit the opposing party to be represented on the application, unless subsection (c.) applies.

c. Where the rules permit an ex parte application or communication to the court in an emergency situation, a lawyer should make 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 by a failure to make the application or communication on regular notice.

11. Settlement and Alternative Dispute Resolution

a. A lawyer should raise and explore with his or her client the issue of settlement in every case as soon as enough is known about the case to make that discussion meaningful.

b. A lawyer should not falsely hold out the possibility of settlement as a means for adjourning discovery or delaying trial.

c. In every case, a lawyer should consider, and discuss with his/her client, whether the client's interest could be adequately served and the controversy more expeditiously and economically disposed of by arbitration, mediation or other forms of alternative dispute resolution.

12. Trials and Hearings

a. A lawyer should be punctual and prepared for any court appearance.

b. A lawyer should always deal with parties, other lawyers, witnesses, jurors or prospective jurors, court personnel and the judge with courtesy and civility.



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Civility Standards for Civil Litigation

PREAMBLE

BELIEVING THAT THE FOLLOWING Civil Litigation Standards embody the principles to which most litigating lawyers already adhere, the Boston Bar Association promulgates these Standards in order to articulate those principles in writing for ease of reference to benefit the community, practicing lawyers and new members of the bar.

These Standards are intended to be aspirational and voluntary. They are not intended to generate disputes that may result in additional litigation, and they should not be cited as legal authority in any disciplinary proceeding or in any civil or criminal action. Rather, it is hoped that the Standards will be used as an educational tool with the effect of promoting efficient, economical and respectful conduct of civil litigation.

A. In his or her representation of a client, a lawyer should conduct himself or herself in a manner which, without compromising the interests of his or her client, will facilitate the resolution of disputed matters. Accordingly, a lawyer should:

- 1. maintain open communication with opposing lawyers;*
- 2. communicate respectfully with other lawyers;*
- 3. respect the schedule of opposing lawyers and be truthful about his or her own schedule;*
- 4. present issues efficiently without unnecessarily burdening opposing lawyers by discovery or otherwise;*
- 5. discuss each issue with opposing lawyers in a good faith attempt to resolve it without protracted negotiation or unnecessary litigation;*
- 6. be guided by the principle that representation behalf of his or her client ought to be characterized by good faith and honesty;*
- 7. avoid creating unnecessary animosity or contentiousness;*
- 8. avoid setting forth allegations against another lawyer unless relevant to the proceeding and well founded;*
- 9. require those under his/her control to comply with these guidelines and encourage clients and others to do likewise.*

B. The application of these guidelines to situations frequently occurring in a litigation practice are described herein.

1. Continuances and Extensions of Time

- a.** First requests for reasonable extensions of time to respond to litigation deadlines, whether relating to pleadings, discovery or motions, should ordinarily be granted as a matter of courtesy unless time is of the essence. A first extension should be allowed even if the lawyer requesting it has previously refused to grant an extension.
- b.** After a first extension, any additional requests for time should be dealt with by balancing the need for expedition against the deference one should ordinarily give to an opponent's schedule of professional and personal engagements, the reasonableness of the length of extension requested, 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.
- c.** A lawyer should inform clients that the decision whether to grant extensions of time belongs to the lawyer and not to the client.
- d.** A lawyer should not seek extensions or continuances for the purpose of harassment or prolonging litigation.
- e.** A lawyer should not attach to extensions unfair and extraneous conditions. A lawyer is entitled to impose conditions such as preserving rights that an extension might jeopardize or seeking reciprocal scheduling concessions. A lawyer should not, by granting extensions, seek to preclude an opponent's substantive rights, such as his or her right to move against a complaint.

3. Service of Papers

- a.** The timing and manner of service of papers should not be used to the disadvantage of the party receiving the papers.
- b.** Papers should not be served so close to a court appearance that they inhibit the ability of

opposing lawyers to prepare for that appearance or to respond to the papers, where the law permits a response. In making or responding to a motion for preliminary injunction or other emergency matters, a lawyer should make reasonable efforts to comply with the spirit of this rule.

- c.** Papers should not be served in order to take advantage of a lawyer's known absence from the office or at a time or in a manner designed to inconvenience a lawyer or his/her client, such as late on Friday afternoon or the day preceding a secular or religious holiday.
- d.** Service should be made personally or by facsimile transmission when it is likely that service by mail, even when allowed, will prejudice the opposing party. A lawyer who has obtained a short order of notice and knows the identity of or can reasonably identify the opposing lawyer should immediately notify that lawyer by telephone or by facsimile. A lawyer who receives notification as described above should immediately notify his or her client of any temporary restraining order and that he or she is bound by it even before formal service is made.

3. Written Submissions to a Court, Including Briefs, Memoranda, Affidavits and Declarations

- a.** Written briefs or memoranda of points and authorities should not rely on facts that are not properly part of the record or subject to judicial notice.
- b.** Neither written submissions nor oral presentations should disparage the intelligence, ethics, morals, integrity or personal behavior of another lawyer or his/her client, unless such matters are directly and necessarily in issue.

4. Communications With Lawyers

- a.** A lawyer should at all times be civil and courteous in communicating with other lawyers, whether in writing or orally.
- b.** A lawyer should not write a letter to ascribe

to another lawyer a position he or she has not taken or to create "a record" of events that have not occurred.

- c.** Letters intended only to make a record should be used sparingly and only when thought to be necessary under all the circumstances.
- d.** Unless specifically permitted or invited by the court, letters between lawyers should not be sent to judges.

5. Depositions

- a.** Depositions should be taken only where actually needed to ascertain facts or information or to perpetuate testimony for purposes of the case in which the deposition is taken. They should never be used as a means of harassment or to generate expense or solely to obtain information for use in other pending or anticipated litigation.
- b.** In scheduling depositions reasonable consideration should be given to accommodating schedules of opposing lawyers and of the deponent, where it is possible to do so without prejudicing the client's rights.
- c.** Before issuing notice of deposition, a lawyer should contact all lawyers of record in an attempt to reach agreement on a schedule for all depositions and all lawyers should attempt in good faith to abide by any agreement reached.
- d.** A lawyer should not attempt to delay a deposition for dilatory purposes.
- e.** A lawyer should not inquire into a deponent's personal affairs or question a deponent's integrity where such inquiry is irrelevant to the subject matter of the deposition.
- f.** A lawyer should not harass a deponent and should refrain from repetitive or arguments live questions.
- g.** A lawyer defending a deposition should limit objections to those that are well-founded and necessary for the protection of a client's interest. A lawyer should bear in mind that most objections are preserved and need be interposed