

Don't Do It: Legal Temptations to Resist

“I can resist everything except temptation.”

- Oscar Wilde

Judge Tanya Garrison, 157th District Court, Harris County

1

Why Does This Need to be Discussed

- Should be second hand, but everyone needs a reminder.
- Sometimes eating your vegetables isn't fun.
- It's always hardest to be nice when you're mad.

2

The Rules vs. The Standards

Rules of Professional Conduct

- Define proper conduct for purposes of professional discipline.
- Codified rules attempting to regulate conduct – a mandatory minimum.
- They do not undertake to define standards of civil liability or legal duty of lawyers.

Standards of Appellate Conduct

- Much like the *Texas Lawyer's Creed*, it is a statement of how lawyers should strive to comport themselves.
- Hopes to assist in resolving conflicting duties lawyers face.
- A suggestion for civility, not a tool of sanctions.
- Aspirational guidelines for lawyers wanting to reach high levels of professionalism.

3

#1

Don't Refuse a Reasonable Request

- Ever, but especially as a way to gain an advantage in a negotiation.
- Standard #2 – Lawyers' Duties to Lawyers, "Counsel will not unreasonably withhold consent to a reasonable request for cooperation or scheduling accommodation by opposing counsel."
- Standard #3 – Lawyers' Duties to Lawyers, "Counsel will not request an extension of time solely for the purpose of unjustified delay."
- Rule 3.02 – "In the course of litigation, a lawyer shall not take a position that unreasonably increases the costs or other burdens of the case or that unreasonably delays resolution of the matter."

4

#2

Don't Attach Your Email Fight to a Pleading

- Standard #5 – Lawyers' Duties to Lawyers, "Counsel will not make personal attacks on opposing counsel or parties."
- Standard #6 – Lawyers' Duties to Lawyers, "Counsel will not attribute bad motives or improper conduct to other counsel without good cause, or make unfounded accusations of impropriety."

5

#3

Don't Go Outside the Record

- Standard #1 – The Court's Relationship with Counsel, "The court will take special care not to reward departures from the record."
- Standard #2 – Lawyers' Duties to the Court, "Counsel should not misrepresent, mischaracterize, misquote, or miscite the factual record or legal authorities."

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Don't Do It: Legal Temptations to Resist

Also available as part of the eCourse

[2023 eConference on State and Federal Appeals](#)

First appeared as part of the conference materials for the
33rd Annual Conference on State and Federal Appeals session
"Don't Do It: Legal Temptations to Resist"