

Standards of Litigation Conduct

1. General Statement

- a. Lawyers should make reasonable efforts to conduct all discovery by agreements.
- b. A lawyer should not use any form of discovery, or the scheduling of discovery, as a means of harassing opposing counsel or his client.
- c. Requests for production should not be excessive or designed solely to place a burden on the opposing duration and unpleasantness of any case.

2. Scheduling lawyers should, when practical, consult with opposing counsel before scheduling hearings and depositions in a good faith attempt to avoid scheduling conflicts.

3. Discussion

a. General Guidelines

(1) When scheduling hearings and depositions, lawyers should communicate with the opposing counsel in an attempt to schedule them at a mutually agreeable time. This practice will avoid unnecessary delays, expense to clients, and stress to lawyers and their secretaries in the management of the calendars and practice.

(2) If a request is made to clear time for a hearing or deposition, the lawyer to whom the request is made should confirm that the time is available or advise of a conflict within a reasonable time (preferably the same business day, but in any event before the end of the following business day).

(3) Conflicts should be indicated only when they actually exist and the requested time is not available. The courtesy requested by this guideline should not be used for the purpose of obtaining delay or any unfair advantage.

b. Exceptions to General Guidelines.

(1) A lawyer who has attempted to comply with this rule is justified in setting a hearing or deposition without agreement from opposing counsel if opposing counsel fails or refuses promptly to accept or reject a time offered for hearing or deposition.

(2) If opposing counsel raises an unreasonable number of calendar conflicts a lawyer is justified in setting a hearing or deposition without agreement from opposing counsel.

(3) If opposing counsel has consistently failed to comply with this guideline, a lawyer is justified in setting a hearing or deposition without agreement from opposing counsel.

(4) When an action involves so many lawyers that compliance with this guideline appears to be impractical, a lawyer should still make a good faith attempt to comply with this guideline.

(5) In cases involving extraordinary remedies where time associated with scheduling agreements could cause damage or harm to a client's case, then a lawyer is justified in setting a hearing or deposition without agreement from opposing counsel.

As an additional resource, The American College of Trial Lawyers updated its Codes of Pretrial and Trial Practice Codes in 2009. The American College of Trial Lawyers was founded in 1950 and is composed of the best of the trial bar in the United States and Canada. Fellows are carefully selected from among those who represent plaintiffs and those who represent defendants in civil cases; and those who prosecute and those who defend persons accused of crimes. The College speaks with a balanced voice and strives to improve and elevate the standards of trial conduct, the administration of justice and the ethics of the profession. The Codes of Pretrial and Trial Practice can be found here: www.actl.com/PDFs/USCodesofPreTrialandTrialConduct.pdf