



*In recognizing the humanity of our fellow beings,  
we pay ourselves the highest tribute.*

*~ Thurgood Marshall*

## MASSACHUSETTS BAR ASSOCIATION CIVILITY GUIDELINES FOR FAMILY LAW ATTORNEYS

### PREAMBLE

Civility and professionalism are hallmarks of a learned profession. Uncivil, abrasive, abusive, hostile and obstructive conduct impedes our ability as domestic relations attorneys to resolve disputes rationally, peacefully and efficiently. The Massachusetts Bar Association (MBA) Family Law Section has developed these guidelines to: (1) encourage new lawyers and members of the bar to treat each other and participants in the court process in a civil and courteous manner; (2) foster public confidence and respect for the legal profession; and (3) provide an educational tool that can raise consciousness among domestic relations lawyers about the importance of respectful client representation. These guidelines are to be included in MBA continuing legal education materials for family law practitioners and supplement the MBA's Statement on Lawyer Professionalism adopted in May, 1989. Attorneys are encouraged to disseminate these guidelines and to take a leadership role in fostering pride and civility in the legal profession.

Adoption of these guidelines reflects the MBA Family Law Section's commitment to promoting excellence in the profession. The Family Law Section has a long and proud history of providing invaluable conflict resolution services to clients, supporting Lawyer for the Day programs throughout the state, and engaging in other pro bono and community services. These guidelines embody general principles to which most lawyers already adhere and are put in writing for ease of reference.

These guidelines are aspirational, but we encourage attorneys to honor and voluntarily adhere to the principles set forth below. These guidelines go beyond what is required by applicable rules of professional conduct and should not be cited as legal authority in disciplinary and court proceedings. The professional courtesies suggested by these guidelines are not to be used to gain any unfair advantages, cause unnecessary delays in litigation, or to generate additional conflict or litigation.

**1. Lawyers shall treat the practice of law as a learned profession and promote respect for the legal profession by adhering to applicable rules of professional conduct with dignity, civility and courtesy.**

***A. Lawyers shall treat participants in the legal process with respect and be positive role models for new lawyers and other members of the bar.***

A lawyer shall treat all participants in a legal matter or case in a civil, professional and courteous manner. This includes, but is not limited to opposing counsel, parties, witnesses, probation officers, guardians *ad litem*, child support enforcement staff, DSS and state agency employees, assistant registers, court personnel and judges. A lawyer's communications, whether oral or in writing, shall be civil and respectful in tone. Lawyers should advise clients, witnesses, associates and other persons they employ to be civil and courteous to opposing counsel and all participants in the legal process. Yelling, swearing, angry outbursts, derogatory name-calling, temper tantrums, ridicule of others, insults and other ill mannered behavior are not appropriate. The erosion of common courtesy and politeness in the interactions of some lawyers does a disservice to all lawyers. Rude, offensive conduct of lawyers toward their colleagues invariably diminishes respect for the law as well as the legal profession as a whole.

***B. Lawyers shall set a positive example for clients and encourage them to conduct themselves with dignity and civility.***

Domestic relations cases are unique in that they center primarily around children, family members and interpersonal relationships. Divorce is often a painful and stressful process. Clients and other family members may be in crisis and emotions often run high when a couple separates or parties are involved in a court case. Lawyers, however, set the tone for their clients. A lawyer's incivility may unwittingly fuel already volatile circumstances or encourage a client to become hostile and unreasonable. The best domestic relations practitioners are holistic in their approach and focus on their role as a counselor as well as zealous advocate for the client. Lack of civility may have devastating, lifelong personal consequences for the client, the client's children and the client's most important relationships. Accordingly, family law attorneys should be sensitive to their clients' vulnerabilities and encourage clients to conduct themselves with appropriate dignity and civility. Attorneys act in their clients' best interests by encouraging them to refrain from impulsive, abusive or vindictive conduct toward the opposing party or other individuals involved in the case.

A lawyer shall decline a client's request that the lawyer engage in rude, offensive conduct toward other counsel, parties, or others involved in a case. Clients should be informed that cooperation between counsel is the professional norm. Attorney incivility often escalates costs, derails settlement possibilities, delays resolution of the case and increases acrimony.

***C. Lawyers shall refrain from engaging in conduct exhibiting racial and other bias.***

Lawyers shall refrain from making degrading comments, ridiculing others, or acting upon or exhibiting bias or prejudice toward any lawyer, party or other participant in the legal process based on race, gender, religion, ethnicity, age, marital status, sexual orientation, gender identity, disability, poverty or economic disadvantage.

***D. Lawyers shall be punctual, respect the schedule of opposing counsel, truthfully disclose their own schedules and reply to opposing counsel communications within a reasonable time.***

***Be on time and prepared.*** Lateness is rude to lawyers, parties and the court. Lawyers shall be punctual and prepared for all scheduled appearances so that all matters may begin on time and proceed efficiently. Lawyers should educate clients and witnesses about the need to be punctual and prepared. If a financial statement or other document is required, the lawyer shall come to court with an already completed financial statement for his or her client or other required documents.

***Promptly inform others if you will be late.*** If a lawyer is delayed or has reason to expect he or she will be delayed, the lawyer shall notify everyone involved as soon as possible.

***Be courteous and truthful about schedules.*** A lawyer shall be truthful about his or her own schedule and respectful of the opposing counsel's schedule. A lawyer will not knowingly schedule events or file motions or other papers at a time calculated to unfairly limit other counsel's opportunity to respond or to take advantage of another attorney's unavailability.

***Reply to communications within a reasonable time.*** A lawyer should return telephone calls and respond to communications from opposing counsel within a reasonable time. Discovery rules, pretrial or other orders may require that counsel confer before a hearing. It is rude to put an attorney in the position of having to repeatedly track down an opposing counsel who fails to return the attorney's calls or adequately respond to his or her communications.

***Decline cases if you cannot appear for case related events on time with regularity.*** If a lawyer knows that he or she will be unable to arrive on time with any regularity for a client's hearings or other case related events because of commitments to other clients or courts, he or she should decline to represent the client. In the alternative, the attorney could make arrangements for co-counsel who can represent the client when the lawyer has to be in another court or place on the same date.

***E. Lawyers shall uphold the dignity and decorum of the court.***

A lawyer shall conduct himself or herself in a manner that demonstrates respect for the lawyer's function as an advocate and for the court. A lawyer shall not engage in conduct that offends the dignity and decorum of legal proceedings or brings disorder to the courtroom. Lawyers should educate clients and witnesses about proper courtroom decorum and to the best of their ability, prevent them from causing disorder or disruption in the courtroom. Lawyers owe a duty of zealous representation to their clients, but shall employ a respectful tone and demeanor when arguing the case or disagreeing with the judge as to interpretation of the law, rulings or other matters.

Lawyers shall refrain from accusing the judge of misconduct or bias when there is no basis for such a claim. Lawyers shall refrain from raising these claims solely as a means of pressuring the judge to make particular rulings, or to cause the judge public embarrassment. Attorneys should also discourage clients or others from engaging in such conduct because it is unjust, causes undue acrimony and erodes public confidence in the legal system.

**2. Attorneys shall foster respect and public confidence in the legal profession through lawyering characterized by honesty, integrity and fair dealings.**

***A. Lawyers shall honor promises, understandings with and commitments they have made with other attorneys.***

A lawyer shall honor his or her agreements and stand by promises he or she has made. If an attorney has not discussed a settlement offer or position with a client, he or she shall disclose that fact to opposing counsel to avoid wasting the other lawyer's time or triggering unrealistic expectations or reliance on the offer or stated position. Lawyers should honor proposals they have made in negotiations unless newly received information or unforeseen circumstances provide a good faith basis for rescinding them, and encourage clients to conduct themselves in accordance with this principle.

***B. Lawyers shall not knowingly misrepresent, mischaracterize or misquote facts or authorities cited.***

Notwithstanding and consistent with his or her responsibility as an advocate, a lawyer shall be guided by the principle that representations on behalf of a client or a cause to the court and opposing counsel ought to be characterized by good faith and honesty. Likewise, a lawyer should counsel his or client to also act in good faith. Lawyers should not condone or encourage fraud or transfer, hiding or dissipation of marital assets by a client to improperly defeat a spouse or party's claims.

**C. *Absent a basis or good cause, lawyers shall refrain from attributing bad motives or accusing opposing counsel of misconduct.***

Lawyers shall refrain from making false or unfounded accusations of misconduct about opposing counsel to the court. Attorneys should also discourage clients or others from doing so because such conduct is unjust, causes undue acrimony and diminishes respect for the legal system and the profession.

**D. *Lawyers shall refrain using the legal system as a means of retaliation or for inappropriate purposes.***

Lawyers shall refrain from utilizing litigation, delaying tactics, or any other course of conduct to harass the opposing party, counsel or others involved in the case. Lawyers shall not encourage clients to file frivolous motions or to contest child custody related matters as a means for financial leverage in a marital property dispute or out of vindictiveness.

**E. *Lawyers shall encourage clients to be good parents and to get professional help rather than condoning or acquiescing to conduct that is clearly harmful to the client, the client's minor children or others.***

The health, safety and well-being of a family member usually affects the rest of the family. Parents also have a fiduciary duty to serve their minor children's best interests. Lawyers should advise their clients to consider the needs and interests of their minor children when making decisions about their case. An attorney shall not contest child custody or block access to a child as a means of obtaining financial leverage in a case or out of vindictiveness. If the attorney discovers a client has problems with parenting, substance abuse, mental health, anger management, physical disabilities, domestic violence or other similar difficulties, the attorney should provide the client with appropriate referrals for assistance as is appropriate and helpful based on the circumstances of the case and any related criminal action.

**F. *Lawyers shall refrain from engaging in excessive and abusive discovery.***

Lawyers shall refrain from designing production requests for the purpose of placing an undue burden or expense on a party. Lawyers shall comply with Rule 401 and Rule 410 mandatory disclosures as well as reasonable discovery requests. Lawyers shall not strain to interpret discovery requests in an artificially restrictive manner to avoid disclosure of information.

**3. *Lawyers shall be polite and respectful to pro se parties.***

While these guidelines focus on attorneys and their opposing counsel, the same courtesies and principles should extend to *pro se* parties who represent themselves. Lawyers should explain to a *pro se* party that they do not represent him or her and suggest that the *pro se* party seek legal advice from an attorney. This may avoid a *pro se* party equating courtesy, politeness or friendliness with dual representation.

## DEDICATION

*These Guidelines of Civility for Family Law Attorneys are dedicated to the memory of Richard D. Pakenham, known to virtually all as "Packy." Packy was a gentleman and a pillar of the domestic relations bar who epitomized a lawyer at his best in the role of counselor, zealous advocate, scholar, educator, officer of the court, friend and respected colleague.*