

Orange County Paralegal Association
31st Annual Educational Conference
September 15, 2018
Courtroom Etiquette, Demeanor and Civility in the Practice of
Law
1 Hour MCLE (.5 Ethics)

Hon. Eric V. Isaac
Superior Court of California
Commissioner, Riverside



This program is geared towards individuals at the start of their legal careers and making their first court appearance or assisting their attorney in a courtroom setting. Your presenter is Eric V. Isaac, Riverside Superior Court Commissioner and a seasoned trial attorney. My previous career was as a Deputy Public Defender. The practice of law evolves on a daily basis. You will make mistakes and most will be forgiven. That is why it is called "the practice of law." Enjoy and learn!



Sources of Law and References

- *California Rules of Professional Conduct and the State Bar Act*
www.calbar.ca.gov
Hereafter "RPC"
1-100(A): "The following rules are intended to regulate professional conduct of members of the State Bar through discipline . . . They have been adopted . . . To protect the public and to promote respect and confidence in the legal profession."
- *CJP: Code on Judicial Performance*
- *California Judicial Conduct Handbook (West Group)*
- *ABA Model Rules of Professional Conduct (2003 Edition)*
Hereafter "MR"
California appellate courts frequently cite the ABA Model Rules
Nation-wide trend to adopt ABA Model Rules
- *California Attorney Guidelines for Civility and Professionalism (Adopted 07/20/07)*
www.calbar.ca.gov

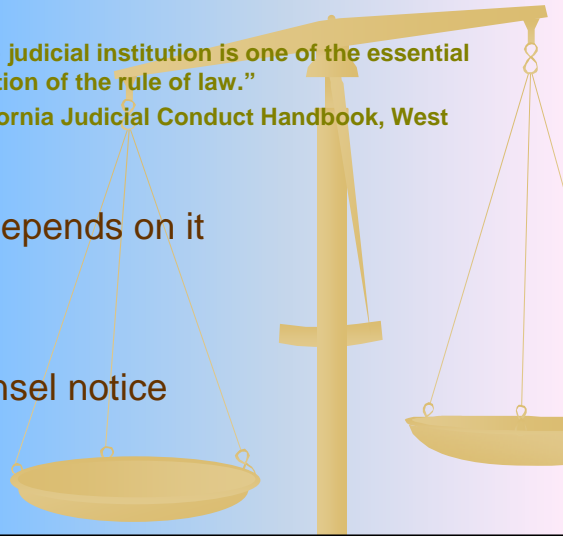
Attorney Civility and Professionalism

The screenshot shows a web browser window displaying the State Bar of California's website. The page title is "ATTORNEY CIVILITY AND PROFESSIONALISM". The content includes a navigation menu on the left with categories like "Home", "Ethics", "Attorney Civility and Professionalism", "Professional Competence", "Client Portal", "Accounting Resources", "Ethics & Technology Resources", "Senior Lawyers Resources", "Judicial Ethics", "Attorney Civility and Professionalism", and "Rules Revision Commission 2014". The main content area features the heading "ATTORNEY CIVILITY AND PROFESSIONALISM" and a sub-heading "Attorney Guidelines of Civility and Professionalism (Civility Toolbox)". Below this, there is a paragraph explaining the purpose of the guidelines and a list of resources including "Attorney Guidelines of Civility and Professionalism (Civility Toolbox) (PDF)", "Sample resolution (Word)", "Sample court order (Word)", and "Civility and Ethics PowerPoint Presentation (PowerPoint)". At the bottom, it mentions "California Rules of Court, Rule 9.4 - Revised Attorney Oath" and states that Rule 9.4 of the California Rules of Court, effective May 27, 2014, was adopted to supplement the attorney oath for new lawyers. It also notes that in addition to the language required by Business and Professions Code section 6067, the oath is to be taken by

Does Civility and Professionalism Matter?

- “Public confidence in the judicial institution is one of the essential elements of the preservation of the rule of law.”
(David M. Rothman, California Judicial Conduct Handbook, West Group, § 1.20, p. 5.)

- Justice system depends on it
- Parties notice
- Jurors notice
- Judges and counsel notice

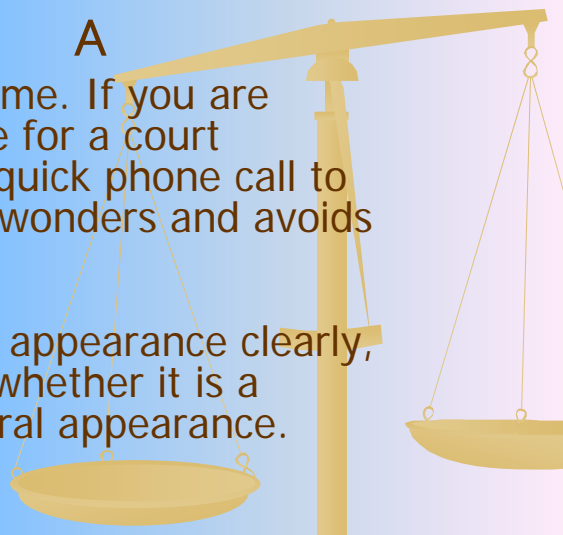


Courtroom Decorum and Etiquette- A thru Z

A

Always be on time. If you are going to be late for a court appearance, a quick phone call to the court does wonders and avoids sanctions.

- Announce your appearance clearly, succinctly and whether it is a special or general appearance.



B

- Be polite and courteous to the court clerk, staff and bailiff. They have a direct line to the judge who will be hearing your case.

- CAAGC&P- Section 14: Conduct in Court

An attorney should maintain respect for and confidence in a judicial office by displaying courtesy, dignity and respect towards the court and courtroom personnel.

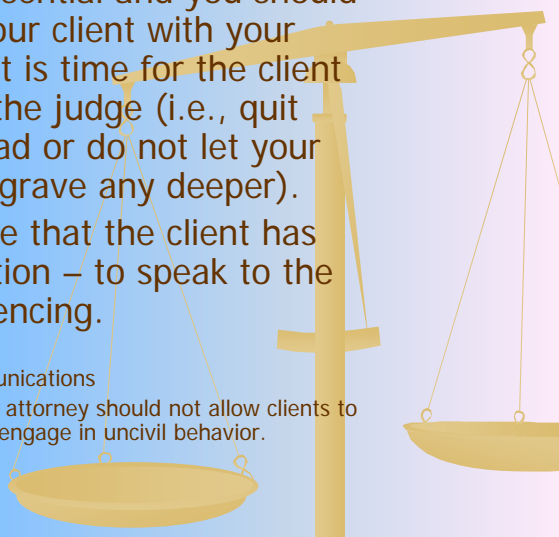


C

- Client control is essential and you should acquaint/advise your client with your clues/signs when it is time for the client to stop talking to the judge (i.e., quit while you are ahead or do not let your client dig his own grave any deeper). However, be aware that the client has the right to allocution – to speak to the judge during sentencing.

CAAGC&P: Section 4: Communications

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



D

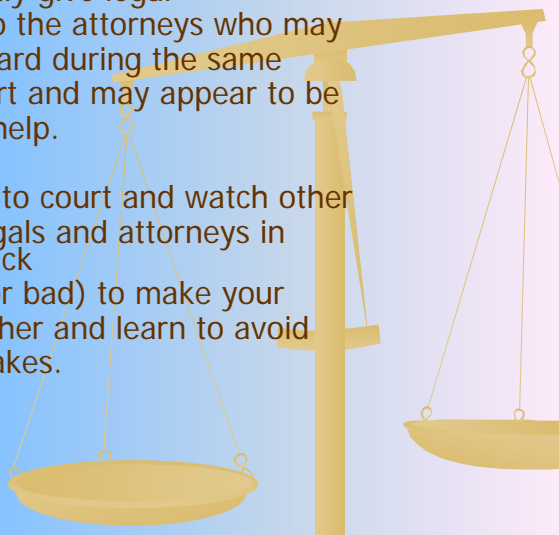
Do not make personal attacks against or disparage opposing counsel while in open court in front of the judge or a jury. Not only will you lose points, opposing counsel may be judging you one day.



E/F

Eagerly and earnestly give legal advice/assistance to the attorneys who may have their cases heard during the same time you are in court and may appear to be struggling or need help.

Find the time to go to court and watch other experienced paralegals and attorneys in action. You will pick up pointers (good or bad) to make your appearances smoother and learn to avoid making future mistakes.



G/H

- Gum chewing is very unprofessional. Same advice goes for having other objects in your mouth when addressing the judge in court, such as breath mints or throat lozenges.
- Have your dates ready when asking for a continuance or for a case to trail. It is helpful to check with opposing counsel as well as the court clerk in advance of the case being called to make sure the dates are convenient for everyone before going on the record.

I

It's your professional reputation, so take it seriously!

Your attorney and you are responsible for all your cases and appearances.

It is not a defense just because someone, such as a colleague or supervisor, gave you bad advice.

If you don't know how to do a particular motion, then research it or just ask. There are other knowledgeable paralegals and attorneys who will be more than happy to assist you with any questions.

J

Join your local paralegal member associations and other professional legal groups. Not only will you meet other paralegals with a lot of experience and who may have had similar situations, but you will get good advice that you can use in your career.

Inland County Association of Paralegals
Los Angeles Paralegal Association
Orange County Paralegal Association
Kern County Paralegal Association
San Francisco Paralegal Association
San Diego Paralegal Association
Ventura County Paralegal Association
Fresno Paralegal Association



K/L

- Know the local rules where you will be appearing and the nuances of the judge who will be hearing your case. Do your own research on the judge and elicit insight from other paralegals and attorneys who have experience before the judge and the judge's clerk.
- Let others who have multiple appearances in other courtrooms go before you if you have the time to spare. They may return the favor some day.

M

- Make sure you are FAR away from the microphone in the courtroom or podium before making statements to your client or disparaging comments about the judge or opposing counsel. (That is why you have a legal pad to pass notes.)

Please do not hold conversations in the courtroom while court is in session.

The court reporter needs to be able to accurately record the proceedings.

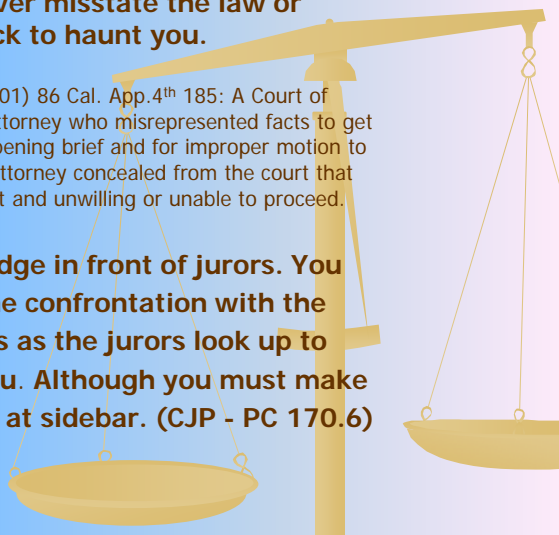


N

- **Never make representations that you cannot later support. And never misstate the law or facts. It will come back to haunt you.**

Bryan v. Bank of America (2001) 86 Cal. App.4th 185: A Court of Appeal may sanction an attorney who misrepresented facts to get a continuance to file an opening brief and for improper motion to recall the remittitur. The attorney concealed from the court that the client was incompetent and unwilling or unable to proceed.

Never challenge a judge in front of jurors. You will always lose in the confrontation with the judge and lose points as the jurors look up to the judge and not you. Although you must make a record, try to do it at sidebar. (CJP - PC 170.6)



O

- Only take cases that you are prepared or experienced to handle. Again seek advice from other experienced counsel for assistance.

RPC 3-110: A lawyer must provide competent legal services. This rule includes a duty to supervise the work of subordinate attorneys, agents, and/or other employees. (See *Waysman v. State Bar* (1986) 41 Cal.3d 452)

RPC 3-110(B): A lawyer should not accept a case if she lacks the time, skill, and "mental, emotional, and physical ability reasonably necessary for the performance of such service."

RPC 3-110(C): If a member does not have sufficient learning and skill when the legal services is undertaken, the member may nonetheless perform such services competently by 1) associating with . . . Another lawyer reasonably believed to be competent, or 2) by acquiring sufficient learning and skill before performance is required."

Business and Professions Code Section 6460 "Paralegal"

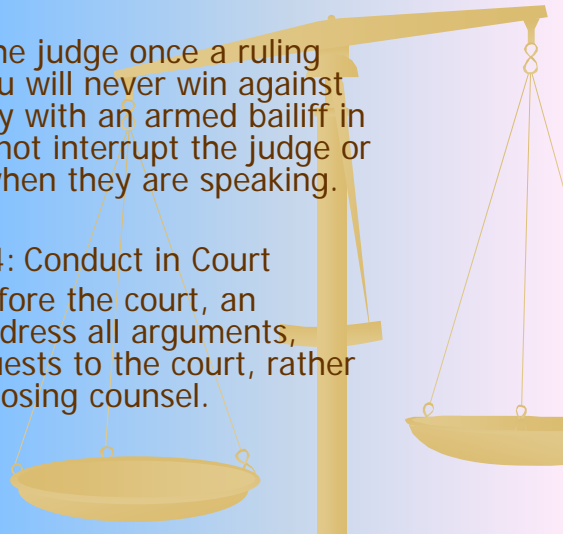
- "Paralegal" means a person who holds himself or herself out to be a paralegal, who is qualified by education, training, or work experience, who either contracts with or is employed by an attorney, law firm, corporation, governmental agency, or other entity, and who performs substantial legal work under the direction and supervision of an active member of the State Bar of California, as defined in Section 6060, or an attorney practicing law in the federal courts of this state, that has been specifically delegated by the attorney to him or her. Tasks performed by a paralegal include, but are not limited to, case planning, development, and management; legal research; interviewing clients; fact gathering and retrieving information; drafting and analyzing legal documents; collecting, compiling, and utilizing technical information to make an independent decision and recommendation to the supervising attorney; and representing clients before a state or federal administrative agency if that representation is permitted by statute, court rule, or administrative rule or regulation.

Q

- Quit arguing with the judge once a ruling has been made. You will never win against the judge, especially with an armed bailiff in the courtroom. Do not interrupt the judge or opposing counsel when they are speaking.

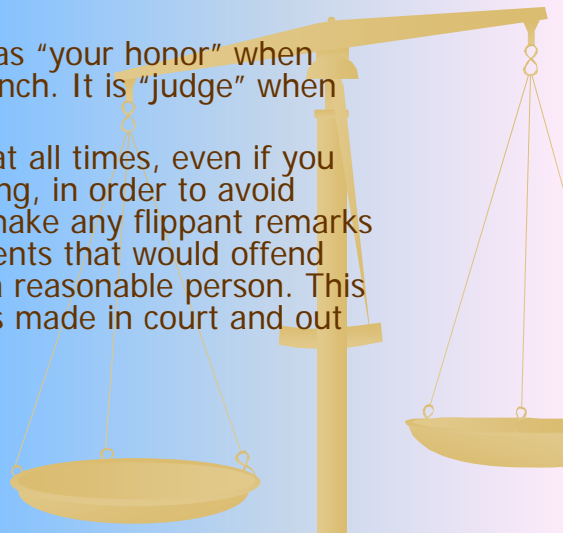
CAAGC&P Section 14: Conduct in Court

While appearing before the court, an attorney should address all arguments, objections and requests to the court, rather than directly to opposing counsel.



R

- Refer to the judge as “your honor” when he/she is on the bench. It is “judge” when not in session.
- Respect the judge at all times, even if you disagree with a ruling, in order to avoid sanctions. Do not make any flippant remarks or improper arguments that would offend the sensibilities of a reasonable person. This includes statements made in court and out of court.



S

- Security is always a concern while in the courthouse. If you know that a client, witnesses or family members have been a problem in the past, alert the bailiff or court security officer.
- It is for your protection as well as others in the courthouse.

T

- Thank the judge for his or her ruling even if you disagree with the ruling. (It is just polite and may even convince you and the jurors that you really didn't lose that one).
- CAAGC&P 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.

An attorney's conduct should avoid disorder or disruption and preserve the right to a fair trial
- Take your time when making your points. The court reporter needs to record each word that is spoken and is likely to miss important information if you speak too fast.

Unlawful Conduct

- It is unlawful for a paralegal to perform any services for a consumer except as performed under the direction and supervision of the attorney, law firm, corporation, government agency, or other entity that employs or contracts with the paralegal. Nothing in this chapter shall prohibit a paralegal who is employed by an attorney, law firm, governmental agency, or other entity from providing services to a consumer served by one of these entities if those services are specifically allowed by statute, case law, court rule, or federal or state administrative rule or regulation. (BPC sect. 6451)

Unlawful Conduct Cont.

- It is unlawful for a person to identify himself or herself as a paralegal on any advertisement, letterhead, business card or sign, or elsewhere unless he or she has met the qualifications of subdivision (c) of Section 6450 and performs all services under the direction and supervision of an attorney who is an active member of the State Bar of California or an attorney practicing law in the federal courts of this state who is responsible for all of the services performed by the paralegal. The business card of a paralegal shall include the name of the law firm where he or she is employed or a statement that he or she is employed by or contracting with a licensed attorney. (BPC sect. 6452(a))

V

- Verify information about representations your client has made to you before making a statement on the record. This will avoid the appearance of misleading the court and opposing counsel.
- CAAGC&P Section 4: Communications

An attorney should not create a false or misleading record of events, or attribute to an opposing counsel a position not taken.

W

- Wait until the judge/baliff/court clerk calls the case on the record before you start talking.
 - The court reporter is making a record for the case. You need to make sure everything is recorded so that the transcripts (which may be needed for clarification of what was said for read backs, motions or appeals.)

X/Y/Z

- 'X'tra verbiage is not necessary. Quit while you are ahead.
- Your reputation is everything. Guard it wisely. Keep in mind that the legal community is smaller than you think and your reputation as an advocate will follow you for the rest of your legal career. It is easier to keep a good reputation than to repair a bad one.
- Zealous advocacy is good. Although you are an advocate, you are also an officer of the court. Always practice by the law and not by the case.
- CAAGC&P 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 administration of justice.