

## Finger Wag At Rude Judge Reminds Calif. Jurists To Stay Civil

By Erin Coe

*Law360, San Diego (May 15, 2014, 11:09 PM ET)* -- The California Commission on Judicial Performance admonished a retired Los Angeles judge Tuesday for belittling lawyers with sarcastic remarks, and attorneys say the public rebuke should remind jurists that they can maintain courtroom order and crack down on difficult lawyers without resorting to rude behavior that risks eroding public trust in the judicial system.

The commission on Tuesday issued a public admonishment letter against Los Angeles County Superior Court Judge Ronald M. Sohigian, saying his sarcasm in two recent cases before he retired in April was inconsistent with the judge's duty to be "patient, dignified and courteous." In one case where an attorney asked Judge Sohigian in 2011 to explain why his objection was overruled, the judge said, "I'll explain it to you sometime when you pay tuition." In another case, the judge accused plaintiff's counsel of gamesmanship in an unopposed motion for continuance based on the plaintiff's pregnancy.

"This case indicates that judges shouldn't let their personal reactions to lawyers be manifested in court," said Rex Heinke, co-head of Akin Gump Strauss Hauer & Feld LLP's Supreme Court and appellate practice. "Sometimes judges are rightly frustrated by lawyers, but part of the job of being a judge is not letting that show. Judges can't be sarcastic or demeaning in court."

Last year, the commission took final action on 1,181 complaints filed against California judges, 29 more than it dealt with in the previous year, according to its annual report in April. Out of those, 1,061 complaints were closed after the initial review and 120 cases proceeded. For the cases that continued, only 30 led to disciplinary action, of which only two resulted in public discipline.

Judges who are known for being discourteous, impatient, rude or curt are fortunately a rare breed in California, attorneys say, but those who have a less than shining judicial demeanor can pose problems for the attorneys, their clients and the public at large.

"Being sarcastic or belittling counsel severely undermines the confidence of litigants, lawyers and the rest of the public of the evenhandedness and fairness of courts," Heinke said. "It also discourages lawyers from vigorously representing their client."

A very small percentage of judges are guilty of unprofessional off-the-cuff comments in the courtroom when they should be comporting themselves with the highest level of professionalism, according to John Worden, a partner at Schiff Hardin LLP.

“Anything that suggests a lack of objectivity by the judge is a cause for concern,” he said. “If the judge is making comments that are sarcastic or are of a personal nature, it suggests that the judge— whom we assume is making rulings without passion, prejudice, bias or capriciousness — is not focusing his powers in that direction ... and that the judge is not being as objective as he could be.”

At the same time, lawyers say they expect judges to maintain control of their courtroom and put lawyers on notice who are unprepared or unprofessional.

“Judges don’t have to sit on the bench and smile and let counsel say whatever they want,” Heinke said. “Lawyers expect judges to ask them tough questions, to push back against what counsel is arguing and be skeptical, even if that makes the lawyers uncomfortable as well as their clients. It’s a question of how judges say these things. They can say that an argument is wrong or that they disagree or that they aren’t persuaded, but they can’t say, ‘That’s the most ridiculous thing I’ve ever heard.’ They can’t say that, no matter how stupid the argument may sound.”

When lawyers are late, sloppy or discourteous, Worden said he wants judges to take those lawyers to task. He said San Francisco County Superior Court Presiding Judge Cynthia Ming-mei Lee, for instance, does a good job of appropriately reminding lawyers when they fall short of their professional obligations.

“If lawyers are late, she reminds them of the other people that are waiting for them, and if they are unprepared, she encourages them to be more prepared in the future,” he said. “Her comments aren’t sarcastic, ad hominem or personal in nature.”

If their case is assigned to a judge who has a reputation for having a bad temperament, attorneys have the right to “paper” or automatically disqualify the judge without any showing of cause, but they only get one opportunity in a case and must do so within a short time period, according to Michael Paul Thomas of the Law Office of Michael Paul Thomas.

“Some judges are known for getting papered, particularly those with reputations for being discourteous or difficult to work with,” he said.

Rude judges are doing themselves no favors, especially if they seek to work as private decision-makers after their time serving on the bench, according to Christopher Wesierski of Wesierski & Zurek LLP. He recalled one case where a judge threatened to throw him in jail for refusing to budge on his position in the settlement of the matter, and then years later when the judge retired, he asked Wesierski about whether there were any cases he could serve as a mediator.

“Judges who belittle, demean or treat lawyers with sarcasm are not encouraging future work from lawyers if they want to be a mediator after their career as a judicial officer,” he said. “From a business standpoint, that behavior is not helping judges in any way.”

When an attorney is continuing to argue after a judge has ruled, a judge can yell at the lawyer, warn the lawyer, tell the bailiff to remove the lawyer or leave the bench, according to Thomas.

“Judges always have options on how to handle their courtroom, but the question is which option is the judge going to take,” he said. “Judges can be assertive and in control without having to be rude or intemperate.”

Living under the constant glare of social media, judges can't afford to lose their cool in court, according to Worden.

"Anything a judge does is going to be in the limelight and will be judged by others," he said. "If judges don't comport to the highest level of professionalism, we are all going to hear about it immediately."

--Additional reporting by Michael Lipkin. Editing by Elizabeth Bowen.

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