



**2025
STATE OF THE
PROBATE COURT**

Judge Roger L. Lund
VCSC Presiding Probate Judge



EPP Section
October 23, 2025



Focus on Civility

1



2

SANCTIONS

- *In re Marriage of Davenport* (2011) 194 Cal.App.4th 1507.
- Dissolution proceeding generated **19 volumes** of court files.
- Wife's case handled by **brand new associate** at Santa Rosa firm; Husband filed motion **seeking atty fees and costs >900k**.
- The evidence presented was clear and convincing that **uncivil, rude, aggressive, and unprofessional conduct** has marred this case from the very beginning from counsel Watters. These **uncooperative and uncivil courses of action** have caused Mrs. Davenport **unnecessary delays and unnecessary attorney fees and costs**.

3

SANCTIONS

- Attorney Andrew Watters [NO LONGER PRACTICING IN SANTA ROSA] **violated the mediation privilege** in Evidence Code section 1119, his declaration attached mediation-related documents, set forth what was purportedly said in mediation, and referred to agreements reached in mediation. [part of reason ct app upheld sanctions against wife]
- The record is replete with **correspondence** from Andrew Watters to HUSBAND Ken's attorneys that **contained abusive, rude, hostile, and/or disrespectful language**,
- Ct app upheld **100k in sanctions and >300k in atty fees** against wife.

4

SANCTIONS

- 1537: "We close this discussion with a **reminder** to counsel—all counsel, regardless of practice, regardless of age—that **zealous advocacy does not equate with `attack dog' or `scorched earth'; nor does it mean lack of civility.** Zeal and vigor in the representation of clients are commendable. So are civility, courtesy, and cooperation. **They are not mutually exclusive."**

5

SANCTIONS

- ***Interstate Specialty Marketing, Inc. v. ICRA Sapphire, Inc.*** (2013) 217 Cal.App.4th 708:
- [plaintiff **attached wrong contract to verified complaint** in breach of contract action]. **On trial judge's own motion, he set an order to show cause "re: Dismissal re Sanctions" as against Interstate and its counsel.** The order awarding Sapphire sanctions of \$5,076.16 under CCP 128.7 [requiring bad faith] is vacated.
- I will quote extensively on the court of appeal's discourse on the subject of **Sanctions**, which they said are **a judge's last resort.**

6

SANCTIONS

- At bottom, **sanctions are an admission of failure**. When judges resort to sanctions, it means we have failed **to adequately communicate to counsel what we believe the law requires, failed to impress counsel with the seriousness of our requirements, and failed even to intimidate counsel with the fact we hold the high ground: the literal high ground of the bench and the figurative high ground of the state's authority**. We don't like to admit failure so we sanction reluctantly.
- But **sanctions can level the playing field**. If we do not take action against parties and attorneys who do not follow the rules, we handicap those who do. If **we ignore transgressions, we encourage transgressors**. So **sanctions serve a purpose other than punishment**. If we cannot convince attorneys to conduct themselves honorably and ethically by appealing to their character, we can sometimes bring them into line by **convincing them that obeying the rules is the route of least resistance**—the less expensive alternative.

7

SANCTIONS

- We find ourselves disappointed by defendant's counsel. **A little civility on his part could have resolved the problems** in this case **early on**, saved everyone a lot of time, money, and toner, and spared us the unpleasant role of judicial scold this case has forced upon us.
- Costs on appeal awarded to plaintiff: **“a phone call [by defense counsel] alerting opposing counsel** to his corrigendum [a thing to be corrected, typically an error in a printed book] would have avoided this consequence.”

8



9

EXTENSIONS

- *Ahanchian v. Xenon Pictures, Inc.* (9th Cir 2010) 624 F.3d 1253:
- These appeals arise from the creation of National Lampoon's The Movie, asserting causes of action for copyright infringement, breach of an implied contract, and unfair competition.
- **On the last possible day for filing, the defendants moved for summary judgment seeking dismissal of all of [plaintiff's] claims and for terminating sanctions resulting from a discovery dispute.** Because the defendants chose to wait until the last day to file their motions, **under local rules plaintiff was left with a mere eight days, three over the Labor Day weekend, to draft his oppositions to the motions. Also, to compound his problems, plaintiff's lead counsel was scheduled to travel out of state during this period to fulfil a previously-scheduled commitment.**
- **Plaintiff asked defense counsel to stipulate to a one-week continuance of the hearing date for defendants' motions, along with corresponding one-week extensions of the deadlines for plaintiff to file oppositions and for defendants to reply. Defense counsel refused to so stipulate. The very next day, plaintiff filed an ex parte application seeking a one-week extension, which the district court denied and which resulted in judgment for the defense.**

10

EXTENSIONS

- The 9th circuit noted that **Defense counsel steadfastly refused** to stipulate to an extension of time, and when plaintiff's counsel sought relief from the court, **defense counsel filed fierce oppositions**, *even accusing plaintiff's counsel of unethical conduct.*
- Such **uncompromising behavior** is not only **inconsistent with general principles of professional conduct**, but also **undermines the truth-seeking function of our adversarial system.**

11

EXTENSIONS

- ***Lasalle v. Vogel*** (2019) 36 Cal. App. 5th 127:
- [LEGAL MALPRACTICE CASE] On the 36th day after service of complaint, **Lasalle's attorney sent Vogel a letter and an e-mail telling her that the time for a responsive pleading was "past due" and threatening to request the entry of a default against Vogel unless he received a responsive pleading by the close of business the next day.** Not receiving any response, **a few days later plaintiff had default entered.** Eventually, a default judgment was entered against Vogel **for \$1 million.** **She has appealed** from both that judgment and the order refusing to set aside the default.
- The **ethical obligation to warn opposing counsel of an intent to take a default is now reinforced by a statutory policy that all parties "cooperate in bringing the action to trial or other disposition."** (CCP§ 583.130.) **Quiet speed and unreasonable deadlines do not qualify as "cooperation" and cannot be accepted by the courts.**

12

EXTENSIONS

- It's gotten so bad the **California State Bar amended the oath** new attorneys take **to add a civility requirement**. Since 2014, new attorneys have been required to vow to **treat opposing counsel with "dignity, courtesy, and integrity."**
- **"e-mails are a lousy medium with which to warn opposing counsel** that a default is about to be taken." 138

13



14

DISCOVERY

- ***Masimo Corp. v. The Vanderpool Law Firm, Inc.*** (2024) 101 Cal.App.5th 902:
- Discovery dispute in misappropriation case; defendant's attorney **served long boilerplate objections then withdrew from the case**; "Vanderpool's main argument—that it had substituted out of the case as counsel before the motion to compel was filed and was therefore unsanctionable—is unavailing. **It is not necessary to be counsel of record to be liable for monetary sanctions for discovery misuse.**"
- The court stated that Vanderpool's **conduct was "woefully uncivil."**

15

DISCOVERY

- "After being served with the moving papers for the motion to compel, Douglas Vanderpool began an **email** to Ellison with the **subject line "You are joking right?"** The **body of the email** continued in the same vein: "In 30 years of practice this may be the **stupidest thing I've ever seen**. Robert is this really why you went to law school? Quit sending us paper. You know we are out of the case so just **knock it off and get a life**. Otherwise we're going to be requesting sanctions against your firm for even bothering us with this nonsense.'"
 - The **trial court granted motion to compel and assessed 10k sanctions** against defendants **and attorney Vanderpool. Upheld.**
 - **"Incivility is the adult equivalent of schoolyard bullying and we will not keep looking the other way when attorneys practice like this. They will be called out and immortalized** in the California Appellate Reports."

16

DISCOVERY

- ***Agnone v. Agnone*** (2025) 111 Cal.App.5th 758:
- [marital dissolution] (3rd party **witness's attorney refused to turn on videocam**)
- Deposing attorney told defending attorney, that, "every time that I ask a question, **your client is looking upward to you for feedback.**"
- Court of appeal **upheld Imposition of sanctions on 3rd party witness** under CCP 2023.10 and 2023.030, stating that ***this type of gamesmanship was an unusual form of discovery abuse.***

17



ACTIONS AGAINST OPPOSING COUNSEL

18

ACTIONS AGAINST OPPOSING COUNSEL

- **Lossing v. Superior Court** (1989) 207 Cal.App.3d 635, 641
- Petitioner Lawrence G. Lossing was a **defense attorney in a personal injury action**. Lossing sought and obtained an order compelling plaintiffs to appear for their depositions. Seeking to enforce the discovery order, Lossing filed an order to show cause re contempt against plaintiffs. **After the trial court discharged the order to show cause, plaintiffs filed a complaint against Lossing for damages for malicious prosecution and negligent and intentional infliction of emotional distress. The complaint alleged Lossing did not honestly, reasonably and in good faith believe the plaintiffs to be guilty of contempt and acted maliciously to intimidate them and coerce them to settle their underlying case.**
- **Lossing filed a general demurrer to the complaint.** The superior court sustained the demurrer to the causes of action for negligent and intentional infliction of emotional distress without leave to amend, leaving only the causes of action for malicious prosecution. Lossing petitioned for a writ of mandate contending his demurrer to the causes of action for malicious prosecution should also have been sustained without leave to amend. We agree.

19

ACTIONS AGAINST OPPOSING COUNSEL

- "We conclude by reminding members of the Bar that their **responsibilities as officers of the court include professional courtesy to the court and to opposing counsel.** All too often today we see signs that the practice of law is becoming more like a business and less like a profession."

20

ACTIONS AGAINST OPPOSING COUNSEL

- **Hansen v. Volkov** (2023) 96 Cal.App.5th 94:
- Dissolution proceeding; both parties to the appeal were attorneys for the parties.
- **Following an incident at Hansen's office**, [I will spare you the details] Hansen obtained a three-year **civil harassment restraining order** pursuant to Code of Civil Procedure section 527.6 and authorizing Volkov to contact Hansen only by United States mail or e-mail and only for purposes of service of legal papers.
- Court of appeal held that **civil harassment restraining order was reversed since Volkov's conduct was constitutionally protected activity**. *"Nor was it appropriate for Hansen to seek a civil harassment restraining order against her opposing counsel based on an argument over deposition scheduling that reasonable attorneys could have resolved without court intervention..."*

21



22

TRIAL & JUDICIAL CIVILITY (JUDGES DON'T GET A FREE PASS!)

- *Haluck v. Ricoh Electronics, Inc.* (2007) 151 Cal. App. 4th 994:
- [employment case] Court of appeal took issue with many of the trial judge's actions but I'll highlight just two.
- - in overruling one of plaintiffs' objections, **the judge held up a hand-lettered sign, apparently prepared by him, stating "overruled."**
- - **defense counsel was humming The Twilight Zone theme song during his cross-examination of plaintiff** regarding his emotional distress damages. Judge encouraged this.

23

TRIAL & JUDICIAL CIVILITY

- We conclude the **trial judge's conduct** was **sufficiently egregious** and **pervasive** that a reasonable person could doubt whether the trial was fair and impartial and reverse on that ground. On remand, the case shall be assigned to a different judge.
- **Judicial ethics require** a judge to "be **patient, dignified, and courteous to litigants ... [and] ... lawyers ... and ... require similar conduct of lawyers ... under the judge's direction and control.**" (Cal.Code Jud. Ethics, canon 3(B)(4).)

24



25

ATTORNEYS FEES

- **Karton v. Ari Design & Construction, Inc.** (2021) 61 Cal.App.5th 734, 747:
- [breach of residential construction contract] [plaintiff homeowner was attorney]
- The trial court fairly attributed some of the overlitigation to **Karton's personal embroilment** in the matter. The court concluded that **embroilment undermined Karton's objectivity about the appropriate scale of litigation.**
- Just one example of Karton's embroilment was his **continual assertion that opposing counsel was a liar.**

26

ATTORNEYS FEES

- **"Excellent lawyers deserve higher fees, and excellent lawyers are civil.** Sound logic and bitter experience support these points. [¶] **Civility is an ethical component** of professionalism. **Civility is desirable** in litigation, not only because it is ethically required for its own sake, but also because it is **socially advantageous**: it lowers the costs of dispute resolution. **Incivility** between counsel is **sand in the gears**. [¶] Incivility can **rankle relations** and thereby **increase the friction**, extent, and **cost** of litigation. Calling opposing counsel a liar, for instance, can invite destructive reciprocity and generate needless controversies. **All those human hours, which could have been put to socially productive uses, instead are devoted to the unnecessary war and are lost forever. All sides lose, as does the justice system, which must supervise the hostilities."**

27

ATTORNEYS FEES

- Held: Trial judges deciding motions for attorney fees **properly** may **consider whether the attorney seeking the fee** has become **personally embroiled** and has, therefore, **overlitigated the case**. Similarly, judges permissibly may **consider whether an attorney's incivility in litigation has affected the litigation costs**.
- ***[\$200k reduction in fees]***

28

ATTORNEYS FEES

- ***Snoeck v. ExakTime Innovations, Inc.*** (2023) 96 Cal.App.5th 908:
- Plaintiff Steve Snoeck appeals from the trial court's order awarding him \$686,795.62 in attorney fees [disability disc case] ***after the court applied a 0.4 negative multiplier to its \$1,144,659.36 adjusted lodestar calculation "to account for [p]laintiff's counsel's ... lack of civility throughout the entire course of this litigation."***
- "We agree a trial court **may consider an attorney's pervasive incivility in determining the reasonableness of the requested fees.**"

29

ATTORNEYS FEES

- Substantial evidence supports the trial court's finding that plaintiff **attorney was uncivil toward opposing counsel and the court**, and his "***ad hominem attacks were unnecessary for the zealous representation of his client.***" He accused defense counsel of telling the courts "lies," committing "fraud" and a "brazen con," making "misrepresentations" to the trial court and appellate court, engaging in "sleazy" and "cringeworthy" conduct, and "dup[ing] the court of appeal."
- Plaintiff's counsel also **acted with incivility toward the trial court**. The court itself **described his tone during the motion for new trial hearing as "belittling and antagonistic" and having "verged on the contemptuous."** Smith certainly belittled the court in his e-mails to opposing counsel, claiming defense counsel made "a total fool of", "exploited," and "duped" the trial court, and treated the trial court as an "easy mark."
- So the **attorney's incivility cost him nearly half a million dollars.**

30



31

APPEALS

- **DeRose v. Heurlin.** (2002) 100 Cal.App.4th 158:
- This case arose out of an **attorney fees dispute** between Heurlin and his former client, Michael DeRose, in a dental malpractice action. Heurlin's **conduct has been "disgraceful."**
- **"On our own motion** we impose **sanctions against attorney** John M. Heurlin [Santa Ana] **and his law firm (Heurlin) for filing and prosecuting a frivolous appeal.** We conclude Heurlin had **improper motives** in seeking (1) to **delay** the effects of an adverse judgment and (2) to **cover up his mishandling of client trust funds** and his **dishonesty** before the trial court. Heurlin compounded the deception at oral argument after notice of this court's consideration of sanctions against him. He was inexcusably **unable or unwilling to respond forthrightly to our questions** regarding his conduct. Heurlin followed a **path of artifice and deceit with single-minded determination....** we assess Heurlin sanctions in the amount of \$6,000. We **publish our opinion** because the issue of integrity of lawyers is important to the bench, the bar, and the general public."
- [Note: Heurlin was **disbarred** in 2013]

32

APPEALS

- *Kim v. Westmoore Partners* (2011) 201 Cal.App.4th 267:
- **Breach of contract and misrepresentation** in which a default judgment was reversed. A **cautionary tale for appellate counsel**.
- Those who practice before this court are **expected to comport themselves honestly, ethically, professionally and with courtesy toward opposing counsel**. The conduct of Kim's counsel **seeking an extension of time to file his brief under false pretenses**, and then filing a brief which was not just boilerplate, but a **virtual copy of a brief for another case** — including a boilerplate accusation of misconduct against appellants' counsel and a boilerplate request for sanctions based on a purportedly "frivolous" appeal — will not be countenanced.

33

APPEALS

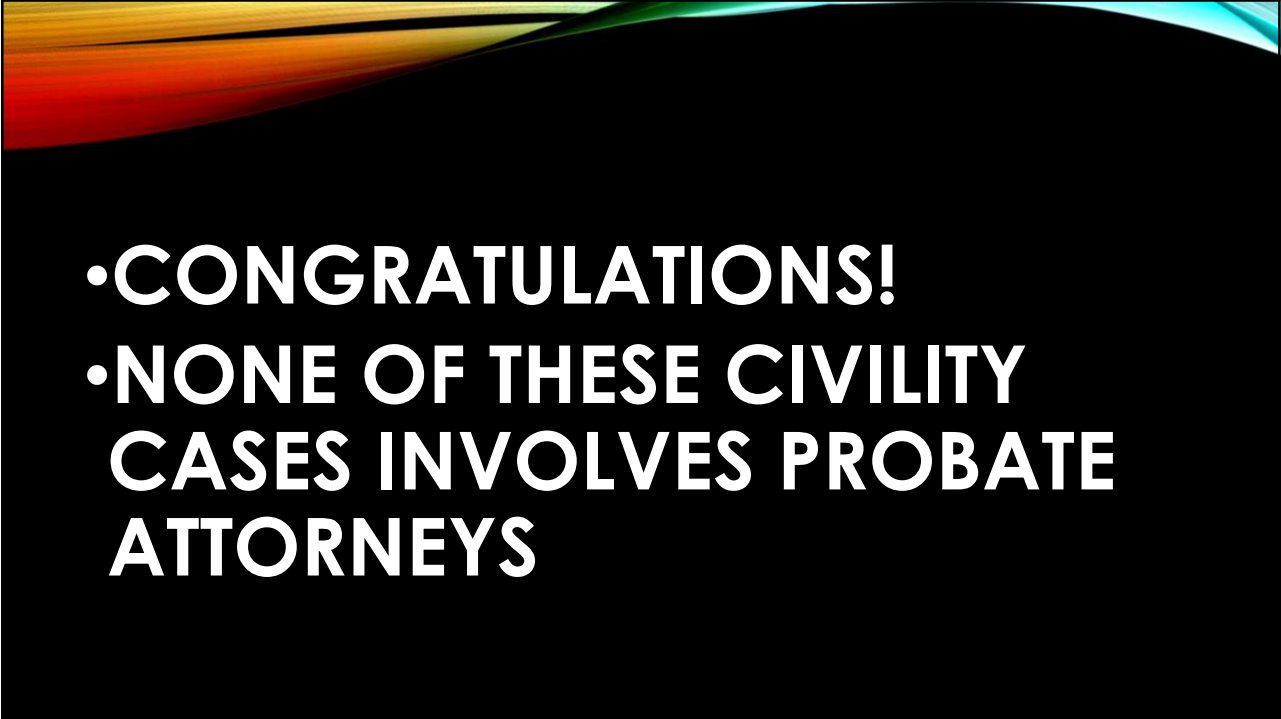
- **Counsel's response** to this court's notice, informing him that we were contemplating the **imposition of sanctions** on our own motion, was both **truculent and dismissive**, going so far as to assert that we must have issued the notice in error. We did not.
- Nor did we appreciate him responding to our order that he appear to address possible sanctions against him by **sending in his stead an attorney who had not been informed sanctions were being considered, and knew nothing about our order**.
- Counsel's conduct on appeal was **inappropriate in nearly every respect**, and we hereby **sanction him in the amount of \$10,000**.

34

APPEALS

- **“Our profession** is rife with cynicism, **awash in incivility**. Lawyers and judges of our generation spend a great deal of time **lamenting the loss of a golden age** when **lawyers treated each other with respect and courtesy**. It is **time to stop talking** about the problem and **act on it**. For decades, our profession has given lip service to civility. All we have gotten from it is tired lips. We have reluctantly concluded **lips cannot do the job; teeth are required. In this case, those teeth will take the form of sanctions.**”

35

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- **CONGRATULATIONS!**
 - **NONE OF THESE CIVILITY CASES INVOLVES PROBATE ATTORNEYS**

36



37

SUGGESTIONS

- **Transparency**: share discovery voluntarily; don't wait for formal discovery; appraisals; medical records; accountings; bank statements; personal property inventories.
- **Don't file papers the day or week before hearing**: it inconveniences opposing counsel, court staff and judge.
- **Return phone calls**, including from self-represented beneficiaries.
- **Don't interrupt other speakers** during argument.

38

SUGGESTIONS

- **Don't say** “you'll be happy to lend your probate code” to opposing counsel.
- **Set up regular Zoom meetings with opposing counsel.**
- **Be reasonable** in scheduling depositions.
- **Be careful** what you put in emails. (e.g. administrator lawyer tells beneficiary lawyer to apply for higher bond on “your own dime”)

39



CONCLUSION

40

CONCLUSION

As in marital dissolution cases, you are dealing with family members who are *highly emotional*. **Do not allow yourself to be sucked into the emotional vortex**. Keep your objectivity and **remain civil no matter what** your client demands.

41



42