

Bridging the Gap-January 16, 2016

Subject: Ethics: Civility and Confidentially

Presenter: Michael Case

Michael is a founding partner of Ferguson Case Orr Paterson LLP, formed in 1982. He has practiced litigation since admission to the Bar in 1972, including stints as a deputy district attorney and Air Force JAG officer. He has tried over 100 court and jury trials and is a member of the American Board of Trial Advocates (ABOTA).

In connection with this topic, Michael is:

- A former member of the California Judicial Council;
- A former member of the State Bar's Board of Governors, where he chaired the Board's Committee on Admissions and Competence , responsible for oversight of ethics issues.
- A former president of the Ventura County Bar Association and a chair of the association's Ethic's and Professional Conduct Committee for several years.
- In 2006, he was appointed as a member of the State Bar's "Attorney Civility Task Force" which created a civility code for members of the California State Bar. The Code was subsequently enacted by the Board of Governors.

Michael has frequently lectured and contributed articles on ethics and civility issues and has represented lawyers in professional disputes.

VENTURA COUNTY BAR ASSOCIATION GUIDELINES ON PROFESSIONAL CONDUCT AND CIVILITY

PREAMBLE

The Ventura County Bar Association is committed to the highest standards of professional courtesy and ethics for all attorneys. In recognition of our commitment, the following Code of Civility is adopted as a guide for professional conduct. These guidelines are not exhaustive; they illustrate, however, recognized principles to which this Bar enthusiastically subscribes to as a means of promoting professional and equitable relations in all circumstances and regardless of reciprocity, not only among colleagues and the courts, but with clients, staffs and the public.

Therefore, in addition to abiding by the rules of Professional Conduct codified by the California State Bar, attorneys practicing or appearing in Ventura County are expected to adhere to the following guidelines for professional behavior.

Section 1. Scheduling

Civility and courtesy in scheduling meetings, hearings and discovery are expected, are not equated with weakness, and are not inconsistent with zealous representation of clients. Accordingly, professional courtesy and civility requires all lawyers to:

- a. Make reasonable efforts to schedule meetings, hearings, and discovery by agreement whenever possible and to consider the schedule of opposing counsel, the parties, and witnesses before scheduling any matter.
- b. Refrain from arbitrarily or unreasonably withholding consent to a request for scheduling accommodations.
- c. Refrain from engaging in delaying tactics when scheduling meetings, hearings and discovery.
- d. Verify the availability of key participants and witnesses before scheduling a meeting, hearing or trial date, or if not feasible, at the first opportunity thereafter so that others can promptly notify the court, parties, and witnesses of any scheduling problems.
- e. Notify other counsel, and as appropriate, the court or other tribunal, as early as possible, when scheduled meetings, hearings, or depositions are being canceled or rescheduled.

Section 2. Continuances and Extensions of Time

- a. 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.
- b. 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.

- c. A lawyer should advise clients against the strategy of granting no time extensions for the sake of appearing "tough".
- d. A lawyer should not seek extensions or continuances for the purpose of harassment or prolonging litigation.
- e. 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 the right to demurrer.

Section 3. Service of Papers

- a. The timing and manner of service of papers should not be used to the disadvantage of the party receiving the papers.
- b. 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.
- c. 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.
- d. Service should be made personally or by facsimile transmission when it is likely that service by mail, even when authorized, will prejudice the opposing party.

Section 4. Punctuality

A lawyer should be punctual in performance of all obligations and duties. Accordingly, professional courtesy and civility requires all lawyers to:

- a. Arrive in advance of trial, hearing, meeting, deposition or other scheduled event so that preliminary or procedural matters may be resolved.
- b. Timely notify all other participants and the court when the lawyer or other participant will be late.

Section 5. Communications

Memoranda, declarations, and other written materials submitted to the court should be factual, concise and accurately state the current law without personally attacking the opposing party or opposing counsel. A lawyer should be civil, courteous and as accurate as possible when communicating with adversaries and the court. Accordingly, professional courtesy and civility requires all lawyers to:

- a. Argue only that which is clearly supported by the law or the facts of the case.

- b. Show respect and dignity to all judicial officers, parties, counsel and witnesses.
- c. Accurately recite positions taken by a party or counsel.
- d. Promptly respond to telephone calls, letters or other communications.
- e. Comply with all local and state rules regarding ex parte communications with the court.

Section 6. Discovery

A lawyer should not use any form of discovery, including the scheduling of discovery, to harass, delay, increase the cost of litigation, or to obtain an unfair advantage. Accordingly, professional courtesy and civility requires all lawyers to:

- a. Timely respond to discovery requests.
- b. Fully and accurately respond to discovery requests with all information relevant to the discovery request, and to provide discovery responses, including the production of documents, in an organized manner.
- c. Conduct discovery in good faith and not to harass another or to unduly invade the rights of privacy of others.
- d. Conduct discovery with the same degree of professionalism as expected in a courtroom.
- e. Timely and in good faith, meet and confer on discovery disputes to resolve as many issues as possible before discovery motions are prepared or required.
- f. As to document requests, a lawyer should refrain from
 - 1. Requesting production of documents which are not reasonably believed to be needed for the prosecution or defense of an action or which are not reasonably calculated to lead to the discovery of admissible evidence.
 - 2. Conducting discovery designed to harass or to embarrass another, or which is intended to impose an inordinate burden or expense.
 - 3. Asserting privileges which cannot, in good faith, be supported by the law or the facts of the case.
 - 4. Seeking to invade known and valid privileges.
 - 5. Producing documents in such a disorganized or unintelligible fashion calculated to hide or to obscure the existence of a document or information.
 - 6. Withholding or delaying the production of documents when such delay is solely intended to obtain a tactical or unfair advantage.
- g. As to interrogatories, a lawyer should refrain from

1. Serving interrogatories intended solely to harass or to impose an undue burden or expense.
2. Responding to or interpreting interrogatories in an artificial manner designed to avoid providing relevant or accurate information.
3. Posing objections to interrogatories when not supported by the facts and the law.

Section 7. Motion Practice

Motions should be filed in good faith and only if the issue cannot otherwise be resolved. Accordingly, professional courtesy and civility requires all lawyers to:

- a. Engage in more than a mere pro forma effort to resolve the issue before the motion is filed or responded to;
- b. Refrain from engaging in conduct which forces opposing counsel to file a motion unless intending to oppose such motion in good faith or unless the relief sought affects the interests of the court or of persons or parties other than the lawyer's client.

Section 8. Communicating with Non-Party Witness

All communications with non-party witnesses should be courteous and respectful and designed to protect the dignity and integrity of the judicial system. The lawyer should explain to unrepresented witnesses the purpose of the required attendance. The lawyer should attempt to accommodate the witnesses' schedule when setting or rescheduling the witnesses' appearance and should promptly notify them of any changes in scheduling.

Section 9. Ex Parte Communications with the Judge or Hearing Officer

Lawyers should avoid ex parte communication regarding the substance or merits of a pending case with the court before whom such case is pending. Where applicable rules or laws permit an ex parte communication, before making such application or communication, the lawyer should make diligent efforts to notify the opposing party or opposing counsel known to represent or likely to represent the opposing party, should make reasonable efforts to accommodate the schedule of counsel or opposing party and should avoid taking advantage of an opponent's known absence or unavailability.

Section 10. Candor to the Court and Opposing Counsel

Professional courtesy and civility requires all lawyers to:

- a. Accurately state the facts and legal authority to the court and to opposing counsel. Written materials and oral argument should accurately state current law and should fairly represent the party's position without unfairly attacking the opposing counsel or party.

- b. Draft proposed orders promptly, fairly and accurately representing the ruling of the court. When proposed orders are submitted for approval, the opposing lawyer or party should promptly communicate any objection to the party preparing the proposed order so that good faith efforts are undertaken to resolve the dispute.
- c. Respect and abide by the spirit and letter of all rulings.

Section 11. Settlement and Alternative Dispute Resolution

Lawyers should consider and explore the potentials of settlement or alternative dispute resolution as soon as the case can be evaluated, and if appropriate, such alternatives to litigation should be encouraged. Accordingly, professional courtesy and civility requires all lawyers to:

- a. Advise the client at the outset of the availability of alternatives to litigation and in good case to determine whether some alternative to litigation should be pursued.
- b. Engage in good faith efforts to settle disputes and not as a means of adjourning, terminating discovery, or delaying the proceeding.
- c. Accurately inform clients of the strengths and weaknesses of the client's case.

Section 12. Trials and Hearings

Lawyers should at trial and during hearings, conduct themselves in a manner consistent with promoting the positive image of the profession and with respect and dignity to the judicial process. Accordingly, professional courtesy and civility requires all lawyers to:

- a. Be punctual and prepared for all court appearances.
- b. Extend courtesy, civility and respect to anyone involved in the judicial process.
- c. Make objections during a proceeding for legitimate and good faith reasons and not solely for the purpose of harassment, delay, or any other improper purpose.
- d. Honor reasonable requests made by an opponent to enter into stipulations, for the admission of evidence, the coordination of the presentation of evidence, and other such matters, taking into account the client's legitimate concerns and without compromising any tactical advantage.

Section 13. Privacy

All matters should be handled with due respect for the rights and privacy of parties and non-parties. Accordingly, professional courtesy and civility requires all lawyers to:

- a. Refrain from inquiring into, attempting to use, or threatening to use, private matters of any party or other individual so as to gain an advantage in a case, where such information is not relevant to the specific issues at hand. In the event sensitive and private matters are relevant and probative within a proceeding, the lawyer should use such information only to the extent necessary.

- b. Maintain privacy and confidentiality.

Section 14. Diversity

Our society is diverse. As our profession grows to mirror the diversity in society, we must commit ourselves to advancing tolerance and respect for diverse cultures, opinions and views, and expand opportunities to those who have traditionally been excluded. Our profession includes men and women of various races, ethnicity, political views, cultural and economic backgrounds, religions, disabilities and sexual orientation. It also includes a wide variety of specialties, affiliations and professional relationships. Professional courtesy and civility requires lawyers to respect diversity and to uniformly honor these rules of civility without discrimination and with equal dignity.

Section 15. The Courts

Our judicial system is a cornerstone of our democracy. In order for our courts to serve their constitutional function, the public and the legal profession must have confidence in them. Respect for the institution of the judiciary, the judicial officers, administrators and court support staff is essential in maintaining public confidence in our judicial system. At the core of our legal system is the acceptance of our courts as the adjudicator of criminal and civil disputes. Professional courtesy and civility requires lawyers to recognize the importance of the judicial office and to refrain from disparaging the judiciary, and those holding the office.

California Attorney Guidelines of Civility and Professionalism

FAQs

(July 2009)

1. What are the California Attorney Guidelines of Civility and Professionalism?

The Guidelines are voluntary goals of best practices of civility in the practice of law in California.

2. Why are California Attorney Guidelines of Civility and Professionalism necessary?

Uncivil or unprofessional conduct not only disserves the individuals involved, it demeans the profession as a whole and our system of justice. The Guidelines promote both the effectiveness and the enjoyment of the practice of law and economical client representation by providing best practices of civility in the practice of law.

3. How were the Guidelines developed?

In 2007, the Board of Governors appointed a task force of attorneys and judges from every State Bar district. The task force recommended the California Attorney Guidelines of Civility and Professionalism to the Board after studying civility codes of other organizations, adapting provisions from those codes and creating new provisions for practice in California, and incorporating feedback from members, judicial officers, the public, organizations and others in two periods of public comment and two public hearings.

4. Why are there two sets of Guidelines?

The two versions are complementary. The version with examples gives detail to illustrate problem areas and best practices for the subject of the Section. The two-page version is a concise summary that can be conveniently carried by the attorney when out of the office.

5. Do the Guidelines create standards of conduct or standards of care?

No. The Introduction says they do not create standards of conduct or standards of care, and they do not supplant any rules or laws that govern attorney conduct. The Guidelines are not an independent basis for imposition of discipline or a finding of malpractice.

6. How are the Guidelines different from the Rules of Professional Conduct or laws on the practice of law in California?

Unlike the California Rules of Professional Conduct, the Supreme Court of California has not approved the Guidelines or mandated that California attorneys follow the Guidelines. Similarly, the Guidelines do not have the force of legislative enactments.

7. Are the Guidelines mandatory?

The Guidelines are cast in terms of “should”, not “must”. The State Bar follows the usage conventions of the California Supreme Court, which is that “should” expresses a preference, a nonbinding recommendation or non-mandatory conduct.

8. If they are not mandatory, why should an attorney abide by the Guidelines?

Civility in the practice of law promotes effectiveness and enjoyment of the practice of law. They also promote economical client representation. Conversely, uncivil conduct not only disserves clients, it demeans the profession and the American system of justice.

9. Are these Guidelines for statewide, local, law firm or individual use?

The Guidelines may be adopted for use by any or all of these. Courts, too, may adopt or endorse the Guidelines as best practices to be followed.

10. If the guidelines are adopted by our local bar association or law firms, what should be done to implement them?

Entities implement the Guidelines in a variety of ways to keep them viable, alive, and relevant. The Guidelines can be implemented by a number actions, including the following: through MCLE programs; by publicizing in bar association directories those attorneys who have taken the pledge; through local courts endorsement of the Guidelines; publicly posting the Guidelines and signed pledge; writing news articles on the subject of civility and professionalism; and through a mentor system for best practices of civility in the profession.

11. My organization already has a code of professionalism. How do the Guidelines relate to my organization’s code of professionalism?

The Guidelines are intended to be complementary with codes of professionalism adopted by bar associations in California.

12. Do the Guidelines denigrate an attorney’s duty of zealous representation?

No. Attorneys are officers of the court with responsibilities to the administration of justice, the courts, the public, and other counsel, in addition to attorneys’ duties to their clients. Civility, professional integrity, personal dignity, candor, diligence, respect, courtesy, and cooperation are all essential to the fair administration of justice and conflict resolution.

13. Why do some Guidelines seem redundant to local rules of court or some rules of professional conduct?

The Guidelines address problems in conduct that have been observed as arising from a local rule of court or other prescribed rule. The examples given in the Guidelines illustrate what do to, or not do, to address a particular situation.

14. There is no statement that the Guidelines are enforceable through sanctions. Is this intentional?

Yes. Sanctions can be expected to lead to a less collegial relationship among counsel, and tend to undermine the civility effort. Sanctions also tend to increase the costs and expenses of the case.

15. Section 16 seems to diverge from existing law. What is the reason for this?

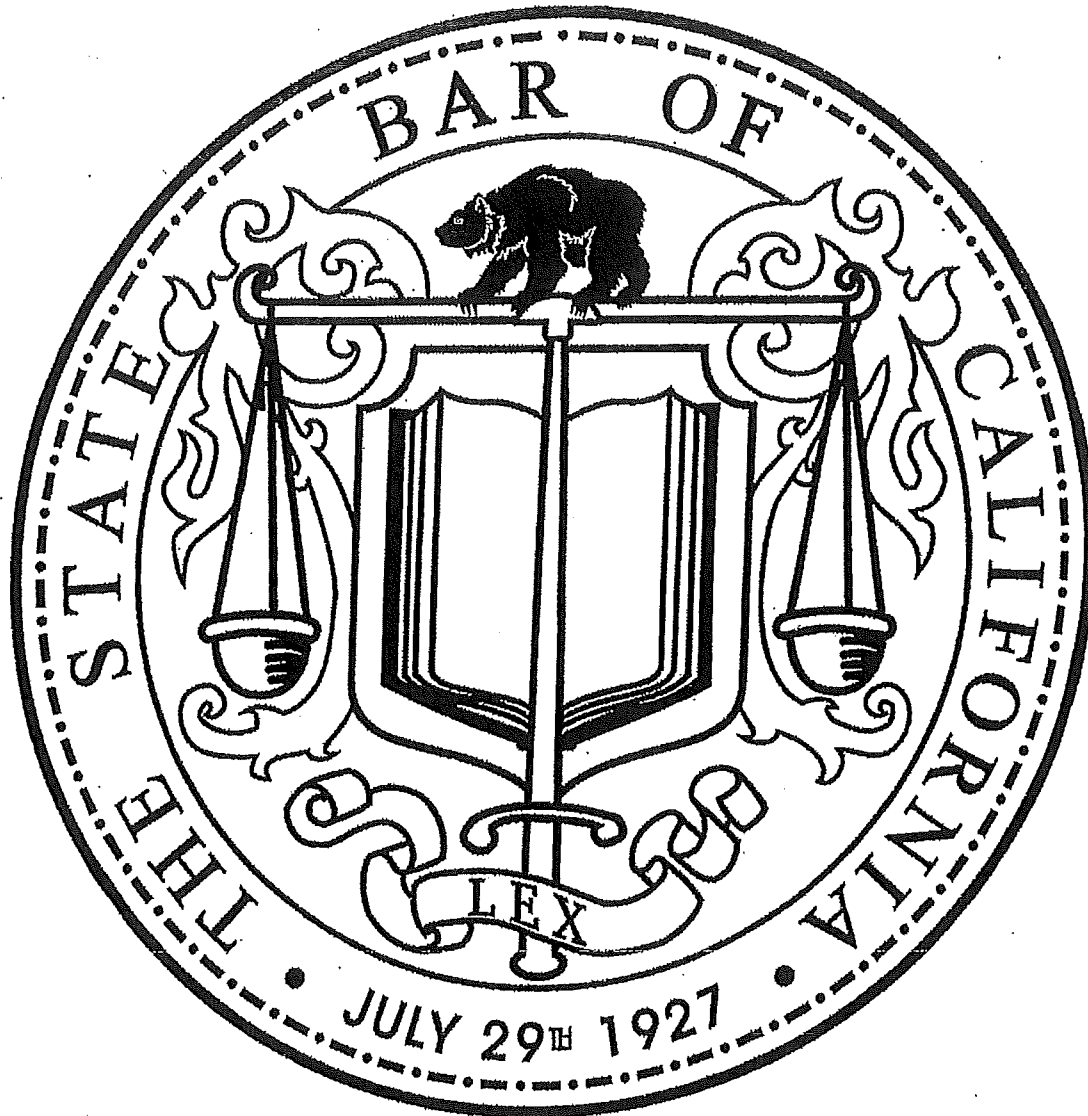
When an attorney has any close, personal relationships with judicial officers, neutrals and court appointed experts, the law places a burden of disclosure on the judicial officer. The Guidelines go beyond that burden, so that as a matter of courtesy and to avoid a waste of court resources, an attorney should notify an opposing counsel of party if the attorney has a close, personal relationship with one of these categories of people.

16. There is nothing in the Guidelines for my area of law. Do they apply to me?

Yes, they could. The Guidelines are potentially applicable to all California attorneys. To avoid becoming unwieldy, the Guidelines do not cover all areas of law. However, to the extent that the guidelines could apply to areas of practice that are not mentioned, the spirit of the Guidelines would permit extending them as appropriate.

California Attorney Guidelines of Civility and Professionalism

(Abbreviated Without Examples)



The State Bar of California
180 Howard Street
San Francisco, CA 94105-1639

Adopted by the Board of Governors on
July 20, 2007

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.

California Attorney Guidelines of Civility and Professionalism



**The State Bar of California
180 Howard Street
San Francisco, CA 94105-1639**

**Adopted by the Board of Governors on
July 20, 2007**

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**CALIFORNIA ATTORNEY
GUIDELINES OF CIVILITY AND PROFESSIONALISM**
(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 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.

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)

MICHAEL'S QUICK RULES...OR..."CASE LAW" ON CONFIDENTIALITY
(January 16, 2016)

1. Presume what you learn from and about your client is secret, unless told otherwise by the client.
2. Secrets remain in the office, and should be confined to the "team" working on the matter.
3. Be aware of where you are and who is listening.
4. Remember who owns the secret.
5. Do not learn secrets unless there is a need. Recall the burden they create.
6. Before hiring secretaries, paralegals, investigators, etc. who have worked for other law firms, check whether any of those firms are opposing counsel in pending cases. Burden is on the hiring firm.
7. A law firm risks vicarious disqualification when it retains an expert witness who was previously interviewed (even if not retained) by the opposing party.
8. Protect secrets on your computer and computer system. Also guard against providing electronic documents having metadata. Consider software protection.
9. Faxes and other messages. Be careful where you fax to or how messages are left. Are they viewable to others not within the protected group?
10. Clients should not be inadvertently allowed to see other client's secrets in the office, in stray mail, or overhear conversations.
11. Be especially careful in shared office environments.
12. Mark documents as protected, including faxes and email.
13. Avoid the perception of compromised secrets.
14. Return confidential information as soon as possible.
15. Using independent bookkeeping data processing, copy or other support services is permissible, provided the lawyer or law firm retains ultimate responsibility for protection of secrets.

16. Inadvertent use of confidential information can lead to recusal, sanctions and other penalties. Protect yourself from something that may be too good to be true. *Rico v Mitsubishi Motors Corp.* (2007) 42 Cal.4th 607)
17. In house and general counsel should separate ordinary business communications from confidential.
18. The person paying the bill is not necessarily the client and may not be entitled to see the secrets. Consider asking for written consent or agreement in writing regarding what can or can not be shared.

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