

# **Civility in Litigation: A Voluntary Commitment**

**The New York State Bar Association  
Guidelines on Civility in Litigation**

**NYSBA**

A copy of the Report on Guidelines on Civility in Litigation prepared by the  
Commercial and Federal Litigation Section may be obtained by writing:

**The New York State Bar Association  
Legislation Department  
One Elk Street  
Albany NY 12207**

*The following Guidelines were adopted by the House of Delegates of the New York State Bar Association as a standard of appropriate conduct for all participants in the litigation process, including lawyers, judges, court personnel and lay persons. They are not intended as a set of rules to be enforced by way of sanction or discipline but rather as guidance to those in the litigation process.*

**I. In dealing with other persons involved in the litigation process, a lawyer should be courteous and civil in all communications.**

- A. Lawyers should act in a professional manner regardless of the ill feelings that their clients may have toward others.
- B. Lawyers can disagree without being disagreeable. They should recognize that effective representation does not require antagonistic or acrimonious behavior.
- C. Lawyers should not use vulgar language or make demeaning characterizations of other persons.
- D. A lawyer should require lawyers, employees and other persons under his or her supervision to conduct themselves with courtesy and civility.

**II. When consistent with their clients' interests, lawyers should communicate with opposing counsel in an effort to avoid litigation and to resolve litigation that has already commenced.**

- A. Lawyers should allow themselves sufficient time to resolve any dispute or disagreement by communicating with one another and imposing reasonable and meaningful deadlines in light of the nature and status of the case.
- B. Lawyers should seek to avoid unnecessary motion practice or other judicial intervention by negotiating and agreeing with the other counsel whenever it is practicable to do so.

**III. A lawyer should respect the schedule and commitments of opposing counsel, consistent with protection of the clients' interests.**

- A. A lawyer should agree to reasonable requests for extensions of time or for waiver of procedural formalities when the legitimate interests of the client will not be adversely affected.
- B. Upon request coupled with the simple representation by counsel that more time is required, the first request for an extension to respond to pleadings ordinarily should be granted as a matter of courtesy.
- C. A lawyer should not attach unfair and extraneous conditions to the extension of time. A lawyer is entitled to impose conditions appropriate to preserve rights that an extension might otherwise jeopardize or to seek reciprocal scheduling concessions.
- D. A lawyer should endeavor to consult with other counsel regarding scheduling matters in a good faith effort to avoid scheduling conflicts. A lawyer should likewise cooperate with opposing counsel when scheduling changes are requested, provided the interests of his or her client will not be jeopardized.
- E. A lawyer should notify other counsel and, if appropriate, the court or other persons, at the earliest possible time when hearings, depositions, meetings or conferences are to be cancelled or postponed.

**IV. A lawyer should promptly return telephone calls and answer correspondence.**

**V. The timing and manner of service of papers should not be designed to cause disadvantage to the party receiving the papers.**

- A. Papers should not be served in order to take advantage of an opponent's known absence from the office.
- B. Papers should not be served at a time or in manner designed to inconvenience an adversary, such as late on Friday afternoon or the day preceding a secular or religious holiday.
- C. Unless specifically authorized by law or rule, a lawyer should not submit papers to the court without serving copies of all such papers to opposing counsel in such a manner that opposing counsel will receive them before or contemporaneously with the submission to the court.

**VI. A lawyer should not use any aspect of the litigation process, including discovery and motion practice, as a means of harassment or for the purpose of increasing litigation expenses.**

**VII. In depositions and other proceedings, and in negotiations, lawyers should conduct themselves with dignity and refrain from engaging in acts of rudeness and disrespect.**

- A. Lawyers should not engage in any conduct during a deposition that would not be appropriate in the presence of a judge.
- B. Lawyers should advise their clients and witnesses of the proper conduct expected of them in court, at depositions and at conferences, and, to the best of their ability, prevent clients and witnesses from causing disorder or disruption.

**VIII. A lawyer should adhere to all express promises and agreements with other counsel, whether oral or in writing.**

**IX. Lawyers should be candid with other persons involved in the litigation process.**

- A. Lawyers should not falsely hold out the possibility of settlement as a means for adjourning discovery or delaying trial.
- B. A lawyer should not ascribe a position to another counsel that counsel has not taken or otherwise seek to create an unjustified inference based on counsel's statements or conduct.
- C. In preparing written versions of agreements and court orders, a lawyer should attempt to correctly reflect the agreement of the parties or the direction of the court.

**X. Lawyers should be mindful of the need to protect the image of the legal profession in the eyes of the public.**