

Public Comments: California Attorney Guidelines of Civility & Professionalism
June 21, 2007

	Commentator	Position	Comment on behalf of group? Name of Group	Comment
1.	Christine J. Kim, Deputy County Counsel, County of Tehama	A	N	The Guidelines are comprehensive and clear. Would like child dependency lawyers included in § 19
2.	Tom Lincoln, Attorney	A	N	They look good.
3.	David Casselmen, Attorney	A	N	Very nice work. Agrees with the intent. Short Version has insufficient direct focus on attorney/ attorney incivility early in the document. Long Version, p. 4, the wording of item i(2) seems questionable.
4.	Jonathan Weiss, Attorney	A	N	Saw two attorneys in court who demonstrated the sort of civility that brought the Guidelines to mind
5.	Linda A. Iannelli, Attorney	A	N	Thought the Guidelines are fine. Would like to see a guideline for civility at voluntary bar association events so that members promote civility, offer mentoring and introduce new participants.
6.	Jim Flanagan, Attorney	A	N	The Guidelines are common sense. Should be required in law school & continuing education and be published in general newspapers.
7.	J. Daniel Holsenback and Christopher Healey, Attorneys	A	N	Guidelines are well-written and show careful consideration of important issues. §9.b.3 should require inadvertently privileged documents be returned; consider adding language to encourage law firms to include professional and civil conduct in training for new lawyers, such as language adopted by the San Diego Association of Business Trial Lawyers.
8.	Corrine Bielejeski, Law Clerk to Hon. Jellen, U.S. Bankruptcy Court	A	N	The Guidelines cover a variety of subjects and cover them well. Comments on specific §§ are re grammar or formatting rather than substance.
9.	Jonathan G. Stein, Attorney	A	N	While he appreciates guidelines, he believes many will not follow them without an enforcement mechanism. Would like §21 revised to encourage courts to adopt the Guidelines as part of local rules. This would allow the Guidelines to have an impact on the legal community and practice of law.
10.	Clark Stone, President	A	Santa Clara County Bar Association (SCCBA)	SCCBA supports the Guidelines. SCCBA's use of its guidelines to positively influence the conduct of local attorneys in conjunction with the local bench, SCCBA recommends that the Bar promote the Guidelines as a model for local, specialty and minority bar associations to use and implement in the way most effective for them. It will help eliminate any impression that the Guidelines are part of the Bar's disciplinary rules or will be used for discipline or be promoted as a basis for sanctions. SCCBA's experience suggests that local implementation may be more effective than statewide implementation. Specific suggestions: Introduction, change "minimal" to "minimum" Rules of Professional Conduct and replace the last sentence with "Attorneys are encouraged to comply with both the spirit and letter of

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				these guidelines, recognizing that complying with these guidelines does not in any way denigrate the attorney's duty of zealous representation."; §4.b. should read "An attorney making statements of dissent or criticism made in public or private discussion for the purpose of improving the legal system or profession, or addressing perceived inadequacies should do so in good faith, with such statements having a factual basis."; §4.d. should add gender identity and other groups recognized by California state law; §9 3 rd sentence add "or parties" after "opposing counsel"; §9.a.4 & 5 seem out of place; §18, delete b entirely & delete 1 st sentence of c & change 2 nd sentence to: "If an attorney uses boilerplate language that is modified, the attorney should clearly identify... "; §19 1 st paragraph, substitute language from b. so that the 2 nd sentence reads: "..., an attorney should attempt to resolve disputes by agreement and should consider alternatives to litigation to resolve disputes. An attorney should also keep the best interest of the child in mind.", and delete (b) entirely; §20.a move to §4 and delete "by criticizing an opposing counsel."; delete §20.b.; §20.d add "in the best interests of the client." Alternative viewpoint opinion offered: language is overly general and broad; the Guidelines duplicate overlapping Rules of Professional Conduct and may lead to confusion; the Guidelines will result in a potential standards for discipline without appropriate substantive or procedural due process; attorneys are unlikely to substantially adhere to the Guidelines.
11.	Jason A. Bezis	A	N	Commends the task force. Short version is concise and will facilitate practitioners' internalization of the goals. However, the Guidelines will not reign in uncivil attorneys. Gives an example in unlawful detainer context and wants the Bar to discipline attorneys for the conduct as well as adopt Guidelines.
12.	Philip N. Andreen, Attorney	A	N	Should adopt 3 rules: 1) attorneys should not cite cases or introduce documents that they know cannot arguably be considered; 2) attorneys should not attempt to distract witnesses or attorney during deposition; 3) attorneys should attempt to respond within 2 days to opposing counsel's calls and emails.
13.	William Hansult, Attorney	A	N	Guidelines need "teeth", like court-issued sanctions. The Guidelines should address the situation where Lawyer A serves notice of nonavailability and yet lawyer B at the last minute files a draconian motion.
14.	Leonard J. Umina	A	N	Guidelines should be a cause of action and provide penalties for violation. He was served with a complaint on the Friday before Christmas, the worst time. Later the attorney was verbally abusive in

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				deposition. Professional rules need to be enforced against the treatment.
15.	John W. Amberg, Chair	NP	COPRAC	Although the task force changed proposed guidelines in response to COPRAC's feedback, the Guidelines are still too long, vague and confusing. They address topics already covered by the Rules of Professional Conduct, the State Bar Act, and existing civility codes of voluntary bar associations and courts. They appear to create duties that are inconsistent and tend to confuse, and may lead to unintended consequences. Substantial bodies of rules and statutes already occupy this field. To the extent the Guidelines duplicate existing rules, they will be confusing. The Guidelines set standards of communication and behavior that may be inconsistent with fiduciary duties to clients and the law. The Attorney Pledge is unnecessary. Assuming Guidelines will be adopted, COPRAC offers comments: Introduction change "minimal" to "minimum", and after "negligence" in the ¶3 insert "or breach of fiduciary duty, and after insert "and courts" in ¶4; reverse §§ 2 & 3; §4 imposition of standards of acceptable speech & thought re legal system, court, or other counsel should be rejected, the section should be deleted; §6 examples in e. & f. are vague & ambiguous & should be deleted; §9.a.9 adds nothing & should be deleted; §11 should say that nonparty witness should be treated in a civil manner consistent with the circumstances under which he/she is appearing; §12 unnecessary & should be deleted, but if it is not deleted "and" should be changed to "or"; §16 improperly seeks to impose duty of a court on the attorney & should be deleted; §19 vague & inconsistent & should be deleted.
16.	Gerald McNally, Attorney	NP	N	Opposes in any form but aspirational. These rules could be interpreted as a limit on an attorney's duty of zealous representation. We don't need a "nanny state".
17.	Patrick J. Byrne, Attorney	NP	N	Why is the long version so long & detailed? Most of the guidelines are common sense, at least to those of us with some gray hair, and were learned from senior partners over the years. Suggests a few adages to add.
18.	Scott L. Kays, President	NP	Cal. Judges Assoc.	Commends the task force for diligent efforts on critical issues. If the CJA board has comments, they will be forwarded.
19.	Karen M. Fletcher, J.D.	NP	N	Revise Calif. Rules of Civil Discovery & implement Federal Rules of Civil Procedure as federal rules require attorney to be more civil.
20.	Ronald Steven Mintz, Attorney	NP	N	Sent an example of uncivil conduct.
21.	Martin Grayson, Attorney	NP	N	Sent an article he wrote on the issue of civility.
22.	Stephanie Patterson, Investigator, Dept.	O	N	Disagrees with the proposal.

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	Consumer Affairs			
23.	Joseph L. Chairez, President, OCBA	O	Orange County Bar Association	Guidelines are not the best means to achieve civility goals. Local civility guidelines are more appropriate. Teaching civility should be left to law schools, local bar associations, and MCLE programs. With the State Bar's imprimatur, the guidelines are likely to be cited in an adversary context, and may be subverted into standards of conduct from which a standard of care arises. Guidelines duplicate existing rules or statutes and maybe inconsistent with them. Many of the guidelines are best left to local standards and to an extant body of law. Guidelines vague & duplicative, too long & conflicts w/local rules & procedures. Forward to the Rules Revision Commission for consideration. §§3 & 13 are overbroad; §18 should not direct an attorney as to how docs. should be written & transactions be documents; §§19 & 20 should not impose special duties upon lawyers
24.	Louisa Y. Lau, Chair	O	Professional Responsibility & Ethics Comm. of Los Angeles County Bar Association (LACBA's PRE Com)	Committee unanimously recommends against adoption. Concerned that the Guidelines will be used in disciplinary proceedings & civil litigation to establish a standard of care. "Should" and "should not" suggest obligations, not mere recommendations. Guidelines impose on all attorneys standards that may not be relevant. Local bar associations are in a better position to formulate civility standards. An extensive body of law already exists regarding conduct, and professional conduct standards should be left to those bodies of law. Civility is best taught in law schools, voluntary bar organizations, or MCLE. Forward the guidelines to the Rules Revision Commission to consider whether any of the proposals should be incorporated into ethics rules If Guidelines will be adopted, offers comments: Number of standards vague & open to conflicting interpretation. Long version is too long and detailed. Re-word to delete "should" and provide a recommendation rather than a command. Revise to ensure nonrepetitiveness and consistency with other standards of conduct. §2 should encourage lawyers to promote access to justice; §3 directs attorneys to give advisement even when unwarranted; §4 is overbroad and redundant; §8 assumes there is single issue & does not consider many rules of court which specify content of submissions; §9, it creates confusion to add guidelines that duplicate existing law; §10 requirement is already covered by existing law; §11is vague and of questionable value; §12 prohibition is covered by existing law, this will increase confusion; §13 imposes on all lawyers a standard intended only

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				for civil litigators; §16 proposal diverges from existing law, which places burden of disclosure upon judge or judicial officer; it should be referred for consideration by Rules Revision Comm. of State Bar; §18 is too broad, recommend as alternative “Attorneys should avoid making misleading statements to one another during the course of business transactions or litigation”; §§19,20 standard is vague & no guidance given; §21 since Bar has no jurisdiction over judiciary’s conduct, should avoid attempting to control their actions. Also, by asking judiciary to enforce Guidelines, would contribute to misconception that a violation is a basis for sanctions.
24.	Janet Levine, Pres.	O	LA Chapter of Fed. Bar Assoc.	Guidelines will not further the cause of justice. Adopt comments made by LACBA’s PRE Com. Doubt this is the appropriate mechanism to address the issue of lawyer civility.
26.	Robin Yeager, Chair	O	LACBA’s Individual Rights Section	Guidelines are not necessary. Concerned that voluntary civility guidelines may be used as a standard in prosecution & they will clash with lawyers’ 1 st Amendment rights to speak out.
27.	Patricia Daehnke, Chair	O	LACBA’s Litigation Section	Executive Committee unanimously recommends against adoption. Adopt comments made by LACBA’s PRE Com. The Guidelines do little to advance civility and would create confusion as lawyers bounce form one standards to another. The Attorney Pledge resembles loyalty oaths, and should be eliminated.
28.	Evan A. Jenness, Attorney	O	N	Opposes both versions. Even as advisory rules, these will increase the complexity of analyzing issues of professionalism and ethics, and promote confusion. Standards of attorney professionalism already established by myriad sources; Guidelines would serve as further fodder for disputes re claimed attorney misconduct; many of the standards of conduct in Guidelines quite vague and amenable to conflicting interpretation, specifically §§1,3,4,6,11,14,17,18,19 & Attorney’s Pledge; use of vague language in describing proscribed conduct creates potential for misuse and discriminatory application of Guidelines; some standards could be inconsistent with attorneys’ duties to their clients (as in §7 re service of papers); they appear to mostly address issues of concern to civil litigators; does not believe it appropriate to burden judges with reviewing and promoting Guidelines.
29.	Tim Jensen, Attorney	O	N	This will not change human behavior. It will create another layer of regulation for the unwary.
30.	G. Kirk Ellis, Attorney	O	N	Can only add to cost of legal representation.
31.	Tim Kelleher, Attorney	O	N	Unnecessary waste of time.