



March 15, 2023

VIA EMAIL: BQuirk@sanmarcostx.gov

Barbara L. Quirk, Interim City Attorney
City of San Marcos
630 E. Hopkins
San Marcos, Texas 78666

RE: Legal Services Agreement

Dear Ms. Quirk:

Messer, Fort & McDonald, PLLC (“MFM” or “Firm”) and I appreciate the opportunity to represent the City of San Marcos on litigation matters. This letter outlines some of the specific terms of our engagement. If you have any questions about these matters, please call me.

1. **Client:** Our client will be the City of San Marcos. Our representation in this matter is limited to the City of San Marcos and the term “Client” does not include, and we do not represent, any other entities or individuals.
2. **Scope of Work:** The City of San Marcos hereby engages MFM to perform the following services:
 - a. Litigation Counsel to the City of San Marcos for certain assigned civil litigation matters, including a civil appeal by James Reece filed in the Court of Appeals for the Third District of Texas in Austin, Appellate Court Number 03-23-00088-CV, Trial Court Number 22-1388, and other work as assigned.
 - b. Perform any other services mutually agreed upon by the City of San Marcos and MFM; however, either party may request an addendum to this Agreement in a form mutually agreeable to the parties prior to the provision of additional services hereunder.
3. **Conflicts:** MFM represents that it has reviewed its records and has no conflicts of interest involving the City of San Marcos. MFM will do all within reason necessary to prevent and avoid any situation that might constitute a conflict. In the event a conflict arises, MFM shall promptly advise the City of San Marcos of such, in writing, and shall notify the City of San Marcos of MFM’s proposal to resolve the conflict.
4. **Personnel:** MFM has over twenty attorneys, including six partners, in its North Texas office and three partners in its Austin office. Bradford Bullock will have the primary responsibility for providing or supervising services for the City of San Marcos. Other MFM lawyers (including less experienced lawyers or contract lawyers selected by MFM) and legal assistants may be involved when MFM believes it would be beneficial or is necessary to serve the City of San Marcos, but Bradford Bullock will be the primary contact on matters assigned to MFM under this Engagement Agreement. Attorney resumes can be viewed at www.txmunicipallaw.com.

5. **Results**: Any views MFM expresses about a likely outcome are only expressions of judgment, we do not make representations or guarantees to the City of San Marcos as to the probability of ultimate success or any particular result.

The City of San Marcos acknowledges and agrees that MFM's entitlement to payment for fees and expenses shall not be contingent upon the results obtained or the final disposition of the services for which MFM has been retained.

6. **Records**: The City of San Marcos should retain all originals and copies of documents the City of San Marcos desires for future reference. MFM will retain most of its file(s) for a certain period of time, but ultimately the file will be destroyed in accordance with our record retention schedule. MFM does not contact the client prior to such destruction.

The City of San Marcos recognizes that working papers shall be assembled and accumulated by MFM in connection with this representation, and that same shall belong to and remain the property of MFM.

7. **Litigation Matters**: MFM will represent the City of San Marcos respect to matters assigned under City of San Marcos, and the City's officers, employees or agents in a lawsuit upon the request of the City of San Marcos. Likewise, we will initiate litigation only at the request of the City of San Marcos as directed.

8. **Fees**: MFM shall bill the City of San Marcos monthly for services rendered and expenses incurred, in the manner agreed to herein, until such time as this Agreement has expired by its own terms or has been terminated. MFM shall separate invoices as requested by the City of San Marcos. Attorney's fees are based upon a consideration of time and labor involved, the skill requisite to perform the services properly, the preclusion of other employment by MFM due to acceptance of the matters identified herein, time limitations imposed by the City of San Marcos or other circumstances, results achieved, experience, reputation and ability, extraordinary time requirements, and MFM's hourly rates. The Firm will bill the City of San Marcos at the following rates:

	Litigation
Partners	\$260
Associate Attorney	\$225
Paralegal Support	\$135

Time for legal work and travel is billed in tenth of an hour increments, as follows:

.1 = 6 minutes	.5 = 30 minutes	.9 = 54 minutes
.2 = 12 minutes	.6 = 36 minutes	1.0 = 60 minutes
.3 = 18 minutes	.7 = 42 minutes	
.4 = 24 minutes	.8 = 48 minutes	

Opinion letters for bonds are a flat fee paid from the bond proceeds, if requested. Market rates (non-governmental) will be charged when the City of San Marcos is being reimbursed for legal expenses, such as by a developer or a debt issuance, if applicable. The City of San Marcos understands that the costs of services can be estimated in advance on a per case basis, but no particular amount is guaranteed as the amount of time necessary to spend on a legal matter can be influenced by the actions of third parties. The City of San Marcos further understands that MFM hourly rates may be modestly increased on an annual basis, but that any annual increase shall be no more than ten percent of the current rate.

9. **Billing Practices and Payment:** MFM bills for matters on a monthly basis, and payment is due upon receipt of the statement. We do not bill for expenses associated with our representation except for filing and recording fees, litigation costs, and charges for extraordinary items which may be generated by the particular demands of the project involved.

If experts or consultants are retained or if other support services are required, e.g., mediators, engineers, court reporters, investigators, etc., these individuals or firms will be retained based upon the City of San Marcos consent. The City of San Marcos will be responsible for paying the fees of these individuals or firms, and such payments should be made within thirty days of receipt of their invoice or MFM's invoice containing the charges for the third party. We will advise these individuals or firms that they are being retained by and for the benefit of the City of San Marcos and that the City of San Marcos responsible for payment of their fees.

If the City of San Marcos has a question about MFM's billing procedures or statements, please ask Bradford Bullock. MFM prefers that questions be raised as soon as possible so that we can address the concerns and be certain the City of San Marcos understands our procedures and our statements and is fully satisfied with them.

10. **Termination:** Either party may terminate our representation at any time by notifying the other in writing. In either case, MFM's withdrawal will be accomplished pursuant to applicable ethical requirements. Upon termination of the representation, the City of San Marcos will be obligated to pay for all services rendered and expenses incurred.
11. **Amendments/Modifications:** The City of San Marcos and MFM may amend or modify this Agreement so long as such amendment or modification is reduced to writing and is mutually agreed upon by the City of San Marcos and MFM.
12. **Independent Legal Review:** MFM has written this engagement letter on its own behalf. Please feel free to seek independent legal advice from legal counsel of your choosing in order to review this engagement letter. MFM wishes to provide you ample opportunity to consult with independent counsel, we do not require that you return a signed copy of this letter immediately.
13. **Attorney Complaint Information:** MFM intends to maintain the high standard of ethical conduct towards the City of San Marcos and others as set out and enforced by the State Bar of Texas. If for any reason the City of San Marcos believes an attorney in MFM has violated the written rules of professional conduct for lawyers and/or has questions prior to filing a grievance, the City of San Marcos may either contact the Office of the Chief Disciplinary Counsel of the State Bar of Texas by calling 1-866-224-5999 (toll free) or writing to P.O. Box 12487, Austin, Texas 78711-2487. Please note that by signing the grievance form any attorney-client privilege which would otherwise keep discussions between your attorney and you confidential will be waived.
14. **Press Inquiries:** From time to time, we may receive media inquiries concerning the City of San Marcos. Applicable ethical requirements may preclude or limit our response to those inquiries. Subject to ethical limitations, MFM will abide by your instructions concerning whether and in what manner we respond to media inquiries. In the absence of specific instructions, we will respond to such inquiries in accordance with our best judgment, revealing non-confidential information when it is ethical to do so and appears to advance the City of San Marcos' interests.

- 15. Electronic Mail:** In the course of our representation, we may have occasion to communicate with you or with others by electronic mail. Such communications will not be encrypted. Although interception of such communications by a third party would constitute a violation of federal law, we can offer no assurance that such interception will not occur. We will abide by any instructions you may give us concerning electronic mail communications; in the absence of such instructions, we will use our own judgment regarding the advisability of using such means of communication.
- 16. Miscellaneous:** Duplicate counterparts of this Agreement may be or may have been executed by the parties hereto. Each such executed copy or counterpart shall have the full force and effect of an original executed instrument.

Any notice or communication required or permitted hereunder shall be in writing, and shall be sent by (a) personal delivery (provided that such delivery is confirmed by the courier delivery service), or (b) expedited delivery service with proof of delivery, or by United States mail, postage pre-paid, registered or certified mail, or (c) pre-paid facsimile, addressed as follows:

If to the City of San Marcos

Barbara Quirk, Interim City Attorney
City of San Marcos
630 E. Hopkins
San Marcos, Texas 78666

If to the Firm:

Messer, Fort & McDonald, PLLC
Attn: Bradford E. Bullock
4201 W. Parmer Ln., Ste. C-150
Austin, TX 78727

or to such other address or for the attention of such other person as thereafter shall be designated in writing by the applicable parties sent in accordance herewith. Any such notice or communication shall be deemed to have been given at either the time of personal delivery or, in the case of delivery service or certified or registered mail, as of the date of deposit or delivery to the United States Postal Service or expedited delivery service in the manner provided herein, or, in the case of facsimile, upon receipt. Any notice required by this Agreement shall be void and of no effect unless given in accordance with the provisions of this paragraph. Either party hereto may change the address for notice specified above for giving the other party two (2) days' advance, written notice of such change of address.

This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Travis, Texas. This Agreement is executed by the authorized agent of the City of San Marcos and MFM, effective as of the date first above written.

- 17. Texas Lawyer's Creed:** On November 7, 1989, the Texas Supreme Court adopted the Texas Lawyer's Creed - a Mandate for Professionalism. Paragraph II, subparagraph 1 of the Creed requires us to advise you of its contents when we undertake representation. A copy of the Creed is enclosed. We intend to abide by the Creed.

If the City of San Marcos agrees with the foregoing, please sign and return one enclosed copy of this letter and retain the other copy for your records to be effective upon execution.

Again, we appreciate you employing Messer, Fort & McDonald, PLLC to represent you and we look forward to working with you and establishing a mutually beneficial relationship.

Sincerely yours,
Messer, Fort & McDonald, PLLC

A handwritten signature in black ink, appearing to read 'Bullock', with a stylized, cursive script.

Bradford E. Bullock

The City of San Marcos AGREES TO RETAIN MESSER, FORT & MCDONALD, PLLC ON THE FOREGOING TERMS.

Barbara L. Quirk, Interim City Attorney
City of San Marcos

PRIVACY NOTICE

Attorneys, like other professionals who advise on personal financial matters, are now required by a new federal law to inform their individual clients of their policies regarding privacy of client information. Attorneys have been and continue to be bound by professional standards of confidentiality that are even more stringent than those required by this new law. Therefore, we have always protected your right to privacy.

In the course of providing our clients with advice, we receive significant personal financial information from our clients and from others. If you are a client of Messer, Fort & McDonald, PLLC, you should know that all information that we receive from you or obtain in the course of representing you is held in confidence, and is not released to people outside the firm, except as expressly or implicitly authorized by you in the course of representing you, or as required under applicable law. We maintain physical, electronic, and procedural safeguards that comply with professional standards to protect your personal information.

**THE TEXAS LAWYER'S CREED—
A MANDATE FOR PROFESSIONALISM**

Adopted November 7, 1989

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ORDER OF ADOPTION

The conduct of a lawyer should be characterized at all times by honesty, candor, and fairness. In fulfilling his or her primary duty to a client, a lawyer must be ever mindful of the profession's broader duty to the legal system.

The Supreme Court of Texas and the Court of Criminal Appeals are committed to eliminating a practice in our State by a minority of lawyers of abusive tactics which have surfaced in many parts of our country. We believe such tactics are a disservice to our citizens, harmful to clients, and demeaning to our profession.

The abusive tactics range from lack of civility to outright hostility and obstructionism. Such behavior does not serve justice but tends to delay and often deny justice. The lawyers who use abusive tactics instead of being part of the solution have become part of the problem.

The desire for respect and confidence by lawyers from the public should provide the members of our profession with the necessary incentive to attain the highest degree of ethical and professional conduct. These rules are primarily aspirational. Compliance with the rules depends primarily upon understanding and voluntary compliance, secondarily upon re-enforcement by peer pressure and public opinion,

and finally when necessary by enforcement by the courts through their inherent powers and rules already in existence.

These standards are not a set of rules that lawyers can use and abuse to incite ancillary litigation or arguments over whether or not they have been observed.

We must always be mindful that the practice of law is a profession. As members of a learned art we pursue a common calling in the spirit of public service. We have a proud tradition. Throughout the history of our nation, the members of our citizenry have looked to the ranks of our profession for leadership and guidance. Let us now as a profession each rededicate ourselves to practice law so we can restore public confidence in our profession, faithfully serve our clients, and fulfill our responsibility to the legal system.

The Supreme Court of Texas and the Court of Criminal Appeals hereby promulgate and adopt "The Texas Lawyer's Creed—A Mandate for Professionalism" as attached hereto and made a part hereof.

In Chambers, this 7th day of November, 1989.

TEXAS LAWYER'S CREED

THE TEXAS LAWYER'S CREED—A MANDATE FOR PROFESSIONALISM

I am a lawyer. I am entrusted by the People of Texas to preserve and improve our legal system. I am licensed by the Supreme Court of Texas. I must therefore abide by the Texas Disciplinary Rules of Professional Conduct, but I know that professionalism requires more than merely avoiding the violation of laws and rules. I am committed to this creed for no other reason than it is right.

I. OUR LEGAL SYSTEM

A lawyer owes to the administration of justice personal dignity, integrity, and independence. A lawyer should always adhere to the highest principles of professionalism.

1. I am passionately proud of my profession. Therefore, "My word is my bond."
2. I am responsible to assure that all persons have access to competent representation regardless of wealth or position in life.
3. I commit myself to an adequate and effective pro bono program.
4. I am obligated to educate my clients, the public, and other lawyers regarding the spirit and letter of this Creed.
5. I will always be conscious of my duty to the judicial system.

II. LAWYER TO CLIENT

A lawyer owes to a client allegiance, learning, skill, and industry. A lawyer shall employ all appropriate legal means to protect and advance the client's legitimate rights, claims, and objectives. A lawyer shall not be deterred by any real or imagined fear of judicial disfavor or public unpopularity, nor be influenced by mere self-interest.

1. I will advise my client of the contents of this creed when undertaking representation.
2. I will endeavor to achieve my client's lawful objectives in legal transactions and in litigation as quickly and economically as possible.
3. I will be loyal and committed to my client's lawful objectives, but I will not permit that loyalty and commitment to interfere with my duty to provide objective and independent advice.
4. I will advise my client that civility and courtesy are expected and are not a sign of weakness.
5. I will advise my client of proper and expected behavior.
6. I will treat adverse parties and witnesses with fairness and due consideration. A client has no right to demand that I abuse anyone or indulge in any offensive conduct.

7. I will advise my client that we will not pursue conduct which is intended primarily to harass or drain the financial resources of the opposing party.

8. I will advise my client that we will not pursue tactics which are intended primarily for delay.

9. I will advise my client that we will not pursue any course of action which is without merit.

10. I will advise my client that I reserve the right to determine whether to grant accommodations to opposing counsel in all matters that do not adversely affect my client's lawful objectives. A client has no right to instruct me to refuse reasonable requests made by other counsel.

11. I will advise my client regarding the availability of mediation, arbitration, and other alternative methods of resolving and settling disputes.

III. LAWYER TO LAWYER

A lawyer owes to opposing counsel, in the conduct of legal transactions and the pursuit of litigation, courtesy, candor, cooperation, and scrupulous observance of all agreements and mutual understandings. Ill feelings between clients shall not influence a lawyer's conduct, attitude, or demeanor toward opposing counsel. A lawyer shall not engage in unprofessional conduct in retaliation against other unprofessional conduct.

1. I will be courteous, civil, and prompt in oral and written communications.
2. I will not quarrel over matters of form or style, but I will concentrate on matters of substance.
3. I will identify for other counsel or parties all changes I have made in documents submitted for review.
4. I will attempt to prepare documents which correctly reflect the agreement of the parties. I will not include provisions which have not been agreed upon or omit provisions which are necessary to reflect the agreement of the parties.
5. I will notify opposing counsel, and, if appropriate, the Court or other persons, as soon as practicable, when hearings, depositions, meetings, conferences or closings are cancelled.

TEXAS LAWYER'S CREED

6. I will agree to reasonable requests for extensions of time and for waiver of procedural formalities, provided legitimate objectives of my client will not be adversely affected.

7. I will not serve motions or pleadings in any manner that unfairly limits another party's opportunity to respond.

8. I will attempt to resolve by agreement my objections to matters contained in pleadings and discovery requests and responses.

9. I can disagree without being disagreeable. I recognize that effective representation does not require antagonistic or obnoxious behavior. I will neither encourage nor knowingly permit my client or anyone under my control to do anything which would be unethical or improper if done by me.

10. I will not, without good cause, attribute bad motives or unethical conduct to opposing counsel nor bring the profession into disrepute by unfounded accusations of impropriety. I will avoid disparaging personal remarks or acrimony towards opposing counsel, parties and witnesses. I will not be influenced by any ill feeling between clients. I will abstain from any allusion to personal peculiarities or idiosyncrasies of opposing counsel.

11. I will not take advantage, by causing any default or dismissal to be rendered, when I know the identity of an opposing counsel, without first inquiring about that counsel's intention to proceed.

12. I will promptly submit orders to the Court. I will deliver copies to opposing counsel before or contemporaneously with submission to the Court. I will promptly approve the form of orders which accurately reflect the substance of the rulings of the Court.

13. I will not attempt to gain an unfair advantage by sending the Court or its staff correspondence or copies of correspondence.

14. I will not arbitrarily schedule a deposition, court appearance, or hearing until a good faith effort has been made to schedule it by agreement.

15. I will readily stipulate to undisputed facts in order to avoid needless costs or inconvenience for any party.

16. I will refrain from excessive and abusive discovery.

17. I will comply with all reasonable discovery requests. I will not resist discovery requests which are not objectionable. I will not make objections nor give instructions to a witness for the purpose of delaying or obstructing the discovery process. I will encourage witnesses to respond to all deposition questions which are reasonably understandable. I will neither encourage nor permit my witness to quibble about words where their meaning is reasonably clear.

18. I will not seek Court intervention to obtain discovery which is clearly improper and not discoverable.

19. I will not seek sanctions or disqualification unless it is necessary for protection of my client's lawful objectives or is fully justified by the circumstances.

IV. LAWYER AND JUDGE

Lawyers and judges owe each other respect, diligence, candor, punctuality, and protection against unjust and improper criticism and attack. Lawyers and judges are equally responsible to protect the dignity and independence of the Court and the profession.

1. I will always recognize that the position of judge is the symbol of both the judicial system and administration of justice. I will refrain from conduct that degrades this symbol.

2. I will conduct myself in Court in a professional manner and demonstrate my respect for the Court and the law.

3. I will treat counsel, opposing parties, the Court, and members of the Court staff with courtesy and civility.

4. I will be punctual.

5. I will not engage in any conduct which offends the dignity and decorum of proceedings.

6. I will not knowingly misrepresent, mischaracterize, misquote or miscite facts or authorities to gain an advantage.

7. I will respect the rulings of the Court.

8. I will give the issues in controversy deliberate, impartial and studied analysis and consideration.

9. I will be considerate of the time constraints and pressures imposed upon the Court, Court staff and counsel in efforts to administer justice and resolve disputes.

STANDARDS FOR APPELLATE CONDUCT

Lawyers are an indispensable part of the pursuit of justice. They are officers of courts charged with safeguarding, interpreting, and applying the law through which justice is achieved. Appellate courts rely on counsel to present opposing views of how the law should be applied to facts established in other proceedings. The appellate lawyer's role is to present the law controlling the disposition of a case in a manner that clearly reveals the legal issues raised by the record while persuading the court that an interpretation or application favored by the lawyer's clients is in the best interest of the administration of equal justice under law.

The duties lawyers owe to the justice system, other officers of the court, and lawyers' clients are generally well-defined and understood by the appellate bar. Problems that arise when duties conflict can be resolved through understanding the nature and extent of a lawyer's respective duties, avoiding the tendency to emphasize a particular duty at the expense of others, and detached common sense. To that end, the following standards of conduct for appellate lawyers are set forth by reference to the duties owed by every appellate practitioner.

Use of these standards for appellate conduct as a basis for motions for sanctions, civil liability or litigation would be contrary to their intended purpose and shall not be permitted. Nothing in these standards alters existing standards of conduct under the Texas Disciplinary Rules of Professional Conduct, the Texas Rules of Disciplinary Procedure or the Code of Judicial Conduct.

LAWYERS' DUTIES TO CLIENTS

A lawyer owes to a client allegiance, learning, skill, and industry. A lawyer shall employ all appropriate means to protect and advance the client's legitimate rights, claims, and objectives. A lawyer shall not be deterred by a real or imagined fear of judicial disfavor or public unpopularity, nor be influenced by mere self-interest. The lawyer's duty to a client does not militate against the concurrent obligation to treat with consideration all persons involved in the legal process and to avoid the infliction of harm on the appellate process, the courts, and the law itself.

1. Counsel will advise their clients of the contents of these Standards of Conduct when undertaking representation.
2. Counsel will explain the fee agreement and cost expectation to their clients. Counsel will then endeavor to achieve the client's lawful appellate objectives as quickly, efficiently, and economically as possible.
3. Counsel will maintain sympathetic detachment, recognizing that lawyers should not become so closely associated with clients that the lawyer's objective judgment is impaired.
4. Counsel will be faithful to their clients' lawful objectives, while mindful of their concurrent duties to the legal system and the public good.
5. Counsel will explain the appellate process to their clients. Counsel will advise clients of the range of potential outcomes, likely costs, timetables, effect of the judgment pending appeal, and the availability of alternative dispute resolution.
6. Counsel will not foster clients' unrealistic expectations.
7. Negative opinions of the court or opposing counsel shall not be expressed unless relevant to a client's decision process.
8. Counsel will keep clients informed and involved in decisions and will promptly respond to inquiries.
9. Counsel will advise their clients of proper behavior, including that civility and courtesy are expected.
10. Counsel will advise their clients that counsel reserves the right to grant accommodations to opposing counsel in matters that do not adversely affect the client's lawful objectives. A client has no right to instruct a lawyer to refuse reasonable requests made by other counsel.
11. A client has no right to demand that counsel abuse anyone or engage in any offensive conduct.
12. Counsel will advise clients that an appeal should only be pursued in a good faith belief that the trial court has committed error or that there is a reasonable basis for the extension, modification, or reversal of existing law, or that an appeal is otherwise warranted.

13. Counsel will advise clients that they will not take frivolous positions in an appellate court, explaining the penalties associated therewith. Appointed appellate counsel in criminal cases shall be deemed to have complied with this standard of conduct if they comply with the requirements imposed on appointed counsel by courts and statutes.

LAWYERS' DUTIES TO THE COURT

As professionals and advocates, counsel assist the Court in the administration of justice at the appellate level. Through briefs and oral submissions, counsel provide a fair and accurate understanding of the facts and law applicable to their case. Counsel also serve the Court by respecting and maintaining the dignity and integrity of the appellate process.

1. An appellate remedy should not be pursued unless counsel believes in good faith that error has been committed, that there is a reasonable basis for the extension, modification, or reversal of existing law, or that an appeal is otherwise warranted.
2. An appellate remedy should not be pursued primarily for purposes of delay or harassment.
3. Counsel should not misrepresent, mischaracterize, misquote, or miscite the factual record or legal authorities.
4. Counsel will advise the Court of controlling legal authorities, including those adverse to their position, and should not cite authority that has been reversed, overruled, or restricted without informing the court of those limitations.
5. Counsel will present the Court with a thoughtful, organized, and clearly written brief.
6. Counsel will not submit reply briefs on issues previously briefed in order to obtain the last word.
7. Counsel will conduct themselves before the Court in a professional manner, respecting the decorum and integrity of the judicial process.
8. Counsel will be civil and respectful in all communications with the judges and staff.
9. Counsel will be prepared and punctual for all Court appearances, and will be prepared to assist the Court in understanding the record, controlling authority, and the effect of the court's decision.
10. Counsel will not permit a client's or their own ill feelings toward the opposing party, opposing counsel, trial judges or members of the appellate court to influence their conduct or demeanor in dealings with the judges, staff, other counsel, and parties.

LAWYERS' DUTIES TO LAWYERS

Lawyers bear a responsibility to conduct themselves with dignity towards and respect for each other, for the sake of maintaining the effectiveness and credibility of the system they serve. The duty that lawyers owe their clients and the system can be most effectively carried out when lawyers treat each other honorably.

1. Counsel will treat each other and all parties with respect.
2. Counsel will not unreasonably withhold consent to a reasonable request for cooperation or scheduling accommodation by opposing counsel.
3. Counsel will not request an extension of time solely for the purpose of unjustified delay.
4. Counsel will be punctual in communications with opposing counsel.
5. Counsel will not make personal attacks on opposing counsel or parties.
6. Counsel will not attribute bad motives or improper conduct to other counsel without good cause, or make unfounded accusations of impropriety.
7. Counsel will not lightly seek court sanctions.
8. Counsel will adhere to oral or written promises and agreements with other counsel.
9. Counsel will neither ascribe to another counsel or party a position that counsel or the party has not taken, nor seek to create an unjustified inference based on counsel's statements or conduct.
10. Counsel will not attempt to obtain an improper advantage by manipulation of margins and type size in a manner to avoid court rules regarding page limits.
11. Counsel will not serve briefs or other communications in a manner or at a time that unfairly limits another party's opportunity to respond.

THE COURT'S RELATIONSHIP WITH COUNSEL

Unprofessionalism can exist only to the extent it is tolerated by the court. Because courts grant the right to practice law, they control the manner in which the practice is conducted. The right to practice requires counsel to conduct themselves in a manner compatible with the role of the appellate courts in administering justice. Likewise, no one more surely sets the tone and the pattern for the conduct of appellate lawyers than appellate judges. Judges must practice civility in order to foster professionalism in those appearing before them.

1. Inappropriate conduct will not be rewarded, while exemplary conduct will be appreciated.
2. The court will take special care not to reward departures from the record.
3. The court will be courteous, respectful, and civil to counsel.
4. The court will not disparage the professionalism or integrity of counsel based upon the conduct or reputation of counsel's client or co-counsel.
5. The court will endeavor to avoid the injustice that can result from delay after submission of a case.
6. The court will abide by the same standards of professionalism that it expects of counsel in its treatment of the facts, the law, and the arguments.
7. Members of the court will demonstrate respect for other judges and courts.

STANDARDS OF PRACTICE TO BE OBSERVED BY ATTORNEYS APPEARING IN CIVIL ACTIONS

Adopted in *Dondi Properties Corp. v. Commerce Sav. and Loan Assn.*,
121 F.R.D. 284 (N.D. Tex., July 14, 1988)

- A. In fulfilling his or her primary duty to the client, a lawyer must be ever conscious of the broader duty to the judicial system that serves both attorney and client.
- B. A lawyer owes, to the judiciary, candor, diligence and utmost respect.
- C. A lawyer owes, to opposing counsel, a duty of courtesy and cooperation, the observance of which is necessary for the efficient administration of our system of justice and the respect of the public it serves.
- D. A lawyer unquestionably owes, to the administration of justice, the fundamental duties of personal dignity and professional integrity.
- E. Lawyers should treat each other, the opposing party, the court, and members of the court staff with courtesy and civility and conduct themselves in a professional manner at all times.
- F. A client has no right to demand that counsel abuse the opposite party or indulge in offensive conduct. A lawyer shall always treat adverse witnesses and suitors with fairness and due consideration.
- G. In adversary proceedings, clients are litigants and though ill feeling may exist between clients, such ill feeling should not influence a lawyer's conduct, attitude, or demeanor towards opposing lawyers.
- H. A lawyer should not use any form of discovery or the scheduling of discovery, as a means of harassing opposing counsel or counsel's client.
- I. Lawyers will be punctual in communications with others and in honoring scheduled appearances and will recognize that neglect and tardiness are demeaning to the lawyer and to the judicial system.
- J. If a fellow member of the Bar makes a just request for cooperation, or seeks scheduling accommodation, a lawyer will not arbitrarily or unreasonably withhold consent.
- K. Effective advocacy does not require antagonistic or obnoxious behavior and members of the Bar will adhere to the higher standard of conduct which judges, lawyers, clients, and the public may rightfully expect.