

OCT 24 2022

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Jorge Navarrete Clerk

ADMINISTRATIVE ORDER 2022-10-19-06

Deputy

IN THE SUPREME COURT OF CALIFORNIA

EN BANC

ORDER RE APPROVAL OF RULE 9.8.5 OF THE CALIFORNIA RULES OF COURT
AND AMENDMENTS TO RULES 1.4 AND 1.15
OF THE CALIFORNIA RULES OF PROFESSIONAL CONDUCT

On September 26, 2022, the court received a request from the State Bar of California to approve rule 9.8.5 of the California Rules of Court and amendments to rules 1.4 and 1.15 of the California Rules of Professional Conduct. On October 7, 2022, the State Bar filed an amended request. The amended request is granted.

Rule 9.8.5 of the California Rules of Court and amendments to rule 1.15 of the California Rules of Professional Conduct are approved as modified by the court. Amendments to rule 1.4 are approved as submitted by the State Bar. The approved rules are set forth in the Attachment and are effective January 1, 2023.

It is so ordered.

CANTIL-SAKAUYE

Chief Justice

CORRIGAN, J.

Associate Justice

LIU, J.

Associate Justice

KRUGER, J.

Associate Justice

GROBAN, J.

Associate Justice

JENKINS, J.

Associate Justice

GUERRERO, J.

Associate Justice

ATTACHMENT

Rule 9.8.5 State Bar Client Trust Account Protection Program

(a) Client trust account protection program requirements

The State Bar of California must establish and administer a Client Trust Account Protection Program for the protection of client funds held in trust by a licensee that facilitates the State Bar's detection and deterrence of client trust accounting misconduct.

(1) The State Bar must impose the following requirements under this program:

- (A) Annual Trust Account Certification - All licensees must annually (1) report whether or not, at any time during the prior year, they were responsible for client funds and funds entrusted by others under the provisions of rule 1.15 of the Rules of Professional Conduct and (2) if they were responsible, certify that they are knowledgeable about, and in compliance with, applicable rules and statutes governing client trust accounts and the safekeeping of funds entrusted by clients and others; and
- (B) Annual Trust Account Registration - All licensees who were responsible for client funds and funds entrusted by others under the provisions of rule 1.15 of the Rules of Professional Conduct must, annually, register each and every trust account in which the licensee held such funds at any time during the prior year by identifying account numbers and financial institutions in a manner prescribed by the State Bar for such reporting that will securely maintain the information submitted.

(2) Among the other requirements the State Bar may impose under this program are the following:

- (A) Annual Self-Assessment - All licensees who were responsible, at any time during the prior year, for a client trust account under the provisions of rule 1.15 of the Rules of Professional Conduct must complete an annual self-assessment on client trust accounting duties and practices;
- (B) Compliance Review - If selected by the State Bar, a licensee must complete and submit to the State Bar a client trust accounting compliance review to be conducted by a certified public accountant at the licensee's expense; and

- (C) Additional Actions - If selected by the State Bar, an additional action or actions based on the results of a compliance review may include an investigative audit, a notice of mandatory corrective action, and a referral for disciplinary action.

(b) Authorization for the Board of Trustees of the State Bar to adopt rules and regulations

The Board of Trustees of the State Bar is authorized to formulate and adopt such rules and regulations as it deems necessary and appropriate to comply with this rule, including a rule or regulation that defines a licensee who is responsible for client funds and funds entrusted by others under the provisions of rule 1.15 of the Rules of Professional Conduct.

(c) Failure to comply with program

A licensee who fails to satisfy the requirements of this program must be enrolled as an inactive licensee of the State Bar under the rules to be adopted by the Board of Trustees of the State Bar. Inactive enrollment imposed for noncompliance with the requirements of this program is cumulative and does not preclude a disciplinary proceeding or other actions for violations of the State Bar Act, the Rules of Professional Conduct, or other applicable laws.

(d) Fees and penalties

The State Bar has the authority to set and collect appropriate fees and penalties.

Rule 1.4 Communication with Clients

- (a) A lawyer shall:
 - (1) promptly inform the client of any decision or circumstance with respect to which disclosure or the client's informed consent* is required by these rules or the State Bar Act;
 - (2) reasonably* consult with the client about the means by which to accomplish the client's objectives in the representation;
 - (3) keep the client reasonably* informed about significant developments relating to the representation, including promptly complying with reasonable* requests for information and copies of significant documents when necessary to keep the client so informed; and
 - (4) advise the client about any relevant limitation on the lawyer's conduct when the lawyer knows* that the client expects assistance not permitted by the Rules of Professional Conduct or other law.
- (b) A lawyer shall explain a matter to the extent reasonably* necessary to permit the client to make informed decisions regarding the representation.
- (c) A lawyer may delay transmission of information to a client if the lawyer reasonably believes* that the client would be likely to react in a way that may cause imminent harm to the client or others.
- (d) A lawyer's obligation under this rule to provide information and documents is subject to any applicable protective order, non-disclosure agreement, or limitation under statutory or decisional law.

Comment

[1] A lawyer will not be subject to discipline under paragraph (a)(3) of this rule for failing to communicate insignificant or irrelevant information. (See Bus. & Prof. Code, § 6068, subd. (m).) Whether a particular development is significant will generally depend on the surrounding facts and circumstances. For example, a lawyer's receipt of funds on behalf of a client requires communication with the client pursuant to rule 1.15, paragraphs (d)(1) and (d)(4) and ordinarily is also a significant development requiring communication with the client pursuant to this rule.

[2] A lawyer may comply with paragraph (a)(3) by providing to the client copies of significant documents by electronic or other means. This rule does not prohibit a lawyer from seeking recovery of the lawyer's expense in any subsequent legal proceeding.

[3] Paragraph (c) applies during a representation and does not alter the obligations applicable at termination of a representation. (See rule 1.16(e)(1).)

[4] This rule is not intended to create, augment, diminish, or eliminate any application of the work product rule. The obligation of the lawyer to provide work product to the client shall be governed by relevant statutory and decisional law.

Rule 1.15 Safekeeping Funds and Property of Clients and Other Persons*

- (a) All funds received or held by a lawyer or law firm* for the benefit of a client, or other person* to whom the lawyer owes a contractual, statutory, or other legal duty, including advances for fees, costs and expenses, shall be deposited in one or more identifiable bank accounts labeled "Trust Account" or words of similar import, maintained in the State of California, or, with written* consent of the client, in any other jurisdiction where there is a substantial* relationship between the client or the client's business and the other jurisdiction.
- (b) Notwithstanding paragraph (a), a flat fee paid in advance for legal services may be deposited in a lawyer's or law firm's operating account, provided:
 - (1) the lawyer or law firm* discloses to the client in writing* (i) that the client has a right under paragraph (a) to require that the flat fee be deposited in an identified trust account until the fee is earned, and (ii) that the client is entitled to a refund of any amount of the fee that has not been earned in the event the representation is terminated or the services for which the fee has been paid are not completed; and
 - (2) if the flat fee exceeds \$1,000.00, the client's agreement to deposit the flat fee in the lawyer's operating account and the disclosures required by paragraph (b)(1) are set forth in a writing* signed by the client.
- (c) Funds belonging to the lawyer or the law firm* shall not be deposited or otherwise commingled with funds held in a trust account except:
 - (1) funds reasonably* sufficient to pay bank charges; and
 - (2) funds belonging in part to a client or other person* and in part presently or potentially to the lawyer or the law firm,* in which case the portion belonging to the lawyer or law firm* must be withdrawn at the earliest reasonable* time after the lawyer or law firm's interest in that portion becomes fixed. However, if a client or other person* disputes the lawyer or law firm's right to receive a portion of trust funds, the disputed portion shall not be withdrawn until the dispute is finally resolved.
- (d) A lawyer shall:
 - (1) absent good cause, notify a client or other person* no later than 14 days of the receipt of funds, securities, or other property in which the lawyer knows* or reasonably should know* the client or other person* has an interest;

- (2) identify and label securities and properties of a client or other person* promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable;
 - (3) maintain complete records of all funds, securities, and other property of a client or other person* coming into the possession of the lawyer or law firm;*
 - (4) promptly account in writing* to the client or other person* for whom the lawyer holds funds or property;
 - (5) preserve records of all funds and property held by a lawyer or law firm* under this rule for a period of no less than five years after final appropriate distribution of such funds or property;
 - (6) comply with any order for an audit of such records issued pursuant to the Rules of Procedure of the State Bar; and
 - (7) promptly distribute any undisputed funds or property in the possession of the lawyer or law firm* that the client or other person* is entitled to receive.
- (e) The Board of Trustees of the State Bar shall have the authority to formulate and adopt standards as to what “records” shall be maintained by lawyers and law firms* in accordance with subparagraph (d)(3). The standards formulated and adopted by the Board, as from time to time amended, shall be effective and binding on all lawyers.
- (f) For purposes of determining a lawyer’s compliance with paragraph (d)(7), unless the lawyer, and the client or other person* agree in writing that the funds or property will continue to be held by the lawyer, there shall be a rebuttable presumption affecting the burden of proof as defined in Evidence Code sections 605 and 606 that a violation of paragraph (d)(7) has occurred if the lawyer, absent good cause, fails to distribute undisputed funds or property within 45 days of the date when the funds become undisputed as defined by paragraph (g). This presumption may be rebutted by proof by a preponderance of evidence that there was good cause for not distributing funds within 45 days of the date when the funds or property became undisputed as defined in paragraph (g).
- (g) As used in this rule, “undisputed funds or property” refers to funds or property, or a portion of any such funds or property, in the possession of a lawyer or law firm* where the lawyer knows* or reasonably should know* that the ownership interest of the client or other person* in the funds or property, or any portion thereof, has become fixed and there are no unresolved disputes as to the client’s or other person’s* entitlement to receive the funds or property.

Standards:

Pursuant to this rule, the Board of Trustees of the State Bar adopted the following standards, effective November 1, 2018, as to what “records” shall be maintained by lawyers and law firms* in accordance with paragraph (d)(3).

- (1) A lawyer shall, from the date of receipt of funds of the client or other person* through the period ending five years from the date of appropriate disbursement of such funds, maintain:
 - (a) a written* ledger for each client or other person* on whose behalf funds are held that sets forth:
 - (i) the name of such client or other person;*
 - (ii) the date, amount and source of all funds received on behalf of such client or other person;*
 - (iii) the date, amount, payee and purpose of each disbursement made on behalf of such client or other person;* and
 - (iv) the current balance for such client or other person;*
 - (b) a written* journal for each bank account that sets forth:
 - (i) the name of such account;
 - (ii) the date, amount and client affected by each debit and credit; and
 - (iii) the current balance in such account;
 - (c) all bank statements and cancelled checks for each bank account; and
 - (d) each monthly reconciliation (balancing) of (a), (b), and (c).
- (2) A lawyer shall, from the date of receipt of all securities and other properties held for the benefit of client or other person* through the period ending five years from the date of appropriate disbursement of such securities and other properties, maintain a written* journal that specifies:
 - (a) each item of security and property held;
 - (b) the person* on whose behalf the security or property is held;
 - (c) the date of receipt of the security or property;
 - (d) the date of distribution of the security or property; and
 - (e) person* to whom the security or property was distributed.

Comment

- [1] Whether a lawyer owes a contractual, statutory or other legal duty under paragraph (a) to hold funds on behalf of a person* other than a client in situations where client

funds are subject to a third-party lien will depend on the relationship between the lawyer and the third-party, whether the lawyer has assumed a contractual obligation to the third person* and whether the lawyer has an independent obligation to honor the lien under a statute or other law. In certain circumstances, a lawyer may be civilly liable when the lawyer has notice of a lien and disburses funds in contravention of the lien. (See *Kaiser Foundation Health Plan, Inc. v. Aguiluz* (1996) 47 Cal.App.4th 302 [54 Cal.Rptr.2d 665].) However, civil liability by itself does not establish a violation of this rule. (Compare *Johnstone v. State Bar of California* (1966) 64 Cal.2d 153, 155-156 [49 Cal.Rptr. 97] [“When an attorney assumes a fiduciary relationship and violates his duty in a manner that would justify disciplinary action if the relationship had been that of attorney and client, he may properly be disciplined for his misconduct.”] with *Crooks v. State Bar* (1970) 3 Cal.3d 346, 358 [90 Cal.Rptr. 600] [lawyer who agrees to act as escrow or stakeholder for a client and a third-party owes a duty to the nonclient with regard to held funds].)

[2] As used in this rule, “advances for fees” means a payment intended by the client as an advance payment for some or all of the services that the lawyer is expected to perform on the client’s behalf. With respect to the difference between a true retainer and a flat fee, which is one type of advance fee, see rule 1.5(d) and (e). Subject to rule 1.5, a lawyer or law firm* may enter into an agreement that defines when or how an advance fee is earned and may be withdrawn from the client trust account.

[3] Absent written* disclosure and the client’s agreement in a writing* signed by the client as provided in paragraph (b), a lawyer must deposit a flat fee paid in advance of legal services in the lawyer’s trust account. Paragraph (b) does not apply to advance payment for costs and expenses. Paragraph (b) does not alter the lawyer’s obligations under paragraph (d) or the lawyer’s burden to establish that the fee has been earned.

[4] Subparagraph (d)(7) is not intended to apply to a fee or expense the client has agreed to pay in advance, or the client file, or any other property that the client or other person* has agreed in writing that the lawyer will keep or maintain. Regarding a lawyer’s refund of a fee or expense paid in advance, see rule 1.16(e)(2). Regarding the release of a client’s file to the client, see rule 1.16(e)(1).

[5] Upon rebuttal by proof by a preponderance of the evidence of the presumption set forth in paragraph (f), a violation of paragraph (d)(7) must be established by clear and convincing evidence without the benefit of the rebuttable presumption.

[6] Whether or not the rebuttable presumption in paragraph (f) applies, a lawyer must still comply with all other applicable provisions of this rule. This includes a lawyer’s duty to take diligent steps to initiate and complete the resolution of disputes concerning a client’s or other person’s* entitlement to funds or property received by a lawyer.

[7] Under paragraph (g), possible disputes requiring resolution may include, but are not limited to, disputes concerning entitlement to funds arising from: medical liens; statutory liens; prior attorney liens; costs or expenses; attorney fees; a bank's policies and fees for clearing a check or draft; any applicable conditions on entitlement such as a plaintiff's execution of a release and dismissal; or any legal proceeding, such as an interpleader action, concerning the entitlement of any person to receive all or a portion of the funds or property.

California State Bar Resources

<https://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Ethics/Opinions>

[https://www.calbar.ca.gov/Portals/0/documents/ethics/Opinions/2015-194%20\(12-0007\)%20Puffing%20in%20Negotiations%20FINAL%2012-29-15.pdf](https://www.calbar.ca.gov/Portals/0/documents/ethics/Opinions/2015-194%20(12-0007)%20Puffing%20in%20Negotiations%20FINAL%2012-29-15.pdf)

<https://www.calbar.ca.gov/Portals/0/documents/ethics/Opinions/CAL-2019-198-14-0003-Settling-Before-Withdrawal.pdf>

<https://www.calbar.ca.gov/Portals/0/documents/publicComment/2021/COPRAC-Formal-Opinion-No.2021-207.pdf>

<https://www.calbar.ca.gov/Portals/0/documents/ethics/Opinions/Formal-Opinion-No-2020-204-Litigation-Funding.pdf>

<http://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Ethics>

<http://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Ethics/Opinions>

California Attorney Guidelines of Civility and Professionalism (Abbreviated, adopted July 20, 2007)

INTRODUCTION. As officers of the court with responsibilities to the administration of justice, attorneys have an obligation to be professional with clients, other parties and counsel, the courts and the public. This obligation includes civility, professional integrity, personal dignity, candor, diligence, respect, courtesy, and cooperation, all of which are essential to the fair administration of justice and conflict resolution.

These are guidelines for civility. The Guidelines are offered because civility in the practice of law promotes both the effectiveness and the enjoyment of the practice and economical client representation. The legal profession must strive for the highest standards of attorney behavior to elevate and enhance our service to justice. Uncivil or unprofessional conduct not only disserves the individual involved, it demeans the profession as a whole and our system of justice.

These voluntary Guidelines foster a level of civility and professionalism that exceed the minimum requirements of the mandated Rules of Professional Conduct as the best practices of civility in the practice of law in California. The Guidelines are not intended to supplant these or any other rules or laws that govern attorney conduct. Since the Guidelines are not mandatory rules of professional conduct, nor rules of practice, nor standards of care, they are not to be used as an independent basis for disciplinary charges by the State Bar or claims of professional negligence.

The Guidelines are intended to complement codes of professionalism adopted by bar associations in California. Individual attorneys are encouraged to make these guidelines their personal standards by taking the pledge that appears at the end. The Guidelines can be applicable to all lawyers regardless of practice area. Attorneys are encouraged to comply with both the spirit and letter of these guidelines, recognizing that complying with these guidelines does not in any way denigrate the attorney's duty of zealous representation.

SECTION 1. The dignity, decorum and courtesy that have traditionally characterized the courts and legal profession of civilized nations are not empty formalities. They are essential to an atmosphere that promotes justice and to an attorney's responsibility for the fair and impartial administration of justice.

SECTION 2. An attorney should be mindful that, as individual circumstances permit, the goals of the profession include improving the administration of justice and contributing time to persons and organizations that cannot afford legal assistance.

An attorney should encourage new members of the bar to adopt these guidelines of civility and professionalism and mentor them in applying the guidelines.

SECTION 3. An attorney should treat clients with courtesy and respect, and represent them in a civil and professional manner. An attorney should advise current and potential clients that it is not acceptable for an attorney to engage in abusive behavior or other conduct unbecoming a member of the bar and an officer of the court.

As an officer of the court, an attorney should not allow clients to prevail upon the attorney to engage in uncivil behavior.

An attorney should not compromise the guidelines of civility and professionalism to achieve an advantage.

SECTION 4. An attorney's communications about the legal system should at all times reflect civility, professional integrity, personal dignity, and respect for the legal system. An attorney should not engage in conduct that is unbecoming a member of the Bar and an officer of the court.

Nothing above shall be construed as discouraging the reporting of conduct that fails to comply with the Rules of Professional Conduct.

SECTION 5. An attorney should be punctual in appearing at trials, hearings, meetings, depositions and other scheduled appearances.

SECTION 6. An attorney should advise clients that civility and courtesy in scheduling meetings, hearings and discovery are expected as professional conduct.

In considering requests for an extension of time, an attorney should consider the client's interests and need to promptly resolve matters, the schedules and willingness of others to grant reciprocal extensions, the time needed for a task, and other relevant factors.

Consistent with existing law and court orders, an attorney should agree to reasonable requests for extensions of time that are not adverse to a client's interests.

SECTION 7. The timing and manner of service of papers should not be used to the disadvantage of the party receiving the papers.

SECTION 8. Written materials directed to counsel, third parties or a court should be factual and concise and focused on the issue to be decided.

SECTION 9. Attorneys are encouraged to meet and confer early in order to explore voluntary disclosure, which includes identification of issues, identification of persons with knowledge of such issues, and exchange of documents.

Attorneys are encouraged to propound and respond to formal discovery in a manner designed to fully implement the purposes of the California Discovery Act.

An attorney should not use discovery to harass an opposing counsel, parties or witnesses. An attorney should not use discovery to delay the resolution of a dispute.

SECTION 10. An attorney should consider whether, before filing or pursuing a motion, to contact opposing counsel to attempt to informally resolve or limit the dispute.

SECTION 11. It is important to promote high regard for the profession and the legal system among those who are neither attorneys nor litigants. An attorney's conduct in dealings with nonparty witnesses should exhibit the highest standards of civility.

SECTION 12. In a social setting or otherwise, an attorney should not communicate ex parte with a judicial officer on the substance of a case pending before the court, unless permitted by law.

SECTION 13. An attorney should raise and explore with the client and, if the client consents, with opposing counsel, the possibility of settlement and alternative dispute resolution in every case as soon possible and, when appropriate, during the course of litigation.

SECTION 14. To promote a positive image of the profession, an attorney should always act respectfully and with dignity in court and assist the court in proper handling of a case.

SECTION 15. An attorney should not take the default of an opposing party known to be represented by counsel without giving the party advance warning.

SECTION 16. An attorney should avoid even the appearance of bias by notifying opposing counsel or an unrepresented opposing party of any close, personal relationships between the attorney and a judicial officer, arbitrator, mediator or court-appointed expert and allowing a reasonable opportunity to object.

SECTION 17. An attorney should respect the privacy rights of parties and non-parties.

SECTION 18. An attorney should negotiate and conclude written agreements in a cooperative manner and with informed authority of the client.

In addition to other applicable Sections of these Guidelines, attorneys engaged in a transactional practice have unique responsibilities because much of the practice is conducted without judicial supervision.

SECTION 19. In addition to other applicable Sections of these Guidelines, in family law proceedings an attorney should seek to reduce emotional tension and trauma and encourage the parties and attorneys to interact in a cooperative atmosphere, and keep the best interests of the children in mind.

SECTION 20. In addition to other applicable Sections of these Guidelines, criminal law practitioners have unique responsibilities. Prosecutors are charged with seeking justice, while defenders must zealously represent their clients even in the face of seemingly overwhelming evidence of guilt. In practicing criminal law, an attorney should appreciate these roles.

SECTION 21. Judges are encouraged to become familiar with these Guidelines and to support and promote them where appropriate in court proceedings.

ATTORNEY'S PLEDGE. I commit to these Guidelines of Civility and Professionalism and will be guided by a sense of integrity, cooperation and fair play.

I will abstain from rude, disruptive, disrespectful, and abusive behavior, and will act with dignity, decency, courtesy, and candor with opposing counsel, the courts and the public.

As part of my responsibility for the fair administration of justice, I will inform my clients of this commitment and, in an effort to help promote the responsible practice of law, I will encourage other attorneys to observe these Guidelines.

States with Civility language in their Attorney Oaths (Currently recognized on ABOTA map)

Alaska

I do affirm:

I will support the Constitution of the United States and the Constitution of the State of Alaska;

I will adhere to the Rules of Professional Conduct in my dealings with clients, judicial officers, attorneys, and all other persons;

I will maintain the respect due to courts of justice and judicial officers;

I will not counsel or maintain any proceedings that I believe are taken in bad faith or any defense that I do not believe is honestly debatable under the law of the land;

I will be truthful and honorable in the causes entrusted to me, and will never seek to mislead the judge or jury by an artifice or false statement of fact or law;

I will maintain the confidences and preserve inviolate the secrets of my client, and will not accept compensation in connection with my client's business except from my client or with my client's knowledge or approval;

I will be candid, fair, and courteous before the court and with other attorneys, and will advance no fact prejudicial to the honor or reputation of a party or witness unless I am required to do so in order to obtain justice for my client;

I will uphold the honor and maintain the dignity of the profession, and will strive to improve both the law and administrative justice.

Arizona

I, (state your name), do solemnly swear (or affirm) that I will support the constitution and the laws of the United States and the State of Arizona;

I will treat the courts of justice and judicial officers with due respect;

I will not counsel or maintain any action, proceeding, or defense that lacks a reasonable basis in fact or law;

I will be honest in my dealings with others and not make false or misleading statements of fact or law;

I will fulfill my duty of confidentiality to my client; I will not accept compensation for representing my client from anyone other than my client without my client's knowledge and approval;

I will avoid engaging in unprofessional conduct; I will not advance any fact prejudicial to the honor or reputation of a party or witness, unless required by my duties to my client or the tribunal;

I will support the fair administration on justice, professionalism among lawyers, and legal representation for those unable to afford counsel;

I will at all time faithfully and diligently adhere to the rules of professional responsibility and A Lawyer's Creed of Professionalism of the State Bar of Arizona.

Arkansas

I will support the Constitution of the United States and the Constitution of the State of Arkansas, and I will faithfully perform the duties of attorney at law. I will maintain the respect and courtesy due to courts of justice, judicial officers, and those who assist them.

I will, to the best of my ability, abide by the Arkansas Rules of Professional Conduct and any other standards of ethics proclaimed by the courts, and in doubtful cases I will attempt to abide by the spirit of those ethical rules and precepts of honor and fair play.

To opposing parties and their counsel, I pledge fairness, integrity and civility, not only in court, but also in all written and oral communications.

I will not reject, from any consideration personal to myself, the cause of the impoverished, the defenseless, or the oppressed.

I will endeavor always to advance the cause of justice and to defend and to keep inviolate the rights of all persons whose trust is conferred upon me an attorney at law.

California

I solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of California, and that I will faithfully discharge the duties of an attorney and counselor at law to the best of my knowledge and ability. As an officer or the court, I will strive to conduct myself at all times with dignity, courtesy and integrity.

Colorado

I DO SOLEMNLY SWEAR...

I will support the Constitution of the United States and the Constitution of the State of Colorado; I will maintain the respect due to Courts and judicial officers; I will employ only such means as are consistent with truth and honor; I will treat all persons whom I encounter through my practice of law with fairness, courtesy, respect and honesty; I will use my knowledge of the law for the betterment of society and the improvement of the legal system; I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed; I will at all times faithfully and diligently adhere to the Colorado Rules of Professional Conduct.

Delaware

I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of Delaware; that I will behave myself in the office of an attorney within the Court and according to the best of my learning and ability and with all good fidelity, as well to the Court as to the client; that I will use not falsehood, nor delay any person's cause through lucre and malice.

Florida

I do solemnly swear:

I will support the Constitution of the United States and the Constitution of the State of Florida;

I will maintain the respect due to courts of justice and judicial officers;

I will not counsel or maintain any suit or proceedings which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land;

I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law;

I will maintain the confidence and preserve inviolate the secrets of my clients, and will accept no compensation in connection with their business except from them or with their knowledge and approval;

To opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications;

I will abstain from all offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay anyone's cause for lucre or malice. So help me God.

Hawaii

I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution and laws of the State of Hawai'i, and that I will at all times conduct myself in accordance with the Hawai'i Rules of Professional Conduct.

As an officer of the courts to which I am admitted to practice, I will conduct myself with dignity and civility towards judicial officers, court staff, and my fellow professionals.

I will faithfully discharge my duties as attorney, counselor, and solicitor in the courts of the state to the best of my ability, giving due consideration to the legal needs of those without access to justice.

Iowa

I do solemnly swear:

I will support the Constitution of the United States and the Constitution of the State of Iowa;

I will maintain the respect due to courts of justice and judicial officers;

I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except the defense of a person charged with a public offense;

I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth, and will never seek to mislead the judges by any artifice or false statement of fact or law;

I will maintain the confidence, and, at any peril to myself, will preserve the secret of my client;

I will abstain from all offensive personality, and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

I will refuse to encourage either the commencement or continuance of an action proceeding from any motive of passion or interest;

I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed; and

I will faithfully discharge the duties of an attorney and counselor at law to the best of my ability and in accordance with the ethics of my profession, So Help Me God.

Louisiana

I solemnly swear (or affirm) I will support the Constitution of the United States and the Constitution of the State of Louisiana;

I will maintain the respect due to courts of justice and judicial officers;

I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust nor any defense except such as I believe to be honestly debatable under the law of the land;

I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor and will never seek to mislead the judge or jury by any artifice or false statement of fact or law;

I will maintain the confidence and preserve inviolate the secrets of my client and will accept no compensation in connection with a client's business except from the client or with the client's knowledge and approval;

To opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications;

I will abstain from all offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness unless required by the justice of the cause with which I am charged;

I will never reject from any consideration personal to myself the cause of defenseless or oppressed or delay any person's cause for lucre or malice.

So help me God.

Michigan

I do solemnly swear (or affirm):

I will support the Constitution of the United States and the Constitution of the State of Michigan;

I will maintain the respect due to courts of justice and judicial officers;

I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land;

I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law;

I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with my client's business except with my client's knowledge and approval;

I will abstain from all offensive personality, and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any cause for lucre or malice;

I will in all other respects conduct myself personally and professionally in conformity with the high standards of conduct imposed upon members of the bar as conditions for the privilege to practice law in this State.

Minnesota

I, (insert name) do swear that I will support the Constitution of the United States and that of the State of Minnesota, and will conduct myself as an attorney and counselor at law, in an upright and courteous manner, to the best of my learning and ability, with all good fidelity as well to the court as to a client, and that I will use no falsehood or deceit, nor delay any person's cause for lucre or malice, SO HELP ME GOD.

Montana

I do affirm:

I will support the Constitution of the United States and the Constitution of the State of Montana;

I will maintain the respect due to the courts of justice and judicial officers;

I will not counsel or maintain any proceedings which shall appear to me to be taken in bad faith or any defense except such as I believe to be honestly debatable under the law of the land;

I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by an artifice or false statement of fact or law;

I will maintain the confidence and preserve inviolate the secrets of my client and will accept no compensation in connection with my client's business except from my client or with my clients knowledge or approval;

I will be candid, fair, and courteous before the court and with other attorneys, maintain civility toward opposing parties and their counsel not only in court, but also in all written and oral communications, and advance no fact prejudicial to the honor or reputation of the party or witness, unless required by the justice of the cause with which I am charged;

I shall faithfully discharge the duties of an attorney and counselor at law with fidelity to the best of my knowledge and ability;

I will strive to uphold the honor and to maintain the dignity of the profession to improve not only the law but the administration of justice, so help me God.

Nevada

I, (insert name), DO SOLEMNLY SWEAR, OR AFFRIM, THAT:

I will support the Constitution and government of the United States and of the State of Nevada;

I will maintain the respect due to courts of justice and judicial officers;

I will support, abide by and follow the Rules of Professional Conduct as are now or may hereafter be adopted by the Supreme Court;

I will conduct myself in a civil and professional manner, whether dealing with client, opposing parties and counsel, judicial officers or the general public, and will promote the administration of justice; and

I will faithfully and honestly discharge the duties of an attorney at law to the best of my knowledge and ability.

New Mexico

I will support the Constitution of the United States and the Constitution of the State of New Mexico;

I will maintain the respect due to courts of justice and judicial officers;

I will comply with the Rules of Professional Conduct adopted by the New Mexico Supreme Court;

I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land;

I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law;

I will maintain the confidence and preserve inviolate the secrets of my clients, and will accept no compensation in connection with their business except from them or with their knowledge and approval;

I will maintain civility at all times, abstain from all offensive personality, and advance no fact prejudicial to the honor or reputation of a party or witness unless required by the justice of the cause with which I am charged;

I will never reject from any consideration personal to myself the cause of the defenseless or oppressed, or delay any person's cause for lucre or malice.

Ohio

I (insert name) hereby (swear or affirm) that I will support the Constitution and the laws of the United States and the Constitution and the laws of Ohio, and I will abide by the Ohio Rules of Professional Conduct.

In my capacity as an attorney and officer of the Court, I will conduct myself with dignity and civility and show respect toward judges, court staff, clients, fellow professionals, and all other persons.

*I will honestly, faithfully, and competently discharge the duties of an attorney at law.
(So help me God.)*

Oregon

I, (insert name), swear (or affirm);

That I will faithfully and honestly conduct myself in the office of an attorney in the courts of the State of Oregon; that I will observe and abide by the Rules of Professional Conduct approved by the Supreme Court of the State of Oregon; and that I will support the Constitution and laws of the United States and of the State of Oregon. To the court, opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications.

South Carolina

I do solemnly swear (or affirm) that:

I am duly qualified, according to the Constitution of this State, to exercise the duties of the office to which I have been appointed, and that I will, to the best of my ability, discharge those duties and will preserve, protect and defend the Constitution of this State and the United States;

I will maintain the respect and courtesy due to the courts of justice, judicial officers, and those who assist them;

To my clients, I pledge faithfulness, competence, diligence, good judgement and prompt communication;

To opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications;

I will not pursue or maintain any suit or proceeding which appears to me to be unjust nor maintain any defenses except those I believe to be honestly debatable under the law of the land, but this obligation shall not prevent me from defending a person charged with a crime;

I will employ for the purpose of maintaining the causes confided to me only such means as are consistent with trust and honor and the principles of professionalism, and will

never seek to mislead an opposing party, the judge or jury by false statement of fact or law;

I will respect and preserve inviolate the confidences of my clients, and will accept no compensation in connection with a client's business except from the client or with the client's knowledge and approval;

I will maintain the dignity of the legal system and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

I will assist the defenseless or oppressed by ensuring that justice is available to all citizens and will not delay any person's cause for profit or malice;

[So help me God.]

Tennessee

I, (insert name), do solemnly swear or affirm that I will support the Constitution of the United States and the Constitution of the State of Tennessee. In the practice of my profession, I will conduct myself with honesty, fairness, integrity, and civility to the best of my skill and abilities, so help me God.

Texas

*I, (insert name), do solemnly swear ...
that I will support the Constitutions of
the United States, and of this State;
that I will honestly demean myself in the practice of law;
that I will discharge my duties to my clients to the best of my ability;
and I will conduct myself with integrity and civility in dealing and communicating with
the court and all parties.
So help me God.*

Utah

"I do solemnly swear that I will support, obey and defend the Constitution of the United States and the Constitution of Utah; that I will discharge the duties of attorney and counselor at law as an officer of the courts of this State with honesty, fidelity, professionalism, and civility; and that I will faithfully observe the Rules of Professional Conduct and the Standards of Professionalism and Civility promulgated by the Supreme Court of the State of Utah."

Virginia

I do solemnly swear or affirm that I will support the Constitution of the United States and the Constitution of the Commonwealth of Virginia, and that I will faithfully, honestly, professionally, and courteously demean myself in the practice of law and execute my office of attorney at law to the best of my ability, so help me God.

Washington

I, (insert name), do solemnly declare:

- 1. I am fully subject to the laws of the State of Washington and the laws of the United States and will abide by the same.*
- 2. I will support the constitution of the State of Washington and the constitution of the United States.*
- 3. I will abide by the Rules of Professional Conduct approved by the Supreme Court of the State of Washington.*
- 4. I will maintain the respect due to the courts of justice and judicial officers.*
- 5. I will not counsel, or maintain any suit, or proceeding, which shall appear to me to be unjust or any defense except as I believe to be honestly debatable under the law, unless it is in defense of a person charged with a public offense. I will employ for the purpose of maintaining the causes confided to me only those means consistent with truth and honor. I will never seek to mislead the judge or jury by any artifice or false statement.*
- 6. I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with the business of my client unless this compensation is from or with the knowledge and approval of the client or with approval of the court.*
- 7. I will abstain from all offensive personalities, and advance no fact prejudicial to the honor or reputation of a party or witness unless required by the justice of the cause with which I am charged.*
- 8. I will never reject, from an consideration personal to myself, the cause of the defenseless or oppressed, or delay unjustly the cause of any person.*

West Virginia

"I do solemnly swear or affirm that: I will support the Constitution of the United States and the Constitution of the State of West Virginia; that I will honestly demean myself in the practice of law; that I will conduct myself with integrity, dignity and civility and show respect toward judges, court staff, clients, fellow professionals and all other persons; and to the best of my ability, execute my office of attorney-at-law; so help me God."



Thoughts on Improving Civility and Professionalism

By Judge Loren McMaster

As members of the legal profession, we all owe a duty to act in a professional, ethical, and civil manner. Sadly, not everyone meets these standards, as all of us have experienced one time or another. Many the problem areas concerning conduct of counsel have been memorialized in published opinions of both the California Supreme Court and the Courts of Appeal. The lofty goal of this article is to suggest steps to take to eliminate (or at least reduce) the need for such appellate opinions in the future.

My usual disclaimer applies. Nothing herein is to be considered a local rule of court, an unwritten rule, or a court policy. What follows are simply the views of one judge.

As I have noted in my two-part article on the English Legal System, barristers rarely, if ever, object to questions posed to a witness by an adversary. The explanation is that since barristers are well-trained not only in the law, but also in professionalism and ethics, they would never ask an improper question. The concept that the opposing attorney would never do wrong is ingrained in the English system. Indeed, discovery disputes are rare since it is expected that barristers will always produce all relevant documents to the other side. Unfortunately, the American legal system does not have similar traditions, notwithstanding that it is dependant upon the integrity of its participants, judges and lawyers. As appellate justices have observed, "it is vital to the integrity of our adversary legal process that attorneys strive to maintain the highest standards of ethics, civility, and professionalism in the practice of law." (*People v. Chong* (1999) 76 Cal.App.4th 232, 243). In *Re S.C.* (2006) 138 Cal.App.4th 396, 412.

That attorneys take their responsibility to act professionally and ethically at all times is extremely important since "[t]he profession of the law possesses extraordinary powers. Lawyers can make the arrogant humble and the weak strong. In control of the course of litigation and armed with the knowledge of right and wrong, they are most able to abjure illegal or tortious conduct; it is their duty to do so. As occupants of a high public trust and officers of the court, they are expected to conform their behavior in legal affairs to a higher standard of rectitude and spirit of obedience than those who are willing to endure the dust of transgression. [¶] Guided by oath, duty and obligation, the lawyer's path avoids the vices from which the virtuous abstain." *Kimmel v. Golland* (1990) 51 Cal.3d 202, 214.

Upon reading the last sentence of the quoted portion of the opinion of the California Supreme Court, one can only wistfully sigh and ruminate, "if only that were the case." However, to cast a positive light on the subject, happily these words represent the conduct of the majority of lawyers, especially those who are recognized as leaders in the profession. For example, members of the Sacramento County Bar Association are expected to abide by its Standards of Professional Conduct. Those standards are appended to the Local Rules of Court and set forth the standards

with which attorneys are expected to comply. A copy may be accessed by using the following link: http://www.saccourt.com/geninfo/local_rules/PDFChapters/2005/Standards%20of%20Professional%20Conduct%2010105.pdf.

Members of the American Board of Trial Advocates, invited to join by reason of their demonstrated legal skills and professionalism, subscribe to a comprehensive code of ethics. (The link to the Principles of Civility, Integrity and Professionalism from the American Board of Trial Advocates is as follows: <http://www.abota.org/about/default.asp?about=4&title=Principles%20of%20Civility,%20Integrity%20and%20Professionalism>.)

Members of the American Inns of Court declare that their raison d'être is to promote ethics, civility, and professionalism. The web site of the American Inns of Court is <http://www.insofcourt.org> and the website of the Anthony M. Kennedy Inn of Court, which meets at McGeorge Law School eight times a year is <http://www.kennedyinn.org>.

The next step for all of us to take is to reach out to the under-informed and educate them on the expectations of the profession and the courts in the areas of ethics, civility and professionalism. New attorneys who join a firm should be educated in the importance of professional, ethical, and civil behavior and should be provided with copies of the County Bar Standards of conduct and the ABOTA "Principles." When an attorney's conduct is less than civil or professional, one should attempt to privately discuss the expected standards of the profession with the offending lawyer. A professional and civil reply to a vituperative letter from opposing counsel is much more effective (at least in the courts' eyes) than a response in kind.

While the vast majority of litigators are ethical and professional, the few that lack these qualities not only give the profession a bad name, but also drive up the cost of litigation, both in terms of monetary cost and the consumption of limited judicial resources. Several appellate courts have felt the need to comment on improper conduct or impose sanctions because of it. The following examples illustrate the frustration of the appellate courts with less than civil behavior from civil practitioners.

In *Pierotti v. Torian* (2000) 81 Cal.App.4th 17, 32, the appellate court found that the tone of the brief, with its ad hominem attacks, was "more cathartic than tactical," but observed that an appellate brief is not the proper place for a litigator to "vent his spleen" because it requires a response by the opponent and processing by the court. "Thus, an unsupported appellate tirade is more than just words on paper; it represents a real cost to the opposing party and to the state." *Id.* at pp. 32-33.

In *Townsend v. Superior Court* (1998) 61 Cal.App.4th 1431, 1438, the Court made the following observation: "[W]e note with dismay the ever growing number of cases in which most of the trappings of civility . . . are lacking."

The simple and plain fact is that judges do not appreciate being caught in the middle of a war waged by the competing attorneys. An attorney should consider the following five points before participating in an unprofessional exchange:

- (1) The attorney can expect that the email or letter containing what the attorney said "in the heat of the moment" will be an exhibit to whatever motion is pending before the court. If the case goes to trial, resourceful counsel on the other side will find a way to get those words before the jury. They may also provide proof of the required element of malice in a subsequent malicious prosecution case.
- (2) Business and Professions Code § 6068(d) makes it the duty of every attorney to "employ, for the purpose of maintaining the causes confided to him or her those means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law." Personal attacks on an opposing lawyer may not be "consistent with truth" and may "seek to mislead the judge."
- (3) Such conduct is both unprofessional and inappropriate and lowers the attorney's standing in the eyes of the Court and reflects poorly on the legal profession.
- (4) Even if such accusations do not meet the definition of section 6068(d), they still may constitute misconduct. In *Re S.C.* (2006) 138 Cal.App.4th 396, 412
- (5) Such conduct will violate the Sacramento Local Rules of Court. Appendix A to the Local Rules consists of the Sacramento County Bar Associations Standards of Professional Conduct, which the Court expects counsel will follow in their dealings with each other and the court in the course of the litigation.


The duty of civility and professionalism also apply to the interaction between counsel and the Court. Even if in the attorney's judgment, the Court's ruling is wrong, it is still counsel's duty to "maintain the respect due to the courts of justice and judicial officers." Business and Professions Code § 6068(b). See *Hawk v. Superior Court* (1974) 42 Cal.App.3d 108, 126 and *People v. Massey* (1955) 137 Cal.App.2d 623, 625 (attorneys, as officers of the court, owe a duty of respect to the court). The purpose of the rule is not to provide a shield against criticism for judges, but rather is to make sure that the public maintains confidence in the fairness and impartiality of the American system of justice. *Standing Committee v. Yagman* (9th Cir. 1995) 55 F.3d 1430, 1437.

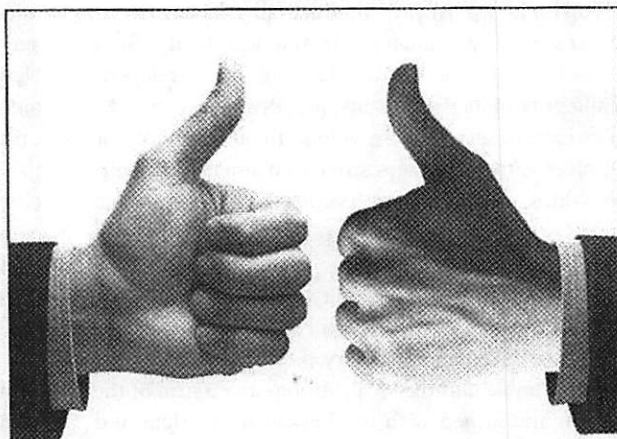
"Disparaging the trial judge is a tactic that is not taken lightly by a reviewing court. Counsel better make sure he or she has the facts right before venturing into such dangerous territory because it is contemptuous for an attorney to make the unsupported assertion that the judge was 'act[ing] out of bias toward a party.' (In *re White* (2004) 121 Cal.App.4th 1453, 1478 [18 Cal. Rptr. 3d 444].)" In *re S.C.* (2006) 138 Cal.App.4th 396, 423.

Other examples of improper conduct towards a court include accusations of illegal behavior (*Ramirez v. State Bar* (1980) 28 Cal. 3d 402); accusing the judge of intentionally ignoring the law (In

re White (2004) 121 Cal.App.4th 1453, 1478); accusing the judge of being "intellectually dishonest" (*People v. Chong* (1999) 76 Cal. App. 4th 232, 236). Perhaps one of the more egregious comments was one made by a male attorney to a female judge, stating, "you're not my mother." (*McCann v. Municipal Court* (1990) 221 Cal.App.3d 527, 540-41.)

Civility and professionalism is a two way street and judges owe a duty to respond civilly and professionally to attorneys in their courtroom, consistent with the Court's duty to maintain order and regulate the proceedings. Judges are bound by the Canons of Judicial Conduct to be "patient, dignified, and courteous to litigants" (Canon 3 (B)(4)) and to perform the Court's duties "without bias or prejudice" (Canon 3 (B)(4)). ABOTA, as part of its Principles of Civility, Integrity and Professionalism has included Counsel's expectations concerning the conduct of judges hearing the matter. These "Principles" should be read and applied by all judicial officers, including those serving as temporary judges.

The State Bar's new president, **Sheldon Sloan**, has stated as a goal of his term of office to improve civility and professionalism among attorneys. He has created a task force appropriately titled Attorney Civility Task Force, the goal of which is to improve civility among attorneys. The charge of this task force is to recommend to the State Bar President appropriate procedures and programs that when implemented will improve attorney civility and professionalism. This will be an important step in the right direction. 



It isn't easy making people on both sides of the table happy. However, it can be done.

Dave Rudy, Mediation
888.310.7490



Principles of Civility, Integrity, and Professionalism

Preamble

These Principles supplement the precepts set forth in ABOTA's Code of Professionalism and are a guide to the proper conduct of litigation. Civility, integrity, and professionalism are the hallmarks of our learned calling, dedicated to the administration of justice for all. Counsel adhering to these principles will further the truth-seeking process so that disputes will be resolved in a just, dignified, courteous, and efficient manner.

These principles are not intended to inhibit vigorous advocacy or detract from an attorney's duty to represent a client's cause with faithful dedication to the best of counsel's ability. Rather, they are intended to discourage conduct that demeans, hampers, or obstructs our system of justice.

These Principles apply to attorneys and judges, who have mutual obligations to one another to enhance and preserve the dignity and integrity of our system of justice. As lawyers must practice these Principles when appearing in court, it is not presumptuous of them to expect judges to observe them in kind. The Principles as to the conduct of judges set forth herein are derived from judiciary codes and standards.

These Principles are not intended to be a basis for imposing sanctions, penalties, or liability, nor can they supersede or detract from the professional, ethical, or disciplinary codes of conduct adopted by regulatory boards.

As a member of the American Board of Trial Advocates, I will adhere to the following Principles:

1. Advance the legitimate interests of my clients, without reflecting any ill will they may have for their adversaries, even if called on to do so, and treat all other counsel, parties, and witnesses in a courteous manner.
2. Never encourage or knowingly authorize a person under my direction or supervision to engage in conduct proscribed by these principles.

3. Never, without good cause, attribute to other counsel bad motives or improprieties.
4. Never seek court sanctions unless they are fully justified by the circumstances and necessary to protect a client's legitimate interests and then only after a good faith effort to informally resolve the issue with counsel.
5. Adhere to all express promises and agreements, whether oral or written, and, in good faith, to all commitments implied by the circumstances or local custom.
6. When called on to do so, commit oral understandings to writing accurately and completely, provide other counsel with a copy for review, and never include matters on which there has been no agreement without explicitly advising other counsel.
7. Timely confer with other counsel to explore settlement possibilities and never falsely hold out the potential of settlement for the purpose of foreclosing discovery or delaying trial.
8. Always stipulate to undisputed relevant matters when it is obvious that they can be proved and where there is no good faith basis for not doing so.
9. Never initiate communication with a judge without the knowledge or presence of opposing counsel concerning a matter at issue before the court.
10. Never use any form of discovery scheduling as a means of harassment.
11. Make good faith efforts to resolve disputes concerning pleadings and discovery.
12. Never file or serve motions or pleadings at a time calculated to unfairly limit opposing counsel's opportunity to respond.
13. Never request an extension of time solely for the purpose of unjustified delay or to obtain a tactical advantage.
14. Consult other counsel on scheduling matters in a good faith effort to avoid conflicts.
15. When calendar conflicts occur, accommodate counsel by rescheduling dates for hearings, depositions, meetings, and other events.
16. When hearings, depositions, meetings, or other events are to be canceled or postponed, notify as early as

possible other counsel, the court, or other persons as appropriate, so as to avoid unnecessary inconvenience, wasted time and expense, and to enable the court to use previously reserved time for other matters.

17. Agree to reasonable requests for extension of time and waiver of procedural formalities when doing so will not adversely affect my client's legitimate rights.

18. Never cause the entry of a default or dismissal without first notifying opposing counsel, unless material prejudice has been suffered by my client.

19. Never take depositions for the purpose of harassment or to burden an opponent with increased litigation expenses.

20. During a deposition, never engage in conduct which would not be appropriate in the presence of a judge.

21. During a deposition, never obstruct the interrogator or object to questions unless reasonably necessary to preserve an objection or privilege for resolution by the court.

22. During depositions, ask only those questions reasonably necessary for the prosecution or defense of an action.

23. Draft document production requests and interrogatories limited to those reasonably necessary for the prosecution or defense of an action, and never design them to place an undue burden or expense on a party.

24. Make reasonable responses to document requests and interrogatories and not interpret them in an artificially restrictive manner so as to avoid disclosure of relevant and nonprivileged documents.

25. Never produce documents in a manner designed to obscure their source, create confusion, or hide the existence of particular documents.

26. Base discovery objections on a good faith belief in their merit, and not for the purpose of withholding or delaying the disclosure of relevant and nonprivileged information.

27. When called on, draft orders that accurately and completely reflect a court's ruling, submit them to other counsel for review, and attempt to reconcile any differences before presenting them to the court.

28. During argument, never attribute to other counsel a position or claim not taken, or seek to create such an unjustified inference. 2

29. Unless specifically permitted or invited, never send to the court copies of correspondence between counsel.

When In Court I Will:

1. Always uphold the dignity of the court and never be disrespectful.
2. Never publicly criticize a judge for his or her rulings or a jury for its verdict. Criticism should be reserved for appellate court briefs.
3. Be punctual and prepared for all court appearances, and, if unavoidably delayed, notify the court and counsel as soon as possible.
4. Never engage in conduct that brings disorder or disruption to the courtroom.
5. Advise clients and witnesses of the proper courtroom conduct expected and required.
6. Never misrepresent or misquote facts or authorities.
7. Verify the availability of clients and witnesses, if possible, before dates for hearings or trials are scheduled, or immediately thereafter, and promptly notify the court and counsel if their attendance cannot be assured.
8. Be respectful and courteous to court marshals or bailiffs, clerks, reporters, secretaries, and law clerks.

Conduct Expected of Judges

A lawyer is entitled to expect judges to observe the following Principles:

1. Be courteous and respectful to lawyers, parties, witnesses, and court personnel.
2. Control courtroom decorum and proceedings so as to ensure that all litigation is conducted in a civil and efficient manner.
3. Abstain from hostile, demeaning, or humiliating language in written opinions or oral communications with lawyers, parties, or witnesses.
4. Be punctual in convening all hearings and conferences, and, if unavoidably delayed, notify counsel, if possible.
5. Be considerate of time schedules of lawyers, parties, and witnesses in setting dates for hearings, meetings,

and conferences. When possible, avoid scheduling matters for a time that conflicts with counsel's required appearance before another judge.

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CODE OF PROFESSIONALISM

As a member of the American Board of Trial Advocates, I shall

Always remember that the practice of law is first and foremost a profession.

Encourage respect for the law, the courts, and the right to trial by jury.

Always remember that my word is my bond and honor my responsibilities to serve as an officer of the court and protector of individual rights.

Contribute time and resources to public service, public education, charitable and pro bono activities in my community.

Work with the other members of the bar, including judges, opposing counsel, and those whose practices are different from mine, to make our system of justice more accessible and responsive.

Resolve matters and disputes expeditiously, without unnecessary expense, and through negotiation whenever possible.

Keep my clients well-informed and involved in making decisions affecting them.

Achieve and maintain proficiency in my practice and continue to expand my knowledge of the law.

Be respectful in my conduct toward my adversaries.

Honor the spirit and intent, as well as the requirements of applicable rules or codes of professional conduct, and shall encourage others to do so.

American Board
of Trial Advocates





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What is Civility Matters®?

The Foundation of the American Board of Trial Advocates is proud to present Civility Matters, an effort to promote one of the main tenets of ABOTA's Constitution:

"To elevate the standards of integrity, honor and courtesy in the legal profession."

ABOTA created Civility Matters with the hope that the program would be presented at ABOTA educational activities, other bar and professional programs, and, especially, in every law school in the country. The programs feature first-hand lessons and experience from ABOTA members and are intended to instill values and standards that promote high regard for the legal profession.

What is the ABOTA Foundation?

The mission of the Foundation is to support the purposes of the American Board of Trial Advocates, to preserve the constitutional vision of equal justice for all Americans, and to preserve our civil justice system for future generations.

Who are ABOTA Members?

The American Board of Trial Advocates is an invitation-only membership organization comprising more than 7,500 of the nation's premier civil trial lawyers equally balanced between plaintiff and defense. Members must complete a requisite number of civil jury trials and maintain high personal character and honorable reputation in their field.

Civility Matters® is a publication of the ABOTA Foundation's Professional Education Committee. We recognize the vision of David B. Casselman. We thank Wilma J. Gray, Donald J. Winder, and William B. Smith from the Professionalism, Ethics and Civility Committee for their contributions to this program.

Help us spread civility nationwide! Each year, hundreds of Civility Matters programs across the country seek to raise the level of professionalism and respect in the legal community. If your chapter or firm would like to host a Civility Matters program in your area, visit ABOTACivilityMatters.org to obtain the resources, guides and information. Please contact the Foundation if you plan to host or have previously hosted a Civility Matters program. We maintain a list of programs and would like to recognize your efforts.

ABOTA also seeks to have civility language added to the attorney oath in each state. Visit our website for a map of current oaths containing civility language, and for information on getting language added in your state, contact the ABOTA Foundation at (800) 779-5879.



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American Board of Trial Advocates
(800) 93-ABOTA / (214) 871-7523

2001 Bryan Street, Suite 3000
abota.org

Dallas, Texas 75201

Principles of Civility, Integrity and Professionalism

American Board of Trial Advocates

Preamble

These Principles supplement the precepts set forth in ABOTA's Code of Professionalism and are a guide to the proper conduct of litigation. Civility, integrity, and professionalism are the hallmarks of our learned calling, dedicated to the administration of justice for all. Counsel adhering to these principles will further the truth-seeking process so that disputes will be resolved in a just, dignified, courteous, and efficient manner.

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4. Never seek court sanctions unless they are fully justified by the circumstances and necessary to protect a client's legitimate interests and then only after a good faith effort to informally resolve the issue with counsel.
5. Adhere to all express promises and agreements, whether oral or written, and, in good faith, to all commitments implied by the circumstances or local custom.
6. When called on to do so, commit oral understandings to writing accurately and completely, provide other counsel with a copy for review, and never include matters on which there has been no agreement without explicitly advising other counsel.
7. Timely confer with other counsel to explore settlement possibilities and never falsely hold out the potential of settlement for the purpose of foreclosing discovery or delaying trial.
8. Always stipulate to undisputed relevant matters when it is obvious that they can be proved and where there is no good faith basis for not doing so.
9. Never initiate communication with a judge without the knowledge or presence of opposing counsel concerning a matter at issue before the court.
10. Never use any form of discovery scheduling as a means of harassment.
11. Make good faith efforts to resolve disputes concerning pleadings and discovery.
12. Never file or serve motions or pleadings at a time calculated to unfairly limit opposing counsel's opportunity to respond.
13. Never request an extension of time solely for the purpose of unjustified delay or to obtain a tactical advantage.
14. Consult other counsel on scheduling matters in a good faith effort to avoid conflicts.
15. When calendar conflicts occur, accommodate counsel by rescheduling dates for hearings, depositions, meetings, and other events.
16. When hearings, depositions, meetings, or other events are to be canceled or postponed, notify as early as possible other counsel, the court, or other persons as appropriate, so as to avoid unnecessary inconvenience, wasted time and expense, and to enable the court to use previously reserved time for other matters.
17. Agree to reasonable requests for extension of time and waiver of procedural formalities when doing so will not adversely affect my client's legitimate rights.
18. Never cause the entry of a default or dismissal without first notifying opposing counsel, unless material prejudice has been suffered by my client.
19. Never take depositions for the purpose of harassment or to burden an opponent with increased litigation expenses.
20. During a deposition, never engage in conduct which would not be appropriate in the presence of a judge.

21. During a deposition, never obstruct the interrogator or object to questions unless reasonably necessary to preserve an objection or privilege for resolution by the court.

22. During depositions, ask only those questions reasonably necessary for the prosecution or defense of an action.

23. Draft document production requests and interrogatories limited to those reasonably necessary for the prosecution or defense of an action, and never design them to place an undue burden or expense on a party.

24. Make reasonable responses to document requests and interrogatories and not interpret them in an artificially restrictive manner so as to avoid disclosure of relevant and nonprivileged documents.

25. Never produce documents in a manner designed to obscure their source, create confusion, or hide the existence of particular documents.

26. Base discovery objections on a good faith belief in their merit, and not for the purpose of withholding or delaying the disclosure of relevant and nonprivileged information.

27. When called on, draft orders that accurately and completely reflect a court's ruling, submit them to other counsel for review, and attempt to reconcile any differences before presenting them to the court.

28. During argument, never attribute to other counsel a position or claim not taken, or seek to create such an unjustified inference.

29. Unless specifically permitted or invited, never send to the court copies of correspondence between counsel.

When In Court I Will:

1. Always uphold the dignity of the court and never be disrespectful.

2. Never publicly criticize a judge for his or her rulings or a jury for its verdict. Criticism should be reserved for appellate court briefs.

3. Be punctual and prepared for all court appearances, and, if unavoidably delayed, notify the court and counsel as soon as possible.

4. Never engage in conduct that brings disorder or disruption to the courtroom.

5. Advise clients and witnesses of the proper courtroom conduct expected and required.

6. Never misrepresent or misquote facts or authorities.

7. Verify the availability of clients and witnesses, if possible, before dates for hearings or trials are scheduled, or immediately thereafter, and promptly notify the court and counsel if their attendance cannot be assured.

8. Be respectful and courteous to court marshals or bailiffs, clerks, reporters, secretaries, and law clerks.

Conduct Expected of Judges

A lawyer is entitled to expect judges to observe the following Principles:

1. Be courteous and respectful to lawyers, parties, witnesses, and court personnel.

2. Control courtroom decorum and proceedings so as to ensure that all litigation is conducted in a civil and efficient manner.

3. Abstain from hostile, demeaning, or humiliating language in written opinions or oral communications with lawyers, parties, or witnesses.

4. Be punctual in convening all hearings and conferences, and, if unavoidably delayed, notify counsel, if possible.

5. Be considerate of time schedules of lawyers, parties, and witnesses in setting dates for hearings, meetings, and conferences. When possible, avoid scheduling matters for a time that conflicts with counsel's required appearance before another judge.

6. Make all reasonable efforts to promptly decide matters under submission.

7. Give issues in controversy deliberate, impartial, and studied analysis before rendering a decision.

8. Be considerate of the time constraints and pressures imposed on lawyers by the demands of litigation practice, while endeavoring to resolve disputes efficiently.

9. Be mindful that a lawyer has a right and duty to present a case fully, make a complete record, and argue the facts and law vigorously.

10. Never impugn the integrity or professionalism of a lawyer based solely on the clients or causes he represents.

11. Require court personnel to be respectful and courteous toward lawyers, parties, and witnesses.

12. Abstain from adopting procedures that needlessly increase litigation time and expense.

13. Promptly bring to counsel's attention uncivil conduct on the part of clients, witnesses, or counsel.

Ever wonder what happened to the ideals of civility, integrity, and professionalism to which you aspired in law school? They are alive and well in the American Board of Trial Advocates. The legal profession as a whole and each individual lawyer and judge must adopt and practice these concepts so that the members of our profession will again be looked upon as the greatest protectors of our life, liberty and property.

Reference Articles

In an effort to provide relevant and compelling information to legal professionals, students, and teachers, the ABOTA Foundation has compiled a library of resources for those interested in learning about and teaching civility. Abstracts of key articles that discuss the importance and implementation of civility are included below. For the complete text and many more resources, visit our online library at ABOTACivilityMatters.org.

If Incivility Strikes...

By the Professionalism, Ethics and Civility Committee of ABOTA

The nuts and bolts of how to respond to the challenge of incivility from the ABOTA's National Professionalism, Ethics and Civility Committee. This will help you avoid taking the bait and joining your opponent in a downward spiral of incivility. It will help you learn how to transform uncivil conduct into an upward spiral of cooperation.

Why Civility . . . And Why Now?

By David B. Casselman

ABOTA recognizes a full-scale epidemic with toxic effects from a growing problem of serious decline in civility and collegiality in the practice of civil law. By focusing on civility, we can protect the integrity of the judicial system and serve the best interests of the clients.

Judges' Top 10 Pet Peeves

Prepared by Caroline C. Emery

Learn a popular trial judge's Top 10 Pet Peeves regarding incivility.

ABA White Paper

By Justice Douglas S. Lang

The ABA, joined by the Conference of Chief Justices, has adopted a Resolution recommending, among other things: civility oaths, professional boards to resolve complaints, and mentoring.

Why Civility Matters – It Is The Essence of Professionalism

By Justice Douglas S. Lang

The core values of professionalism are honesty, integrity and civility. The meaning and importance of these values are explored in this article, as well as the importance of mentoring in encouraging these values.

Civility in the Legal Profession — Our Common Goal

By Justice Donald W. Lemons

The American Inns of Court is devoted to promoting professionalism, civility, ethics and excellent legal skills. This national movement of legal apprenticeship brings together lawyers, judges, academics and students for continuing education and mentoring to help lawyers become more effective advocates and counselors with a keener ethical awareness.

Civility: Setting the Tone for Respect!

By William B. Smith

Civility is all about respect. It is the obligation of every lawyer to set the proper tone. It all comes down to you and the Golden Rule. Bill Smith is a Co-Chair of ABOTA's National Professionalism, Ethics and Civility Committee and he discusses civility, its importance, the roots of incivility and how to deal with it when it surfaces.

Making Civility Contagious

By Jerry Spolter, JAMS

Incivility is counter productive to ADR. The JAMS Foundation supports ABOTA's efforts to promote civility and has been a partner from the beginning. Jerry Spolter of JAMS has a short message about the importance of civility.

Enforcing Civility in an Uncivilized World

By Donald J. Winder and Jerald V. Hale

As of 2012, 42 of 50 states had civility codes. However, these codes are guidelines only.

How can we enforce civility? It can be done through court decisions, bar mechanisms and placing civility in attorney oaths. Seventeen states have civility in the oath. A common approach is to "Pledge fairness, integrity, and civility, not only in court, but in all written and oral communications."

Utah Standards of Professionalism and Civility

To enhance the daily experience of lawyers and the reputation of the Bar as a whole, the Utah Supreme Court, by order dated October 16, 2003, approved the following Standards of Professionalism and Civility as recommended by its Advisory Committee on Professionalism.

Host a Civility Matters® Program

Contact the ABOTA Foundation at (800) 799-5879 for more information. A separate supplement for teaching Civility Matters is available, as are copies of this Civility Matters publication and DVDs. The teaching supplement includes guidelines for conducting a Civility Matters panel, discussion questions, role play vignettes and a presentation DVD containing a PowerPoint presentation along with actual video, audio, and written instances of incivility to further group discussions regarding what a civil lawyer should do when faced with such situations. All resources are also available at ABOTACivilityMatters.org.



ON CIVILITY

Civility requires respect — respect for ideas, respect for persons, and respect for the institutions that have held together our nation in times of revolution, civil war, and economic uncertainties.

Civility is not a quaint notion; civility allows the architect and the fiscal officer to agree on the scope of a basketball arena; the pedagogical detail of the restoration of a magnificent university library; and yes, even a discussion about the level of school tuition.

Civility constrained passion when our founding fathers drafted the United States Constitution. It allowed President Lincoln to reach across the Mason-Dixon Line to pull together a fractured nation. And, civility fueled the airlift of the Marshall Plan when the victorious nations of World War II fed those who were conquered.

Civility requires no operator's manual, no updates to download, no complicated set of rules. It is simple; it is easy; and it produces positive and constructive human interaction.

Civility may be the forum for our civic conversation, but that discussion is captured in all its colorful hues in our laws and in our constitutions.

— *The late Chief Justice Thomas J. Moyher, Ohio Supreme Court
The Ohio State University Commencement, August 30, 2009*

OCBA CIVILITY GUIDELINES

The Orange County Bar Association and its Board of Directors take seriously all lawyers' obligations to act ethically and professionally, whether interacting with clients, other parties, the courts, or the public. In furtherance of the OCBA's goal to promote lawyer professionalism, 2016 OCBA President Todd Friedland formed and appointed a task force on lawyer civility, headed by Justice Richard Fybel and Scott Garner. The task force included lawyers from a variety of practice areas, including criminal law, family law, and civil litigation, and also included a number of Orange County federal and state court judges.

The result of the task force's hard work is the OCBA Civility Guidelines published below. It is the hope of the OCBA and its leadership that Orange County lawyers in all practice areas will voluntarily commit to adopt and abide by these Guidelines so that Orange County can maintain and improve the professionalism, ethics, and civility that is so important to public trust in the County's judicial system.

PREAMBLE

The practice of law is a noble, time-honored profession requiring and inspiring trust and confidence. Lawyers rightly take pride in seeking mutual cooperation and maintaining personal dignity. Lawyers practicing in Orange County share a commitment to civility and recognize their obligation to be professional with clients, other parties and counsel, the courts, and the public.

Courts expect lawyers to show others respect. Lawyers are officers of the court. Each lawyer's conduct should reflect well on the judicial system, the profession, and the fair administration of justice. Judicial resources are limited and wisely conserved when lawyers avoid frivolous disputes.

Lawyers should inspire public regard for the profession and for the judicial system. Rudeness, distrust, or abusive tactics by lawyers do not reflect well on the legal profession or inspire the public's confidence.

Civility allows for zealous representation, reduces clients' costs, better advances clients' interests, reduces stress, increases professional satisfaction, and promotes effective conflict resolution. These guidelines foster the civility and professionalism that are hallmarks of the best traditions of the legal profession.

All OCBA members are encouraged to adopt these guidelines as their personal standards. The guidelines exceed the Rules of Professional Conduct; do not replace any statute or rule; and are not intended as an independent basis for sanctions, discipline, or more litigation. Rather, the guidelines remind us that law is best practiced with civility and that clients, courts, the public, and the fair administration of justice are best served thereby.

GUIDELINES

1. Counsel shall show civility to other counsel and self-represented litigants.

- a. Communicate in a professional, businesslike manner. Respond to communications within a reasonable time, using reasonable means. Provide accurate redlines and note significant changes when exchanging drafts. Avoid personal attacks, demeaning comments, and misleading characterizations of the other side's positions, both in private communications and in court. Act civilly toward opposing counsel's staff members.
- b. Extend professional courtesies. Agree to reasonable requests, including those regarding service of papers or extensions of time, whenever possible without prejudicing the client's interests or violating a court's scheduling order. Honor commitments.
- c. Advise clients about the need for civility. Assure clients you will zealously represent them while still treating others with civility. Resist client requests to engage in abusive or disrespectful behavior.

2. Counsel shall show civility during discovery.

- a. Work together to make discovery self-executing. Meet and confer in good faith to try to limit and expedite discovery—and to resolve disputes without motions. Cooperate to make discovery reasonably convenient: e.g., provide written discovery requests in electronic format, discuss search terms for electronic discovery in advance, produce written responses and responsive documents in a user-friendly manner. Avoid pursuing discovery only to harass adversaries or increase litigation costs. Respond forthrightly and timely to non-objectionable requests.
- b. Schedule depositions reasonably. Respond to inquiries for dates within a reasonable time and on reasonable terms. Make good-faith efforts to accommodate the schedules of other parties, counsel, and witnesses. Delay or cancel depositions only with good cause and as much notice as practicable.
- c. Behave professionally at depositions. Avoid abusive or rude behavior, mischaracterizations of anyone's conduct, baseless instructions not to answer, and questions asked only to embarrass the witness. Make reasonable use of the allotted time, without needlessly running out the clock or requiring an additional day.

3. Counsel shall show civility to the courts.

- a. Respect the court's time. Make good-faith efforts to avoid or narrow issues before raising them with the court. Plan to make witnesses available while minimizing their wait time—consider on-call agreements. Notify the court as soon as possible if a matter resolves.
- b. Communicate respectfully with the court. Treat the court and its personnel with dignity. Avoid personal attacks, disrespectful familiarity, the appearance of impropriety, and improper ex parte communications.
- c. Conduct yourself professionally in court. Be punctual and prepared for every appearance. Wait for your matter respectfully. Let others speak, without interrupting. Accept responsibility for your handling of the case without blaming subordinates.
- d. Show this civility to all bench officers (judges, commissioners, temporary judges, referees), arbitrators, mediators, other dispute resolution providers, and their staffs.



Orange County Department of Child Support Services



We offer a variety of services to help your client achieve parental success

Our services include:

- | | |
|----------------------------|--------------------------------|
| ✓ Community Resources | ✓ Modifications |
| ✓ Paternity Establishment | ✓ Arrears/Determination |
| ✓ Settlements/Stipulations | ✓ Establishment of Court Order |
| | ✓ Enforcement |

Visit us online or call for more information.

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866.901.3212



Code of Civility Guidelines

As Amended by the Board of Trustees May 23, 2018

The freedom to express one's views is a cornerstone of the community and diversity of LACBA members. LACBA welcomes the diverse views and opinions of its members as they relate to the issues before our organization, committees, sections, governing boards and other working groups. In order for these discussions to be meaningful and effective, and to uphold LACBA's proud tradition of respectful discourse for over 140 years, we must treat each other with courtesy, respect, dignity and professional integrity.

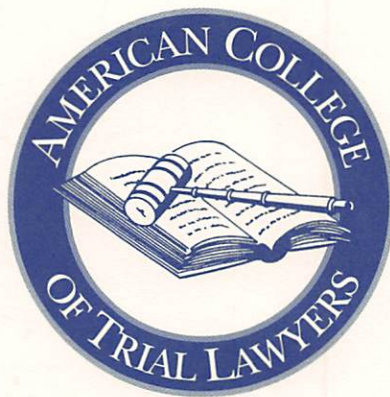
Therefore, as a condition of membership, each member of the Los Angeles County Bar Association ("LACBA") agrees to abide by the following Code of Civility to ensure that all LACBA activities, particularly those with, between and among LACBA volunteers, members and staff, are conducted in a respectful and courteous manner, and in a way that will generate respect and credibility for LACBA and each of its members and staff.

The following Code of Civility applies to all types of communication with, between and among LACBA volunteers, members and staff, including without limitation statements at in person meetings, telephone conversations, letters, public statements (oral and in writing), email and all types of other electronic (listserve and social media) communications.

1. I will conduct myself in a professional and civil manner at all times when engaged in any and all LACBA matters, including treating each member of LACBA, its staff and members of the public with respect.
2. I will commit to communicate my ideas and points of view clearly, and allow others to do the same without interruption. I pledge to be able to disagree without being disagreeable.
3. I will seek to present information truthfully, and will not knowingly misrepresent, mischaracterize, or misquote information in seeking to advance any point of view.

4. Even in the face of disagreement or differences of opinion, I will demonstrate esteem and deference for LACBA colleagues, staff and the public. I will not use language that is rude, demeaning, insulting, hostile, threatening or slanderous. I acknowledge and agree that derogatory language about an individual's age, physical appearance, intelligence, motivations, ethnicity, race, sexuality, sexual orientation or religion is not acceptable.
5. I will take responsibility for my own actions, and will work to fulfill my role and responsibilities as a member and volunteer of LACBA as specified by this Code of Civility.
6. When acting as a volunteer leader in LACBA activities, I will promote and enforce a safe meeting environment at all times. While engaging in LACBA matters, if someone becomes disrespectful, insulting, disruptive or otherwise violates this Code of Civility, I will join my fellow LACBA members in encouraging the person to act in a respectful and professional manner, even if I agree with the point of view that is being expressed.
7. As a volunteer engaged in LACBA activities, I will make every effort to put the interests of the LACBA organization ahead of my own personal interests.
8. As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy, and integrity.

LACBA shall have the right to investigate any alleged violation of this Code of Civility, and in its sole and absolute discretion (i) determine whether any violation of this Code has occurred, and (ii) take action, through the Executive Committee of its Board of Trustees, as it deems necessary to enforce this Code, including but not limited to (a) removal from any and all leadership positions at LACBA, including boards, sections and committees, and/or (b) termination of all membership status and rights in or related to LACBA.



*Code of Pretrial Conduct
and
Code of Trial Conduct*

Printing of the
American College of Trial Lawyers U.S. Code of Pretrial Conduct and Code of Trial Conduct
has been generously supported by a grant from the
Foundation of the American College of Trial Lawyers.

Discovery

The deponent's counsel should not even raise an objection to a question counsel believes will elicit irrelevant testimony at the deposition; relevance objections should be held in abeyance until an attempt is made to use the testimony at trial. Stewart v. Colonial Western Agency, Inc., 87 Cal.App.4th 1006 (Cal.App. 2 Dist. Mar 14, 2001).

A reasonable and good-faith attempt at informal resolution of a discovery dispute, such as the propriety of an objection, entails something more than bickering with deponent's counsel at a deposition; rather, the law requires that counsel attempt to talk the matter over, compare their views, consult, and deliberate. Townsend v. Superior Court, 61 Cal.App.4th 1431 (Cal.App. 2 Dist. Mar 10, 1998), limitation of holding recognized by Obregon v. Superior Court, 67 Cal.App.4th 424, 433 (Cal.App. 2 Dist. Oct 22, 1998) (upon finding that inadequate efforts at informal resolution have been made, a trial judge is required to determine the appropriate consequence, whether it be outright denial of the discovery requested or some lesser sanction; not every finding that additional informal resolution efforts are required can be categorized as a failure so egregious as to justify summary denial of discovery and such categorical rulings should be reserved for cases of clear intent to burden or harass, cases of clear flaunting of statutory responsibilities, cases of established track records of lack of good faith, and the like; the range of a judge's discretion is broad, and litigants cannot always predict exactly where on that broad range a particular judge might alight in a particular case and the party who attempts informal resolution, but mis-predicts the judge's location on the reasonable spectrum of possible levels of effort, should not inevitably be penalized by outright denial of possibly critical discovery).

During a discovery dispute arising in a deposition, the proponent does not fulfill the informal resolution requirement for bringing a motion to compel merely by debating the propriety of an objection with the deponent's counsel immediately following the objection. Townsend v. Superior Court, 61 Cal.App.4th 1431 (Cal.App. 2 Dist. Mar 10, 1998), limitation of holding recognized by Obregon v. Superior Court, 67 Cal.App.4th 424, 433 (Cal.App. 2 Dist. Oct 22, 1998).

Objections on the basis of vagueness to a deposition are waived unless they are made at the deposition. Aetna Casualty & Surety Co. v. Aceves, 233 Cal.App.3d 544 (Cal.App. 4 Dist. Aug 16, 1991).

The deponent's counsel should not raise an objection to a question counsel believes will elicit irrelevant testimony at the deposition; relevance objections should be held in abeyance until an attempt is made to use the testimony at trial. Stewart v. Colonial Western Agency, Inc., 87 Cal.App.4th 1006 (Cal.App. 2 Dist. Mar 14, 2001) (the deposing attorney's letter to deponent's counsel, stating that unless he heard from deponent's counsel immediately he would seek motion to compel, satisfied meet-and-confer requirement for informally resolving discovery dispute, where deponent's counsel directed deponent not to answer several questions on ground of irrelevancy, counsel had opportunity at that time to discuss matter, upcoming discovery deadlines created need for immediate action, scheduling face-to-face meeting or telephonic conference was complicated by deponent's counsel's unavailability for two lengthy periods prior to trial, and deponent's counsel indicated no intention to compromise).

Once the party resisting discovery has raised the objection of work product privilege, the burden of proof is, under the statute, on the party seeking discovery. City of Long Beach v. Superior Court, 64 Cal.App.3d 65 (Cal.App. 2 Dist. Nov 23, 1976).

The mere interposing of an objection or the refusal of a deponent to answer a question does not place the burden of showing good cause on the party seeking disclosure. Kramer v. Superior Court of Los Angeles County, 237 Cal.App.2d 753 (Cal.App. 2 Dist. Oct 29, 1965).

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 07/13/2022

TIME: 04:00:00 PM

DEPT: C-67

JUDICIAL OFFICER PRESIDING: Eddie C Sturgeon

CLERK: Valerie Secaur

REPORTER/ERM: Michelle Neuenswander CSR# 12508

BAILIFF/COURT ATTENDANT: M. Micone

CASE NO: **37-2018-00016374-CU-PO-CTL** CASE INIT.DATE: 03/22/2018

CASE TITLE: **Veronica Doyle vs. Vault PK [IMAGED]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: PI/PD/WD - Other

EVENT TYPE: Status Conference (Civil)

APPEARANCES

TIMOTHY A SCOTT, counsel, present for Plaintiff(s).

Kimberly S Oberrecht, counsel, present for Defendant,Cross - Complainant(s).

EYDITH J KAUFMAN, counsel, present for Defendant,Cross - Complainant(s).

Traci Lagasse, counsel, present for Defendant,Cross - Complainant(s).

The purpose of this Minute Order is to address a statement made by Plaintiff's counsel, Timothy Scott, made on the record during trial on June 30, 2022. Specifically, while Mr. Scott was addressing the Court, and after this Court orally granted Defendant MTS's motion for nonsuit, Mr. Scott stated as follows:

"...I hope this doesn't sound unctuous, but just to end the weekend on a good note, I want to thank the court staff. I want to say to have a good weekend to Mr. DeMaria. I want to say have a good weekend to Ms. Frerich. And I want to say have a good weekend to both MTS counsel. I'll See you next Tuesday. See you next Tuesday."

CAN Tuesday

(Judge's Ex. 1 at p. 110, emphasis added.)

Completely unaware of the intended meaning of "See you next Tuesday," (see *infra*), the Court responded, "How kind." (Judge's Ex. 1 at p. 110.)

On Tuesday, July 5, 2022, counsel for MTS approached the Court and requested to be heard about an issue concerning the above statement made by Mr. Scott on June 30, 2022. The Court and all counsel met in chambers to discuss the issue. The in-chambers meeting was recorded and documents consisting of various emails were provided to the Court. (Judge's Exs. 2-4.) During this meeting it was revealed, that unbeknownst to the Court, the term "See you next Tuesday," is a serious covert insult directed towards women. (See Judge's Ex. 5 at p. 6-9 ; see also <https://www.dictionary.com/e/slang/see-you-next-tuesday/>.) It was also revealed during the in-chambers meeting that Mr. Scott intentionally made the statement with the full knowledge of the meaning of the

phrase. (Judge's Exs. 2, 5 at pp. 8-9.) Mr. Scott tried to explain that his deliberate use of the phrase was an "inside joke" between him and one of this firm employees which he expected no one in the courtroom would detect. (Judge's Ex. 5 at pp. 8-9, see also Judge Ex. 2.) However, it is not a joke to this Court that Mr. Scott made this egregious and offensive insult intentionally to two female attorneys via a coded message. In fact, but for Ms. Lagasse bringing it to the Court's attention, this wrongdoing would have been undetected. Mr. Scott not only attempted to deceive all counsel, but also this Court, into believing he genuinely was wishing everyone a nice weekend when in fact he was purposefully directing a derogatory epithet toward the female defense attorneys who had just prevailed in a nonsuit in this case.

"An attorney is an 'officer of the court' who, by virtue of his or her professional position, undertakes certain 'special duties ... to avoid conduct that undermines the integrity of the adjudicative process.' " (*F.T.C. v. Network Services Depot, Inc.* (9th Cir. 2010) 617 F.3d 1127, 1143.) In other words, "[I]t is vital to the integrity of our adversary legal process that attorneys strive to maintain the highest standards of ethics, civility, and professionalism in the practice of law." (*People v. Chong* (1999) 76 Cal.App.4th 232, 243, 90 Cal.Rptr.2d 198.) Indeed, unwarranted personal attacks on the character or motives of the opposing party, counsel, or witnesses are inappropriate and may constitute misconduct. (*Id.* at p. 245, 90 Cal.Rptr.2d 198; see also *Stone v. Foster* (1980) 106 Cal.App.3d 334, 355, 164 Cal.Rptr. 901.)" (*In re S.C.* (2006) 138 Cal.App.4th 396, 412.) "When, during the course of trial, an attorney violates his or her obligations as an officer of the court, the judge may control the proceedings and protect the integrity of the court and the judicial process by reprimanding the attorney." (*Chong, supra*, 76 Cal.App.4th at 243–244.)

Mr. Scott's statement directed to Ms. Lagasse and Ms. Oberrecht is reprehensible and will not be tolerated in this courtroom. As such, for reasons stated above, the Court finds that it has a duty to alert the State Bar of California of Mr. Scott's conduct on June 30, 2022 and will be filing a Discipline Referral with the State Bar.

Eddie C. Sturgeon

Judge Eddie C Sturgeon

CHAPTER THREE CIVIL DIVISION

APPENDIX 3.A

GUIDELINES FOR CIVILITY IN LITIGATION

(a) CONTINUANCES AND EXTENSIONS OF TIME.

(1) First requests for reasonable extensions of time to respond to litigation deadlines, whether relating to pleadings, discovery or motions, should ordinarily be granted as a matter of courtesy unless time is of the essence. A first extension should be allowed even if the counsel requesting it has previously refused to grant an extension.

(2) After a first extension, any additional requests for time should be dealt with by balancing the need for expedition against the deference one should ordinarily give to an opponent's schedule of professional and personal engagements, the reasonableness of the length of extension requested, the opponent's willingness to grant reciprocal extensions, the time actually needed for the task, and whether it is likely a court would grant the extension if asked to do so.

(3) A lawyer should advise clients against the strategy of granting no time extensions for the sake of appearing "tough".

(4) A lawyer should not seek extensions or continuances for the purpose of harassment or prolonging litigation.

(5) A lawyer should not attach to extensions unfair and extraneous conditions. A lawyer is entitled to impose conditions such as preserving rights that an extension might jeopardize or seeking reciprocal scheduling concessions. A lawyer should not, by granting extensions, seek to preclude an opponent's substantive rights, such as his or her right to move against a complaint.

(b) SERVICE OF PAPERS.

(1) The timing and manner of service of papers should not be used to the disadvantage of the party receiving the papers.

(2) Papers should not be served sufficiently close to a court appearance so as to inhibit the ability of opposing counsel to prepare for that appearance or, where permitted by law, to respond to the papers.

(3) Papers should not be served in order to take advantage of an opponent's known absence from the office or at a time or in a manner designed to inconvenience an adversary, such as late on Friday afternoon or the day preceding a secular or religious holiday.

(4) Service should be made personally or by facsimile transmission when it is likely that service by mail, even when allowed, will prejudice the opposing party.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

(c) WRITTEN SUBMISSIONS TO A COURT, INCLUDING BRIEFS, MEMORANDA, AFFIDAVITS AND DECLARATIONS.

(1) Written briefs or memoranda or points and authorities should not rely on facts that are not properly part of the record. A litigant may, however, present historical, economic, or sociological data if such data appear in or are derived from generally available sources.

(2) Neither written submissions nor oral presentations should disparage the intelligence, ethics, morals, integrity or personal behavior of one's adversaries, unless such things are directly and necessarily in issue.

(d) COMMUNICATIONS WITH ADVERSARIES.

(1) Counsel should at all times be civil and courteous in communicating with adversaries, whether in writing or orally.

(2) Letters should not be written to ascribe to one's adversary a position he or she has not taken or to create "a record" of events that have not occurred.

(3) Letters intended only to make a record should be used sparingly and only when thought to be necessary under all the circumstances.

(4) Unless specifically permitted or invited by the Court, letters between counsel should not be sent to judges.

(e) DEPOSITIONS.

(1) Depositions should be taken only where actually needed to ascertain facts or information or to perpetuate testimony. They should never be used as a means of harassment or to generate expense.

(2) In scheduling depositions, reasonable consideration should be given to accommodating schedules or opposing counsel and of the deponent, where it is possible to do so without prejudicing the client's rights.

(3) When a deposition is noticed by another party in the reasonably near future, counsel should ordinarily not notice another deposition for an earlier date without the agreement of opposing counsel.

(4) Counsel should not attempt to delay a deposition for dilatory purposes but only if necessary to meet real scheduling problems.

(5) Counsel should not inquire into a deponent's personal affairs or question a deponent's integrity where such inquiry is irrelevant to the subject matter of the deposition.

(6) Counsel should refrain from repetitive or argumentative questions or those asked solely for purposes of harassment.

(7) Counsel defending a deposition should limit objections to those that are well founded and necessary for the protection of a client's interest. Counsel should bear in mind that most objections are preserved and need be interposed only when the form of a question is defective or privileged information is sought.

(8) While a question is pending, counsel should not, through objections or otherwise, coach the deponent or suggest answers.

(9) Counsel should not direct a deponent to refuse to answer questions unless they seek privileged information or are manifestly irrelevant or calculated to harass.

(10) Counsel for all parties should refrain from self-serving speeches during depositions.

(11) Counsel should not engage in any conduct during a deposition that would not be allowed in the presence of a judicial officer.

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(f) DOCUMENT DEMANDS.

(1) Demands for production of documents should be limited to documents actually and reasonably believed to be needed for the prosecution or defense of an action and not made to harass or embarrass a party or witness or to impose an inordinate burden or expense in responding.

(2) Demands for document production should not be so broad as to encompass documents clearly not relevant to the subject matter of the case.

(3) In responding to document demands, counsel should not strain to interpret the request in an artificially restrictive manner in order to avoid disclosure.

(4) Documents should be withheld on the grounds of privilege only where appropriate.

(5) Counsel should not produce documents in a disorganized or unintelligible fashion, or in a way calculated to hide or obscure the existence of particular documents.

(6) Document production should not be delayed to prevent opposing counsel from inspecting documents prior to scheduled depositions or for any other tactical reason.

(g) INTERROGATORIES.

(1) Interrogatories should be used sparingly and never to harass or impose undue burden or expense on adversaries.

(2) Interrogatories should not be read by the recipient in an artificial manner designed to assure that answers are not truly responsive.

(3) Objections to interrogatories should be based on a good faith belief in their merit and not be made for the purpose of withholding relevant information. If an interrogatory is objectionable only in part, the unobjectionable portion should be answered.

(h) MOTION PRACTICE.

(1) Before filing a motion, counsel should engage in more than a mere pro forma discussion of its purpose in an effort to resolve the issue.

(2) A lawyer should not force his or her adversary to make a motion and then not oppose it.

(i) DEALING WITH NON-PARTY WITNESS.

(1) Counsel should not issue subpoenas to non-party witnesses except in connection with their appearance at a hearing, trial or deposition.

(2) Deposition subpoenas should be accompanied by notices of deposition with copies to all counsel.

(3) Where counsel obtains documents pursuant to a deposition subpoena, copies of the documents should be made available to the adversary at his or her expense even if the deposition is canceled or adjourned.

(j) EX PARTE COMMUNICATIONS WITH THE COURT.

(1) A lawyer should avoid *ex parte* communication on the substance of a pending case with a judge (or his or her law clerk) before whom such case is pending.

(2) Even where applicable laws or rules permit an *ex parte* application or communication to the Court, before making such an application or communication, a lawyer should make diligent efforts to notify the opposing party or a lawyer known to represent or likely to represent the opposing party and should make reasonable efforts to accommodate the schedule of such lawyer to permit the opposing party to be represented on the application.

(3) Where the Rules permit an *ex parte* application or communication to the Court in an emergency situation, a lawyer should make such an application or communication (including an application to shorten an otherwise applicable time period) only where there is a bona fide

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emergency such that the lawyer's client will be seriously prejudiced by a failure to make the application or communication on regular notice.

(k) SETTLEMENT AND ALTERNATIVE DISPUTE RESOLUTION.

(1) Except where there are strong and overriding issues of principle, an attorney should raise and explore the issue of settlement in every case as soon as enough is known about the case to make settlement discussions meaningful.

(2) Counsel should not falsely hold out the possibility of settlement as a means for adjourning discovery or delaying trial.

(3) In every case, counsel should consider and discuss with the client whether the client's interest could be adequately served and the controversy more expeditiously and economically disposed of by arbitration, mediation or other forms of alternative dispute resolution.

(4) Counsel are encouraged to discuss the various ADR processes with their clients and explain the confidentiality and non-binding nature of the selected process.

(5) The court ADR program may be used for 1 pro bono ADR process through an ADR hearing. The court ADR program is available for an additional ADR process, if the parties want to retain the Court ADR Neutral on a private basis.

(l) TRIALS AND HEARINGS.

(1) Counsel should be punctual and prepared for any court appearance.

(2) Counsel should always deal with parties, counsel, witnesses, jurors or prospective jurors, court personnel and the judge with courtesy and civility.