

Pro Se, You Say? No Way!

Navigating Cases with Self-Represented Litigants

**The Anthony M. Kennedy American Inn of Court
Team 4**

Select Legal Authorities

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The Anthony M. Kennedy Inn of Court certifies that this activity has been approved for MCLE credit by the State Bar of California.

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CALIFORNIA RULES OF PROFESSIONAL CONDUCT

Rule 1.3 Diligence:

(a) A lawyer shall not intentionally, repeatedly, recklessly or with gross negligence fail to act with reasonable diligence in representing a client.

(b) For purposes of this rule, “reasonable diligence” shall mean that a lawyer acts with commitment and dedication to the interests of the client and does not neglect or disregard, or unduly delay a legal matter entrusted to the lawyer.

Rule 4.1 Truthfulness in Statements to Others:

In the course of representing a client a lawyer shall not knowingly:

(a) make a false statement of material fact or law to a third person; or

(b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Business and Professions Code section 6068, subdivision (e)(1) or rule 1.6.

Rule 4.3 Communicating with an Unrepresented Person:

(a) In communicating on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person incorrectly believes the lawyer is disinterested in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. If the lawyer knows or reasonably should know that the interests of the unrepresented person are in conflict with the interests of the client, the lawyer shall not give legal advice to that person, except that the lawyer may, but is not required to, advise the person to secure counsel.

(b) In communicating on behalf of a client with a person who is not represented by counsel, a lawyer shall not seek to obtain privileged or other confidential information the lawyer knows or reasonably should know the person may not reveal without violating a duty to another or which the lawyer is not otherwise entitled to receive.

CALIFORNIA CODE OF JUDICIAL ETHICS

CANON 2 - A JUDGE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL OF THE JUDGE'S ACTIVITIES

...

C. Membership in Organizations

A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, gender, gender identity, gender expression, religion, national origin, ethnicity, or sexual orientation. This canon does not apply to membership in a religious organizations.

CANON 3 – A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY, COMPETENTLY, AND DILIGENTLY

A. Judicial Duties in General

All of the judicial duties prescribed by law shall take precedence over all other activities of every judge. In the performance of these duties, these standards apply.

B. Adjudicative Responsibilities

(1) A judge shall hear and decide all matters assigned to the judge except those in which he or she is disqualified.

(2) A judge shall be faithful to the law regardless of partisan interests, public clamor, or fear of criticism, and shall maintain professional competence in the law.

(3) A judge shall require order and decorum in proceedings before the judge.

(4) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers and of all staff and court personnel under the judge's direction and control.

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, engage in speech, gestures, or other conduct that would reasonably be perceived as (a) bias, prejudice, or harassment based upon race, sex, gender, gender identity, gender expression, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, or (b) sexual harassment.

(6) A judge shall require lawyers in proceedings before the judge to refrain from (a) manifesting, by words or conduct, bias, prejudice, or harassment based upon race, sex, gender, gender identity, gender expression, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, or (b) sexual harassment against parties, witnesses, counsel, or others. This canon does not preclude legitimate advocacy when race, sex, gender, gender identity, gender expression, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, political affiliation, or other similar factors are issues in the proceeding.

...

(8) A judge shall dispose of all judicial matters fairly, promptly, and efficiently. A judge shall manage the courtroom in a manner that provides all litigants the opportunity to have their matters fairly adjudicated in accordance with the law.

C. Administrative Responsibilities

(1) A judge shall diligently discharge the judge's administrative responsibilities impartially, on the basis of merit, without bias or prejudice, free of conflict of interest, and in a manner that promotes public confidence in the integrity of the judiciary. A judge shall not, in the performance of administrative duties, engage in speech, gestures, or other conduct that would reasonably be perceived as (a) bias, prejudice, or harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, gender identity, gender expression, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, or (b) sexual harassment.

...

(3) A judge shall require staff and court personnel under the judge's direction and control to observe appropriate standards of conduct and to refrain from (a) manifesting bias, prejudice, or harassment based upon race, sex, gender, gender identity, gender expression, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, or (b) sexual harassment in the performance of their official duties.

STATUTES

California Business & Professions Code § 6068:

It is the duty of an attorney to do all of the following:

- (a) To support the Constitution and laws of the United States and of this state.
- (b) To maintain the respect due to the courts of justice and judicial officers.
- (c) To counsel or maintain those actions, proceedings, or defenses only as appear to him or her legal or just, except the defense of a person charged with a public offense. ...

ARTICLES/OTHER RELEVANT RESOURCES

Davis G. Yee, *The Professional Responsibility of Fair Play When Dealing with a Pro Se Adversary*, South Carolina Law Review, Volume 69, Issue 2 (Winter 2017)

<https://scholarcommons.sc.edu/sclr/vol69/iss2/4/>

Cynthia Gray, *Reaching out or Overreaching: Judicial Ethics and Self-Represented Litigants*, 27 J. Nat'l Ass'n Admin. L. Judiciary Iss. 1 (2007)

<https://digitalcommons.pepperdine.edu/naalj/vol27/iss1/4>

The Judicial Ethics Committee of the California Judges Association, *Ethical Issues for Judges When Self-Represented Litigants Appear in Court (CANONS 3B & 2A)*, Opinion No. 76 Addendum (December 2018)

<https://www.caljudges.org/docs/Ethics%20Opinions/Op%2076%20Final.pdf>

Judicial Council of California, *Handling Cases Involving Self-Represented Litigants*
A BENCHGUIDE FOR JUDICIAL OFFICERS (APRIL 2019)

https://www4.courts.ca.gov/partners/documents/benchguide_self_rep_litigants.pdf