

*Academy of Trial Lawyers  
Of Allegheny County*



*Guidelines for Professionalism*

*July, 2000*

# GUIDELINES FOR PROFESSIONALISM

## HISTORY

*The Guidelines for Professionalism are the result of three years of work by members of the Professionalism Committee of the Academy of Trial Lawyers of Allegheny County, and a number of judges from the Western District of Pennsylvania and the Court of Common Pleas of Allegheny County.*

*The impetus for this effort arose from concerns of members of our local judiciary, practicing attorneys, and law school professors about the level of professionalism and lack of standards of conduct.*

*With the aid of a number of judges, the Committee examined materials published by the federal courts, the Pennsylvania Bar Association, and a number of other organizations, culling from each those particular guidelines the Committee felt were most needed and appropriate. Numerous drafts were generated and distributed for critical comment to judges, practitioners, and Allegheny County and Federal Bar Association Committee members.*

*In drafting these Guidelines, the Committee was mindful of that fine line between generalization, which obstructs the need for ascertainable standards, and specificity, which often results in situations where the exception governs the rule. There will be exceptions to the suggested Guidelines. And in this sense, they should be considered as an expectation of conduct from which deviations should be measured.*

*These Guidelines are to be considered, first and foremost, aspirational in nature. It is hoped that this publication will foster dialogue on the subject of professionalism, and further cooperation between the bench, bar, and local law schools. Revisions are contemplated.*

*The Committee acknowledges the contributions of Judges Donald E. Ziegler, Robert E. Dauer, James H. McLean, Bernard J. McGowan, R. Stanton Wettick, Jr., Eugene B. Strassburger, III, Paul R. Zavarella, and Raymond A. Novak. Finally, the Committee wishes to thank Deborah Eyler Smith whose efforts over the past several years have been invaluable in bringing this project to completion.*

# ACADEMY OF TRIAL LAWYERS OF ALLEGHENY COUNTY

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# GUIDELINES FOR PROFESSIONALISM

## PREAMBLE

*A Judge's conduct toward all participants in the legal process should be characterized at all times by courtesy, fairness, and patience. As judges, we owe respect, diligence, punctuality, and protection against unjust and improper criticism or attack to all participants in legal proceedings.*

*A lawyer's conduct should be characterized at all times by personal courtesy and professional integrity in the fullest sense. In fulfilling our duty to represent our clients vigorously, we will be mindful of our obligations to the administration of justice, and the need to conduct this process in a rational, peaceful, and efficient manner.*

*Uncivil or obstructive conduct impedes the fundamental goal of resolving disputes rationally, peacefully, and efficiently.*

*The following standards are designed to encourage judges and lawyers to meet their obligations toward each other, litigants, and the judicial system in general; thereby achieving the twin goals of civility and professionalism, which are the hallmarks of a learned profession dedicated to public service.*

*We expect judges and lawyers to make a mutual commitment to these standards. Voluntary adherence is expected as part of a commitment by all participants to improve the administration of justice by our courts.*

*It is recognized that these guidelines will not be used as a basis for substantive or procedural law, sanctions or penalties. Nor will they supersede or alter existing disciplinary codes or standards of conduct.*

*These guidelines will be followed by all members of the Academy in any proceeding in Allegheny County, at all levels of the judicial system. It is hoped that these standards will be adopted by the full bench and bar of Allegheny County and the United States District Court for the Western District of Pennsylvania. Copies may be made available to clients to reinforce our obligation to maintain and foster these guidelines.*

## **I. THE COURTS' DUTIES TO LAWYERS**

### **1. Civility and Respect**

*We will be courteous to lawyers, parties and witnesses. We will maintain control of the proceedings, recognizing that judges have both the obligation and the authority to insure that all judicial proceedings move forward promptly and are conducted in a civil manner.*

### **2. Written and Oral Communication**

*We will not employ hostile or demeaning words in opinions or in written or oral communications with lawyers, parties, or witnesses.*

### **3. Punctuality**

*We will be punctual in convening hearings, meetings and conferences; if delayed, we will timely notify counsel, if possible.*

### **4. Scheduling, Time Constraints, and Litigation Expenses**

*In scheduling hearings, meetings, conferences and trials, we will be considerate of the time constraints upon lawyers, parties and witnesses, and the expenses attendant to litigation. Agreements between counsel with respect to filings, deadlines, the timing of discovery, and other scheduling matters will be considered by the Court. This objective will encourage lawyers to make reasonable arrangements with one another without unnecessary use of judicial resources.*

### **5. Promptness of Decision Making, Consideration of Issues in Controversy**

*We will make reasonable efforts to decide promptly all matters presented to us for decision. We will give the issues in controversy informed and impartial analysis and consideration and explain, when practicable, the reasons for our decisions.*

### **6. Deference to Litigation Constraints and Pressures Upon Attorneys**

*While endeavoring to resolve disputes, we will be considerate of the time constraints and pressures imposed on lawyers by the exigencies of litigation practice. While judicial efficiency is a worthy goal, the speed with which a case is resolved should not be the sole criterion of judicial competence.*

### **7. Completeness and Accuracy of Record**

*We will recognize that a lawyer has the right and the duty to present a case fully and properly, and that a litigant has a right to a fair and impartial hearing. Within the practical limits of time, we will allow lawyers to present proper arguments and to make a complete and accurate record.*

### **8. Lawyer's Representative**

*We will not impugn the integrity or professionalism of any lawyer on the basis of the clients whom or the causes, which he/she represents.*

### **9. Dress, Conduct, and Demeanor of Court Personnel**

*We will do our best to insure that Court personnel dress and conduct themselves appropriately and act civilly toward lawyers, parties, and witnesses.*

10. ***Confidentiality of the Conciliation Process***

*The conciliation process should be considered an integral part of the trial. All parties should sincerely strive to fulfill the purpose of that process. We will protect all confidences and remain unbiased with respect to conciliation communications.*

11. ***The Appearance and Dispensation of Justice***

*We will be mindful of the appearance of justice as well as its dispensation.*

12. ***Proctors of Uncivil and Unprofessional Conduct***

*We will bring to a lawyer's attention any uncivil conduct observed.*

**II. LAWYERS' DUTIES TO THE COURT**

1. ***Communications with the Court and Ex-Parte Communications***

*We will speak and write respectfully in all communications with the Court.*

*Ex-parte communications with the Court on pending matters are strictly prohibited. Ex-parte communication with the Court shall be attempted only after counsel has consulted the Rules of Professional Conduct and other professional sources.*

*We will not write letters to the Court in connection with a pending action, unless permitted by the Court. Communications with the Court without notice to opposing counsel are strictly prohibited. If necessity requires communications with the Court, the preferred means shall be in writing given contemporaneously to opposing counsel. In the rare instance when oral communication is necessary, a conference call should be attempted and, if not practicable, then a telephone communication with immediate facsimile or telephone notice of the sum and substance of said communication to opposing counsel.*

*To avoid the appearance of impropriety, when legal proceedings are truncated, or if there are periods of delay in ongoing proceedings, counsel will avoid ex-parte communications with the Judge before whom proceedings are continuing.*

*We will not discuss with any Judge outside the presence of opposing counsel a pending matter in which we are or our firm is appearing or in which our client has an interest.*

2. ***Punctuality and Preparedness***

*We will be punctual and prepared for all Court appearances so that hearings, conferences, and trials may commence on time. If delayed, we will timely notify the court and counsel.*

3. ***Consideration of Judicial Constraints and Pressures***

*We will be considerate of the time constraints and pressures on the court and court staff inherent in their efforts to administer justice and will make every effort to comply with schedules set by the Court.*

4. ***Courtroom Demeanor and of Clients and Witnesses***

*Our conduct will facilitate order in the Courtroom. We will advise our clients and witnesses who appear in Court of the proper conduct expected of them and will, to the*

best of our ability, prevent our clients and witnesses from creating disorder or disruption in the Courtroom. Dress in the Courtroom (whether for trial or not) requires clean, neat, appropriate business attire.

5. ***Addressing the Court, Commencement of Argument, Reference to Opposing Counsel***

When before a Judge, we will never address a remark to opposing counsel; we will make all remarks to the Judge. We shall begin an argument by saying, "May it please the Court", and identify ourselves, our firms, and our clients. We will address a Judge as "Your Honor" or "The Court" or by other formal designation.

When in the Courtroom, we will refer to opposing counsel by surname preceded by the preferred title (Mr., Mrs., Ms., Miss), even if we are otherwise on a first name basis.

6. ***Approaching a Witness***

Before handing or showing a document or object to a witness, we will first seek the permission of the Court to do so, e.g., "May I approach the witness?"

7. ***Citing Facts and Authorities***

We will accurately represent and cite facts or authorities and be candid and truthful in any oral or written communication with the Court.

8. ***Anticipating Conflicts Among Counsel and Trial Participants***

Before hearings and trial dates are set, or if that is not feasible, immediately after such dates have been set, we will attempt to verify the availability of necessary participants and witnesses so we can promptly notify the Court of any anticipated problems.

9. ***Relationship Between Attorneys and Court Personnel***

We will act and speak civilly to clerks, court reporters, secretaries, law clerks, and other court personnel with an awareness that they, too, are an integral part of the judicial system.

10. ***Contemporaneous Service of Communications to the Court***

All written communication to the Court should be accompanied by copies to all counsel involved in the pending proceedings, delivered at substantially the same time and by the same means as the written communication to the Court.

11. ***Conciliation Process***

The conciliation process should be considered an integral part of the trial. All parties will sincerely strive to fulfill the purpose of that process. Counsel shall presume that they have the assurance that Court will protect all confidences and remain unbiased with respect to conciliation communications.

12. ***Disturbances in the Courtroom***

We will turn off cellular phones and paging devices inside any Courtroom.

### **III. LAWYERS' DUTIES TO OTHER COUNSEL**

1. ***Relationship with Opposing Counsel, Parties and Witnesses***

*We will practice our profession with a continuing awareness that our role is to advance the legitimate interests of our clients. We will treat all other counsel, parties, and witnesses in a civil and courteous manner, not only in Court, but also in all other written and oral communications.*

2. ***Demeanor towards Opposing Counsel, Parties and Witnesses***

*We will not, even when called upon by a client to do so, abuse or indulge in offensive conduct directed to other counsel, parties or witnesses. We will abstain from disparaging personal remarks or acrimony toward other counsel, parties, or witnesses. We will treat adverse witnesses and parties with fair consideration.*

3. ***Intolerance of Improper Conduct***

*We will not encourage or knowingly authorize or permit any person under our control to engage in improper conduct.*

4. ***Attribution of Bad Motives or Improper Conduct***

*We will not, absent good cause, attribute bad motives or improper conduct to other counsel or bring the profession into disrepute by unfounded accusations.*

5. ***Notice and Due Diligence in the Sanctions Process***

*We will not seek Court sanctions without first conducting a reasonable investigation and unless fully justified by the circumstances and necessary to protect our client's lawful interests.*

6. ***Adherence to Express and Implied Promises and Agreements Between Counsel***

*We will adhere to all express promises and agreements with other counsel, whether oral or in writing, and will adhere in good faith to all agreements implied by the circumstances or local customs.*

7. ***Negotiating Written Documents***

*When we reach an oral understanding on a proposed agreement or a stipulation and decide to commit it to writing, we will endeavor in good faith to state draft the oral understanding accurately and completely. The drafter will provide the opportunity for review of the writing to other counsel. As drafts are exchanged between counsel, changes from prior drafts will be identified in the draft or otherwise explicitly brought to the attention of other counsel. We will not include matters to which there has been no agreement without explicitly advising other counsel in writing of the addition.*

8. ***Informal Settlement Conferences***

*We will endeavor to confer early with other counsel to assess settlement possibilities. We recognize that the possibility of settlement should not adjourn discovery or delay trial unless both parties are in agreement.*

9. **Stipulations**

*In civil actions, we will stipulate to relevant matters if they are undisputed and if no good faith basis exists for not stipulating.*

10. **Resolution of Disputes Without Court Intervention**

*We will make good faith efforts to resolve our objections to matters contained in pleadings, discovery requests, and objections. Before making objections to discovery requests, all attorneys are encouraged to READ THE RULES. It behooves both Plaintiffs and Defendants to work out reasonable means by which information can be disclosed without resorting, unnecessarily, to a Courtroom forum, to air disparate views of already well-recognized and agreed-upon case law.*

11. **Provision of Adequate Opportunity of Response**

*We will not time the filing or service of motions or pleadings in any way that unfairly limits another party's opportunity to respond. This is particularly true for proceedings initiated on short notice. In such situations, the quickest method of notice is required and may well require delivery by several methods, such as telephone communication followed by a confirming fax.*

12. **Notice and Opportunity to Respond to a Position Filed with the Court**

*Briefs and Motions In Limine shall be provided to opposing counsel sufficiently in advance to allow a thorough review. We will contact opposing counsel, if possible, before scheduling a motion. If we are consenting to a motion, we shall timely notify opposing counsel and not simply fail to appear.*

13. **Extensions of Time**

*We will not request an extension of time solely for the purpose of unjustified delay or to obtain a tactical advantage.*

14. **Scheduling, Cancellations and Postponement Conflicts**

*We will consult other counsel regarding the scheduling matters in a good faith effort to avoid scheduling conflicts. We will endeavor to accommodate previously scheduled dates for trials, hearings, depositions, meetings, conferences, vacations, seminars, or other functions that produce good faith calendar conflicts on the part of other counsel. If we have been given an accommodation because of a calendar conflict, we will notify those who have accommodated us as soon as the conflict has been removed. We will notify other counsel and, if appropriate, the Court or other persons, at the earliest possible time, when trials, hearings, depositions, meetings, or conferences are to be canceled or postponed. Early notice avoids unnecessary travel and expense and may enable the Court and other counsel to use the previously reserved time for other matters.*

15. **Requests for Extensions and Waivers**

*We will agree to reasonable requests for extensions of time and for waiver of procedural formalities, provided our clients' rights will not be materially or adversely affected.*

16. ***The Entry of Defaults and Dismissal***  
*We will not cause any default or dismissal to be entered without following the procedures set forth for each level of the judiciary.*
17. ***Reasonableness in Discovery***  
*The foremost guideline in discovery is that of reasonableness. No paper discovery should be propounded which does not advance a reasonable objective of litigation.*
18. ***Depositions***  
*We will take depositions only when actually needed to ascertain facts or information or to perpetuate testimony, or further another proper purpose. We will not employ any form of discovery for the purpose of harassment or to increase litigation expenses.*
19. ***Conduct During Depositions***  
*We will not engage in any conduct during a deposition that would not be appropriate in the presence of a judge.*
20. ***Questioning During Depositions***  
*We will not obstruct questioning during a deposition or object to deposition questions unless appropriate under the applicable rules or necessary to preserve an objection or privilege for resolution by the Court.*
21. ***Time Limits During Depositions***  
*During depositions, we will ask only those questions we reasonably believe are necessary for the prosecution or defense of an action.*
22. ***Document Requests and Production***  
*We will respond to document requests reasonably and not strain to interpret the request in an artificially restrictive manner to avoid disclosure of relevant and non-privileged documents. We will not produce documents in a manner designed to hide or obscure them.*
23. ***Interrogatories and Interrogatory Responses***  
*We will respond to Interrogatories reasonably and will not strain to interpret them in an artificially restrictive manner to avoid disclosure of relevant and non-privileged information.*
24. ***Discovery Objections***  
*We will base our discovery objections on a good faith belief in their merit, and will not object solely for the purpose of withholding or delaying the disclosure of relevant information.*
25. ***Duplicate and Inappropriate Discovery***  
*When propounding written discovery, Plaintiffs and Defendants should be aware of those inquiries that are best left to oral deposition so as not to unnecessarily burden the written response process. Where there are multiple party Plaintiffs or Defendants, lawyers should strive to avoid duplication of Interrogatories and Requests for Production.*

26. ***Interrogatories as Tools to Evaluate Liability and Damage Issues***  
*It is essential that Plaintiff and Defendant appreciate that Interrogatories are not an empty exercise, but permit the litigants to evaluate the liability and damage issues of the case, a necessary step to placing reserves or projecting a recovery.*

27. ***Tone and Method of Communication Between Counsel***  
*Written communications between counsel should be courteous and to the point, and hand delivered, mailed or faxed in a timely manner. Delivery or faxing after normal business hours or on weekends should be deemed delivered as of 9:00 a.m. the next business day. Mailing a letter several days after the date appearing on that letter shall be avoided.*

*We will not ascribe a position to counsel which he/she has not taken or otherwise seek to create an unjustified inference based on counsel's statements or conduct. Similar self-serving communications to opposing counsel will be avoided. Such communications are often viewed as posturing and inevitably invite a response.*

28. ***Timeliness of Communications***  
*Phone calls from other counsel should be returned promptly, or if there is to be a delay in responding, notification to that effect should be given with an appropriate explanation, e.g., out of town, engaged in trial, or otherwise unavailable for whatever reason.*

29. ***Written Confirmation of Important Oral Communications***  
*Important communications between counsel will either be in writing or confirmed in writing as to create a clear and undisputed record, especially for future reference.*

30. ***Drafting and Review of Proposed Orders***  
*When a draft order is to be prepared by counsel to reflect a Court ruling, we will draft an order that accurately and completely reflects that Court's ruling. We will promptly prepare and submit a proposed order to other counsel and attempt to reconcile any differences before the draft order is presented to the Court.*

31. ***Copying Counsel and the Court with Communications Between Counsel***  
*Unless specifically permitted or invited by the Court, we will not send copies of correspondence between counsel to the Court.*