Los Angeles County Bar Association

# Litigation Guidelines

Adopted by the Board of Trustees April, 1989

*These Guidelines have been endorsed by the United States District Court for the Central District of California.*

*THESE GUIDELINES ARE REQUIRED TO BE SERVED WITH THE SUMMONS AND COMPLAINT ON ALL DEFENDANTS. ADDITIONAL COPIES HAVE BEEN PROVIDED FOR THAT PURPOSE.*

## Preamble

MANY BELIEVE that relations between lawyers have so deteriorated that our profession nears a crisis--one that not only implicates how we deal with each other but threatens our usefulness to society, the ability of our clients to bear the cost of our work and the essential values that mark us as professionals.

There have always been lawyers who have abused each other and the judicial system, but they seemed to be few in number. Now, some perceive, abusive conduct is gaining new adherents cloaked in the mantle of forceful advocacy. They proclaim that clients are best served by the intimidation of opponents, a relentless refusal to accommodate and the use of tactics that impose escalating expense on an adversary. Be difficult and the other side may cave, they think.

The Committee on Professionalism of the Los Angeles County Bar Association thinks otherwise. For us, filing needless interrogatories or oppressive document demands are not acceptable tactical ploys just because they will divert the other side by requiring useless work. For us, the refusal to accommodate other counsel is not a sign of strength or determination but a simple act of unreasonableness likely to be revisited on the instigator, all to no productive end. For us, the idea that civility and candor stand in the way of desired results is in fact inconsistent with the achievement of long term goals, including successful results for our clients.

Most lawyers impose high standards on themselves. They are courteous, candid, and accommodating to opponents, judges and witnesses--even when faced with less professional behavior by their adversaries. By meeting those high standards, lawyers do not sacrifice their clients' interests; they advance them. They do not compromise principles; they show a steady resolve to stand by them.

Still, lawyers are said to be held in low esteem by the public--and sinking lower. Many see us as unpleasant people who put their own egos and monetary ambitions before the interests of clients or society. We know that is not a true picture of the profession as a whole, but growing incidents of questionable conduct make our case an increasingly hard one to make.

If we are right, something must be done. As a modest first step, the Committee has prepared the following guidelines for litigators. We do not expect every lawyer will agree with every guideline. They simply reflect our best effort at encouraging decency and courtesy in our professional lives without intruding unreasonably on each lawyer's choice of style or tactics. We have not come out against "hardball" as such nor do we advocate anything less than forceful, dedicated advocacy. But we think our profession will be a better one if the guidelines become the accepted norm.

Nothing in the guidelines is intended to conflict with any court policies or rules which are, of course, paramount.

The Committee on Professionalism of the Los Angeles County Bar Association: William W. Vaughn (Chair), Maxwell M. Blecher, Michael J. Bonesteel, John R. Cadarette, Jr., Richard E. Drooyan. Charles R. English, Catherine B. Hagen, Rex S. Heinke, Clinton M. Hodges, C. Douglas Kranwinkle, James J. McCarthy, Gavin Miller, Margaret M. Morrow, Andrea S. Ordin, Jay Joel Plotkin, Hon. David M. Rothman, Hon. Pamela A. Rymer, Robert S. Schlifkin, Hon. Diane Wayne, Lee B. Wenzel.

**The Committee acknowledges with thanks the head start it was given in formulating its guidelines by the "Proposed Code of Litigation Conduct" promulgated in 1988 by the Committee on Federal Courts of the Association of the Bar of the City of New York chaired by John Koeltl of that city.**

# Guidelines

**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 counsel 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 advise clients against the strategy of granting no time extensions for the sake of appearing "tough."

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.

**2. 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 sufficiently close to a court appearance so as to inhibit the ability of opposing counsel to prepare for that appearance or, where permitted by law, to respond to the papers.

c. Papers should not be served in order to take advantage of an opponent's known absence from the office or at a time or in a manner designed to inconvenience an adversary, 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.

**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. A litigant may, however, present historical, economic, or sociological data if such data appear in or are derived from generally available sources.

b. Neither written submissions nor oral presentations should disparage the intelligence, ethics, morals, integrity or personal behavior of one's adversaries, unless such things are directly and necessarily in issue.

**4. Communications With Adversaries**

a. Counsel should at all times be civil and courteous in communicating with adversaries, whether in writing or orally.

b. Letters should not be written to ascribe to one's adversary 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 counsel 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. They should never be used as a means of harassment or to generate expense.

b. In scheduling depositions, reasonable consideration should be given to accommodating schedules of opposing counsel, and of the deponent, where it is possible to do so without prejudicing the client's rights.

c. When a deposition is noticed by another party in the reasonably near future, counsel should ordinarily not notice another deposition for an earlier date without the agreement of opposing counsel.

d. Counsel should not attempt to delay a deposition for dilatory purposes but only if necessary to meet real scheduling problems.

e. Counsel 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. Counsel should refrain from repetitive or argumentative questions or those asked solely for purposes of harassment.

g. Counsel defending a deposition should limit objections to those that are well founded and necessary for the protection of a client's interest. Counsel should bear in mind that most objections are preserved and need be interposed only when the form of a question is defective or privileged information is sought.

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

i. Counsel should not direct a deponent to refuse to answer questions unless they seek privileged information or are manifestly irrelevant or calculated to harass.

j. Counsel for all parties should refrain from self-serving speeches during depositions.

k. Counsel should not engage in any conduct during a deposition that would not be allowed in the presence of a judicial officer.

## 6. 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, counsel 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 appropriate.

e. Counsel 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 counsel from inspecting documents prior to scheduled depositions or for any other tactical reason.

## 7.Interrogatories

a. Interrogatories should be used sparingly and never to harass or impose undue burden or expense on adversaries.

b. Interrogatories should not be read by the recipient 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.

## 8. Motion Practice

a. Before filing a motion, counsel should engage in more than a mere pro forma discussion of its purpose in an effort to resolve the issue.

b. A lawyer should not force his or her adversary to make a motion and then not oppose it.

### 9. Dealing With Non-Party Witnesses

a. Counsel 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 counsel.

c. Where counsel obtains documents pursuant to a deposition subpoena, copies of the documents should be made available to the adversary at his or her expense even if the deposition is cancelled 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 or a lawyer known to represent or likely to represent the opposing party and should make reasonable efforts to accommodate the schedule of such lawyer to permit the opposing party to be represented on the application.

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. Except where there are strong and overriding issues of principle, an attorney should raise and explore the issue of settlement in every case as soon as enough is known about the case to make settlement discussions meaningful.

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

c. In every case, counsel should consider 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. Counsel should be punctual and prepared for any court appearance.

b. Counsel should always deal with parties, counsel, witnesses, jurors or prospective jurors, court personnel and the judge with courtesy and civility.