The State Bar of California

Attorney Civility: Proposed Amendments to the MCLE Rules, Rule of Court 9.7, and the Rules of Professional Conduct

Council on Access and Fairness, December 9, 2022

Presentation Overview

1. Provide an overview of the California Civility Task Force Recommendations
2. Discuss proposed revisions to the State Bar Rules regarding the minimum continuing legal education (MCLE) course requirements
3. Discuss proposed revisions to the California Rules of Professional Conduct issued for public comment
4. Discuss proposed revisions to California Rules of Court, rule 9.7 issued for public comment

Report & Recommendations

The California Civility Task Force Report

- The California Civility Task Force (CCTF) is a joint project of the California Judges Association and the California Lawyers Association

- CCTF reported that:
  - Incivility increases:
    - stress and job dissatisfaction among lawyers and judges; and
    - costs and delays in litigation and legal transactions, thereby increasing costs for the public.
  - Incivility can be a manifestation of bias.

CCTF Recommendations

Three Recommendations Affecting Attorneys

1. Require one hour of MCLE for civility training;
2. Revise the Rules of Professional Conduct to address incivility; and
3. Require all lawyers to take the civility pledge.

Proposed Amendments to the MCLE Requirements

Current vs. Proposed State Bar Rule 2.72 Requirements

CURRENT MCLE REQUIREMENTS

25 hours of MCLE credit every 36 months, including:

- ✓ 4 hours of legal ethics
- ✓ 2 hours on recognition and elimination of bias, including 1 hour of implicit bias
- ✓ 1 hour of competency issues (substance abuse or other issues impairing a licensee).

PROPOSED MCLE REQUIREMENTS

25 hours of MCLE credit every 36 months, including:

- ✓ 4 hours of legal ethics
- ✓ 2 hours on recognition and elimination of bias, including 1 hour of implicit bias
- ✓ 2 hours of competency issues, including 1 hour of prevention and detection
- ✓ 1 hour of technology in the practice of law
- ✓ 1 hour of civility in the legal profession

Proposed New State Bar Rule 2.84

MCLE credit for mock trial and moot court activities

- Participatory MCLE credit for coaching students, servings as an attorney scorer, and/or presiding judge over mock trial and moot court competitions at the high school, collegiate level, and law school level
- Up to 2 hours of general credit during a compliance period

Proposed Amendments to the Rules of Professional Conduct

Proposed Amendments to Rule 1.2 Comment [1]

Rule 1.2 addresses the allocation of authority within a lawyer-client relationship.

" . . . Notwithstanding a client's direction, a lawyer retains the authority to agree to reasonable requests of opposing counsel that do not prejudice the rights of the client, be punctual in fulfilling all professional commitments, avoid offensive tactics, and treat all persons involved in the legal process with dignity, courtesy, and integrity. . . ."

Proposed Amendments to Rule 8.4 Comment [4]

Rule 8.4: Misconduct

Amendments to Comment [4] provide a cross-reference to proposed new standalone rule addressing incivility, rule 8.4.2.

Proposed Amendments to Rule 8.4 Comment [6]

Rule 8.4(d): It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

"[6] A violation of paragraph (d) includes engaging in significantly unprofessional conduct that is abusive or harassing in the practice of law or related professional activities. A lawyer does not violate paragraph (d) by standing firm in the position of the client, protecting the record for subsequent review, or preserving professional integrity.

For further guidance, a lawyer should consult the current California Attorney Guidelines of Civility and Professionalism and other applicable civility authorities."

Proposed New Rule of Professional Conduct 8.4.2

Rule 8.4.2 Prohibited Incivility

(a) In representing a client, a lawyer shall not engage in incivility in the practice of law or related professional activities.

(b) For purposes of this rule, “incivility” means significantly unprofessional conduct that is abusive or harassing and shall be determined on the basis of all the facts and circumstances surrounding the conduct.

Proposed New Rule of Professional Conduct 8.4.2

Comment

- Directs lawyers to consult the current California Attorney Guidelines of Civility and Professionalism and other applicable civility authorities;
- Describes conduct that would not violate the rule;
- Indicates that a violation of rule 8.4.2 may also violate rule 8.4(d) (Misconduct) and/or the State Bar Act; and
- Clarifies that the rule does not apply to conduct protected by the First Amendment.

Proposed Amendments to Rule of Court 9.7

Current Attorney Oath

- **California Rules of Court, rule 9.7**
  - Since June 2014, has required all attorneys to take the attorney oath with civility language:

    > I, (licensee name) solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of California, and that I will faithfully discharge the duties of any attorney and counselor at law to the best of my knowledge and ability. **As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy and integrity.**
- **Total licensees:**
  - **Approx. 237,000 licensees (150,000 active) who took the oath without civility language**
  - **Approx. 48,000 licensees who took the oath with the civility language**

Rule of Court 9.7

Proposed amendments issued for public comment

- By February 1, 2024, licensees who did not take the oath with the civility language and specially admitted attorneys must submit a declaration with the civility pledge language.
- Annual requirement to take the civility pledge when paying licensing fees or registration.