

**Twentieth Anniversary Judith N. Keep Federal Civil Practice Seminar
Judicial Perspectives on Civility and Ethics in High-Stakes Litigation**

October 16, 2024

Rules on Civility and Professionalism in Federal District Court

Civil Local Rule 2.1 Professionalism

a. Code of Conduct. The following Code of Conduct establishes the principles of civility and professionalism that will govern the conduct of all participants in cases and proceedings pending in this Court. It is to be construed in the broadest sense and governs conduct relating to such cases and proceedings, whether occurring in the presence of the Court or occurring outside of the presence of the Court. This Code of Conduct is not intended to be a set of rules that lawyers can use to incite ancillary litigation on the question whether the standards have been observed, but the Court may take any appropriate measure to address violations, including, without limitation, as set forth in Civil L. Rule 2.2.

1. Principles of Civility. To borrow from others who have considered the importance of civility in our state and federal courts, we should all understand that the law preserves our freedom, and it is the courts that preserve our laws. Fair, impartial and accessible courts are fundamental to the preservation of our democracy. We-- judges, lawyers, court staff, parties—all have a responsibility in ensuring that we preserve the legacy of this institution by conducting ourselves according to the Golden Rule—to treat others as we ourselves would like to be treated.

In seeking justice through the courts, attorneys and parties subject themselves to an inherently adversarial system. Although adversarial, the experience does not have to, and should not, be antagonistic or hostile. Civility is paramount and not to be confused with weakness. Civility in action and words is fundamental to the effective and efficient functioning of our system of justice and public confidence in that system.

The Federal Rules and this court's Local and Chambers' Rules serve as safeguards to ensure that the principles of equity and fairness govern the procedural course of all litigation. At the same time, these resources, without more, may not sufficiently quell incivility amongst those who litigate in this court. The Court has therefore adopted the following Code of Conduct. No one is above the law and, equally important, no one is entitled to act in such a way that erodes the public's trust in the administration of justice, impartiality, and the search for the truth. Civility should not only be aspirational, but rather it should be inherent within us all. Nevertheless, this Code of Conduct serves as the Court's reminder that we owe it to ourselves, one another, and our justice system to act in accordance with the principles of fairness and equal treatment that underpin the law of our land.

This court is committed to ensuring that all who work within it and come before it treat each other with decency, dignity, and respect. As such, the Court expects that all who practice in this court will adhere to this Code of Conduct in all of their interactions within the courts of this judicial district, in order to nurture, rather than tarnish, the practice of law and to maintain the public's faith in the legitimacy of our judicial system. The Court acknowledges the substantial work of the San Diego County Bar Association in developing the Association's Attorney Civility and Practice Guidelines, which this court has adopted, in substantial part, in this Code of Conduct.

2. Duties Owed to the Court

- a) We expect lawyers to be courteous and respectful to the Court and all court and court-related personnel.
- b) We expect lawyers arguing for an extension of existing law to clearly state that fact and why.
- c) We expect lawyers appearing in court to dress neatly and appropriately and encourage their clients to do the same.
- d) We expect lawyers to be on time and adhere to time constraints.
- e) We expect lawyers to be prepared for all court appearances.
- f) We expect lawyers to attempt to resolve disputes promptly, fairly and reasonably, with resort to the Court for judicial relief only if necessary.
- g) We expect lawyers to discourage and refuse to accept a role in litigation that is meritless or designed primarily to harass or drain the financial resources of the opposing party.
- h) We expect lawyers to honor and maintain the integrity of our justice system, including by not impugning the integrity of its proceedings, or its members.

3. Duties Owed to Other Lawyers, Parties and Witnesses.

- a) We expect lawyers to address legal arguments with other lawyers professionally, and not personally.
- b) We expect lawyers to treat adverse witnesses, litigants and opposing counsel with courtesy, fairness and respect.
- c) We expect lawyers to conduct themselves in the discovery process as if a judicial officer were present.
- d) We expect lawyers to not arbitrarily or unreasonably withhold consent to a reasonable request for cooperation or accommodation.
- e) We expect lawyers to refrain from attributing to an opponent a position the opponent has not clearly taken.

- f) We expect lawyers to be accurate in written communications intended to make a record.
- g) We expect lawyers to refrain from proposing a stipulation in the presence of the Court or trier of fact unless the other parties have previously agreed to it.
- h) We expect lawyers to refrain from interrupting an opponent’s legal argument unless making an appropriate objection for a legitimate basis.
- i) We expect lawyers in court to address opposing lawyers through the Court.
- j) We expect lawyers to seek sanctions sparingly, and not to obtain a tactical advantage or for any other improper purpose.
- k) We expect lawyers to refrain from seeking to disqualify opposing counsel for any improper purpose or for any reason not supported by fact or law.
- l) We expect lawyers to encourage other lawyers to conform to the standards in this Code of Conduct.
- m) We expect lawyers to conduct themselves so that they may conclude each case amicably with the opposing party.

Civil Local Rule 2.2 Discipline

a. General. In the event any attorney engages in conduct which may warrant discipline or other sanctions, the Court or any judge may, in addition to initiating proceedings for contempt under Title 18 U.S.C. 401 and Rule 42, Fed. R. Crim.P., or imposing other appropriate sanctions, refer the matter to the disciplinary body of any court before which the attorney has been admitted to practice.

[. . .]

c. The Standing Committee on Discipline. The Court will appoint from time to time, by an order entered in its minutes, a “Standing Committee on Discipline” consisting of a least five members of the bar and will designate one of the members to serve as chairperson of the committee. The members of the committee will continue in office for a period of two years or until further order of the Court.

Federal Rule of Civil Procedure 11 – Signing Pleadings, Motions, and Other Papers; Representations to the Court; Sanctions

(a) SIGNATURE. Every pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney's name—or by a party personally if the party is unrepresented. The paper must state the signer's address, e-mail address, and telephone number. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an

affidavit. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention.

(b) REPRESENTATIONS TO THE COURT. By presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

Federal Rules of Civil Procedure 16 – Pretrial Conferences; Scheduling Management

(f) SANCTIONS.

(1) *In General.* On motion or on its own, the court may issue any just orders, including those authorized by [Rule 37\(b\)\(2\)\(A\)\(ii\)](#)–(vii), if a party or its attorney:

(A) fails to appear at a scheduling or other pretrial conference;

(B) is substantially unprepared to participate—or does not participate in good faith—in the conference; or

(C) fails to obey a scheduling or other pretrial order.

(2) *Imposing Fees and Costs.* Instead of or in addition to any other sanction, the court must order the party, its attorney, or both to pay the reasonable expenses—including attorney's fees—incurred because of any noncompliance with this rule, unless the noncompliance was substantially justified or other circumstances make an award of expenses unjust.

Federal Rules of Civil Procedure 26 – Duty to Disclose; General Provisions Governing Discovery

(g) SIGNING DISCLOSURES AND DISCOVERY REQUESTS, RESPONSES, AND OBJECTIONS.

(1) *Signature Required; Effect of Signature.* Every disclosure under Rule 26(a)(1) or (a)(3) and every discovery request, response, or objection must be signed by at least one attorney of record in the attorney's own name—or by the party personally, if unrepresented—and must state the signer's address, e-mail address, and telephone number. By signing, an attorney or

party certifies that to the best of the person's knowledge, information, and belief formed after a reasonable inquiry:

(A) with respect to a disclosure, it is complete and correct as of the time it is made; and

(B) with respect to a discovery request, response, or objection, it is:

(i) consistent with these rules and warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law, or for establishing new law;

(ii) not interposed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; and

(iii) neither unreasonable nor unduly burdensome or expensive, considering the needs of the case, prior discovery in the case, the amount in controversy, and the importance of the issues at stake in the action.

(2) *Failure to Sign.* Other parties have no duty to act on an unsigned disclosure, request, response, or objection until it is signed, and the court must strike it unless a signature is promptly supplied after the omission is called to the attorney's or party's attention.

(3) *Sanction for Improper Certification.* If a certification violates this rule without substantial justification, the court, on motion or on its own, must impose an appropriate sanction on the signer, the party on whose behalf the signer was acting, or both. The sanction may include an order to pay the reasonable expenses, including attorney's fees, caused by the violation.

Federal Rules of Civil Procedure 30 - Depositions by Oral Examination

(d) DURATION; SANCTION; MOTION TO TERMINATE OR LIMIT.

[. . .]

(2) *Sanction.* The court may impose an appropriate sanction—including the reasonable expenses and attorney's fees incurred by any party—on a person who impedes, delays, or frustrates the fair examination of the deponent.

Federal Rules of Civil Procedure 37 - Failure to Make Disclosures or to Cooperate in Discovery; Sanctions

(a) MOTION FOR AN ORDER COMPELLING DISCLOSURE OR DISCOVERY.

(1) *In General.* On notice to other parties and all affected persons, a party may move for an order compelling disclosure or discovery. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action.

(2) *Appropriate Court.* A motion for an order to a party must be made in the court where the action is pending. A motion for an order to a nonparty must be made in the court where the discovery is or will be taken.

(3) *Specific Motions.*

(A) *To Compel Disclosure.* If a party fails to make a disclosure required by [Rule 26\(a\)](#), any other party may move to compel disclosure and for appropriate sanctions.

(B) *To Compel a Discovery Response.* A party seeking discovery may move for an order compelling an answer, designation, production, or inspection. This motion may be made if:

(i) a deponent fails to answer a question asked under [Rule 30](#) or [31](#);

(ii) a corporation or other entity fails to make a designation under [Rule 30\(b\)\(6\)](#) or [31\(a\)\(4\)](#);

(iii) a party fails to answer an interrogatory submitted under [Rule 33](#); or

(iv) a party fails to produce documents or fails to respond that inspection will be permitted—or fails to permit inspection—as requested under [Rule 34](#).

(C) *Related to a Deposition.* When taking an oral deposition, the party asking a question may complete or adjourn the examination before moving for an order.

(4) *Evasive or Incomplete Disclosure, Answer, or Response.* For purposes of this subdivision (a), an evasive or incomplete disclosure, answer, or response must be treated as a failure to disclose, answer, or respond.

(5) *Payment of Expenses; Protective Orders.*

(A) *If the Motion Is Granted (or Disclosure or Discovery Is Provided After Filing).* If the motion is granted—or if the disclosure or requested discovery is provided after the motion was filed—the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees. But the court must not order this payment if:

(i) the movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action;

(ii) the opposing party's nondisclosure, response, or objection was substantially justified; or

(iii) other circumstances make an award of expenses unjust.

(B) *If the Motion Is Denied.* If the motion is denied, the court may issue any protective order authorized under [Rule 26\(c\)](#) and must, after giving an opportunity to be heard, require the movant, the attorney filing the motion, or both to pay the party or deponent who opposed the motion its reasonable expenses incurred in opposing the motion, including attorney's fees. But the court must not order this payment if the motion was substantially justified or other circumstances make an award of expenses unjust.

(C) *If the Motion Is Granted in Part and Denied in Part.* If the motion is granted in part and denied in part, the court may issue any protective order authorized under [Rule 26\(c\)](#) and may, after giving an opportunity to be heard, apportion the reasonable expenses for the motion.

(b) FAILURE TO COMPLY WITH A COURT ORDER.

(1) *Sanctions Sought in the District Where the Deposition Is Taken.* If the court where the discovery is taken orders a deponent to be sworn or to answer a question and the deponent fails to obey, the failure may be treated as contempt of court. If a deposition-related motion is transferred to the court where the action is pending, and that court orders a deponent to be sworn or to answer a question and the deponent fails to obey, the failure may be treated as contempt of either the court where the discovery is taken or the court where the action is pending.

(2) *Sanctions Sought in the District Where the Action Is Pending.*

(A) *For Not Obeying a Discovery Order.* If a party or a party's officer, director, or managing agent—or a witness designated under [Rule 30\(b\)\(6\)](#) or [31\(a\)\(4\)](#)—fails to obey an order to provide or permit discovery, including an order under [Rule 26\(f\)](#), [35](#), or [37\(a\)](#), the court where the action is pending may issue further just orders. They may include the following:

- (i) directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims;
- (ii) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;
- (iii) striking pleadings in whole or in part;
- (iv) staying further proceedings until the order is obeyed;
- (v) dismissing the action or proceeding in whole or in part;
- (vi) rendering a default judgment against the disobedient party; or
- (vii) treating as contempt of court the failure to obey any order except an order to submit to a physical or mental examination.

(B) *For Not Producing a Person for Examination.* If a party fails to comply with an order under [Rule 35\(a\)](#) requiring it to produce another person for examination, the court may issue any of the orders listed in [Rule 37\(b\)\(2\)\(A\)\(i\)](#)—(vi), unless the disobedient party shows that it cannot produce the other person.

(C) *Payment of Expenses.* Instead of or in addition to the orders above, the court must order the disobedient party, the attorney advising that party, or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

(c) FAILURE TO DISCLOSE, TO SUPPLEMENT AN EARLIER RESPONSE, OR TO ADMIT.

(1) *Failure to Disclose or Supplement.* If a party fails to provide information or identify a witness as required by [Rule 26\(a\)](#) or (e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless. In addition to or instead of this sanction, the court, on motion and after giving an opportunity to be heard:

(A) may order payment of the reasonable expenses, including attorney's fees, caused by the failure;

(B) may inform the jury of the party's failure; and

(C) may impose other appropriate sanctions, including any of the orders listed in [Rule 37\(b\)\(2\)\(A\)\(i\)](#)—(vi).

(2) *Failure to Admit.* If a party fails to admit what is requested under [Rule 36](#) and if the requesting party later proves a document to be genuine or the matter true, the requesting party may move that the party who failed to admit pay the reasonable expenses, including attorney's fees, incurred in making that proof. The court must so order unless:

(A) the request was held objectionable under [Rule 36\(a\)](#);

(B) the admission sought was of no substantial importance;

(C) the party failing to admit had a reasonable ground to believe that it might prevail on the matter; or

(D) there was other good reason for the failure to admit.

(d) PARTY'S FAILURE TO ATTEND ITS OWN DEPOSITION, SERVE ANSWERS TO INTERROGATORIES, OR RESPOND TO A REQUEST FOR INSPECTION.

(1) *In General.*

(A) *Motion; Grounds for Sanctions.* The court where the action is pending may, on motion, order sanctions if:

(i) a party or a party's officer, director, or managing agent—or a person designated under [Rule 30\(b\)\(6\)](#) or [31\(a\)\(4\)](#)—fails, after being served with proper notice, to appear for that person's deposition; or

(ii) a party, after being properly served with interrogatories under [Rule 33](#) or a request for inspection under [Rule 34](#), fails to serve its answers, objections, or written response.

(B) *Certification.* A motion for sanctions for failing to answer or respond must include a certification that the movant has in good faith conferred or attempted to confer with the party failing to act in an effort to obtain the answer or response without court action.

(2) *Unacceptable Excuse for Failing to Act.* A failure described in [Rule 37\(d\)\(1\)\(A\)](#) is not excused on the ground that the discovery sought was objectionable, unless the party failing to act has a pending motion for a protective order under [Rule 26\(c\)](#).

(3) *Types of Sanctions.* Sanctions may include any of the orders listed in [Rule 37\(b\)\(2\)\(A\)\(i\)](#)—(vi). Instead of or in addition to these sanctions, the court must require the party failing to act, the attorney advising that party, or both to pay the reasonable expenses,

including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

(e) FAILURE TO PRESERVE ELECTRONICALLY STORED INFORMATION. If electronically stored information that should have been preserved in the anticipation or conduct of litigation is lost because a party failed to take reasonable steps to preserve it, and it cannot be restored or replaced through additional discovery, the court:

(1) upon finding prejudice to another party from loss of the information, may order measures no greater than necessary to cure the prejudice; or

(2) only upon finding that the party acted with the intent to deprive another party of the information's use in the litigation may:

(A) presume that the lost information was unfavorable to the party;

(B) instruct the jury that it may or must presume the information was unfavorable to the party; or

(C) dismiss the action or enter a default judgment.

(f) FAILURE TO PARTICIPATE IN FRAMING A DISCOVERY PLAN. If a party or its attorney fails to participate in good faith in developing and submitting a proposed discovery plan as required by [Rule 26\(f\)](#), the court may, after giving an opportunity to be heard, require that party or attorney to pay to any other party the reasonable expenses, including attorney's fees, caused by the failure.

Federal Rules of Civil Procedure 56 – Summary Judgment

(h) AFFIDAVIT OR DECLARATION SUBMITTED IN BAD FAITH. If satisfied that an affidavit or declaration under this rule is submitted in bad faith or solely for delay, the court — after notice and a reasonable time to respond — may order the submitting party to pay the other party the reasonable expenses, including attorney's fees, it incurred as a result. An offending party or attorney may also be held in contempt or subjected to other appropriate sanctions.

28 U.S. Code § 1927 - Counsel's liability for excessive costs

Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.

Rules on Civility and Professionalism in State Appellate Practice

California Code of Civil Procedure § 907

When it appears to the reviewing court that the appeal was frivolous or taken solely for delay, it may add to the costs on appeal such damages as may be just.

California Rule of Court 8.276. Sanctions

(a) Grounds for sanctions

On motion of a party or its own motion, a Court of Appeal may impose sanctions, including the award or denial of costs under rule 8.278, on a party or an attorney for:

- (1) Taking a frivolous appeal or appealing solely to cause delay;
- (2) Including in the record any matter not reasonably material to the appeal's determination;
- (3) Filing a frivolous motion; or
- (4) Committing any other unreasonable violation of these rules.

(Subd (a) amended and relettered effective January 1, 2008; adopted as subd (e); previously amended effective January 1, 2007.)

(b) Motions for sanctions

- (1) A party's motion under (a) must include a declaration supporting the amount of any monetary sanction sought and must be served and filed before any order dismissing the appeal but no later than 10 days after the appellant's reply brief is due.
- (2) If a party files a motion for sanctions with a motion to dismiss the appeal and the motion to dismiss is not granted, the party may file a new motion for sanctions within 10 days after the appellant's reply brief is due.

(Subd (b) amended and lettered effective January 1, 2008; adopted as part of subd (e); previously amended effective January 1, 2007.)

(c) Notice

The court must give notice in writing if it is considering imposing sanctions.

(Subd (c) amended and lettered effective January 1, 2008; adopted as part of subd (e); previously amended effective January 1, 2007.)

(d) Opposition

Within 10 days after the court sends such notice, a party or attorney may serve and file an opposition, but failure to do so will not be deemed consent. An opposition may not be filed unless the court sends such notice.

(Subd (d) amended and lettered effective January 1, 2008; adopted as part of subd (e); previously amended effective January 1, 2007.)

(e) Oral argument

Unless otherwise ordered, oral argument on the issue of sanctions must be combined with oral argument on the merits of the appeal.

(Subd (e) amended and lettered effective January 1, 2008; adopted as part of subd (e); previously amended effective January 1, 2007.)

Rule 8.276 amended effective January 1, 2008; repealed and adopted as rule 27 effective January 1, 2003; previously amended and renumbered effective January 1, 2007.

California Code of Civil Procedure § 904.1

(a) An appeal, other than in a limited civil case, is to the court of appeal. An appeal, other than in a limited civil case, may be taken from any of the following:

- (1) From a judgment, except an interlocutory judgment, other than as provided in paragraphs (8), (9), and (11), or a judgment of contempt that is made final and conclusive by Section 1222.
- (2) From an order made after a judgment made appealable by paragraph (1).
- (3) From an order granting a motion to quash service of summons or granting a motion to stay the action on the ground of inconvenient forum, or from a written order of dismissal under Section 581d following an order granting a motion to dismiss the action on the ground of inconvenient forum.
- (4) From an order granting a new trial or denying a motion for judgment notwithstanding the verdict.
- (5) From an order discharging or refusing to discharge an attachment or granting a right to attach order.
- (6) From an order granting or dissolving an injunction, or refusing to grant or dissolve an injunction.
- (7) From an order appointing a receiver.
- (8) From an interlocutory judgment, order, or decree, made or entered in an action to redeem real or personal property from a mortgage thereof, or a lien thereon, determining the right to redeem and directing an accounting.

(9) From an interlocutory judgment in an action for partition determining the rights and interests of the respective parties and directing partition to be made.

(10) From an order made appealable by the Probate Code or the Family Code.

(11) From an interlocutory judgment directing payment of monetary sanctions by a party or an attorney for a party if the amount exceeds five thousand dollars (\$5,000).

(12) From an order directing payment of monetary sanctions by a party or an attorney for a party if the amount exceeds five thousand dollars (\$5,000).

(13) From an order granting or denying a special motion to strike under Sections 425.16 and 425.19.

(14) From a final order or judgment in a bifurcated proceeding regarding child custody or visitation rights.

(b) Sanction orders or judgments of five thousand dollars (\$5,000) or less against a party or an attorney for a party may be reviewed on an appeal by that party after entry of final judgment in the main action, or, at the discretion of the court of appeal, may be reviewed upon petition for an extraordinary writ.