

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA BARBARA

APPENDIX 5

**GUIDELINES FOR ATTORNEYS PRACTICING BEFORE THE
SANTA BARBARA COUNTY SUPERIOR COURTS**

LITIGATION GUIDELINES FOR PRACTICING BEFORE THE SUPERIOR COURT

This is a statement of the policies of the Santa Barbara Superior Court adopted in conjunction with the Santa Barbara County Bar Association. These policies are applicable to all proceedings pending before the Santa Barbara Superior Court.

A. General Principles

1. A lawyer must work to advance the lawful and legitimate interest of his or her client. This duty includes an obligation not to act abusively or discourteously. Zealous representation of the client's interest should be carried out in a professional manner.
2. A lawyer should not engage in derogatory conduct which has its basis the race, national origin, religion, gender, sexual orientation or other immutable characteristics of any person.
3. Counsel should at all times be civil and courteous in communicating with adversaries, whether in writing or orally. A lawyer should not behave offensively, derogatorily or discourteously even when his or her client so desires. If necessary, a lawyer should advise a client that he or she will not engage in such conduct, even if directed.
4. Law firms and other legal organizations should include the subject of professional and civil conduct in their programs for the training of new lawyers and continuing legal education.

B. Alternatives to Litigation:

1. A lawyer should consider the possibility of settlement or alternative dispute resolution in every case and, when appropriate, bring such alternatives to the client's attention.

C. Courtroom Conduct:

1. A lawyer should be punctual and prepared for all court appearances so that all matters may commence on time and proceed efficiently. Lawyers should treat judges, counsel, parties, witnesses, and court personnel in a civil and courteous manner, not only in court but in depositions, conferences, and all other written and oral communications.
2. A lawyer shall avoid personal attacks on other counsel. Even if the zealous representation of a client may necessitate allegations of wrongdoing on the part of an adverse party or opposing counsel, a lawyer must review such allegations to ensure that they are justified.
3. A lawyer should be professional, accurate, and succinct in arguments to the court and shall not cite facts not in the record.
4. Lawyers should agree to mutual stipulations of undisputed facts.

D. Service of Papers:

1. The timing and manner of service of papers shall not be used to disadvantage the receiving party. Service should be made personally or by facsimile transmission when it is likely that service by mail, even when allowed, will prejudice the opposing party.

E. Continuances:

1. A lawyer shall consider opposing counsel's legitimate calendar conflicts when scheduling or postponing hearings, depositions, meetings or conferences, unless to do so would be contrary to the legitimate interest of his or her client. A lawyer should not arbitrarily or unreasonably refuse a reasonable request for an extension of time, as permitted by court rules.

F. Discovery:

1. Discovery shall not be used to harass opposing counsel or the opposing party or for the purpose of delaying the efficient resolution of a dispute. A lawyer should explore with opposing counsel alternatives to formal discovery that will achieve the same objective at lower costs.
2. A lawyer should not engage in conduct during a deposition that would not be appropriate in the presence of a judge.
3. Discovery should be limited to seeking and verifying such information and documents that a lawyer reasonably believes may be necessary for the prosecution or defense of an action. A lawyer responding to discovery or complying with court rules requiring disclosure should not employ artificially restrictive interpretations to avoid disclosure of relevant and non-privileged information or documents.
4. Document production should not be delayed to prevent opposing counsel from inspecting documents or evidence prior to scheduled depositions, trial or hearing or for any other tactical reason.
5. Parties should be informed of their obligation to comply with discovery obligations in a timely manner.
6. A lawyer's submissions to the court should be professional in tone, Briefs and pleadings should not be written in an inflammatory style.
7. A lawyer should at all times strive to be concise and to state accurately the law, the facts and the parties' positions.
8. Written briefs or memoranda of points and authorities should not cite facts that are not properly part of the record.
9. A lawyer should not seek judicial sanctions as a means of harassment, advance or intimidation.

G. Ex Parte Communications with the Court:

1. Except as permitted by law including these Rules, neither a lawyer nor a party may communicate directly or indirectly with a judicial officer regarding a case pending before that judicial officer without notice to and attendance by opposing counsel or unrepresented opposing party. Indirect communication includes but is not limited to communication with a judicial officer's staff. To communicate includes but is not limited to contact through in person discussion, by telephone or by correspondence through mail, express mail, overnight delivery, facsimile transmission, electronic mail, or electronic service.
2. Even where applicable laws or rules permit an *ex parte* application or communication to the court without notice to opposing counsel or unrepresented party, before making such an application or communication, a lawyer should make diligent efforts to notify the opposing party or a lawyer known to represent or likely to represent the opposing party or the unrepresented party and should make reasonable efforts to accommodate the schedule of such lawyer to permit the opposing party to be represented on the application.
3. Except as an attachment to a pleading, a lawyer may not transmit correspondence between counsel or between counsel and an unrepresented party to a judicial officer regarding a matter pending before that judicial officer without prior approval of that judicial officer either on the record or by written order.
4. Even where an *ex parte* application or communication to the court in an emergency situation is permitted by law or these Rules, a lawyer should make such an application or communication (including an application to shorten an otherwise applicable time period) only where there is a bona fide emergency such that the lawyer's client will be prejudiced by a failure to make the application or communication on regular notice.
5. Electronic Communications with the Court:
 - No lawyer or party to any criminal action may communicate by electronic mail directly or indirectly with a judicial officer regarding a pending case without notice and prior authorization from the judicial officer. Authorization may be granted in the discretion of the judicial officer in the following situations:
 - a. Service of courtesy copies of pleadings on the court and opposing counsel or unrepresented party.
 - b. Service of courtesy copies of trial documents including proposed jury instructions, witness lists, motions in limine jury questions and questionnaires and exhibit lists.
 - c. Service of any documents approved for distribution by electronic mail by a judicial officer presiding over a therapeutic court.
 - d. Notice to the court and opposing counsel or an unrepresented party on matters not involving the merits of a pending case including, for example, scheduling.
 - e. Emergency communications provided the procedures addressed in G. 4., above, are followed.

- Any communication authorized in advance for service by electronic mail must be simultaneously served on opposing counsel or unrepresented party.
- To the extent electronic mail is used to transmit pleadings to a judicial officer with prior approval, the electronic mail envelope and cover message may not be used to argue the merits of the pending matter or personally attack opposing counsel or party.
- Electronic mail addressed to opposing counsel or unrepresented party regarding the merits of a pending matter should not be copied to the judicial officer presiding on the matter.
- Neither a party nor a lawyer may communicate directly or indirectly with a judicial officer regarding a special circumstances case pending before that judicial officer.
- No lawyer or party to any civil action may communicate by electronic mail directly or indirectly with a judicial officer regarding a pending case without prior authorization from the judicial officer and notice to opposing counsel or unrepresented party.

(Amended, eff. 01-01-07)