

# TOP TIPS: THE NEW ETHICS RULEBOOK: CONFLICTS, COMPLIANCE & CIVILITY



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## JAMES LANCE'S: TOP TIPS FOR DEALING WITH INCIVILITY IN ETHICS

### JAMES LANCE, ESQ.

#### **Be Civil & Professional in Every Communication & Interaction**

- Civility is a powerful quality - not a sign of weakness
- Practicing law with Civility is in the best interest of your clients and an excellent way to develop business

#### **Every California attorney must affirm every year they will conduct themselves with Dignity, Courtesy & Integrity - as an officer of the court (CRC 9.7)**

- Assume every communication and interaction will be reviewed by a Judge and the State Bar

#### **Penalties, Sanctions & Fees are now likely for violations of Civility & Professional Conduct Standards**

- Courts are issuing sanctions against attorneys much more often and in higher amounts
- Many courts recently have issued 5 figure sanction orders, and some in excess of \$100,000

# JUDGE PURI'S: TOP TIPS ON ETHICS IN AI

HON. VEDICA PURI (RET.)

## **Trust But Verify**

- The old adage has never been more true, trust but verify the results of any AI research;

## **Warn clients about privilege risks with AI**

- Caution your clients that using AI on their own to review your briefs or research case topics may not be protected by the attorney-client privilege.

## **Stay informed on evolving AI ethics rules**

- Follow me on LinkedIn to keep up on SB 547 and potential new ethical obligations when signing a brief.

# JUDGE ROSEN'S: TOP TIPS ON THE NEW ETHICS LANDSCAPE, CIVILITY AND CTAPP

HON. DAVID ROSEN (RET.)

## **Civility & Collegiality**

- Your reputation proceeds you when you enter a room or situation and it lingers after you leave. Over the course of a career, engaging in our profession with both civility and collegiality will pay great dividends in terms of your standing in the community, your ability to reach agreements, and even your success in business. Though the line between zealous advocacy and professional conduct is sometimes thin, there is a line.

## **Careful Handling of Client Trust Accounts**

- The rules are straightforward and relatively simple; the money held in the client trust account is always the client's and not yours. You cannot be even one penny out of balance, ever. With very rare and not completely clear exceptions, the interest on the funds in the client trust account is always to be delivered (by the bank) to the State Bar to help fund indigent representation. While you, as an individual attorney, are entitled to rely upon the assurances you receive from superiors or partners who maintain the client trust account at your law firm, you must be reasonably confident that those upon whom you are relying are reputable.

## CONT'D

### **Citing Authority in Argument or a Brief**

- When citing a case or statute that you did not find yourself, but read about in a secondary authority, such as a practice guide, a hornbook, or from AI (whether traditional or generative), ALWAYS check the citation and at least review the authority cited to satisfy yourself that it actually stands for the point or premise you are arguing. This applies whether you are writing the brief yourself or editing a brief written by someone else.

# MICHAEL NEBENZAHL'S: TOP TIPS ON THE SNITCH RULE AND CONFLICTS OF INTEREST

MICHAEL NEBENZAHL, ESQ.

### **If it smells like a duck, looks like a duck, walks like a duck and quacks like a duck ...**

- You know that you have a conflict and/or
- You know that you have a colleague who must be reported

### **It's not personal**

- When you represent two or more parties (e.g. multiple car passengers with a driver), simply advise all that it is your Professional Responsibility to get signed waivers of the conflict (and that is not personal).

### **Don't sweep the problem under the rug**

- Never expect that by avoiding a problem (e.g. a conflict or knowledge of improper conduct) that it will go away on its own.

### **Don't sweep the problem under the rug**

- When confronted with the pain, anger or any other emotion of having to report on a friend, colleague or partner, remember that you were placed in that position because of the bad act committed.

## REFERENCE MATERIALS ATTACHED

- Handout with case citations.

## QUESTIONS? CONTACT US

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## Ethical Rules, Statutes and Guidelines for Neutrals (and counsel) in Arbitration and Mediation

### 1. State of California – Applicable Statutes:

- a. California Evidence Code sections 1115 – 1129
  - i. Rules and procedure to follow
  - ii. Communications (oral and written) are confidential
- b. California Evidence Code section 1152
  - i. Confidentiality and inadmissibility of offers to settle
- c. CCP Sections 1280, et seq
  - i. Section 1280: Arbitration – general provisions
  - ii. 1281 – 1281.96: Rules and enforcing arbitrations
    1. 1281.84: Ethical standards for neutrals
    2. 1281.9: Disclosure, duties re pending/past matters
    3. 1281.96: Duty of business provider to report and disclose
- d. CCP Sections 1775, et seq
  - i. 1775: Policy and purpose
  - ii. 1775.1 – 1775.15; Rules and procedures
  - iii. 1775.5: Limited to case value under \$50,000
- e. CCP Sections 638, 639 and 641
  - i. Section 638: Appointment of referee by agreement
  - ii. Section 639: Appointment of referee by court order
  - iii. Section 641: Objections to referee, disclosure and disqualification
- f. Business and Professions Code:
  - i. Section 6068: Duty to support Constitution, to respect the courts, to not mislead facts or law, and to protect inviolate confidentiality (but for crimes and other exceptions)
  - ii. Section 6043.5: False and malicious reporting to State Bar of professional misconduct by an attorney is a criminal misdemeanor

### 2. State of California – Applicable Rules

- a. Rules of the State Bar – California Rules of Professional Conduct
  - i. 1-710: If serving as referee or appointed arbitrator, comply with Judicial Canons
  - ii. 3-110: Failing to act competently (Note: it is not the duty of the mediator to assist incompetent counsel)

- iii. 3-310: Avoiding adverse interests
- iv. 3-320: Avoiding representation where one lawyer has a familial relationship to the lawyer for an adverse party
- v. 3-510: Communication of Settlement Offer (Note: in mediation, no ability to order a party present or to be told of an offer)

b. California Rules of Professional Conduct

i. Client-Lawyer Relationship

1.1 Competence

1.4.1: Communication of Settlement Offer

1.7: Conflict of Interest – Current Client (Note: it is not the duty of the mediator to verify conflict waiver when counsel represents multiple parties (e.g. driver and passengers))

1.8.7: Aggregate Settlements (Note: it is not the duty of the mediator to verify written informed consent by the parties)

1.9: Duties to former clients

1.10: General Rule – imputing conflicts of interest

1.11: Special Rule – conflicts re past/present Gov't employee

1.12: Rule re former judge, mediator or neutral re conflicts

ii. Counselor

2.4: Lawyer as Third-Party Neutral (If a party is not represented by counsel, duty on mediator to educate that party)

iii. Advocate

3.3: Candor Towards a Tribunal

iv. Maintaining The Integrity of the Profession

8.3: Reporting Professional Misconduct, aka “Snitch” rule

c. California Rules of Court:

i. Rules 3.810 – 3.830: Judicial Arbitration

1. 3.816: Disqualification re conflict of interest

ii. Rules 3.850 – 3.860: Mediations

1. A neutral process

2. Confidentiality

3. Circumstances that cause the mediation to be suspended:

4. The mediator can't be impartial

5. A party(ies) effort to facilitate a crime

- 6. A party(ies) is unable to participate, or
- 7. The process will cause harm to a participant
- iii. Rules 3.890 – 3.898
  - 1. Implementing mediation pursuant to CCP 1775 et seq
- iv. Rules 3.900 – 3.907: Referee by Agreement per CCP 638
- v. Rule 3.904
  - 1. Applicable for neutrals appointed by agreement (CCP 638)
  - 2. Certification, disclosures, objections and motions
- vi. Rules 920 – 3.926: Referee by Order per CCP 639
  - 1. Applicable for neutrals appointed by order (CCP639)
  - 2. Certification, disclosures, objections and motions
- d. California Rules of Court – Ethical Standards for Neutrals and Arbitrators
  - i. Standard 1 – Purpose and intent: under authority of CCP 1281.85
  - ii. Standard 7 – Disclosure
    - 1. Time and manner
    - 2. Required disclosures
    - 3. Etc.
  - iii. Standard 8 – Additional disclosures in consumer arbitration
  - iv. Standard 12 – Duties and limitations re relationships and employment

**3. Reference Guide:** California Practice Guide – Alternative Dispute Resolution, Chapter 7, Disclosures and Disqualification

**4. Model rules of ABA**

- a. Formal Opinion 518 – regarding Model Rule 2.4
  - i. Duty to avoid statements re neutrality and a party’s best interests
  - ii. Duty to avoid dishonesty when communicating with parties
- b. Rule 8.3 – Reporting Professional Misconduct

**5. Miscellaneous**

- a. Federal Rules on Evidence 408 and Confidentiality Statute 5 USCA 574
- b. Uniform Mediation Act (by the Uniform Law Commission, aka, National Conference of Commissioners on Uniform State Laws)
- c. California Attorney Guidelines of Civility and Professionalism



**CALIFORNIA ATTORNEY  
GUIDELINES OF  
CIVILITY  
AND  
PROFESSIONALISM**

# 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 disservices 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  
RESPONSIBILITIES TO THE JUSTICE SYSTEM**

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  
RESPONSIBILITIES TO THE PUBLIC AND THE PROFESSION**

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  
RESPONSIBILITIES TO THE CLIENT AND CLIENT REPRESENTATION**

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  
COMMUNICATIONS**

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.

For example, in communications about the legal system and with adversaries:

- a. An attorney's conduct should be consistent with high respect and esteem for the civil and criminal justice systems.
- b. This guideline does not prohibit an attorney's good faith expression of dissent or criticism made in public or private discussions for the purpose of improving the legal system or profession.

- c. An attorney should not disparage the intelligence, integrity, ethics, morals or behavior of the court or other counsel, parties or participants when those characteristics are not at issue.
- d. Respecting cultural diversity, an attorney should not disparage another's personal characteristics.
- e. An attorney should not make exaggerated, false, or misleading statements to the media while representing a party in a pending matter.
- f. An attorney should avoid hostile, demeaning or humiliating words.
- g. An attorney should not create a false or misleading record of events or attribute to an opposing counsel a position not taken.
- h. An attorney should agree to reasonable requests in the interests of efficiency and economy, including agreeing to a waiver of procedural formalities where appropriate.
- i. Unless specifically permitted or invited by the court or authorized by law, an attorney should not correspond directly with the court regarding a case.

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

## **SECTION 5 PUNCTUALITY**

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

For example:

- a. An attorney should arrive sufficiently in advance to resolve preliminary matters.
- b. An attorney should timely notify participants when the attorney will be late or is aware that a participant will be late.

## **SECTION 6 SCHEDULING, CONTINUANCES AND EXTENSIONS OF TIME**

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

For example:

- a. An attorney should consider the scheduling interests of the court, other counsel or party, and other participants, should schedule by agreement whenever possible, and should send formal notice after agreement is reached.

- b. An attorney should not arbitrarily or unreasonably withhold consent to a request for scheduling accommodations or engage in delay tactics.
- c. An attorney should promptly notify the court and other counsel of problems with key participants' availability.
- d. An attorney should promptly notify other counsel and, if appropriate, the court, when scheduled meetings, hearings or depositions must be cancelled or rescheduled, and provide alternate dates when possible.

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.

For example:

- a. Unless time is of the essence, an attorney should agree to an extension without requiring motions or other formalities, regardless of whether the requesting counsel previously refused to grant an extension.
- b. An attorney should agree to an appropriate continuance when new counsel substitutes in.
- c. An attorney should advise clients that failing to agree with reasonable requests for time extensions is inappropriate.
- d. An attorney should not use extensions or continuances for harassment or to extend litigation.
- e. An attorney should place conditions on an agreement to an extension only if they are fair and essential or if the attorney is entitled to impose them, for instance to preserve rights or seek reciprocal scheduling concessions.
- f. If an attorney intends that a request for or agreement to an extension shall cut off a party's substantive rights or procedural options, the attorney should disclose that intent at the time of the request or agreement.

## **SECTION 7 SERVICE OF PAPERS**

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

For example:

- a. An attorney should serve papers on the attorney who is responsible for the matter at his or her principal place of work.
- b. If possible, papers should be served upon counsel at a time agreed upon in advance.
- c. When serving papers, an attorney should allow sufficient time for opposing counsel to prepare for a court appearance or to respond to the papers.
- d. An attorney should not serve papers to take advantage of an opponent's absence or to inconvenience the opponent, for instance by serving papers late on Friday afternoon or the day preceding a holiday.
- e. When it is likely that service by mail will prejudice an opposing party, an attorney should serve the papers by other permissible means.

**SECTION 8**  
**WRITINGS SUBMITTED TO THE COURT, COUNSEL OR OTHER PARTIES**

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

For example:

- a. An attorney should not make ad hominem attacks on opposing counsel.
- b. Unless at issue or relevant in a particular proceeding, an attorney should avoid degrading the intelligence, ethics, morals, integrity, or personal behavior of others.
- c. An attorney should clearly identify all revisions in a document previously submitted to the court or other counsel.

**SECTION 9**  
**DISCOVERY**

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 Civil 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.

For example:

- a. As to Depositions:

1. When another party notices a deposition for the near future, absent unusual circumstances, an attorney should not schedule another deposition in the same case for an earlier date without opposing counsel's agreement.
  2. An attorney should delay a scheduled deposition only when necessary to address scheduling problems and not in bad faith.
  3. An attorney should treat other counsel and participants with courtesy and civility, and should not engage in conduct that would be inappropriate in the presence of a judicial officer.
  4. An attorney should remember that vigorous advocacy can be consistent with professional courtesy, and that arguments or conflicts with other counsel should not be personal.
  5. An attorney questioning a deponent should provide other counsel present with a copy of any documents shown to the deponent before or contemporaneously with showing the document to the deponent.
  6. Once a question is asked, an attorney should not interrupt a deposition or make an objection for the purpose of coaching a deponent or suggesting answers.
  7. An attorney should not direct a deponent to refuse to answer a question or end the deposition without a legal basis for doing so.
  8. An attorney should refrain from self-serving speeches and speaking objections.
- b. As to Document Demands:
1. Document requests should be used only to seek those documents that are reasonably needed to prosecute or defend an action.
  2. An attorney should not make demands to harass or embarrass a party or witness or to impose an inordinate burden or expense in responding.
  3. If an attorney inadvertently receives a privileged document, the attorney should promptly notify the producing party that the document has been received.
  4. In responding to a document demand, an attorney should not intentionally misconstrue a request in such a way as to avoid disclosure or withhold a document on the grounds of privilege.
  5. An attorney should not produce disorganized or unintelligible documents, or produce documents in a way that hides or obscures the existence of particular documents.
  6. An attorney should not delay in producing a document in order to prevent opposing counsel from inspecting the document prior to or during a scheduled deposition or for some other tactical reason.

- c. As to Interrogatories:
  - 1. An attorney should narrowly tailor special interrogatories and not use them to harass or impose an undue burden or expense on an opposing party.
  - 2. An attorney should not intentionally misconstrue or respond to interrogatories in a manner that is not truly responsive.
  - 3. When an attorney lacks a good faith belief in the merit of an objection, the attorney should not object to an interrogatory. If an interrogatory is objectionable in part, an attorney should answer the unobjectionable part.

## **SECTION 10 MOTION PRACTICE**

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

For example:

- a. Before filing demurrers, motions to strike, motions to transfer venue, and motions for judgment on the pleadings, an attorney should engage in more than a pro forma effort to resolve the issue.
- b. In complying with any meet and confer requirement in the California Code of Civil Procedure, an attorney should speak personally with opposing counsel and engage in a good faith effort to resolve or informally limit an issue.
- c. An attorney should not engage in conduct that forces an opposing counsel to file a motion and then not oppose the motion.
- d. An attorney who has no reasonable objection to a proposed motion should promptly make this position known to opposing counsel, who then may file an unopposed motion or avoid filing a motion.
- e. After opposing a motion, if an attorney recognizes that the movant's position is correct, the attorney should promptly advise the movant and the court of this change in position.
- f. Because requests for monetary sanctions, even if statutorily authorized, can lead to the destruction of a productive relationship between counsel or parties, monetary sanctions should not be sought unless fully justified by the circumstances and necessary to protect a client's legitimate interests and then only after a good faith effort to resolve the issue informally among counsel.

**SECTION 11  
DEALING WITH NONPARTY WITNESSES**

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.

For example:

- a. An attorney should be courteous and respectful in communications with nonparty witnesses.
- b. Upon request, an attorney should extend professional courtesies and grant reasonable accommodations, unless to do so would materially prejudice the client's lawful objectives.
- c. An attorney should take special care to protect a witness from undue harassment or embarrassment and to state questions in a form that is appropriate to the witness's age and development.
- d. An attorney should not issue a subpoena to a nonparty witness for inappropriate tactical or strategic purposes, such as to intimidate or harass the nonparty.
- e. As soon as an attorney knows that a previously scheduled deposition will or will not, in fact, go forward as scheduled, the attorney should notify all counsel.
- f. An attorney who obtains a document pursuant to a deposition subpoena should, upon request, make copies of the document available to all other counsel at their expense.

**SECTION 12  
EX PARTE COMMUNICATION WITH THE COURT**

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  
SETTLEMENT AND ALTERNATIVE DISPUTE RESOLUTION**

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 matter as soon as possible and, when appropriate, during the course of litigation.

For example:

- a. An attorney should advise a client at the outset of the relationship of the availability of informal or alternative dispute resolution.
- b. An attorney should attempt to evaluate a matter objectively and to de-escalate any controversy or dispute in an effort to resolve or limit the controversy or dispute.

- c. An attorney should consider whether alternative dispute resolution would adequately serve a client's interest and dispose of the controversy expeditiously and economically.
- d. An attorney should honor a client's desire to settle the dispute quickly and in a cost-effective manner.
- e. An attorney should use an alternative dispute resolution process for purposes of settlement and not for delay or other improper purposes, such as discovery.
- f. An attorney should participate in good faith, and assist the alternative dispute officer by providing pertinent and accurate facts, law, theories, opinions and arguments in an attempt to resolve a dispute.
- g. An attorney should not falsely hold out the possibility of settlement as a means for terminating discovery or delaying trial.

#### **SECTION 14 CONDUCT IN COURT**

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.

For example:

- a. An attorney should be punctual and prepared.
- b. An attorney's conduct should avoid disorder or disruption and preserve the right to a fair trial.
- c. An attorney should maintain respect for and confidence in a judicial office by displaying courtesy, dignity and respect toward the court and courtroom personnel.
- d. An attorney should refrain from conduct that inappropriately demeans another person.
- e. Before appearing in court, an attorney should advise a client of the kind of behavior expected of the client and endeavor to prevent the client from creating disorder or disruption in the courtroom.
- f. An attorney should make objections for legitimate and good faith reasons, and not for the purpose of harassment or delay.
- g. An attorney should honor an opposing counsel's requests that do not materially prejudice the rights of the attorney's client or sacrifice tactical advantage.
- h. While appearing before the court, an attorney should address all arguments, objections and requests to the court, rather than directly to opposing counsel.

- i. While appearing in court, an attorney should demonstrate sensitivity to any party, witness or attorney who has requested, or may need, accommodation as a person with physical or mental impairment, so as to foster full and fair access of all persons to the court.

## **SECTION 15 DEFAULT**

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

For example an attorney should not race opposing counsel to the courthouse to knowingly enter a default before a responsive pleading can be filed. This guideline is intended to apply only to taking a default when there is a failure to timely respond to complaints, cross-complaints, and amended pleadings.

## **SECTION 16 SOCIAL RELATIONSHIPS WITH JUDICIAL OFFICERS, NEUTRALS AND COURT APPOINTED EXPERTS**

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 PRIVACY**

An attorney should respect the privacy rights of parties and nonparties.

For example:

- a. An attorney should not inquire into, attempt or threaten to use, private facts concerning any party or other individuals for the purpose of gaining an advantage in a case. This guideline does not preclude inquiry into sensitive matters relevant to an issue, as long as the inquiry is pursued as narrowly as possible.
- b. If an attorney must inquire into an individual's private affairs, the attorney should cooperate in arranging for protective measures, including stipulating to an appropriate protective order, designed to assure that the information revealed is disclosed only for purposes relevant to the pending litigation.
- c. Nothing herein shall be construed as authorizing the withholding of information in violation of applicable law.

## **SECTION 18 NEGOTIATION OF WRITTEN AGREEMENTS**

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

For example:

- a. An attorney should use boilerplate provisions only if they apply to the subject of the agreement.
- b. If an attorney modifies a document, the attorney should clearly identify the change and bring it to the attention of other counsel.
- c. An attorney should avoid negotiating tactics that are abusive; that are not made in good faith; that threaten inappropriate legal action; that are not true; that set arbitrary deadlines; that are intended solely to gain an unfair advantage or take unfair advantage of a superior bargaining position; or that do not accurately reflect the client's wishes or previous oral agreements.
- d. An attorney should not participate in an action or the preparation of a document that is intended to circumvent or violate applicable laws or rules.

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.

For example:

- a. Attorneys should be mindful that their primary goals are to negotiate in a manner that accurately represents their client and the purpose for which they were retained.
- b. Attorneys should successfully and timely conclude a transaction in a manner that accurately represents the parties' intentions and has the least likely potential for litigation.
- c. With client approval, attorneys should consider giving each party permission to contact the employees of the other party for the purpose of promptly and efficiently obtaining necessary information and documents.

## **SECTION 19 ADDITIONAL PROVISION FOR FAMILY LAW PRACTITIONERS**

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 interest of the children in mind.

For example:

- a. An attorney should discourage and should not abet vindictive conduct.
- b. An attorney should treat all participants with courtesy and respect in order to minimize the emotional intensity of a family dispute.
- c. An attorney representing a parent should consider the welfare of a minor child and seek to minimize the adverse impact of the family law proceeding on the child.

**SECTION 20  
ADDITIONAL PROVISION FOR CRIMINAL LAW PRACTITIONERS**

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.

For example:

- a. A prosecutor should not question the propriety of defending a person accused of a crime.
- b. Appellate counsel and trial counsel should communicate openly, civilly and without rancor, endeavoring to keep the proceedings on a professional level.

**SECTION 21  
COURT PROCEEDINGS**

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

*California Attorney Guidelines of Civility and Professionalism*

**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.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Print Name)

*California Attorney Guidelines of Civility and Professionalism*

**Sample Resolution**

**RESOLUTION OF [ \_\_\_\_\_ ]  
APPROVING AND ADOPTING CALIFORNIA ATTORNEY  
GUIDELINES OF CIVILITY AND PROFESSIONALISM**

**RECITALS**

A. 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.

B. Civility and professionalism have been affected by a number of factors, as a result of which there is a need for attorneys to recommit themselves to the principles of civility and professionalism.

C. On July 20, 2007, the Board of Governors of the State Bar of California adopted California Attorney Guidelines of Civility and Professionalism (the “Civility Guidelines”).

D. The Board of Directors of [ \_\_\_\_\_ ] are of the unanimous opinion that the Civility Guidelines will be of significant assistance in encouraging members of [ \_\_\_\_\_ ] to continue to enhance their reputation and commitment to civility and professionalism.

**RESOLUTION**

The Board of Directors of [ \_\_\_\_\_ ] hereby approves and endorses the California Attorney Guidelines of Civility and Professionalism and recommends that all members of [ \_\_\_\_\_ ] commit to and agree to be guided by such guidelines.

Dated: \_\_\_\_\_

[ \_\_\_\_\_ ]

By: \_\_\_\_\_

*California Attorney Guidelines of Civility and Professionalism*

**Sample Court Order**

1. The Court expects counsel to be familiar with and follow the California Attorney Guidelines of Civility and Professionalism (the “Civility Guidelines”).
2. A copy of the Civility Guidelines may be obtained on the web at the following URL:

<https://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Ethics/Attorney-Civility-and-Professionalism>

3. Uncivil or unprofessional behavior will not be tolerated.
4. The Court expects parties to resolve all disputes regarding scheduling or time extensions without the necessity of Court involvement.

**State of California**

**BUSINESS AND PROFESSIONS CODE**

**Section 6068**

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6068. It is the duty of an attorney to do all of the following:

- (a) To support the Constitution and laws of the United States and of this state.
- (b) To maintain the respect due to the courts of justice and judicial officers.
- (c) To counsel or maintain those actions, proceedings, or defenses only as appear to him or her legal or just, except the defense of a person charged with a public offense.
- (d) 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.
- (e) (1) To maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client.  
(2) Notwithstanding paragraph (1), an attorney may, but is not required to, reveal confidential information relating to the representation of a client to the extent that the attorney reasonably believes the disclosure is necessary to prevent a criminal act that the attorney reasonably believes is likely to result in death of, or substantial bodily harm to, an individual.
- (f) To advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he or she is charged.
- (g) Not to encourage either the commencement or the continuance of an action or proceeding from any corrupt motive of passion or interest.
- (h) Never to reject, for any consideration personal to himself or herself, the cause of the defenseless or the oppressed.
- (i) To cooperate and participate in any disciplinary investigation or other regulatory or disciplinary proceeding pending against himself or herself. However, this subdivision shall not be construed to deprive an attorney of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory privileges. This subdivision shall not be construed to require an attorney to cooperate with a request that requires him or her to waive any constitutional or statutory privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the attorney's practice. Any exercise by an attorney of any constitutional or statutory privilege shall not be used against the attorney in a regulatory or disciplinary proceeding against him or her.
- (j) To comply with the requirements of Section 6002.1.
- (k) To comply with all conditions attached to any disciplinary probation, including a probation imposed with the concurrence of the attorney.

(l) To keep all agreements made in lieu of disciplinary prosecution with the State Bar.

(m) To respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.

(n) To provide copies to the client of certain documents under time limits and as prescribed in a rule of professional conduct which the board shall adopt.

(o) To report to the State Bar, in writing, within 30 days of the time the attorney has knowledge of any of the following:

(1) The filing of three or more lawsuits in a 12-month period against the attorney for malpractice or other wrongful conduct committed in a professional capacity.

(2) The entry of judgment against the attorney in a civil action for fraud, misrepresentation, breach of fiduciary duty, or gross negligence committed in a professional capacity.

(3) The imposition of judicial sanctions against the attorney, except for sanctions for failure to make discovery or monetary sanctions of less than one thousand dollars (\$1,000).

(4) The bringing of an indictment or information charging a felony against the attorney.

(5) The conviction of the attorney, including any verdict of guilty, or plea of guilty or no contest, of a felony, or a misdemeanor committed in the course of the practice of law, or in a manner in which a client of the attorney was the victim, or a necessary element of which, as determined by the statutory or common law definition of the misdemeanor, involves improper conduct of an attorney, including dishonesty or other moral turpitude, or an attempt or a conspiracy or solicitation of another to commit a felony or a misdemeanor of that type.

(6) The imposition of discipline against the attorney by a professional or occupational disciplinary agency or licensing board, whether in California or elsewhere.

(7) Reversal of judgment in a proceeding based in whole or in part upon misconduct, grossly incompetent representation, or willful misrepresentation by an attorney.

(8) As used in this subdivision, "against the attorney" includes claims and proceedings against any firm of attorneys for the practice of law in which the attorney was a partner at the time of the conduct complained of and any law corporation in which the attorney was a shareholder at the time of the conduct complained of unless the matter has to the attorney's knowledge already been reported by the law firm or corporation.

(9) The State Bar may develop a prescribed form for the making of reports required by this section, usage of which it may require by rule or regulation.

(10) This subdivision is only intended to provide that the failure to report as required herein may serve as a basis of discipline.

(Amended by Stats. 2018, Ch. 659, Sec. 50. (AB 3249) Effective January 1, 2019.)