



The State Bar of California

OPEN SESSION AGENDA ITEM 60-4 MAY 2023

DATE: May 18, 2023

TO: Members, Board of Trustees
Sitting as the Regulation and Discipline Committee

FROM: Erika Doherty, Program Director, Office of Professional Competence

SUBJECT: Proposed Rule Amendments Based on Recommendations by the California Civility Task Force (Rule of Court 9.7 and Rules of Professional Conduct 1.2, 8.4, and New Rule 8.4.2): Request to Circulate for Second Public Comment Period

EXECUTIVE SUMMARY

At its November 17, 2022, meeting, the Board authorized for a 60-day public comment period proposed rule changes based on recommendations of the California Civility Task Force (CCTF), including amendments to California Rules of Court, rule 9.7 to require lawyers to annually affirm or reaffirm their civility oath and to the Rules of Professional Conduct to make incivility a basis for discipline.¹ At its January 19, 2023 meeting, the Board extended the public comment period to 90 days.

The State Bar received 60 public comments on the proposed amendments to rule 9.7. In response to the public comments received, staff recommends revisions to the proposed amendments to rule 9.7 that would require all licensees and special admissions attorneys to submit a one-time declaration affirming their commitment to civility and to reaffirm the civility pledge on an annual basis. Staff also recommends a new State Bar Rule that would provide for implementation of the changes to rule 9.7, if ultimately adopted.

The State Bar received 65 comments on the proposed amendments to the Rules of Professional Conduct. In response to the public comments, staff recommends revisions to the proposed

¹ These recommendations are provided in CCTF's initial report, "[Beyond the Oath: Recommendations for Improving Civility](#)" and also included a proposed new civility training requirement for Minimum Continuing Legal Education (MCLE).

amendments to rules 1.2 and 8.4 and proposed new rule 8.4.2. These changes include limiting the rules to address incivility occurring in the practice of law and other clarifying changes.

Should the Board approve these recommended revisions, staff requests that the Board authorize proposed Rules of Professional Conduct 1.2, 8.4, and 8.4.2 and Rule of Court 9.7 for an additional 30-day public comment period. Additionally, staff requests that the Board authorize proposed State Bar Rule 2.3 for a 30-day public comment.

BACKGROUND

CCTF, a joint project of the California Judges Association (CJA) and the California Lawyers Association (CLA) issued a report and recommendations to promote and increase civility in the legal profession that resulted in Board-approved [action plan](#) on March 24, 2022, and ultimately led the Board to request that:

- Staff review the CCTF proposal to add a requirement that each lawyer annually affirm or reaffirm their commitment as an officer of the court to conduct themselves with dignity, courtesy, and integrity as required by Rule of Court 9.7; and
- The Committee on Professional Responsibility and Conduct's (COPRAC) review CCTF's proposed amendments to the Rules of Professional Conduct and make recommendations regarding CCTF's proposal or offer alternatives to the Board.²

At its November 17, 2022, meeting, the Board authorized for public comment proposed amendments to Rule of Court 9.7 that would (1) require that licensees who have not taken the oath with the civility pledge to submit a declaration affirming their commitment to the civility pledge by February 1, 2024; (2) extend the civility requirement to special admissions attorneys³ as part of their application or renewal application to practice law in California; and (3) require all licensees and specially admitted attorneys to take the civility pledge annually when paying annual licensing or registration fees. Similarly, an inactive licensee would also be required to submit a declaration affirming their commitment to the civility pledge when returning to active status. A licensee who has not previously taken the civility oath and who fails to submit the initial declaration or who fails to affirm the annual civility pledge in the manner established by the State Bar would face possible late fees and involuntary inactive enrollment. A special admissions attorney who fails to submit the initial declaration or who fails to affirm the annual civility pledge would face having their special admissions registration suspended or terminated. Additionally, the Board issued for public comment proposed amendments to the Rules of Professional Conduct, including a proposed new standalone rule 8.4.2. These proposed amendments were based on COPRAC's recommended revisions to CCTF's proposed

² The Board also requested that staff review CCTF's proposal to add a civility training requirement for MCLE, which is being addressed in Board Agenda Item Number 707.

³ Special admissions attorneys are attorneys who authorized to practice law in California pursuant to a Rule of Court, including registered military spouse attorneys (rule 9.41.1), registered foreign legal consultants (rule 9.44), registered legal aid attorneys (rule 9.45), and registered in-house counsel (rule 9.46).

amendments to the rules.⁴ COPRAC proposed amendments to two of the rules, rules 1.2 Comment [1] (Scope of Representation and Allocation of Authority) and 8.4 Comment [6] (Misconduct) or, in the alternative, a new standalone rule addressing civility. Staff prepared a standalone rule, rule 8.4.2, and related amendment to rule 8.4 Comment [4] for the Board's consideration. Ultimately, the Board voted to authorize for public comment both COPRAC's recommend revisions to the rules and the new standalone rule. As such, the proposed amendments to rules 1.2 Comment [1], 8.4 Comments [4] and [6] and new rule 8.4.2 were issued for public comment as a comprehensive package of proposed amendments to the rules to address civility.

As issued for public comment, the amendments to the Rules of Professional Conduct would amend rule 1.2 Comment [1] to clarify that a lawyer retains the authority to act in a civil manner such as by agreeing to reasonable requests of opposing counsel so long as the lawyer does not prejudice the rights of their client, even if the client directs the lawyer to act otherwise. Amendments to rule 8.4 Comment [4] would provide a cross-reference to proposed new standalone rule 8.4.2. Amendments to rule 8.4 Comment [6] would clarify that uncivil conduct violates paragraph (d), which states that it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice. Finally, new rule 8.4.2 would create a standalone rule that addresses civility and define incivility as "significantly unprofessional conduct that is abusive or harassing" and that whether a lawyer violates rule 8.4.2 would be determined based on the facts and circumstances surrounding the conduct.

DISCUSSION

Revised Proposed Amendments to Rule of Court 9.7 to Require an Initial Civility Declaration and Annual Affirmation by All Licensees and Special Admissions Attorneys

The State Bar received 60 comments regarding the proposed amendments to Rule of Court 9.7.⁵ Of these comments, 31 agreed with the proposed amendments (52 percent), five agreed only if modified (8 percent), and 24 disagreed with the proposed amendments (24 percent). Of the 31 comments that agreed with the proposed amendments, 12 were from attorney organizations,⁶ 1 from the CCTF, 1 from the California Judges Association, 3 from individual judges, 10 from individual attorneys, and 4 from nonattorneys. Of the 5 comments that agreed only if modified, 3 were from attorney organizations⁷ and 2 from individual attorneys. Of the 24

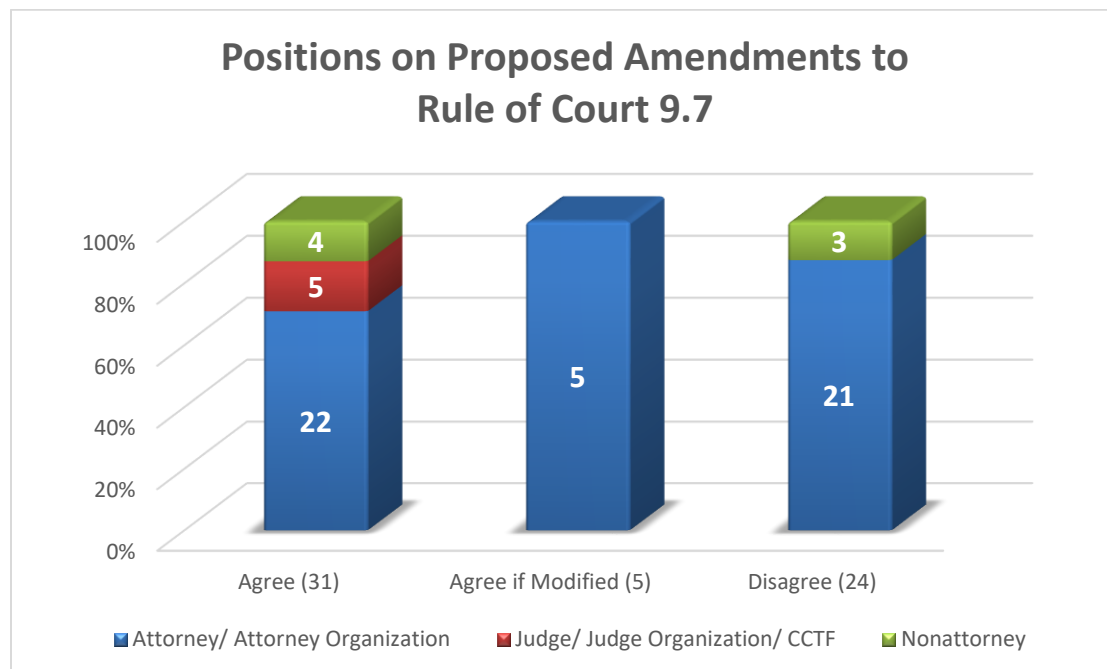
⁴ CCTF proposed amendments to rules 1.0.1 (Terminology), 1.2 (Scope of Representation and Allocation of Authority), 1.3 (Diligence), 3.3 (Candor Toward the Tribunal), 3.4 (Fairness to Opposing Party and Counsel), 3.5 (Contact with Judges, Officials, Employees, and Jurors), and 8.4 (Misconduct).

⁵ The public comments received on proposed amendments to Rule of Court 9.7 are provided as Attachment D.

⁶ These commenters include the Access to Justice Commission, the Asian Pacific American Bar Association of Los Angeles, ABTL – Northern California, ABTL- Orange County, ABTL San Diego, the Association of Southern California Defense Counsel, the Beverly Hills Bar Association, the Consumer Attorneys Association of Los Angeles and California Employment Lawyers Association, the Japanese American Bar Association, the Los Angeles County Bar Association Litigation Section Executive Committee (submitted twice), and the Multicultural Bar Alliance of Southern California.

⁷ These commenters include the California Lawyers Association, the Legal Aid association of California, and the Orange County Bar Association.

comments that disagreed with the proposed recommendations, 20 were from individual attorneys, one from an attorney organization,⁸ and 3 from nonattorneys.



Most of the comments disagreeing with the proposed amendments or agreeing with the proposal if modified stated that changes to the civility oath requirement will have no real impact on increasing civility in the profession, what is uncivil is too vague or subjective, and incivility can be addressed in other ways, such as by a judge or court staff. Other comments also stated that the changes would be burdensome, attorneys are already overly regulated, the requirement would be a waste of resources, and the State Bar should focus on attorney discipline.

The comments agreeing with the proposed amendments stated that requiring all attorneys to take the oath with civility language “may help provide the necessary impetus to improve civility in our profession;” that the changes will help judges do their job by, coupled with the MCLE requirement, reducing the number of instances where judges must intervene to correct attorney conduct; and that it makes sense from an equity perspective for all attorneys practicing in California to commit to civility.

Some comments recommended changes to the oath itself. CLA and Orange County Bar Association recommended limiting the oath to conduct in the practice of law or related professional activities. They stated that the current oath is overly broad, in part because dignity, courtesy, and integrity are subjective terms. Staff does not recommend adopting these changes. The civility oath is aspirational and failure to comply with the oath upon licensure or the proposed declaration and annual reaffirmation are not a basis for discipline. Instead, staff agrees with other changes recommended to the Rules of Professional Conduct, discussed

⁸ This comment came from the Lawyer Wellness Library.

below, that would limit the disciplinary rules regarding incivility to conduct occurring in the practice of law. The California Access to Justice Commission recommended requiring attorneys to state why the oath is important as part of the oath itself. Staff does not recommend this change; educating attorneys on the reasons for the oath and civility more generally are better suited for the new, proposed requirement for one hour of MCLE regarding civility.

Staff is recommending changes to the proposed amendments based on concerns with implementation of the declaration requirement to only a portion of licensees. Applicants to the State Bar are provided with the attorney oath and have up to five years to submit the oath from the date they pass the bar exam. As such, there are attorneys who took the attorney oath without the civility language after the effective date of that language, May 27, 2014. There is no bright line date on which all attorneys had completed the attorney oath with the civility language. Therefore, it would be difficult for staff and the attorney to determine who should or should not submit a declaration containing the oath if it were limited to attorneys who have not previously taken the oath with the civility language. Additionally, the requirements are easier for the State Bar's Office of Information Technology to implement if all licensees, regardless of whether they already took the oath to submit a declaration with the civility language. Moreover, a universal approach will truly put all attorneys on equal footing regarding the oath.

Based on these factors, staff recommends that the amendments be revised to require that all licensees must submit a declaration containing the civility language on a one-time basis, not just licensees who have not already taken the oath with the civility language prior to admission to the State Bar. Additionally, staff recommends further amendments to clarify that all licensees and special admissions attorneys must submit the declaration by February 1, 2024, and that all licensees who are on inactive status or not eligible to practice law must submit the declaration with the civility language prior to their return to active status. Finally, staff also recommends clarifying changes that provide that the State Bar must develop a schedule for implementation for the annual civility pledge affirmation in addition to a schedule for implementation for the initial declaration requirement.

Because these proposed revisions are substantive, staff recommends that the Board release the proposed revised amendments for an additional 30-day public comment period.

Clean and redline versions of the proposed amendments Rule of Court 9.7 are provided in Attachments A and B, respectively.

Proposed New State Bar Rule 2.3 to Implement Civility Declaration and Affirmation Requirements

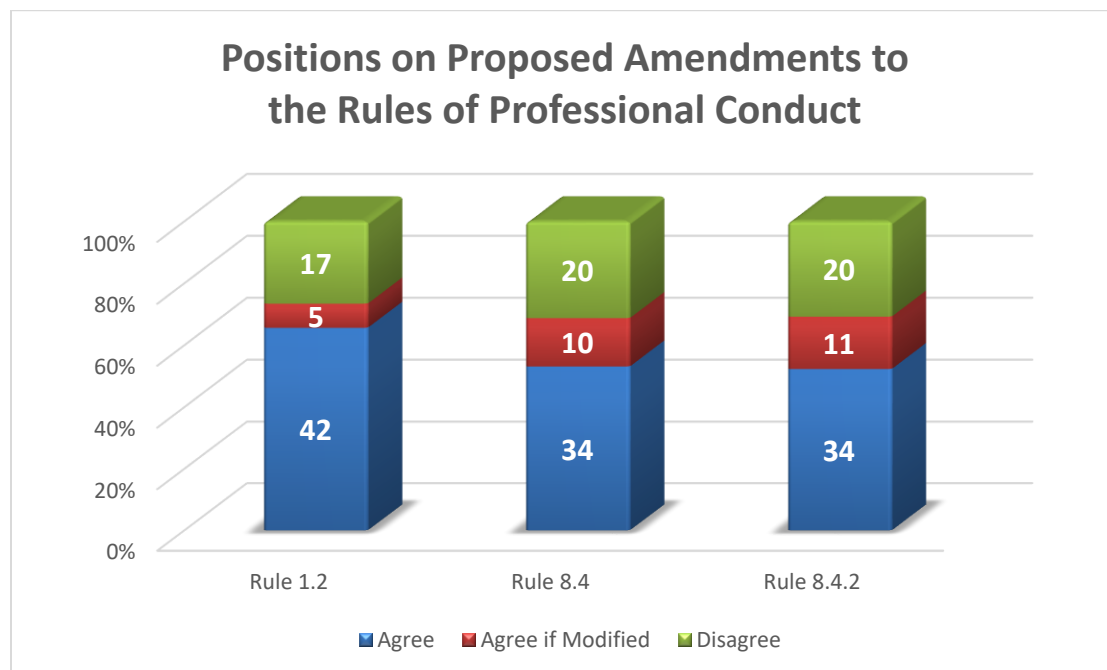
Staff has prepared a proposed new State Bar rule 2.3, provided as Attachment C, to implement the changes to the oath requirements. Rule of Court 9.7 would enable the State Bar to require a one-time declaration and annual civility pledge affirmation by licensed attorneys and special admissions attorneys. However, a State Bar rule is necessary to actually impose the requirements on licensees and special admissions attorneys.

Staff requests that the Board authorize a 30-day public comment circulation of this proposed

rule, including the proposed noncompliance fees,⁹ with the understanding that this State Bar rule would only be considered for adoption by the Board if the Supreme Court ultimately approves the amendments to Rule of Court 9.7.

Revised Proposed Amendments to the California Rules of Professional Conduct to Address Civility

The State Bar received 65 comments regarding the proposed amendments to Rules of Professional Conduct 1.2 and 8.4 and new Rule of Professional Conduct 8.4.2.¹⁰ For each of the proposals, the majority of commenters agreed with the rules as proposed.



Proposed Amendments to Rule 1.2

Of the 65 comments received, 42 (66 percent) agreed with the proposed amendments, 5 (8 percent) agreed only if modified, 17 (26%) disagreed, and one took no position on the proposed amendments. Of the 43 comments that agreed with the proposed amendments, 13 were from attorney organizations,¹¹ one from the CCTF, 10 from individual judges, 11 from individual

⁹ It is anticipated that the noncompliance fees will mirror the types of noncompliance fees and fee amounts used for MCLE and CTAPP noncompliance. See State Bar Rules Appendix A (Schedule of Charges and Deadlines). If proposed amendments to Rule of Court 9.7 are approved by the Supreme Court, staff will recommend appropriate changes to the Schedule of Charges and Deadlines to implement these fees.

¹⁰ The public comments received on proposed amendments to the Rules of Professional Conduct and the new rule are provided as Attachment G.

¹¹ These comments came from the Beverly Hills Bar Association, the Association of Business Trial Lawyers – Orange County, the Association of Business Trial Lawyers – Northern California, the Marin County Bar Association, the California Access to Justice Commission, the California Lawyers Association, the Consumer Attorneys Association of Los Angeles and the California Employment Lawyers Association, the Los Angeles County Bar Association Professional Responsibility and Ethics Committee, the Los Angeles County Bar Association Litigation Section

attorneys, 5 from nonattorneys, 1 from a nonattorney organization,¹² and 1 from a commenter who declined to state. Of the 5 comments that agreed only if modified, 3 were from attorney organizations,¹³ and 1 from an individual attorney and 1 from a nonattorney. Of the 17 comments that disagreed with the proposed recommendations, 14 were from individual attorneys, 2 from attorney organizations,¹⁴ and 1 from a nonattorney organization¹⁵.

Most of the comments agreeing with the rule did not provide specific feedback on the rule 1.2 proposal itself, but were in general support of adding the amendments as part of the overall rule amendments concerning civility. Of the comments that disagreeing with the rule, they disagreed with the overall concept of adding civility as a component of the requirements set forth in the rules. These general comments are addressed as part of the rule 8.4.2 section of this agenda item.

Of the specific revisions provided by commenters, staff recommends incorporating revisions recommended by the California Access to Justice Commission to clarify that a lawyer retains the authority to agree to reasonable requests of opposing counsel and also self-represented parties. Staff does not recommend further revisions recommended by other commenters, including the Marin County Bar Association, which proposed adding examples of offensive tactics to comment [1] and adding a new comment that would incorporate the requirements of the civility oath in Rule of Court 9.7. The civility oath is an aspirational requirement that is broader than the proposed disciplinable incivility set forth in rule 8.4.2, and such a change, particularly in a comment, could create confusion as to what is the basis for discipline for uncivil conduct.

Proposed Amendments to Rule 8.4

Of the 65 comments received regarding proposed amendments to rule 8.4, 34 (53 percent) agreed with the proposed amendments, 10 (16 percent) agreed only if modified, 20 (31 percent) disagreed, and one took no position on the proposed amendments. Of the 34 comments that agreed with the proposed amendments, 10 were from attorney organizations,¹⁶ 1 from the CCTF, 10 from individual judges, 7 from individual attorneys, 5 from nonattorneys, and 1 from a nonattorney organization¹⁷. Of the 10 comments that agreed only if modified, 5

Executive Committee (submitted twice), Legal Aid Association of California, Multicultural Bar Alliance of Southern California, and the Women Lawyers Association of Los Angeles.

¹² This came from the nonattorney organization The Consumer Bar.

¹³ These comments came from the Asian Pacific American Bar Association of Los Angeles, the Japanese American Bar Association, and the Orange County Bar Association.

¹⁴ These comments came from the Association of Southern California Defense Council and the California and Hawaii Chapters of the American Board of Trial Advocates (CAL-ABOTA).

¹⁵ This came from the nonattorney organization Stop Corrupt Lawyers.

¹⁶ These comments came from the Beverly Hills Bar Association, Association of Business Trial Lawyers- Northern California, the California Access to Justice Commission, the Los Angeles County Bar Association Professional Responsibility and Ethics Committee, the Los Angeles County Bar Association Litigation Section Executive Committee (submitted twice), the Legal Aid Association of California, the Marin County Bar Association, the Multicultural Bar Alliance of Southern California, and the Women Lawyers Association of Los Angeles.

¹⁷ This came from the nonattorney organization The Consumer Bar.

were from attorney organizations,¹⁸ 4 from individual attorneys, and 1 from a nonattorney. Of the 20 comments that disagreed with the proposed recommendations, 15 were from individual attorneys, 3 from attorney organizations,¹⁹ 1 from a nonattorney organization,²⁰ and 1 from an individual commenter who declined to state.

Like the response to rule 1.2, most of the comments that agreed with the rule 8.4 proposal did not provide specific feedback, but were in general support of adding the amendments as part of the overall rule amendments concerning civility. Of the comments that disagreed with the rule, they disagreed with the overall concept of adding civility as a component of the requirements set forth in the rules. These types of comments are addressed in the rule 8.4.2 section of this agenda item.

Of the specific revisions recommended, two commenters provided input on proposed amendments to rule 8.4 Comment [4]. Both comments, from the California Access to Justice Commission and the Marin County Bar Association, recommended edits to clarify that there is a separate basis for discipline in rules 8.4(d) and 8.4.2 for incivility. Staff supports these revisions, and recommends the changes proposed to revise the second sentence of comment [4] to have parallel structure with its first sentence. Staff also recommends a revision to comment [6] to indicate that “significantly unprofessional conduct that is abusive or harassing” is defined in rule 8.4.2.

Commenters, including the CCTF, and 11 others, 9 of whom indicated agreement with CCTF’s comment, recommend that comment [6] be narrowed to conduct within the practice of law, citing First Amendment Concerns with a rule that regulates conduct surrounding “related professional activities.” This recommendation is also provided concerning rule 8.4.2(a) and is adopted for both rules.

Individual commenters who are members of the Bar Association of San Francisco (BASF Individuals) recommended that Comment [6] be deleted because, if standalone rule 8.4.2 is ultimately adopted, it would be duplicative of the language in 8.4.2 Comments [1] and [2]. Although staff recognizes that this comment was originally proposed as an alternative to a standalone rule, staff disagrees with this recommendation. Comment [6] provides that incivility violates rule 8.4(d), which is separate from incivility that violates rule 8.4.2. An attorney’s incivility could violate both rules.²¹

¹⁸ These comments came from the Asian Pacific American Bar Association of Los Angeles, the Association of Business Trial Lawyers- Orange County, the California Lawyers Association, the Consumer Attorneys Association of Los Angeles and the California Employment Lawyers Association, and the Japanese American Bar Association.

¹⁹ These comments came from the Association of Southern California Defense Council, the California and Hawaii Chapters of the American Board of Trial Advocates (CAL-ABOTA), and the Orange County Bar Association.

²⁰ This came from the nonattorney organization Stop Corrupt Lawyers.

²¹ In matters in which the same conduct can result in one or more violations, recent State Bar Court cases suggest that, where an attorney is found culpable of the misconduct under both rules, an attorney is likely to only receive discipline based on a violation of one of the rules. (See, e.g., *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 127; *In the Matter of Jones* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. ____ [declining to assign additional discipline based on the same facts underlying other violations of the Rules of Professional Conduct or the State Bar Act].)

Rule 8.4 Comment [6] and rule 8.4.2 Comment [2] contain largely similar language and, as such, commenters made recommendations to both comments, or to one comment that staff considered applicable to both. CLA recommended revisions to remove the examples of when a lawyer does not violate rule 8.4(d) or rule 8.4.2. They stated that it is not clear why these examples should be called out because they do not come close to a violation, raising the question of whether other, similar conduct that is not provided as an example would violate the rule. This language is derived from CCTF's originally recommended amendments to the rules, which was significantly discussed and revised in several COPRAC meetings. COPRAC felt that including examples of conduct that would not violate the rule would be helpful to a lawyer. However, staff acknowledges that, as drafted, a lawyer could believe that the list is exhaustive and recommends that the comment be revised to clarify that these are examples. This change was made to rule 8.4 Comment [6] and rule 8.4.2 Comment [2]. The BASF Individuals recommended that "merely" be inserted because a lawyer could engage in uncivil conduct while also acting in a manner as described in the examples. Staff agrees with this recommended change to rule 8.4 Comment [6] and rule 8.4.2 Comment [2]. The BASF Individuals and the Marin County Bar Association also recommended changes to the reference to "other applicable civility authorities" to "relevant legal authorities" and to provide examples including the local rules of court and bar associations' codes of civility. Staff agrees, and made this change.

Proposed New Rule 8.4.2

Of the 65 comments received pertaining to the proposed new rule 8.4.2, 34 (52 percent) agreed with the proposed rule, 11 (17 percent) agreed only if modified, and 20 (31 percent) disagreed. Of the 34 comments that agreed with the proposed rule, 10 were from attorney organizations,²² 1 from the CCTF, 10 from individual judges, 7 from individual attorneys, 5 from nonattorneys, and 1 from a nonattorney organization²³. Of the 11 comments that agreed only if modified, 6 were from attorney organizations,²⁴ and 4 from individual attorneys, and 1 from a nonattorney. Of the 20 comments that disagreed with the proposed recommendations, 15 were from individual attorneys, 3 from attorney organizations,²⁵ 1 from a nonattorney organization,²⁶ and 1 from a commenter who declined to state.

Most of the comments agreeing with proposed rule 8.4.2 did not provide specific feedback on the text of the proposed rule itself, but were in general support of adding the amendments as

²² These comments came from the Beverly Hills Bar Association, the Association of Business Trial Lawyers – Northern California, the Marin County Bar Association, the California Access to Justice Commission, the Los Angeles County Bar Association Professional Responsibility and Ethics Committee, the Los Angeles County Bar Association Litigation Section Executive Committee (submitted twice), Legal Aid Association of California, Multicultural Bar Alliance of Southern California, and the Women Lawyers Association of Los Angeles.

²³ This came from the nonattorney organization The Consumer Bar.

²⁴ These comments came from Asian Pacific American Bar Association of Los Angeles, the Asian Pacific American Women Lawyers Alliance, the Association of Business Trial Lawyers – Orange County, the California Lawyers Association, the Consumer Attorneys Association of Los Angeles and the California Employment Lawyers Association, and the Japanese American Bar Association.

²⁵ These comments came from the Association of Southern California Defense Council and the California, Hawaii Chapters of the American Board of Trial Advocates (CAL-ABOTA), and the Orange County Bar Association.

²⁶ This came from the nonattorney organization Stop Corrupt Lawyers.

part of the overall rule amendments concerning civility. The general comments described how incivility negatively affects access to justice, and stated it is appropriate for there to be repercussions for incivility and that it should be a disciplinable offense. Some commenters who agreed with the proposal if modified stated that they support the changes based on their intended effect, but that the State Bar will need to ensure that the rule is not disproportionately applied to attorneys it is intended to protect based on prejudices, stereotypes, and biases of the individual reporting alleged incivility or those investigating and prosecuting it.

Of the comments disagreeing with the rule, many disagreed with the overall concept of adding civility as a component of the requirements set forth in the rules. The commenters disagreeing entirely or agreeing if modified stated that the rule is too broad; the definition of incivility is too vague or subjective and has a chilling effect; the rule will be weaponized, specifically against zealous advocates, criminal defense attorneys, and those it is intended to protect; and it will create conflicts between a lawyer and their client.

Some commenters, regardless of their stated position on the proposal, recommended specific revisions to proposed rule 8.4.2. Some of these changes relate to changes to rule 1.2 and 8.4 and are described in more detail in those sections. There were also a few suggested minor revisions based on the comments that are not addressed in this agenda item but that were accepted. There were four significant revisions recommended by commenters. First, CCTF recommended two modifications to rule 8.4.2, with which several other commenters agreed. CCTF and other commenters recommended that the rule be narrowed to prohibit incivility in the practice of law and remove the requirement for “related professional activities.” They supported this change to attempt to eliminate or discourage First Amendment challenges to the rule, and to make the rule cleaner and more easily defensible. Additionally, these commenters recommended that it be clarified that the prohibition on incivility applies to speech and conduct. Staff agrees with these recommendations and has included them in the proposed new rule. Another commenter recommended that related professional activities be kept, but that it be narrowed to include other related professional activities that occur in the course of client representation, communications with opposing counsel, and actions taken on behalf of a client. Staff is not recommending this change, as these activities all fall within the practice of law.

Second, CLA recommended that the definition of incivility be revised to limit it to significantly unprofessional conduct that is solely or primarily intended to abuse or harass. Staff does not recommend this change as there may be conduct that occurs for more than one purpose but that rises to the level of conduct that should be disciplined for incivility and it will be difficult to prove that there were no other motivations for the misconduct. Moreover, the facts and circumstances surrounding the conduct are already taken into account in case there could be justification for particular conduct.

Third, the Women Lawyers Association of Los Angeles recommended further clarification of what constitutes “significantly” be included in Comment [4] and include “words or conduct demonstrating bias against or targeting a protected class” and “words or conduct

demonstrating bias against or targeting counsel based on their physical characteristics, speaking impediments, geographic region, and status of citizenship.” Staff agrees that such behavior is not acceptable and is uncivil. However, staff does not recommend including such bright line examples within the comments as the definition allows for incivility to be determined based on the surrounding facts and circumstances.

Lastly, the Marin County Bar Association recommended a new comment be added to the rule, stating “Lawyers must, at all times, preserve the integrity of the profession by treating all persons involved in the legal process with dignity, courtesy, and respect.” Staff does not recommend that this change, as this concept is already provided for in the civility oath in Rule of Court 9.7 and is broader than what is proposed as disciplinable incivility.

FISCAL/PERSONNEL IMPACT

If adopted by the Supreme Court, the proposed amendments to rule 9.7 and the necessary State Bar implementing rules and procedures would result in an increased workload for State Bar staff. These changes would primarily impact the Office of Information Technology (IT) and the Division of Regulation. For example, IT and Regulation would work together to develop the method of submission of the civility pledge declaration and the annual civility pledge confirmation. Similarly, Regulation would process a licensee’s noncompliance with the civility pledge requirements by enrolling licensees as inactive and later transferring licensees back to active status once compliance occurs and noncompliance fees are paid. It is anticipated that the staff and resource needs associated with implementing these civility requirements can be absorbed through the existing budget.

Any other potential costs associated with the proposed amendments to the Rules of Professional Conduct would be the investigation and prosecution of alleged incivility in violation of the proposed amendments to rules 1.2 and 8.4, and proposed new rule 8.4.2. We are unable to estimate the number of current complaints that might be characterized as civility-related or the additional number of complaints that may be filed as a result of these rule changes. Staff proposes to monitor the workload impact of the rule amendments and report back to the Board on that impact at an appropriate time post implementation.

AMENDMENTS TO RULES OF COURT

Rule 9.7

AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

Amendments to Rules 1.2 and 8.4 and New Rule 8.4.2

AMENDMENTS TO RULES OF THE STATE BAR OF CALIFORNIA

New Rule 2.3

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS

Goal 3. Protect the Public by Regulating the Legal Profession

RECOMMENDATIONS

- I. **Should the Board of Trustees sitting as the Regulation and Discipline System concur in the proposed action on the proposed amendments to Rule of Court 9.7 and State Bar Rule 2.3, staff recommends that the Board of Trustees sitting as the Regulation and Discipline System adopt the following resolutions:**

RESOLVED, that the Board of Trustees sitting as the Regulation and Discipline System authorizes staff to make available for public comment, for a period of 30 days, proposed amendments to rule 9.7 of the California Rules of Court as set forth in Attachment A and proposed State Bar Rule 2.3 as set forth in Attachment C; and it is

FURTHER RESOLVED, that this authorization for release of public comment is not, and shall not be construed as, a statement or recommendation of approval of the proposed amended Rule of Court.

- II. **Should the Board of Trustees sitting as the Regulation and Discipline System concur in the proposed action on the Rules of Professional Conduct, staff recommends that the Board of Trustees sitting as the Regulation and Discipline System adopt the following resolutions:**

RESOLVED, that the Board of Trustees sitting as the Regulation and Discipline System authorizes staff to make available for public comment, for a period of 30 days, proposed amendments to rules 1.2 and 8.4 of the California Rules of Professional Conduct and proposed new rule 8.4.2 as set forth in Attachment E; and it is

FURTHER RESOLVED, that this authorization for release of public comment is not, and shall not be construed as, a statement or recommendation of approval of the proposed amended Rules of Professional Conduct.

ATTACHMENTS LIST

- A. Proposed Amendments to Rule 9.7 of the California Rules of Court – Clean Version
- B. Proposed Amendments to Rule 9.7 of the California Rules of Court – Redline Version
- C. Proposed New State Bar Rule 2.3

- D.** Public Comment Summary and Table on Rule 9.7 of the California Rules of Court
- E.** Proposed Amendments to Rules 1.2 and 8.4, and New Rule 8.4.2 of the Rules of Professional Conduct – Clean Version
- F.** Proposed Amendments to Rules 1.2 and 8.4, and New Rule 8.4.2 of the Rules of Professional Conduct – Redline Version
- G.** Public Comment Summary and Table on Proposed Amendments to Rules 1.2, 8.4 and New Rule 8.4.2 of the Rules of Professional Conduct

Rule 9.7. Attorney Oath and Reaffirmation of Oath

(a) Oath required when admitted to practice law

In addition to the language required by Business and Professions Code section 6067, the oath to be taken by every person on admission to practice law is to conclude with the following: "As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy and integrity."

(b) Declaration requirements for admitted and special admissions attorneys

- (1) Each attorney whose license is on active status with the State Bar ("active licensed attorney") and each attorney permitted to practice law in the State of California under rule 9.41.1, 9.44, 9.45, or 9.46 of the California Rules of Court ("special admissions attorney") must, pursuant to the procedure identified by the State Bar, submit a declaration containing the language set forth in subparagraph (a) by February 1, 2024.
- (2) An attorney whose license is on inactive status with the State Bar or who is not eligible to practice law, except for those attorneys who have submitted a declaration as required by subparagraph (b)(1) of this rule, must, pursuant to the procedure identified by the State Bar, submit a declaration containing the language set forth in subparagraph (a) prior to being placed on active status.

(c) Reaffirmation of Civility Pledge

Each active licensed attorney and special admissions attorney must, pursuant to the procedure identified by the State Bar, reaffirm the civility pledge described in subparagraph (a) of this rule on an annual basis pursuant to the procedure identified by the State Bar.

(d) Implementation schedule and penalty for failure to comply

- (1) The State Bar must develop a schedule for implementation that requires all active licensed attorneys who must submit a declaration under (b)(1) of this rule to submit such declaration by February 1, 2024, and reaffirm the civility pledge under (c) annually thereafter. The State Bar must develop a schedule for implementation that requires all special admissions attorneys who must submit a declaration under (b)(1) of this rule to submit such declaration by the renewal of their application to practice law in the State of California by February 1, 2024, and reaffirm the civility pledge under (c) annually thereafter.
- (2) An active licensed attorney who fails to submit the required declaration or reaffirm the civility pledge as required by this rule must be enrolled as an inactive licensee of the State Bar under rules adopted by the Board of Trustees of the State Bar. A special admissions attorney who fails to submit the required declaration or reaffirm the civility pledge as required by this rule must have their registration suspended or terminated under rules adopted by the Board of Trustees of the State Bar.

(e) Authorization for the Board of Trustees of the State Bar to adopt rules and procedures

The Board of Trustees of the State Bar is authorized to adopt such rules and procedures as it deems necessary and appropriate in order to comply with this rule.

(f) Fees and penalties

The State Bar has the authority to set and collect appropriate fees and penalties.

Rule 9.7. Attorney Oath and Reaffirmation of Oath

(a) Oath required when admitted to practice law

In addition to the language required by Business and Professions Code section 6067, the oath to be taken by every person on admission to practice law is to conclude with the following: "As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy and integrity."

(b) Declaration requirements for admitted and special admissions attorneys

- (1) Each attorney whose license is on active status with the State Bar ("active licensed attorney") and each attorney permitted to practice law in the State of California under rule 9.41.1, 9.44, 9.45, or 9.46 of the California Rules of Court ("special admissions attorney") must, pursuant to the procedure identified by the State Bar, submit a declaration containing the language set forth in subparagraph (a) by February 1, 2024.
- (2) An attorney whose license is on inactive status with the State Bar or who is not eligible to practice law, except for those attorneys who have submitted a declaration as required by subparagraph (b)(1) of this rule, must, pursuant to the procedure identified by the State Bar, submit a declaration containing the language set forth in subparagraph (a) prior to being placed on active status.

(c) Reaffirmation of Civility Pledge

Each active licensed attorney and special admissions attorney must, pursuant to the procedure identified by the State Bar, reaffirm the civility pledge described in subparagraph (a) of this rule on an annual basis pursuant to the procedure identified by the State Bar.

(d) Implementation schedule and penalty for failure to comply

- (1) The State Bar must develop a schedule for implementation that requires all active licensed attorneys who must submit a declaration under (b)(1) of this rule to submit such declaration by February 1, 2024, and reaffirm the civility pledge under (c) annually thereafter. The State Bar must develop a schedule for implementation that requires all special admissions attorneys who must submit a declaration under (b)(1) of this rule to submit such declaration by the renewal of their application to practice law in the State of California by February 1, 2024, and reaffirm the civility pledge under (c) annually thereafter.
- (2) An active licensed attorney who fails to submit the required declaration or reaffirm the civility pledge as required by this rule must be enrolled as an inactive licensee of the State Bar under rules adopted by the Board of Trustees of the State Bar. A special admissions attorney who fails to submit the required declaration or reaffirm the civility pledge as required by this rule must have their registration suspended or terminated under rules adopted by the Board of Trustees of the State Bar.

(e) Authorization for the Board of Trustees of the State Bar to adopt rules and procedures

The Board of Trustees of the State Bar is authorized to adopt such rules and procedures as it deems necessary and appropriate in order to comply with this rule.

(f) Fees and penalties

The State Bar has the authority to set and collect appropriate fees and penalties.

TITLE 2. RIGHTS AND RESPONSIBILITIES OF LICENSEES

DIVISION 1. LICENSEE RECORD

Rule 2.3 Noncompliance with Attorney Civility Oath Requirement

(A) Definitions

- (1) “Noncompliance” is failure to submit the one-time civility declaration as required by California Rule of Court 9.7(b), annually reaffirm the civility pledge as required by California Rule of Court 9.7(c), or failure to pay penalties for noncompliance as set forth in the Schedule of Charges and Deadlines.
- (2) “Special admissions attorney” is an attorney permitted to practice law in the State of California under California Rules of Court 9.41.1, 9.44, 9.45, or 9.46.

(B) Return to Active Status

- (1) A licensee must submit the one-time civility declaration as required by California Rule of Court 9.7(b)(1) prior to being placed on active status.

(C) Enrollment as inactive for noncompliance

- (1) A licensee determined by the State Bar to be in noncompliance with State Bar civility oath requirements will be enrolled as inactive and not eligible to practice law. The enrollment is administrative and no hearing is required.
- (2) A special admissions attorney determined by the State Bar to be in noncompliance with the State Bar civility oath requirements will be suspended or terminated from the special admissions program. The enrollment is administrative and no hearing is required.
- (3) All licensees will receive notices of non-compliance at least 60 days prior to involuntary inactive enrollment. All special admissions attorneys will receive notices of non-compliance at least 60 days prior to suspension or termination.

(D) Reinstatement following noncompliance

- (1) Enrollment as inactive for noncompliance terminates when a licensee submits proof of compliance and pays noncompliance and reinstatement fees.
- (2) Reinstatement after suspension or termination of a special admissions attorney requires the attorney to meet all eligibility and application requirements for the special admissions program.

TOTAL = 60 **A = 31**
D = 24
AM = 5
NP = 0

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File No.	Commenter/Signatory	Org ¹	Atty/ Nonat ty ²	Positi on ³	Comment
24544130	ABTL San Diego (Reynolds)	Yes	A	A	https://fs22.formsite.com/sbcta/files/f-318-86-24544130_007oXLhx_2023_ABTL_SD_Letterhead - CIVILITY LETTER.PDF
23857993	Alex, Glenn		A	D	<p>The State Bar has proposed that all active attorneys take an annual oath of “civility.” From 2014, new attorneys have apparently been required to take such an oath when sworn in.</p> <p>Civility is good, particularly if it can have a clear, non-vague definition, if civility doesn’t interfere with zealous advocacy on behalf of a client, and if party opponents are not acting uncivilly or unethically. But what evidence has the Bar gathered, from the past eight years or otherwise, that imposing an oath on all attorneys, let alone an annual oath, makes any difference? Show us.</p> <p>Most attorneys (even criminal attorneys) are “civil.” Those who are “uncivil” will remain uncivil, whatever the meaning. Indeed, the fact that the Bar now proposes to impose a universal annual civility oath indicates that eight years of imposing such an oath on all new admittees has not solved the perceived problem. In the absence of clear evidence that it works, an annual civility oath is merely another burden that the Bar has decided to impose on the attorneys whose advocate the Bar is supposed to be. And if in spite of everything there must be an oath, then once is enough.</p>
23817830	Anonymous	No	A	AM	If the obligation to be "all times with dignity, courtesy, and integrity" applies to conduct outside of a courthouse then this seems to be compelled speech that is not connected to what we do in the profession. Calbar should not be social engineering how people live their normal lives outside of what the profession calls for. We don't need to take an oath of allegiance or swear under God or attest to carrying ourselves with a particular manner. Aside from that, concepts such as "dignity, courtesy, and integrity" are highly subjective. So what metric do we use to

¹ Are you commenting on behalf of an organization?

² Are you an attorney or nonattorney? A = Attorney NA = Nonattorney

³ What is your position on the proposal? A = Agree D = Disagree AM = Agree if Modified NP = No Position

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					determine who is dignified enough, courteous enough? It seems to me that anyone who takes offense of anything, will be quick to report an attorney to the bar. What an incredible waste of resources to try to control what people say and do, especially outside of the courtroom.
23823170	Anonymous	No	A	D	<p>incivility to one person may be normal conduct to another</p> <p>its stated that bias is a concern but it could go the other way for example a meek and demure attorney may believe that a direct and unambiguous attorney is being uncivil when pursuant to an objective standard he/she is not.</p> <p>if an attorney believes opposing counsel he/she can go to the judge of the court moreover nonattorney court staff can be very abrupt due to the fact they know their jobs very well and may not act with paitience when it comes to newer attorneys.</p>
24006229	Anonymous	No	A	D	"Civility" is a way too subjective term.
24012825	Anonymous	No	A	D	"I hold it that a little rebellion now and then is a good thing, and is as necessary in the political world as storms in the physical." - Thomas Jefferson, 1787
24016660	Anonymous	No	NA	D	Should this not also apply to judges? What is next? A pledge to brush their teeth.
24041025	Anonymous	No	A	D	All too often, zealous advocacy is interpreted as being mean, hostile or incivil to a party or attorney. Challenging the accuracy of one's statements or the general credibility or integrity of a party or attorney is often necessary to cull inaccuracies from the truth, like by cross examination or deposition, or negotiation at the table. These common practices may be improperly interpreted under these proposed changes as "incivility" practices to test a witness or his/her allegations or version of events. Moreover, in a world of changing definitions or attacks on common English usage, like pronouns, one may too quickly ascribe incivility to those traditional practices.

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					<p>For those who have practiced a decade, two decades or more (like me), we have matured beyond incivility practices often learned by over-eager new attorneys or those insulting practices observed on TV or movies. Another requirement of a pledge "to be nice", or another among the growth of requirements (i.e., implicit bias training - really?!), appears abusive tinkering by woke bureaucrats who have nothing better to do except to impose growing insulting requirements that would be interpreted by the subjective beliefs of those bureaucrats.</p> <p>For those many who practice with integrity, dignity and courtesy, an oath to do so is unnecessary, whereas for those who would not so practice would still falsely testify to do so.</p> <p>There are enough rules with more objective criteria to deal with those who objectively engage in incivility, like those who pursue false claims or defenses, produce false evidence, or submit irrelevant malicious insults about parties, witnesses or counsel.</p> <p>Additionally, local Court rules exist that may be better suited to the task.</p>
24537317	Anonymous	No	A	D	<p>We are already held to a higher standard as described in the Business and Professions Code, Rules of Court, policies, and the unwritten rule of civility. Additionally, we have to take an Ethics Exam, take 25 or more educational units every three years, and we are constantly and completely scrutinized and evaluated all the time in court, opposing counsel, our clients, court staff, judges, juries, etc.</p> <p>The point is, we are already heavily regulated and required to act with dignity, civility and respect, we don't need to be further regulated. Additionally, the new rule went into effect in 2014, and it is not retroactively applied to attorneys prior to 2014. The Bar got what they wanted with the new rule - 9.7 back in 2014. Fine, let's move forward.</p> <p>I am a very civil and respectful attorney, as is most if not all the attorneys licensed by the bar. So, I am against imposing one more required civility and dignity item as part of my profession.</p> <p>Thanks</p>

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24537595	Anonymous		A	D	Attorneys have always been required to conduct themselves professionally. Adding a civility declaration to already admitted attorneys prior to 2014 just adds a layer of bureaucracy. Another piece for someone to look for on a form. Thus, I disagree.
23817955	Aronsohn, Andrew	No	A	AM	<p>My comments are limited to to proposed annual pledge requirement, which I oppose.</p> <p>This strikes me as something that is being proposed simply so the State Bar can point at it as an example of it doing 'something.' The materials offer no explanation of how this additional annual requirement would be of any benefit.</p> <p>The "civility task force report" that the proposal seems to originate from also notes that it could be done by "checking a box" when paying dues. Such a procedure cheapens this "aspirational" pledge, reducing it to a mere formality.</p>
24545879	Asian Pacific American Bar Association of Los Angeles County (Yen)	Yes	A	A	The Asian Pacific American Bar Association of Los Angeles County endorses the positions taken in the Task Force's letter to you, from Justice Brian S. Currey, dated January 23, 2023. In other words, APABA fully supports the Board of Trustees' proposed amendments to California Rule of Court 9.7 that would require all licensees who did not take the attorney oath with the civility language, as well as specially admitted attorneys, to submit a declaration with the civility pledge by February 1, 2024. We also fully support all licensees and specially admitted attorneys being required to complete the civility pledge on an annual basis when paying licensing fees or registering as a specially admitted attorney.
24360702	Association of Business Trial Lawyers (Orange County) (O'Neill)	Yes	A	A	<p>On behalf of the Orange County, San Diego, San Joaquin, and Los Angeles chapters of the Association of Business Trial Lawyers, we attach a letter joining in CCTF's comments to those proposals, as set forth in Justice</p> <p>Brian Currey's January 11, 2023 letter.</p> <p>https://fs22.formsite.com/sbcta/files/f-318-86-24360702_WnN8nUoQ_CRC9.7_ABTL_Letter_-_civility.pdf</p>

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24035532	Association of Business Trial Lawyers, Northern California Chapter (Patchen)	Yes	A	A	The Association of Business Trial Lawyers, Northern California Chapter (https://abtl.org/northerncalifornia/) has been a leader in promoting civility guidelines in the legal profession. On behalf of our nearly 2000 members, we submit this comment to state that our Chapter AGREES with the Proposal and encourages the State Bar to adopt it.
24544867	Association of Southern California Defense Counsel (Saroukhanioff)	Yes	A	A	See attached correspondence. https://fs22.formsite.com/sbcta/files/f-318-86-24544867_l4kNhCvJ_ASCDC_Letter_Re_Proposed_Rules_-_Civility_Feb_2023.pdf
23818417	Beard, Barbara	Yes	A	A	It is a sad state of affairs that anyone found this necessary. Personally, it represents to me that there are a lot of angry attorneys out there who have never learned to behave. I'm surprised they aren't just warned by the Court and if they persist, held in contempt and thrown in a cell for 24 hours. A hefty find would also be appropriate.
23994448	Beverly Hills Bar Association (Macauley)	Yes	A	A	The California Civility Task Force (CCTF), a joint project of the California Judges Association and the California Lawyers Association, has recommended that the State Bar of California modify its rules to require attorneys to complete an annual civility pledge. This proposal follows observations of growing incivility that undermines our whole profession and the justice system, including by heightening stress and job dissatisfaction among lawyers and judges, and increasing costs and delays in litigation and transactions. The CCTF also notes that incivility disproportionately impacts “young lawyers, women lawyers, lawyers of color, and lawyers from other marginalized groups.” The Beverly Hills Bar Association supports this proposal. Civility must be a cornerstone of the legal profession—essential for our advocates to demonstrate and foster as they zealously advocate for their clients. Lawyers admitted since 2014 have had the following language added to their attorney oath: “As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy and integrity.” Requiring an attestation to these principles by those who have been practicing longer makes sense both practically and from an equity perspective. All attorneys should have the same conduct obligations to each other, our courts, and the public. As the licensing entity for California lawyers, the State Bar of California should require all attorneys to commit to civility. As a

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					voluntary bar, the Beverly Hills Bar Association has adopted a civility policy and expects behavior consistent with it from our members, leaders, and staff. That expectation is reasonable and achievable, and benefits the legal profession, our justice system, and the public.
24016677	Bryson, Charles	No	NA	A	should be mandatory
24503715	California Access to Justice Commission (Londen)	Yes	A	A	<p>We Support the Proposed Amendment to California Rule of Court 9.7 Requiring Attorneys to Complete a Civility Oath and Annually Reconfirm their Civility Pledge.</p> <p>The attorney oath in California was modified in 2014 to include a civility pledge that provides “As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy and integrity.” However, only attorneys admitted to practice after May 2014 have taken an attorney oath that includes a civility pledge. This means most practicing California attorneys have not taken a civility pledge.</p> <p>The proposed amendments to California Rule of Court 9.7 would address this by requiring attorneys who have not taken the oath with the civility pledge to submit a one-time declaration to the State Bar affirming that they will conduct themselves with civility, and by requiring all active attorneys to reaffirm their commitment to civility on an annual basis, most likely when paying annual licensing fees.</p> <p>Attorneys acting with civility promote access to justice, especially for unrepresented parties. While there are many reasons to support civility in the profession, the impact on access to justice motivates the Access Commission to support the proposed required civility pledge for all active California attorneys.</p> <p>Every attorney’s conduct should reflect well on the judicial system, the profession, and the fair administration of justice. Attorneys should avoid frivolous disputes and inspire public regard for the profession and the judicial system. Rude, abusive, or disrespectful tactics neither reflect well on the legal profession nor inspire the public’s confidence. Moreover, civility improves the ability of self-represented parties to navigate the judicial system. This includes when attorneys communicate in a professional manner; respond to communications within a reasonable time and</p>

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					<p>in a reasonable manner; avoid personal attacks, demeaning comments, and misleading characterizations; agree to reasonable requests and honor commitments; and behave professionally. Self-represented parties are already disadvantaged and stressed. Unprofessional, abusive, and disrespectful conduct by attorneys towards people who are unrepresented creates unnecessary and inappropriate additional stresses and barriers. Incivility also can be a manifestation of bias. Incivility related to bias further undermines efforts around racial justice and diversity, equity, and inclusion in the legal profession.</p> <p>In addition, attorneys need to understand that public respect for the judicial process is essential to sustaining the rule of law as well as our democratic institutions, civility need not be at odds with zealous advocacy, and each attorney has a role. This can be accomplished in MCLE training. We also recommend that the State Bar consider modifying the civility oath to be more specific in acknowledging and addressing these issues, as follows:</p> <p>As an officer of the court, I understand that public respect for the judiciary and the judicial process is essential to sustaining the rule of law and our democracy and that my conduct as an attorney directly affects individuals’ trust in the administration of justice in California. Therefore, even when engaged in advocacy for my client, I will strive to conduct myself at all times with dignity, courtesy, and integrity.</p> <p>We thank the California Civility Task Force, the CJA, the CLA, and the State Bar for moving forward with a focus on the importance of civility in the legal profession. We support the proposed amendments to California Rule of Court 9.7.</p> <p>https://fs22.formsite.com/sbcta/files/f-318-86-24503715_PWoeOpd2_StateBarCommentsCivilityMCLE_FINAL_002.pdf</p>
24006145	California Civility Task Force (Currey)	Yes	NA	A	<p>https://fs22.formsite.com/sbcta/files/f-318-86-24006145_PaKYGubY_California_Civility_Task_Force_Letter_and_Comments_to_Proposed_Disciplinary_Rules_Changes_1.11.23_FINAL.pdf</p>
24434393	California Judges Association (Rosenberg)	Yes	NA	A	<p>https://fs22.formsite.com/sbcta/files/f-318-86-24434393_APRBLSAf_CRC9.7_CJA_Civility_Letter_2023.pdf</p>

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24509927	California Lawyers Association (Evans)	Yes	A	AM	https://fs22.formsite.com/sbcta/files/f-318-86-24509927_nXHCiVWK_CLA_comments_on_proposed_amendments_to_civility_pledge.pdf
24545896	Chamberlin, Carl	No	A	A	
24543509	Consumer Attorneys Association of Los Angeles and California Employment Lawyers Association (Silverstein and Horton)	Yes	A	A	https://fs22.formsite.com/sbcta/files/f-318-86-24543509_Wq4f59ng_CRC9.7.CAALA.CELA.State.Bar.Civility.Public.Comment.w.Exhibits.pdf
24543969	Cowan, David	No	NA	A	As a member of the Civility Task Force, and as a Judge of the Los Angeles Superior Court, and Former Supervising Judge of its Civil Division, I support these proposed changes and join in the comments of Justice Currey in his letter to the Bar dated January 11, 2023.
24003934	Durrant, John	No	A	D	<p>"Civility" is an inherently subjective construct, regarding which reasonable people disagree. For some, it means being very careful about criticizing opposing counsel, even if opposing counsel lie about the facts or misrepresent the law. This is -- in my view -- a dangerous perspective. For others, it means just not being personally unpleasant. That's fine. We should all surely try to be more kind. But what is civil or uncivil, particularly in the heat of litigation, is often in the eye of the beholder. It is a rare attorney who believes they are acting uncivilly and rarer still an attorney who would modify his or her conduct based on taking some pledge like the one proposed.</p> <p>We need judges and the Bar to take action against counsel who overstep, particularly when counsel are dishonest or personally abusive. A pledge like this -- which does little to define improper conduct -- will do nothing. This seems to be part of a recent pattern of the Bar creating "feel good" initiatives that seem unlikely to impact conduct or redress the Bar's prior failures to effectively police its members.</p> <p>While I understand and appreciate the desire to "do something" when there is a problem, it is important for all regulations to have reasoned, fact-based demonstration that changes in rules will be effective.</p>

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24361565	Feinberg, Doug	No	A	D	This is a stupid rule and I can't stand the fucking idiots who came up with it. (I can write that because I didn't take the civility pledge.) Civility is meaningless if mandatory. Sometimes a lawyer should not act civilly. If anyone believes that the civility pledge will cause attorneys to act better, that person has been smoking crack. The twenty-five lawyers who signed a declaration accusing the King of England of trying to establish an "absolute Tyranny" and stating that the colonies would no longer be part of Great Britain acted uncivilly. Yet we call them our Founding Fathers.
23817988	Goodman, Howard	No	A	D	Once again, the State Bar is obsessed with "form over substance". Instead of concentrating your resources (which I am forced to contribute to) on meaningless initiatives like this, how about concentrating on preventing a replay of the Tom Girardi fiasco. And, it's about time that the State Bar came clean on the lapses which led to millions in client funds being mis-appropriated, rather than making the L.A. Times file an actual lawsuit to get you to reveal what little you did.
24345094	Grace, Melodie	No	A	D	Seems like surface painting.
23818026	Harris, Mariana	No	NA	D	There are good attorneys and bad attorneys. There are attorneys who are civil and there are attorneys who are jerks. Making everyone take a pledge every year is highly unlikely to change the actions of the jerks - mostly because they don't usually think they are being jerks and therefore won't recognize the need to change their behavior.
24376605	Japanese American Bar Association	Yes	A	A	The Japanese American Bar Association ("JABA") fully supports the proposed amendments to California Rule of Court 9.7. JABA's Resolution in Support of Proposals of the California Civility Task Force is attached. https://fs22.formsite.com/sbcta/files/f-318-86-24376605_kaJ1wTUf_JABA_Resolution_-_California_Civility_Task_Force_Report.pdf
24537078	Kronlund, Barbara	No	NA	A	

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24542516	LACBA Litigation Section Executive Committee (Thomas Glennon)	Yes	A	A	https://fs22.formsite.com/sbcta/files/f-318-86-24542516_0AgSCYRp_CRC9.7_LACBA_Litigation_Section_Executive_Committee_Comment.pdf
24543049	LACBA Litigation Section Executive Committee (Thomas Glennon)	Yes	A	A	Resubmitting with revised attachment name. https://fs22.formsite.com/sbcta/files/f-318-86-24543049_7ZZzOR2p_CRC9.7_LACBA_Litigation_Section_Executive_Committee_Comment.pdf
24516607	Lawyer Wellness Library (Sobel)	Yes	A	D	<p>The California State Bar, an arm of the California Supreme Court, seeks this Incivility "oath" as a Band-aid on a problem that reflects a much larger systemic problem that the State Bar tries to ignore so they don't have to deal with it. The truth is that so long as the State Bar resorts to adopting proposals that merely address the symptoms of the systemic ailments of our legal system and the profession that monetizes it, it will be no different than the emperor who proudly walked naked through the streets of his town, gloating in the praise from his hypnotized subjects.</p> <p>I have been deeply studying the problem of attorney unwellness, that often results in incivility among lawyers, for over four years now and I am here to start to start shouting that the emperor is naked! I have been practicing law for 40 years in California and I have not met a single lawyer who doesn't agree that the State Bar of California is a total waste of our dues' dollars. Not a single lawyer has ever told me that the California State Bar does good things for lawyers.</p> <p>Of course, the State Bar's Mission is to protect the public, which many lawyers consider a big joke. Perhaps providing ethical opinions through the Ethics' Hotline is of value to practicing lawyers, but that's pretty much all I can think of. The State Bar can barely keep up with the investigation and discipline of lawyers who have already hurt members of the public, but actual protection of the public in any proactive way is beyond the abilities of this State Bar. If you folks don't know that, then I can play a role by making public comments to actions you intend to take.</p> <p>For your edification and information, civility oaths and enforcement rules do little to help anyone but our judges, who inarguably are vexed by cantankerous lawyers.</p>

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					<p>However, making all lawyers sign civility oaths is just another way of distracting the public into thinking that the State Bar is doing something significant for the advancement of our legal system.</p> <p>This oath and the rules to enforce it can only be enforced by judges who decide that some lawyer crossed some civility line and now will suffer some penalty. Of course, that will only increase the work of appellate courts, who will be called upon to review the imposition of those penalties - which will do nothing for the delays that litigants must endure in seeking justice.</p> <p>I am sure that judges can fairly argue that getting lawyers to behave with greater "dignity, courtesy and integrity" will cut incivility off at the pass, but that oath and accompanying rules will really only affect what comes before judges. What about violations of the "civility" oath that injures members of the public but will never come before a judge? What about those?</p> <p>The truth is that the State Bar of California is completely unable to deal with behind-the-scenes incivility - even when that conduct is brought as a complaint to this body in accordance with Complaint procedures. As a lawyer who is schooled in the law of malicious prosecution, and who pressed a complaint against San Diego lawyers in 2021 for their incivility in pursuing a meritless claim against members of the public, a Complaint that was grounded on several violations of this body's Rules of Professional Conduct, I can attest that the lawyers responsible for this State Bar's enforcement of civility rules do not know what they are doing.</p> <p>The ability of this State Bar to protect the public from the incivility of lawyers, when the incivility leads to a State Bar Complaint that is outside a court procedure, is hopelessly lacking. I am attaching a letter I wrote to the Office of Chief Trial Counsel, in January 2022, in connection with my clients' appeal from the State Bar's decision to affirm conduct that is a complete violation of the civility "oath."</p> <p>I know a maliciously prosecuted claim (i.e., devoid of merit) when I see one, and the lawyers, including the Office of Chief Trial Counsel, are unable to understand the issues - giving uncivil lawyers the green light to continue their wrongful behavior. The State Bar of California is part of the problem.</p>

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Synopsis of Public Comments**

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					<p>This raises the important question, namely what is the value of an incivility oath when the State Bar that has a budget of over \$250 million cannot hire prosecutors that understand the core incivility of prosecuting a meritless claim and then refusing to reconsider it?</p> <p>This kind of hypocrisy is exactly why California lawyers see the State Bar of California as a useless body for the protection of the public.</p> <p>I am the founder of a California nonprofit, the Lawyer Wellness Library, that seeks to address the systemic causes of incivility, but the State Bar of California has no sensible way to support an idea that can help lawyers to deal with the unhappiness that makes them cranky and uncivil. Half of all lawyers are sorry they went to law school, and the State Bar does nothing of value to address that unhappiness. A civility oath is not the way to address the unhappiness that makes lawyers cranky or ruthless. It might subject lawyers to sanctions, which might make judges and the State Bar think they are doing something, but the problem of lawyer unhappiness will only continue to grow, which ineluctably hurts the public that is not getting the best performance from unhappy lawyers.</p> <p>The point is that you cannot address incivility as its own problem.</p> <p>I intend to express my views before this body. Once my Library is up and running, hopefully soon, I will take this discussion to a wider audience. For now, this will have to suffice. Check it out at www.lawyerwellness.org</p> <p>Sincerely,</p> <p>Janet Sobel</p> <p>https://fs22.formsite.com/sbcta/files/f-318-86-24538602_bncREyGP_CRC9.7_OC_Bar_Letter_.pdf</p>
24066818	Legal Aid Association of California (Newman)	Yes	A	AM	<p>https://fs22.formsite.com/sbcta/files/f-318-86-24066818_bD6fAKSW_Proposed_Amendment_Requiring_Attorneys_to_Complete_Annual_Civility_Pledge_LAAC_Comment_Draft_1.10.23.pdf</p>

TOTAL = 60 **A = 31**
D = 24
AM = 5
NP = 0

**California Rule of Court 9.7 – Civility Pledge
Synopsis of Public Comments**

File No.	Commenter/Signatory	Org ¹	Atty/ Nonat ty ²	Positi on ³	Comment
24518312	Lindmark, Roger	No	A	D	In the old...revised..... B&P Code 6068 (State Bar Act) under ----"Duties of Attorney"---there was a subsection which required an attorney to "refrain from all offensive personality"!!! The Bar was sued in Federal Court due to the vague and overbroad nature of this Duty...as unconstitutional. The 9th Circuit upheld the striking of this clause. NOW the Bar and the WOKE, Progressive, Leftist, Fascist, Nazi Bar and State Legislature want to bring back this requirement by giving it a new name....to fake all of out....which only the old timers know of the former Statute which was Uncon.....but the younger attorneys don't know this clause history or the 9th Circuit Case. But this proposed Statute for "Civility" imposes the same Unconstitutional crap on lawyers. If this statute is enacted and signed by the Woke governor you can be sure that the Bar and State will be SUED and waste more money and time. So if I call you an SOB or an MF'er, or a S _ _T Head....that may be Civil for me but not Civil for you.....who is to judge what is Civil or not??? This also invokes the State and Federal FREE SPEECH clauses....to call someone an SOB. But this name calling would not be permitted in written pleadings....see Hogan v. State Bar (1951) 36 Cal,2d 807, 810 and In re Philbrook (1895) 105 Cal. 471, 477-478. Nor would such name calling etc.--of course--not be permitted in open court during a hearing or trial or directed to the Judge who may warrant the deserved invective. The whole bone headed notion of "regulating" Civility is NUTS unlawful and opens a can of worms. The first lawyer who is disciplined for being "UNCIVIL" WILL SUE your A _ S and cause the State Bar to spend mucho wasted money just as it did years ago on the Brorterhous and Keller cases which the Bar lost big time. The Bar's function under Keller is two fold.....admissions and discipline for real offenses....NOT Social control/Engineering..... NOR Social discipline NOR being a Vocabulary Police Force.....NOR solving the Drug and Alcohol addictions of attorneys to save their lives and failed careers with the woke "Other Bar" program which wastes our dues money!!!! Bye.....Atty. Roger M. Lindmark....SBN 158-291
24514897	Lulianelli, Lisa	No	A	D	The Bar's history of ineffective discipline makes the proposed requirements of civility laughable. There are attorneys and judges openly advocating insurrection, and the Bar does nothing to those inherently violating our oath. If you refuse to enforce, sua sponte, our most fundamental principle, to support the US Constitution, the rest of your efforts are pointless in my eyes. Moreover, after reading how, for 40 years, the

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					Bar failed to discipline powerful rich white men like Tom Girardi and his partners for ripping off clients, I have little to no confidence that the Bar will do anything substantive to those with poor attitudes. Finally, I have attended your discipline working group meetings and watched how the defense bar rep attempts to water down attorney discipline by advocating settlements and weak punishments to save time and money. I don't see much in the way of execution that will benefit our profession given how rarely the Bar enforces its current standards.
24023524	Madokoro, Mike	No	A	A	As a member of the California Civility Task Force, I fully support this proposal to amend California Rule of Court 9.7. https://fs22.formsite.com/sbcta/files/f-318-86-24023524_X1vvL1So_California_Civility_Task_Force_Letter_and_Comments_to_Proposed_Disciplinary_Rules_Changes_1.11.23_FINAL.pdf
23956517	Maguire, Michael	No	A	A	This is an important step forward to reigning in incivility and unprofessional conduct practiced by too many and unfortunately seen by new and impressionable newer attorneys as the expected norm. Incivility is not professional and has high costs in terms of added stress, dissatisfaction and public distrust of our profession. The Bar and profession need the tools to deal with repeated misconduct. I hope the Bar and any other enforcers of the new Rule works to deal with repeat violators and deliberates carefully before severely disciplining a practitioner for a single act of bad behavior.
23956614	Maguire, Michael	No	A	A	Needed in general and provides a foundational basis for disciplinary proceedings in appropriate instances.
23876171	Montrose, D'Artagnan	No	A	A	Most definitely. As someone who attended business school before law school and worked in the corporate world for 10 years before becoming a lawyer, one thing that is very apparent is the lack of business communication education and etiquette among attorneys. You learn in the corporate world about the benefits of striving for win/win negotiations and always communicating in a respectful and positive manner even

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					<p>when in engaged in conflict.</p> <p>Attorneys unfortunately do not learn this in school or in practice, and so you have extremely rude and disrespectful opposing counsel who do not even know how to start an email with “Dear counsel, I hope this message finds you well” or who appear at depositions and think it is some sort of power play to refuse to engage in standard pleasantries.</p> <p>Worst case you end up with the nightmare opposing counsel who is so devoid of manners and professionalism that they are rude even to the Judges. Having come up in a firm that is big on professional courtesy, I am always amazed when opposing counsel takes the position that being extremely obnoxious and unnecessarily confrontational is somehow superior lawyering.</p> <p>I have always wished Judges would sanction such uncivil and unprofessional behavior.</p>
24019759	Moreno, Isaac	No	NA	A	<p>Yes I think you should be honest , In a fair setting with no b.s. from eighther side or else it's a joke.If I could change my past I would on somethings but I feel a person's past in an unfair playing field sometimes lead to poor judgment so its parents job to set this in kids foundation.im an expert in alot of things in life's lesson as my college.so it's important not include everyone in a discussion as a community and vote on things to help solve some of the issues we are having today.education and parents that should be helped by law to get parenting skills and good ethics hard work and dedication.so if I think that integrity is important so the people that claim to serve and protect should not abuse power or people will keep loosing their fate of integrity, dignity , courtesy,kindness and humbleness, without pre judging and not even helping the person of accusations or the judge not letting fairness play out and community should stick together and vote on what future we leave or kids free of drugs or control it or we will leave or kids in a crime world with dark consequences.me myself blind to some of these facts on a world level of thought what's best for our world is most important corruption leads to leaders in power criminal or government.greed and poverty Ying yang.but maybe I'm crazy to believe that it takes everyone to come together and in prison or in high power to people</p>

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					<p>who suffer the unified decisions over loved ones people fear both sides but both sides forget about the people in the middle so civil rights should be there and if some don't give it that are in power and intimidate or confuse people seeking truth to be told, and allow people to get made worse and introduce them to jail with no educational mandates to be released with tools to better themselves and community. And I admit some are hard headed and inside jail should be disciplined in a way such as not to abuse Tru discipline in work outs clean up and education .</p> <p>And rapist and child molester should suffer and anyone who falsely accuses someone through use of polygraph test as one of the tools to be used people who have nothing to hide. so parents should be heard and helped in raising</p> <p>Raising better kids to reach for other planets not stuck in situations of one parent having no justice and broke home. so I need help with my kids life and my life has been getting wreck by me and both sides of the law together we can open discussion not arrest one who has ideas that will work and ideas that will lead to better ideas and a community and world that would be in the light not darkness it takes people excluded for not including them and vice versa.</p> <p>S</p>
24531258	Multicultural Bar Alliance of Southern California (Madokoro)	Yes	A	A	<p>The Multicultural Bar Alliance of Southern California ("MCBA") fully supports the proposed amendments to California Rule of Court 9.7. MCBA's Resolution in Support of Proposals of the California Civility Task Force is attached.</p> <p>https://fs22.formsite.com/sbcta/files/f-318-86-24531258_HJV4o9JB_California_Civility_Task_Force_Resolution_signed_by_MCBA-SoCal_1-22-22.pdf</p>
24417838	Oberto, Richard	No	A	D	<p>The proposed definition of "incivility" is hopelessly vague. The vagueness will have a chilling effect on constitutionally protected speech and legitimate advocacy for clients. Most attorneys will not be brave enough to wade into the gray area between "incivility" as vaguely defined on the one hand and constitutionally protected free speech and legitimate advocacy on the other hand. That chilling effect will be to the great detriment of client advocacy and diversity of views among</p>

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					attorneys. The vagueness also will lead to arbitrary and capricious enforcement against attorneys who might be different, unorthodox, or standing firm against pressures from judges and opposing counsel (e.g., settlement and other procedural pressures). The attempted definition of "incivility" is hopeless vague on its face, as the attempted definition itself refers for guidance to outside sources, including "the current California Attorney Guidelines of Civility and Professionalism and other applicable civility authorities." We should expect that many of the attorneys and judges who will be most zealous about enforcing "civility" will be those who most egregiously abuse the norms of civility. Consider for example the Fresno County District Attorney, who frequently blames the Governor and recent legal reforms when specific criminal acts occur in the community. I have had one of the DA's deputies call my client (who is an Afghanistan war veteran) "a guy who likes to abuse women." These violators of civility norms will be the first to call out "incivility" when anybody pushes back against their abuses. This is going to create a terrible mess. In sum, the proposed rule will have a chilling effect on advocacy and constitutionally protected speech; the enforcement will be arbitrary and capricious, targeting attorneys who are different, unorthodox, and standing firm against procedural pressures from judges and opposing counsel; and the greatest abusers of civility norms will be the ones who most zealously invoke "incivility" against their adversaries. Please do not subject us attorneys to this terrible proposed rule.
24013161	O'Neil, James		A	D	The proposal is a needlessly overbroad requirement that serves no demonstrable purpose for a large section of California attorneys. As an attorney who practices estate planning and administration, I see no need for me or my fellow colleagues in the practice area to take on additional onerous and essentially toothless/meaningless compliance obligations where issues of incivility are rarely present. This administrative burden would more likely see compliance penalties applied to attorneys who are perfectly civil practitioners but through inadvertence miss the compliance deadline. I have not seen any evidence that such oaths improve the practice of law or attorney civility. Since most of the issues regarding incivility apply to the litigation arena, not the transactional, it would seem that any such proposal should be more narrowly tailored to achieve the desired result. Though I sincerely doubt that the oath would have any impact on attorney civility in

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					any case. The proposal is needless bureaucratic overreach and the proposed amendments should be rejected.
24538602	Orange County Bar Association (Gregg)	Yes	A	AM	<p>Proposed Amendments to CRC Rule 9.7. While we understand that Rule 9.7 and the civility declaration therein was approved by the Supreme Court effective May 27, 2014, we question the intended meaning of the words “at all times” as used within such pledge which provides: “As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy and integrity”. Do such words mean at all times while a lawyer is engaged in the practice of law, or does it mean at all times of a lawyer’s life including when a lawyer is on vacation or while with friends, family, or the public at large? If the former, we suggest a revision to so clarify. If the latter, then we suggest considering a revision to the pledge limiting the applicable time range of the pledge to the times that a lawyer is engaged in the practice of law.</p> <p>This clarification seems imperative, especially in light of the various definitions which can be assigned to such words as “dignity, courtesy and integrity” and the proposed new rule setting a basis for regulation and disciplinary action for pledge violations. Other states’ pledges, such as South Carolina’s and Florida’s, make it clear to whom their pledges apply and that such pledges apply to a lawyer’s conduct while engaged in the practice of law. Both states’ pledges provide: “To the opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in the court, but also in all written and oral communications.” Similarly, proposed new Rule 8.4.2(a) expressly provides: “In representing a client, a lawyer shall not engage in incivility in the practice of law or related professional activities”, thereby limiting the civility requirement to when a lawyer is engaged in the practice of law.</p> <p>In further support of limiting the applicable time range of the Rule 9.7 pledge to the times that a lawyer is engaged in the practice, Business and Professions Code Section 6060(b)(1) already requires lawyers to be of “good moral character,” which is defined in Rule 4.40 of the Rules of the State Bar of California (Admissions Rules) as including qualities of honesty, fairness, candor, trustworthiness, observance of fiduciary responsibility, respect for and obedience to the law, and respect for the rights of others and the judicial process. Such requirement, while still broad, seems to be a more appropriate standard than requiring lawyers to act, at all times, with</p>

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					<p>the subjective words of dignity, courtesy, and integrity.</p> <p>As for the proposed amendment that a lawyer face possible fees and eventually be placed on involuntary inactive enrollment or would have their special admissions registration suspended or terminated for failure to submit to the civility pledge in the manner established by the State Bar, we caution against such regulation as it could be difficult to set standards and would require a significant use of resources to so regulate and discipline.</p> <p>If Rule 9.7 is amended to provide for regulation and disciplinary proceeding during which a lawyer's license could be suspended or terminated, then it is all the more important to clarify the words "at all times" within the civility pledge.</p>
23858211	Rosen, Nicholas	No	A	A	
24023606	Rubin, Andrew	No	NA	D	<p>Civility cannot be legislated. Moreover, those who would violate the rule will have no trouble falsely swearing that they will act with civility.</p> <p>The BAR is putting its emphasis in the wrong places. As usual.</p>
23819379	Sanders, Cassandra	No	NA	A	<p>As a leader of staff who deal with clients as well as attorneys on the phones daily, I believe this could be the most important and impactful rule on the books. I believe if we provided free continuing education in diversity, empathy and compassion, the public trust would improve exponentially. People, including the staff providing assistance, want to be treated with dignity and respect. I can't think of a better way to let the public know who we are and what we do to protect them. It's also something I'd like to see promoted with internal staff, whether they interact with the public or not.</p>
24361949	Schewitzer, Eric		A	D	<p>Civility is in the eye of the beholder. If a lawyer is uncivil, his or her colleagues, his clients or the bench will check that in the most effective way possible. Sometimes, lawyers need to be un-civil. Many of the "founding fathers" of this great nation were lawyers who spoke and acted in ways that were less than civil. A civility pledge is un-American and infringes upon free speech and the right to question authority. We don't need this kind of mamby pamby nonsense. We are lawyers. We have real</p>

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					lawyer work to do. Sometimes that makes us ubnpopular and sometimes we are deemed incivil whan we are only doing our jobs. Whoever thought of this silly rule, I'd like to say some real un-civil words to that person.
24544476	Smith, Alex	No	A	A	
24014117	Solomon, Richard	No	A	D	I am adamantly opposed to this amendment! Is there no area of our lives as lawyers that the State Bar does not seek to regulate or control in some manner or fashion? Is the exercise of such control not a violation of our fundamental constitutional right of free speech and expression? And just how does the Bar intend to enforce any alleged violation of such uncivil expression? Does the Bar have nothing better to do with our dues than this utter nonsense? The stated mission of the State Bar is to protect the public from the lawyers. What about doing something to protect the lawyers and aid them in their practice?
23818423	stephanie	No	NA	A	Most attorneys have learned to be uncivil by peers. As they preach civily before a judge in court, once they leave courthouse they r uncivil to beneficiaries of a trust, opposing parties and opposing counsel. They only time an attorney acts civilly is when forced before jury or judge. Uncivil attorneys are the killer of dreams in my personal point of view. Ask attorneys what it means to them to be civil.
24394334	Vosseller, Steven	No	A	D	Please see uploaded attachment. https://fs22.formsite.com/sbcta/files/f-318-86-24394334_RcL7pOyS_2023.2.1_SCV_public_comment_-_CRC9.7.pdf
24013105	Walls-Fox, Tiffany	No	A	A	
24544408	Williams, Betty	No	A	A	https://fs22.formsite.com/sbcta/files/f-318-86-24544408_xlgHLuQU_2023-03-01_-_Letter_to_State_Bar_BOT_Re_Civility_Proposals.pdf

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24541676	Wolf, David	No	NA	A	<p>William of Wykeham, former chancellor of England used to say that "Manners maketh the man."</p> <p>We have an opportunity to make the practice of law more civil for all people. Civility reflects well on all of us.</p> <p>I support the improvement of civility within the legal practice for everyone - judges, attorneys, staff and society.</p> <p>Thank you.</p> <p>David Wolf</p>
24043139	Woods, Sherri	No	A	D	Obligation to be civil already exists. Redundant.
24013856	Zbylut, Greg	No	A	D	<p>Most attorneys act civilly on a day-to-day basis, and there is nothing to show that whether you were admitted prior to 2014 or since 2014 impacts whether you act more or less civilly toward another attorney.</p> <p>When I have experienced incivility, it has been during the course of litigation. Ad hominem attacks, unjustified delays, and so on are not unusual, and often ignored by judges, or dealt with minimally (repeated warnings about behavior, etc.). Most assuredly, if judges came down harder on attorneys who file frivolous motions, or engage in ad hominem filings, such behavior would cease.</p> <p>Making everyone promise to behave means nothing, and forcing people to make a pledge is insulting to those of us who act professionally without the bar finger-wagging at us. Consequently, I am against this amendment.</p> <p>A better example would be what happened this week in OH, where a male attorney who made misogynistic remarks to a female attorney was called out in social media, and subsequently terminated by his firm. That is a much more effective method, and sends the clear message that such behavior has no place in the legal profession (even still, there were plenty of apologists for his behavior).</p>

Proposed Changes to Rules of Court

Are you an attorney?	Yes
Commenting on behalf of an organization	Yes
Name	Paul Reynolds
Professional Affiliation	President of ABTL San Diego
City	San Diego
State	California
Email address	preynolds@shufirm.com
From the choices below, we ask that you indicate your position on the proposed amendment to California Rule of Court 9.7. (This is a required field.)	AGREE with the proposed recommendations
ATTACHMENTSYou may upload your comment as an attachment. Only one attachment will be accepted per comment submission. We accept the following file types: text (.txt), Microsoft Word (.doc), WordPerfect (.wpd), Rich Text Format (.rtf) and Adobe Acrobat PDF (.pdf). We do not accept any other file types. Please DO NOT submit scanned documents. Files must be less than 4 megabytes in size.	2023_ABTL_SD_Letterhead_-_CIVILITY_LETTER.PDF (235 KB)

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March 1, 2023

Via electronic submission to the State Bar

Ruben Duran, Chair
State Bar Board of Trustees 180 Howard Street
San Francisco, CA 94105

Re: ABTL Sand Diego Chapter Comments to State Bar Civility Proposals


Dear Mr. Duran and Members of the Board of Trustees:

The San Diego Chapter of the Association of Business Trial Lawyers (ABTL) would like to supplement the comments provided by the ABTL chapters to the State Bar Board of Trustees in support the various civility proposals now being considered by the State Bar.

In 2018, our local chapter president Michelle Burton raised the issue of declining professional civility at a Joint Meeting of the ABTL chapters, citing several personal and troubling examples she had recently experienced. The ensuing discussion, led by Ms. Burton among the diverse membership of ABTL including practitioners from both the plaintiff and defense bars and members of the state and federal judiciary, revealed a widespread belief this was a systemic issue within the legal community of our State. And while as a result of the work of numerous local practitioners and members of the judiciary the San Diego County Superior Court (as did several other courts) adopted civility guidelines in our local rules leading up to this discussion, these concerns of professional incivility appeared to be increasing. This initial discussion ultimately resulted in the creation the California Civility Task Force led by both Justice Brian Currey and Heather Rosing, whose extensive work provided the recommendations before the State Bar.

We would like to report these proposed rules are no longer necessary as a result of our efforts over the ensuing five years. Sadly, matters have not improved. Even today members of our organization receive communications from other attorneys calling them “embarrassing” or “disgraceful”, refusing simple requests for professional courtesy without explanation or other examples of incivility that have no place within the legal profession. Mandatory continuing legal education, commitments as part of our attorney oath, and amendments to the Rules of Professional Conduct that can provide objective guidance for practitioners to point to may help provide the necessary impetus to improve civility in our profession, for the reasons set forth in Justice Currey's January 11, 2023 letter and the Task Force's report.

We support the full adoption of the State Bar civility proposals currently under consideration. Thank you for considering our views.


Paul Reynolds, President
ABTL SAN DIEGO

Proposed Changes to Rules of Court

Are you an attorney?	Yes
Name	Glenn Alex
City	Berkeley
State	California
Email address	galex@sonic.net
From the choices below, we ask that you indicate your position on the proposed amendment to California Rule of Court 9.7. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "CRC9.7" to the front of your file's name)	<p>The State Bar has proposed that all active attorneys take an annual oath of “civility.” From 2014, new attorneys have apparently been required to take such an oath when sworn in.</p> <p>Civility is good, particularly if it can have a clear, non-vague definition, if civility doesn’t interfere with zealous advocacy on behalf of a client, and if party opponents are not acting uncivilly or unethically. But what evidence has the Bar gathered, from the past eight years or otherwise, that imposing an oath on all attorneys, let alone an annual oath, makes any difference? Show us.</p> <p>Most attorneys (even criminal attorneys) are “civil.” Those who are “uncivil” will remain uncivil, whatever the meaning. Indeed, the fact that the Bar now proposes to impose a universal annual civility oath indicates that eight years of imposing such an oath on all new admittees has not solved the perceived problem. In the absence of clear evidence that it works, an annual civility oath is</p>

merely another burden that the Bar has decided to impose on the attorneys whose advocate the Bar is supposed to be. And if in spite of everything there must be an oath, then once is enough.

Proposed Changes to Rules of Court

Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	Anonymous
City	Pasadena
State	California
Email address	nzoh@philip.law
From the choices below, we ask that you indicate your position on the proposed amendment to California Rule of Court 9.7. (This is a required field.)	AGREE ONLY if Modified
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "CRC9.7" to the front of your file's name)	If the obligation to be "all times with dignity, courtesy, and integrity" applies to conduct outside of a courthouse then this seems to be compelled speech that is not connected to what we do in the profession. Calbar should not be social engineering how people live their normal lives outside of what the profession calls for. We don't need to take an oath of allegiance or swear under God or attest to carrying ourselves with a particular manner. Aside from that, concepts such as "dignity, courtesy, and integrity" are highly subjective. So what metric do we use to determine who is dignified enough, courteous enough? It seems to me that anyone who takes offense of anything, will be quick to report an attorney to the bar. What an incredible waste of resources to try to control what people say and do, especially outside of the courtroom.

Proposed Changes to Rules of Court

Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	Anonymous
From the choices below, we ask that you indicate your position on the proposed amendment to California Rule of Court 9.7. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "CRC9.7" to the front of your file's name)	<p>incivility to one person may be normal conduct to another</p> <p>its stated that bias is a concern but it could go the other way for example a meek and demure attorney may believe that a direct and unambiguous attorney is being uncivil when pursuant to an objective standard he/she is not. if an attorney believes opposing counsel he/she can go to the judge of the court</p> <p>moreover nonattorney court staff can be very abrupt due to the fact they know their jobs very well and may not act with paitience when it comes to newer attorneys.</p>

Proposed Changes to Rules of Court

Are you an attorney? Yes

Commenting on behalf of an organization No

Name Anonymous

From the choices below, we ask that you indicate DISAGREE with the proposed recommendations your position on the proposed amendment to California Rule of Court 9.7. (This is a required field.)

ENTER COMMENTS HERE. To upload files "Civility" is a way too subjective term. proceed to the ATTACHMENTS section below. (Please add "CRC9.7" to the front of your file's name)

Proposed Changes to Rules of Court

Are you an attorney? Yes

Commenting on behalf of an organization No

From the choices below, we ask that you indicate DISAGREE with the proposed recommendations your position on the proposed amendment to California Rule of Court 9.7. (This is a required field.)

ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "CRC9.7" to the front of your file's name)

"I hold it that a little rebellion now and then is a good thing, and is as necessary in the political world as storms in the physical." - Thomas Jefferson, 1787

Proposed Changes to Rules of Court

Are you an attorney?

No

Commenting on behalf of an organization

No

From the choices below, we ask that you indicate your position on the proposed amendment to California Rule of Court 9.7. (This is a required field.)

DISAGREE with the proposed recommendations

ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "CRC9.7" to the front of your file's name)

Should this not also apply to judges? What is next? A pledge to brush their teeth.

Proposed Changes to Rules of Court

Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	Anonymous
City	Murrieta
State	California
From the choices below, we ask that you indicate your position on the proposed amendment to California Rule of Court 9.7. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "CRC9.7" to the front of your file's name)	<p>All too often, zealous advocacy is interpreted as being mean, hostile or incivil to a party or attorney. Challenging the accuracy of one's statements or the general credibility or integrity of a party or attorney is often necessary to cull inaccuracies from the truth, like by cross examination or deposition, or negotiation at the table. These common practices may be improperly interpreted under these proposed changes as "incivility" practices to test a witness or his/her allegations or version of events. Moreover, in a world of changing definitions or attacks on common English usage, like pronouns, one may too quickly ascribe incivility to those traditional practices.</p> <p>For those who have practiced a decade, two decades or more (like me), we have matured beyond incivility practices often learned by over-eager new attorneys or those insulting practices observed on TV or movies. Another requirement of a pledge "to be nice", or another among the growth of requirements (i.e., implicit</p>

bias training - really?!), appears abusive tinkering by woke bureaucrats who have nothing better to do except to impose growing insulting requirements that would be interpreted by the subjective beliefs of those bureaucrats.

For those many who practice with integrity, dignity and courtesy, an oath to do so is unnecessary, whereas for those who would not so practice would still falsely testify to do so.

There are enough rules with more objective criteria to deal with those who objectively engage in incivility, like those who pursue false claims or defenses, produce false evidence, or submit irrelevant malicious insults about parties, witnesses or counsel.

Additionally, local Court rules exist that may be better suited to the task.

Proposed Changes to Rules of Court

Are you an attorney?	Yes
Commenting on behalf of an organization	No
From the choices below, we ask that you indicate your position on the proposed amendment to California Rule of Court 9.7. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "CRC9.7" to the front of your file's name)	<p>We are already held to a higher standard as described in the Business and Professions Code, Rules of Court, policies, and the unwritten rule of civility. Additionally, we have to take an Ethics Exam, take 25 or more educational units every three years, and we are constantly and completely scrutinized and evaluated all the time in court, opposing counsel, our clients, court staff, judges, juries, etc.</p> <p>The point is, we are already heavily regulated and required to act with dignity, civility and respect, we don't need to be further regulated. Additionally, the new rule went into effect in 2014, and it is not retroactively applied to attorneys prior to 2014. The Bar got what they wanted with the new rule - 9.7 back in 2014. Fine, let's move forward.</p> <p>I am a very civil and respectful attorney, as is most if not all the attorneys licensed by the bar. So, I am against imposing one more required civility and dignity item as part of my profession. Thanks</p>

Proposed Changes to Rules of Court

Are you an attorney?

Yes

State

California

From the choices below, we ask that you indicate your position on the proposed amendment to California Rule of Court 9.7. (This is a required field.)

DISAGREE with the proposed recommendations

ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "CRC9.7" to the front of your file's name)

Attorneys have always been required to conduct themselves professionally. Adding a civility declaration to already admitted attorneys prior to 2014 just adds a layer of bureaucracy. Another piece for someone to look for on a form. Thus, I disagree.

Proposed Changes to Rules of Court

Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	Andrew Aronsohn
Professional Affiliation	n/a
City	Yreka
State	California
Email address	aaronsohn@co.siskiyou.ca.us
From the choices below, we ask that you indicate your position on the proposed amendment to California Rule of Court 9.7. (This is a required field.)	AGREE ONLY if Modified
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "CRC9.7" to the front of your file's name)	<p>My comments are limited to to proposed annual pledge requirement, which I oppose.</p> <p>This strikes me as something that is being proposed simply so the State Bar can point at it as an example of it doing 'something.' The materials offer no explanation of how this additional annual requirement would be of any benefit.</p> <p>The "civility task force report" that the proposal seems to originate from also notes that it could be done by "checking a box" when paying dues. Such a procedure cheapens this "aspirational" pledge, reducing it to a mere formality.</p>

Proposed Changes to Rules of Court

Are you an attorney?	Yes
Commenting on behalf of an organization	Yes
Name	Erica Yen
Professional Affiliation	Asian Pacific American Bar Association of Los Angeles County
City	Los Angeles
State	California
Email address	ericayen.apaba@gmail.com
From the choices below, we ask that you indicate your position on the proposed amendment to California Rule of Court 9.7. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "CRC9.7" to the front of your file's name)	<p>The Asian Pacific American Bar Association of Los Angeles County endorses the positions taken in the Task Force's letter to you, from Justice Brian S. Currey, dated January 23, 2023. In other words, APABA fully supports the Board of Trustees' proposed amendments to California Rule of Court 9.7 that would require all licensees who did not take the attorney oath with the civility language, as well as specially admitted attorneys, to submit a declaration with the civility pledge by February 1, 2024. We also fully support all licensees and specially admitted attorneys being required to complete the civility pledge on an annual basis when paying licensing fees or registering as a specially admitted attorney.</p>

Proposed Changes to Rules of Court

Are you an attorney?	Yes
Commenting on behalf of an organization	Yes
Name	William C. O'Neill
Professional Affiliation	President, Association of Business Trial Lawyers (Orange County)
City	Costa Mesa
State	California
Email address	wco@rossllp.com
From the choices below, we ask that you indicate your position on the proposed amendment to California Rule of Court 9.7. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "CRC9.7" to the front of your file's name)	On behalf of the Orange County, San Diego, San Joaquin, and Los Angeles chapters of the Association of Business Trial Lawyers, we attach a letter joining in CCTF's comments to those proposals, as set forth in Justice Brian Currey's January 11, 2023 letter.
ATTACHMENTSYou may upload your comment as an attachment. Only one attachment will be accepted per comment submission. We accept the following file types: text (.txt), Microsoft Word (.doc), WordPerfect (.wpd), Rich Text Format (.rtf) and Adobe Acrobat PDF (.pdf). We do not accept any other file types. Please DO NOT submit scanned documents. Files must be less than 4 megabytes in size.	CRC9.7_ABTL_Letter_-_civility.pdf (67 KB)



Via electronic submission to the State Bar

Ruben Duran, Chair
State Bar Board of Trustees
180 Howard Street
San Francisco, CA 94105

Re: ABTL Comments to State Bar Civility Proposals

Dear Mr. Duran and Members of the Board of Trustees:

With chapters in Los Angeles, Northern California, Orange County, San Diego, and the San Joaquin Valley, the Association of Business Trial Lawyers – commonly known as ABTL – is California's premier professional association for business trial lawyers. By design, we have a diverse membership, including practitioners from the plaintiff and defense bars from law firms of all sizes, solo practitioners, and members of the state and federal judiciary. Civility and professionalism are at the heart of everything we do. We recognize that building and strengthening relationships with colleagues – including potential adversaries – enhances the professional environment for members and better serves clients and the public.

As detailed in its initial report, the California Civility Task Force (CCTF) is, in a very real sense, an outgrowth of our efforts to improve professionalism and civility in the legal profession. We have followed the work of the CCTF closely and support the various civility proposals now being considered by the State Bar. We join in CCTF's comments to those proposals, as set forth in Justice Brian Currey's January 11, 2023 letter.

Thank you for considering our views.

A handwritten signature in black ink, appearing to read "K. Boyle".

Kevin R. Boyle
President
Los Angeles

A handwritten signature in black ink, appearing to read "W. O'Neill".

William C. O'Neill
President
Orange County

A handwritten signature in blue ink, appearing to read "Mandy Jettcoach".

Mandy L. Jettcoach
President
San Joaquin Valley

A handwritten signature in black ink, appearing to read "P. Reynolds".

Paul Reynolds
President
San Diego

Proposed Changes to Rules of Court

Are you an attorney?	Yes
Commenting on behalf of an organization	Yes
Name	Jonathan Patchen
Professional Affiliation	Association of Business Trial Lawyers, Northern California Chapter
City	San Francisco
State	California
Email address	jpatchen@willkie.com
From the choices below, we ask that you indicate your position on the proposed amendment to California Rule of Court 9.7. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "CRC9.7" to the front of your file's name)	The Association of Business Trial Lawyers, Northern California Chapter (https://abtl.org/northerncalifornia/) has been a leader in promoting civility guidelines in the legal profession. On behalf of our nearly 2000 members, we submit this comment to state that our Chapter AGREES with the Proposal and encourages the State Bar to adopt it.

Proposed Changes to Rules of Court

Are you an attorney?	Yes
Commenting on behalf of an organization	Yes
Name	Ninos Saroukhanioff
Professional Affiliation	Association of Southern California Defense Counsel
City	Los Angeles
State	California
Email address	jennifer@caladmanagement.com
From the choices below, we ask that you indicate your position on the proposed amendment to California Rule of Court 9.7. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "CRC9.7" to the front of your file's name)	See attached correspondence.
ATTACHMENTSYou may upload your comment as an attachment. Only one attachment will be accepted per comment submission. We accept the following file types: text (.txt), Microsoft Word (.doc), WordPerfect (.wpd), Rich Text Format (.rtf) and Adobe Acrobat PDF (.pdf). We do not accept any other file types. Please DO NOT submit scanned documents. Files must be less than 4 megabytes in size.	ASCDC_Letter_Re_Proposed_Rules_-_Civility_Feb_2023.pdf (555 KB)



ASSOCIATION OF
SOUTHERN CALIFORNIA
DEFENSE COUNSEL

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March 1, 2023

Ruben Duran, Chair
State Bar Board of Trustees
180 Howard St.
San Francisco, CA 94105

Re: Public Comment on the State Bar of California's Proposed Civility Rules

Dear Mr. Duran:

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The Association of Southern California Defense Counsel (ASCDC), provides the following public comment in support of the Proposed State Bar Civility Rules.

ASCDC has approximately 1,200 members and is the largest regional organization in the country devoted to the interests of civil defense attorneys. ASCDC has long been a proponent of supporting civility amongst lawyers, the judiciary and our clients both in and outside of the courtroom. ASCDC provides educational seminars and webinars throughout the year to both members and non-members. We routinely host a seminar devoted to encouraging civility with panels consisting of judges, plaintiff's attorneys, and defense attorneys. The ASCDC leadership works closely with the leadership of Consumer Attorneys Association of Los Angeles, the American Board of Trial Advocates, the California Judges Association as well as numerous bar associations to promote civility, as well as providing and participating in diversity, equality and inclusion programs.

ASCDC hereby submits its public comment on the following proposals:

1. ASCDC **SUPPORTS Proposal 1** of the Task Force Initial Report. ASCDC SUPPORTS the Board's proposed amendments to the MCLE rules requiring all licensees complete one hour of MCLE on civility in the legal profession, and that the approved course cover

the relationship between bias and incivility as part of their existing 25-hour MCLE requirement. ASCDC asks the State Bar Board of Trustees to mandate one hour of civility MCLE training for attorneys, without increasing total MCLE hours.

2. ASCDC **SUPPORTS Proposal 2** of the Task Force Initial Report and asks the Chief Justice, as head of the Judicial Council, and the Center for Judicial Education and Research Advisory Committee (CJER) to provide voluntary training to judges on promoting civility inside and outside courtrooms.
3. ASCDC **SUPPORTS Proposal 4** of the Task Force Initial Report and asks the Supreme Court to amend Rule of Court 9.7 to require all attorneys, when annually renewing their licenses to practice law, to swear or affirm: "As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy and integrity." ASCDC also **SUPPORTS** the Board's proposed amendments to California Rule of Court 9.7 which would require all State Bar licensees and specially admitted licensees who did not take the civility pledge to submit a declaration with the civility pledge by February 1, 2024.
4. With respect to **Proposal 3** of the Task Force Initial Report and the related proposed changes to the Rules of Professional Conduct, attached as Appendix 8 to the Initial Report. After careful consideration of the Proposal and the related changes to the Rules of Professional Conduct, the **ASCDC is unable to support Proposal 3 at this time**. While ASCDC fully supports promoting civility in our profession, we find some of the proposed language to be unclear and could have the consequence of creating a conflict between a lawyer and his or her client. Specifically, the following proposed language of 1.2 is unclear: "*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..." Comment 6 is unclear: "A lawyer's violation of paragraph (d) includes engaging in significantly *unprofessional conduct that is abusive or harassing* in the practice of law *or related professional activities*. We have concerns that proposed Rule 8.4.2 could be used by a lawyer looking to gain an advantage during litigation. ASCDC also believes that the Rule should be limited to, "incivility in the practice of law." The ASCDC finds the language "or related professional activities" to be unclear and potentially unrelated to the practice of law.

ASCDC wishes to thank the leadership of the California Civility Task Force for their hard work on these important topics. We look forward to learning the Bar's response to the public comment and how it continues to work to promote civility within the practice of law.

Very truly yours,

Ninos Saroukhanioff

Ninos Saroukhanioff
ASCDC President

Proposed Changes to Rules of Court

Are you an attorney?	Yes
Commenting on behalf of an organization	Yes
Name	Barbara Beard
City	Needles
State	California
Email address	listenlaw@gmail.com
From the choices below, we ask that you indicate your position on the proposed amendment to California Rule of Court 9.7. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "CRC9.7" to the front of your file's name)	It is a sad state of affairs that anyone found this necessary. Personally, it represents to me that there are a lot of angry attorneys out there who have never learned to behave. I'm surprised they aren't just warned by the Court and if they persist, held in contempt and thrown in a cell for 24 hours. A hefty fine would also be appropriate.

Proposed Changes to Rules of Court

Are you an attorney?	Yes
Commenting on behalf of an organization	Yes
Name	Belinda Macauley
Professional Affiliation	Beverly Hills Bar Association
City	Beverly Hills
State	California
Email address	bmacauley@bhba.org
From the choices below, we ask that you indicate your position on the proposed amendment to California Rule of Court 9.7. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "CRC9.7" to the front of your file's name)	<p>The California Civility Task Force (CCTF), a joint project of the California Judges Association and the California Lawyers Association, has recommended that the State Bar of California modify its rules to require attorneys to complete an annual civility pledge.</p> <p>This proposal follows observations of growing incivility that undermines our whole profession and the justice system, including by heightening stress and job dissatisfaction among lawyers and judges, and increasing costs and delays in litigation and transactions. The CCTF also notes that incivility disproportionately impacts “young lawyers, women lawyers, lawyers of color, and lawyers from other marginalized groups.”</p> <p>The Beverly Hills Bar Association supports this proposal. Civility must be a cornerstone of the legal profession—essential for our advocates to</p>

demonstrate and foster as they zealously advocate for their clients.

Lawyers admitted since 2014 have had the following language added to their attorney oath: “As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy and integrity.” Requiring an attestation to these principles by those who have been practicing longer makes sense both practically and from an equity perspective. All attorneys should have the same conduct obligations to each other, our courts, and the public.

As the licensing entity for California lawyers, the State Bar of California should require all attorneys to commit to civility. As a voluntary bar, the Beverly Hills Bar Association has adopted a civility policy and expects behavior consistent with it from our members, leaders, and staff. That expectation is reasonable and achievable, and benefits the legal profession, our justice system, and the public.

Proposed Changes to Rules of Court

Are you an attorney?	No
Commenting on behalf of an organization	No
Name	charles bryson
City	LOS ANGELES
State	California
Email address	rett.bryson@gmail.com
From the choices below, we ask that you indicate your position on the proposed amendment to California Rule of Court 9.7. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "CRC9.7" to the front of your file's name)	should be mandatory

Proposed Changes to Rules of Court

Are you an attorney?	Yes
Commenting on behalf of an organization	Yes
Name	Jack Londen
Professional Affiliation	California Access to Justice Commission
City	Oakland
State	California
Email address	jlonden@calatj.org
From the choices below, we ask that you indicate your position on the proposed amendment to California Rule of Court 9.7. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "CRC9.7" to the front of your file's name)	<p>We Support the Proposed Amendment to California Rule of Court 9.7 Requiring Attorneys to Complete a Civility Oath and Annually Reconfirm their Civility Pledge.</p> <p>The attorney oath in California was modified in 2014 to include a civility pledge that provides “As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy and integrity.” However, only attorneys admitted to practice after May 2014 have taken an attorney oath that includes a civility pledge. This means most practicing California attorneys have not taken a civility pledge.</p> <p>The proposed amendments to California Rule of Court 9.7 would address this by requiring attorneys who have not taken the oath with the civility pledge to submit a one-time declaration to the State Bar affirming that they will conduct</p>

themselves with civility, and by requiring all active attorneys to reaffirm their commitment to civility on an annual basis, most likely when paying annual licensing fees.

Attorneys acting with civility promote access to justice, especially for unrepresented parties. While there are many reasons to support civility in the profession, the impact on access to justice motivates the Access Commission to support the proposed required civility pledge for all active California attorneys.

Every attorney's conduct should reflect well on the judicial system, the profession, and the fair administration of justice. Attorneys should avoid frivolous disputes and inspire public regard for the profession and the judicial system. Rude, abusive, or disrespectful tactics neither reflect well on the legal profession nor inspire the public's confidence. Moreover, civility improves...

... the ability of self-represented parties to navigate the judicial system. This includes when attorneys communicate in a professional manner; respond to communications within a reasonable time and in a reasonable manner; avoid personal attacks, demeaning comments, and misleading characterizations; agree to reasonable requests and honor commitments; and behave professionally. Self-represented parties are already disadvantaged and stressed. Unprofessional, abusive, and disrespectful conduct by attorneys towards people who are unrepresented creates unnecessary and inappropriate additional stresses and barriers. Incivility also can be a manifestation of bias. Incivility related to bias further undermines efforts around racial justice and diversity, equity, and

inclusion in the legal profession.

In addition, attorneys need to understand that public respect for the judicial process is essential to sustaining the rule of law as well as our democratic institutions, civility need not be at odds with zealous advocacy, and each attorney has a role. This can be accomplished in MCLE training. We also recommend that the State Bar consider modifying the civility oath to be more specific in acknowledging and addressing these issues, as follows:

As an officer of the court, I understand that public respect for the judiciary and the judicial process is essential to sustaining the rule of law and our democracy and that my conduct as an attorney directly affects individuals' trust in the administration of justice in California. Therefore, even when engaged in advocacy for my client, I will strive to conduct myself at all times with dignity, courtesy, and integrity.

We thank the...

... California Civility Task Force, the CJA, the CLA, and the State Bar for moving forward with a focus on the importance of civility in the legal profession. We support the proposed amendments to California Rule of Court 9.7.

ATTACHMENTS You may upload your comment as an attachment. Only one attachment will be accepted per comment submission. We accept the following file types: text (.txt), Microsoft Word (.doc), WordPerfect (.wpd), Rich Text Format (.rtf) and Adobe Acrobat PDF (.pdf). We do not accept any other file types. Please DO NOT submit scanned documents. Files must be less than 4 megabytes in size.

[StateBarCommentsCivilityMCLE_FINAL_002.pdf](#)
(219 KB)

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Los Angeles County Superior Court

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JUAN JOSE GUTIERREZ
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Educational Center

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California Department of Justice

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Email: info@CalATJ.org

Website: www.CalATJ.org

February 22, 2023

Board of Trustees

The State Bar of California

180 Howard Street

San Francisco, CA 94105

Submitted online: <https://fs22.formsite.com/sbcta/knrig7ggze/index.html>,

<https://fs22.formsite.com/sbcta/i4r185mk2h/index.html>,

<https://fs22.formsite.com/sbcta/jtdtpgyb4a/index.html>

Re: Support for Proposed Amendments to the Rules of Court, the Rules of Professional Conduct, and MCLE Requirements Related to Promoting Civility in the Legal Profession

To the State Bar Board of Trustees:

The California Access to Justice Commission writes in support of three of the recommendations of the California Civility Task Force, a joint project of the California Judges Association (CJA) and the California Lawyers Association (CLA). Specifically, the Access Commission supports the proposed amendment to California Rule of Court 9.7 requiring California attorneys to take a civility pledge, revisions to Rules of Professional Conduct 1.2, 8.4, and 8.4.2 addressing civility, and requiring one hour of MCLE credit for training related to civility in the profession. We believe a focus on increasing and improving civility in the profession will, in particular, promote the needs and experiences of self-represented parties who often face significant barriers to court access and incivility by attorneys.

The California Access to Justice Commission advances access to civil justice for all Californians, expands civil justice resources for low and moderate-income people, and develops innovations that reduce barriers to civil justice for Californians from diverse backgrounds. To do so, the Access Commission facilitates collaboration among the courts, the Bar, and the public—including all three branches of government and stakeholders throughout the state.

We Support the Proposed Amendment to California Rule of Court 9.7 Requiring Attorneys to Complete a Civility Oath and Annually Reconfirm their Civility Pledge.

The attorney oath in California was modified in 2014 to include a civility pledge that provides “As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy and integrity.” However, only attorneys admitted to practice after May 2014 have taken an attorney oath that includes a civility pledge.

This means most practicing California attorneys have not taken a civility pledge.

The proposed amendments to California Rule of Court 9.7 would address this by requiring attorneys who have not taken the oath with the civility pledge to submit a one-time declaration to the State Bar affirming that they will conduct themselves with civility, and by requiring all active attorneys to reaffirm their commitment to civility on an annual basis, most likely when paying annual licensing fees.

Attorneys acting with civility promote access to justice, especially for unrepresented parties. While there are many reasons to support civility in the profession, the impact on access to justice motivates the Access Commission to support the proposed required civility pledge for all active California attorneys.

Every attorney’s conduct should reflect well on the judicial system, the profession, and the fair administration of justice. Attorneys should avoid frivolous disputes and inspire public regard for the profession and the judicial system. Rude, abusive, or disrespectful tactics neither reflect well on the legal profession nor inspire the public’s confidence. Moreover, civility improves the ability of self-represented parties to navigate the judicial system. This includes when attorneys communicate in a professional manner; respond to communications within a reasonable time and in a reasonable manner; avoid personal attacks, demeaning comments, and misleading characterizations; agree to reasonable requests and honor commitments; and behave professionally. Self-represented parties are already disadvantaged and stressed.

Unprofessional, abusive, and disrespectful conduct by attorneys towards people who are unrepresented creates unnecessary and inappropriate additional stresses and barriers. Incivility also can be a manifestation of bias. Incivility related to bias further undermines efforts around racial justice and diversity, equity, and inclusion in the legal profession.

In addition, attorneys need to understand that public respect for the judicial process is essential to sustaining the rule of law as well as our democratic institutions, civility need not be at odds with zealous advocacy, and each attorney has a role. This can be accomplished in MCLE training. We also recommend that the State Bar consider modifying the civility oath to be more specific in acknowledging and addressing these issues, as follows:

As an officer of the court, **I understand that public respect for the judiciary and the judicial process is essential to sustaining the rule of law and our democracy and that my conduct as an attorney directly affects individuals’ trust in the administration of**

justice in California. Therefore, even when engaged in advocacy for my client, I will strive to conduct myself at all times with dignity, courtesy, and integrity.

We thank the California Civility Task Force, the CJA, the CLA, and the State Bar for moving forward with a focus on the importance of civility in the legal profession. We support the proposed amendments to California Rule of Court 9.7.

We Support the Proposed Amendments to California Rules of Professional Conduct 1.2 and 8.4, and Creation of New Rule 8.4.2, Addressing Civility – with Proposed Modifications to Comment [1] to Rule 1.2 and Comment [4] to Rule 8.4.

The proposed amendments to the California Rules of Professional Conduct will further support civility in the legal profession.

First, the proposed amendment to Rule of Professional Conduct 1.2 would add language in comment [1] regarding the allocation of authority between a client and a lawyer. This amended comment appropriately clarifies that while the client controls the decisions concerning the objectives of representation, the attorney retains the authority and professional responsibility to act with civility in pursuing those objectives. Because, as noted, the Access Commission is particularly interested in the professional responsibility of civility in dealing with self-represented parties, we recommend that the language in comment [1] not unnecessarily be limited to “requests of opposing counsel” but instead also include requests by self-represented parties, as follows:

Notwithstanding a client’s direction, a lawyer retains the authority to agree to reasonable requests of opposing counsel or self-represented parties 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.

Calling attention to an attorney’s professional responsibility to agree to reasonable requests by self-represented parties will further the objectives of increasing civility in the profession, supporting access to justice, and reducing barriers to justice for those that do not have counsel.

Second, the proposed amendment to Rule of Professional Conduct 8.4 regarding misconduct adds the following language in comment [6] explaining that significant unprofessional conduct can be prejudicial to the administration of justice, as follows:

[6] A lawyer’s 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.

This proposed comment appropriately explains that significantly unprofessional conduct can be a basis for a finding of attorney misconduct and that it undermines the profession and the administration of justice. The additional proposed amendment to comment [4], cross-referencing the proposed new stand-alone rule 8.4.2, also is helpful. However, this comment can be further clarified by expressly stating that such conduct may be a basis for discipline, as follows:

[4] A lawyer may be disciplined under Business and Professions Code section 6106 for acts involving moral turpitude, dishonesty, or corruption, whether intentional, reckless, or grossly negligent. **A lawyer also may be disciplined** rRegarding significantly unprofessional conduct that is abusive or harassing, see rule 8.4.2.

Clarifying that civility is a professional responsibility of attorneys and significantly unprofessional conduct that is abusive or harassing can be a basis for a finding of attorney misconduct and discipline will further the objectives of increasing civility in the profession and, as noted, reducing barriers to justice for those that do not have counsel. In addition, we expect this may help reduce bias-based incivility and, therefore, further promote racial justice and diversity, equity, and inclusion in the legal profession.

Third, the proposed new stand-alone rule, rule 8.4.2, discussing prohibited incivility, is a helpful addition to explain what is expected and required. Separating prohibited incivility in a new separate rule, as suggested by State Bar staff, has several benefits, including highlighting the importance of civility; providing a further explanation, references, and examples of misconduct; and assisting in interpretation, education, and enforcement of civility guidelines and potential misconduct and discipline related to abusive or harassing misconduct.

We again thank the California Civility Task Force, the CJA, the CLA, and the State Bar for moving forward with proposed amendments to the Rules of Professional Conduct focused on the importance of civility in the legal profession and clarifying the possibility of findings of misconduct and discipline for significantly unprofessional conduct that is abusive or harassing. We support the proposed amendments to California Rules of Professional Conduct 1.2 and 8.4, and the creation of a new rule 8.4.2. As noted, we have suggested language changes to the proposed amendments to Comment [1] to Rule of Professional Conduct 1.2 and Comment [4] to Rule of Professional Conduct 8.4.

We Support the Proposed Revisions to MCLE Requirements Adding Civility to the Legal Profession, and Would Support the Exploration of MCLE Requirements to Support and Promote Pro Bono Legal Services.

In combination with the proposed updates to the civility oath and amendments to the Rules of Professional Conduct regarding civility, we agree with the recommendations of the California Civility Task Force and State Bar staff regarding the addition of civility in the legal profession as a subfield of required mandatory continued legal education. It is our understanding that this would not increase the existing requirement of 25 hours of legal education every three years. Instead, it would add one hour of civility in the practice of law as one of the required areas of education, supplementing existing required areas including legal ethics (four hours), recognition and elimination of bias (two hours), and substance abuse or other mental or physical issues that impair the ability to perform legal service with competence (one hour). This addition of one hour of civility as a required area of legal education will support the goals of actively educating and promoting attorneys about the importance and impact of civility in the profession.

In particular, the Access Commission agrees with the California Civility Task Force that a civility MCLE requirement would “educate attorneys about the economic and human costs of incivility; provide lawyers with reasons and tools to change their own behavior if they are uncivil; teach lawyers how to help those who are uncivil change their behavior; help lawyers deal with stress and dissatisfaction caused by toxic uncivil behavior; and reduce bias-driven incivility.” (CCTF report, pp. 8-9.) We further agree with the California Civility Task Force that a civility MCLE requirement should highlight the link between bias and incivility and urge lawyers to eliminate bias-driven incivility, especially bias-based incivility that can be abusing or harassing. The Access Commission further encourages civility training to include the impact of civility on self-represented parties and access to justice, as well as public respect for the judiciary and the judicial process as important in sustaining the Rule of Law and democracy.

Separately, the request for public comment asked: “Should the State Bar consider adding a requirement for education regarding opportunities for attorneys to render pro bono legal services?” The Access Commission supports efforts to increase the provision of pro bono legal services and is interested in exploring potential opportunities to use MCLE requirements to support and promote pro bono legal services with the State Bar. However, further exploration and input from stakeholders are necessary before moving forward with this initiative.

The California Access to Justice Commission appreciates the State Bar’s implementation of the recommendations of the California Civility Task Force. The Access Commission supports the proposed changes with the suggested modifications noted.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mark Juhas".

Judge Mark Juhas
Chair

Proposed Changes to Rules of Court

Are you an attorney?	No
Commenting on behalf of an organization	Yes
Name	Justice Brian S. Currey
Professional Affiliation	California Civility Task Force
City	Los Angeles
State	California
Email address	brian.currey@jud.ca.org
From the choices below, we ask that you indicate your position on the proposed amendment to California Rule of Court 9.7. (This is a required field.)	AGREE with the proposed recommendations
ATTACHMENTSYou may upload your comment as an attachment. Only one attachment will be accepted per comment submission. We accept the following file types: text (.txt), Microsoft Word (.doc), WordPerfect (.wpd), Rich Text Format (.rtf) and Adobe Acrobat PDF (.pdf). We do not accept any other file types. Please DO NOT submit scanned documents. Files must be less than 4 megabytes in size.	California_Civility_Task_Force_Letter_and_Comments_to_Proposed_Disciplinary_Rules_Changes_1.11.23._FINAL.pdf (2.47 MB)



STATE OF CALIFORNIA
Court of Appeal
SECOND APPELLATE DISTRICT
DIVISION FOUR
300 SOUTH SPRING STREET
LOS ANGELES, CALIFORNIA 90013

BRIAN S. CURREY
ASSOCIATE JUSTICE

TELEPHONE
(213) 830-7438
brian.currey@jud.ca.gov

January 11, 2023

Via electronic submission to the State Bar and email to ruben.duran@bbklaw.com

Ruben Duran, Chair
State Bar Board of Trustees
180 Howard Street
San Francisco, CA 94105

Re: California Civility Task Force Comments to Civility Proposals Being
Considered by the State Bar Board of Trustees

Dear Ruben:

In my capacity as Chair of the California Civility Task Force (CCTF), I write to provide the CCTF's comments on the State Bar's civility proposals, which are based on three of the CCTF's key proposals. I also write to thank you, your colleagues on the State Bar Board of Trustees, and the State Bar staff, for your engagement and leadership on this important topic.

The Board of Trustees will be considering comments on its proposals: (1) Revising California Rule of Court 9.7 to ensure all lawyers take the civility portion of the attorney oath; (2) Making repeated incivility a disciplinary offense; and (3) Requiring lawyers to participate in mandatory continuing legal education (MCLE) about civility, and the connection between bias and incivility. I will address each in turn.

1. Revisions to California Rule of Court 9.7

The CCTF FULLY SUPPORTS the Board's proposed amendments to California Rule of Court 9.7 that would require all licensees who did not take the attorney oath with the civility language, as well as specially admitted attorneys, to submit a declaration with the civility pledge language by February 1, 2024. Also, all licensees and specially admitted attorneys would be required to complete the civility pledge on an annual basis when paying licensing fees or registering as a specially admitted attorney. We have no proposed revisions.

2. Revisions to the Rules of Professional Conduct

The CCTF offers QUALIFIED SUPPORT for the Board's proposed revisions to the Rules of Professional Conduct. Obviously, we support the change to make incivility a disciplinary offense. We offer two minor proposed revisions. The first of our proposed revisions is a substantive change that we believe will eliminate some first amendment concerns that have been expressed to us by members of the bar. The second corrects a numbering error. I have attached a markup showing our proposed revisions.

Scope Revision. On reflection, we believe the proposed civility disciplinary rules should apply only to lawyer speech and conduct when a lawyer is representing a client in the practice of law, and not while the lawyer is engaged in some professional activity other than law practice. Restrictions on lawyers' speech and conduct, including civility rules, inevitably raise the question of whether the First Amendment permits them. (*See generally*, M. Tarkington, Voice of Justice: Reclaiming the First Amendment Rights of Lawyers (2018) ("Tarkington")). As Professor Tarkington explains in her book, courts and commentators have expressed different views on what restrictions on lawyers' speech are permissible under the First Amendment, and why. We believe the modest rule changes being considered by the State Bar do not violate the First Amendment. They merely require lawyers to exercise professionalism and refrain from abusing and harassing others, requirements that judges are already required to enforce with respect to lawyers representing parties in state court litigation. (*See* California Code of Judicial Ethics, Canon 3B, advisory commentary: 3B(2)). These restrictions do not interfere with lawyers' ability to advance their clients' interests and are essential to maintaining the integrity and functioning of the judicial system.

Our proposed scope revision nevertheless limit the civility requirement to lawyers who are representing a client in the practice of law, as opposed to those representing a client in "other professional activities." This may eliminate or discourage some First Amendment challenges. As Professor Tarkington notes, there is significant disagreement among scholars and in the caselaw about the scope of lawyers' First Amendment rights, but if there is a dominant view, it is that lawyers who are engaged in the practice of law on behalf of a client have lesser or no First Amendment rights. (Tarkington at 1-3). We express no view on that. But by deleting "or related professional activities," the State Bar will eliminate challenges to the rules by lawyers who, for example, claim to fear discipline for potentially offensive speech or conduct at bar functions, while teaching MCLE courses, or other professional activities that are not included in the practice of law. Granted, lawyers participating in bar functions or teaching MCLE courses generally are not doing so "[i]n representing a client" and so would not fall within the rules in any event, but we believe our proposed changes make the rules cleaner and more easily defensible. Our other proposed changes make clear that the incivility prohibition applies to both speech and conduct.

Numbering change. Our remaining revision corrects a numbering (typographical) error.

3. New MCLE Civility Course Requirements

The CCTF FULLY SUPPORTS the Board's proposed amendments to the MCLE rules. As it relates to CCTF's recommendations, the Board proposes to amend the MCLE rules to require that all licensees complete one hour of MCLE on the topic of civility in the legal profession as part of their existing 25-hour MCLE requirement, and that approved civility courses cover the relationship between bias and incivility. There are several other non-civility related changes being proposed to the MCLE rules, as to which the CCTF takes no position.

Thank you, as always, for your service to the profession and for considering our views.

Very truly yours,



Brian S. Currey
Associate Justice

cc: Leah Wilson, Executive Director, leaht.wilson@calbar.ca.gov
California Civility Task Force

California Civility Task Force Comments January 11, 2023

State Bar Revisions for comment shown in blue

California Civility Task Force comments shown in red

Rule 1.2 Scope of Representation and Allocation of Authority

(a) Subject to rule 1.2.1, a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by rule 1.4, shall reasonably* consult with the client as to the means by which they are to be pursued. Subject to Business and Professions Code section 6068, subdivision (e)(1) and rule 1.6, a lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. Except as otherwise provided by law in a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer may limit the scope of the representation if the limitation is reasonable* under the circumstances, is not otherwise prohibited by law, and the client gives informed consent.*

Comment

Allocation of Authority between Client and Lawyer

[1] Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. (See, e.g., Cal. Const., art. I, § 16; Pen. Code, § 1018.) A lawyer retained to represent a client is authorized to act on behalf of the client, such as in procedural matters and in making certain tactical decisions. 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. However, a lawyer is not authorized merely by virtue of the lawyer's retention to impair the client's substantive rights or the client's claim itself. (Blanton v. Womancare, Inc. (1985) 38 Cal.3d 396, 404 [212 Cal.Rptr. 151, 156].)

California Civility Task Force Comments January 11, 2023

State Bar Revisions for comment shown in blue

California Civility Task Force comments shown in red

[2] At the outset of, or during a representation, the client may authorize the lawyer to take specific action on the client's behalf without further consultation. Absent a material change in circumstances and subject to rule 1.4, a lawyer may rely on such an advance authorization. The client may revoke such authority at any time.

Independence from Client's Views or Activities

[3] A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

Agreements Limiting Scope of Representation

[4] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. (See, e.g., rules 1.1, 1.8.1, 5.6; see also Cal. Rules of Court, rules 3.35- 3.37 [limited scope rules applicable in civil matters generally], 5.425 [limited scope rule applicable in family law matters].)

California Civility Task Force Comments January 11, 2023

State Bar Revisions for comment shown in blue

California Civility Task Force comments shown in red

CHAPTER 8. MAINTAINING THE INTEGRITY OF THE PROFESSION

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (a) violate these rules or the State Bar Act, knowingly* assist, solicit, or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud,* deceit, or reckless or intentional misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official, or to achieve results by means that violate these rules, the State Bar Act, or other law; or
- (f) knowingly* assist, solicit, or induce a judge or judicial officer in conduct that is a violation of an applicable code of judicial ethics or code of judicial conduct, or other law. For purposes of this rule, "judge" and "judicial officer" have the same meaning as in rule 3.5(c).

Comment

[1] A violation of this rule can occur when a lawyer is acting in propria persona or when a lawyer is not practicing law or acting in a professional capacity.

California Civility Task Force Comments January 11, 2023

State Bar Revisions for comment shown in blue

California Civility Task Force comments shown in red

[2] Paragraph (a) does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.

[3] A lawyer may be disciplined for criminal acts as set forth in Business and Professions Code sections 6101 et seq., or if the criminal act constitutes “other misconduct warranting discipline” as defined by California Supreme Court case law. (See *In re Kelley* (1990) 52 Cal.3d 487 [276 Cal.Rptr. 375].)

[4] A lawyer may be disciplined under Business and Professions Code section 6106 for acts involving moral turpitude, dishonesty, or corruption, whether intentional, reckless, or grossly negligent. Regarding significantly unprofessional conduct that is abusive or harassing, see rule 8.4.2.

[5] Paragraph (c) does not apply where a lawyer advises clients or others about, or supervises, lawful covert activity in the investigation of violations of civil or criminal law or constitutional rights, provided the lawyer’s conduct is otherwise in compliance with these rules and the State Bar Act.

[6] A lawyer’s 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.

[7] This rule does not prohibit those activities of a particular lawyer that are protected by the First Amendment to the United States Constitution or by Article I, section 2 of the California Constitution.

California Civility Task Force Comments January 11, 2023

State Bar Revisions for comment shown in blue

California Civility Task Force comments shown in red

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.

Comment

[1] For guidance on conduct that may be significantly unprofessional, a lawyer should consult the current California Attorney Guidelines of Civility and Professionalism and other applicable civility authorities.

[2] A lawyer does not violate this rule by standing firm in the position of the client, protecting the record for subsequent review, or preserving professional integrity.

[3] A lawyer’s violation of this rule may also constitute a violation of rule 8.4(d).

[54] “Incivility” as used in this rule does not apply to ~~speech or~~ conduct protected by the First Amendment to the United States Constitution or by Article I, section 2 of the California Constitution. “Incivility” as used in this rule includes ~~speech or~~ conduct that violates an attorney’s duties under Business and Professions Code section 6068, subdivisions (b) and (f). (See California Code of Judicial Ethics, Canon 3B, advisory commentary: Canon 3B(2) ~~regarding/for noting~~ a judge’s responsibility to require lawyers under the judge’s direction and control to be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others.)

[5] A disciplinary investigation or proceeding for conduct coming within this rule may also be initiated and maintained if such conduct warrants discipline under California Business and Professions Code sections 6106 and 6068, the California Supreme Court’s inherent authority to impose discipline, or other disciplinary standard.

Proposed Changes to Rules of Court

Are you an attorney?	No
Commenting on behalf of an organization	Yes
Name	Hon. David Rosenberg
Professional Affiliation	President, California Judges Association
City	Sacramento
State	California
Email address	President@caljudges.org
From the choices below, we ask that you indicate your position on the proposed amendment to California Rule of Court 9.7. (This is a required field.)	AGREE with the proposed recommendations
ATTACHMENTSYou may upload your comment as an attachment. Only one attachment will be accepted per comment submission. We accept the following file types: text (.txt), Microsoft Word (.doc), WordPerfect (.wpd), Rich Text Format (.rtf) and Adobe Acrobat PDF (.pdf). We do not accept any other file types. Please DO NOT submit scanned documents. Files must be less than 4 megabytes in size.	CRC9.7_CJA_Civility_Letter_2023.pdf (563 KB)



CALIFORNIA JUDGES ASSOCIATION

The Voice of the California Judiciary

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HON. V. RAYMOND SWOPE III

HON. TERRY T. TRUONG

HON. LARRY P. YELLIN

NICOLE VIRGA BAUTISTA
EXECUTIVE DIRECTOR & CEO

January 31, 2023

Via electronic submission to the California State Bar

Ruben Duran, Chair

State Bar Board of Trustees

180 Howard Street

San Francisco, CA 94105

Re: CJA Comments to Civility Proposals Being Considered by the State Bar Board of Trustees

Dear Chairman Duran:

The California Judges Association (CJA) enthusiastically supports the three civility proposals being considered by the State Bar Board of Trustees and joins in the comments expressed by the California Civility Task Force (CCTF) concerning those proposals.

CJA is the professional organization representing the interests of California's judiciary. Our members include active and retired Judges and Commissioners of the Superior Courts, Justices of the Courts of Appeal and Supreme Court, and State Bar Court Judges. We are governed by an elected, 25-member Executive Board. Because we speak for our members, we often are referred to as the "Voice of the Judiciary" in California.

CJA is a proud co-sponsor – along with the California Lawyers Association (CLA) – of the CCTF. The CCTF's Chair, Justice Brian Currey, is a member of our Executive Board, and several of our other members also serve on the CCTF.

We have followed the CCTF's work, and the State Bar's proposals in response to that work, with great interest. Civility is one of our Board's priorities. Improved civility will be good for all of us in the legal profession, including judges, lawyers, self-represented parties, court personnel, reporters, and lawyers' staff members, as well as clients, jurors, and the public.

As judges, we are bound to conduct ourselves with civility, and to require civility from lawyers engaged in proceedings before us. For example, Canon 3B(3) of the Code of Judicial Ethics states we must "require order and decorum in proceedings before" us. Canon 3B(4) states we must "be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others" with whom we deal in an official capacity, and "require similar conduct of lawyers [and others] under our control." Similarly, the CCTF's focus on reducing bias-driven incivility resonates with us in part because we must perform our work without bias or prejudice (Canon 3B(5)) and require lawyers in proceedings before us to refrain from manifesting bias or prejudice or engaging in harassment (Canon 3B(6)).

The civility proposals now before the State Bar Board of Trustees will help us do our job. An hour of MCLE devoted to civility, and which educates lawyers on the link between bias and incivility, should reduce the number of instances where we must intervene to correct attorney misconduct. Requiring all lawyers to take the civility oath should have the same result, and will allow us to remind all lawyers of their promise to strive for civility. Finally, having a disciplinary rule prohibiting incivility should have a strong deterrent effect on incivility, especially when coupled with warnings from judges to miscreant lawyers that they must change their ways or be referred to the Bar for prosecution. All of this will benefit the justice system and the public at large.

Thank you for considering our views.

Sincerely,

A handwritten signature in black ink, appearing to read "David Rosenberg", with a stylized flourish at the end.

Hon. David Rosenberg
President

cc: Hon. Brian S. Currey, Chair, CCTF

Proposed Changes to Rules of Court

Are you an attorney?	Yes
Commenting on behalf of an organization	Yes
Name	Jeremy M. Evans
Professional Affiliation	California Lawyers Association
City	Los Angeles
State	California
Email address	jeremy@csllegal.com
From the choices below, we ask that you indicate your position on the proposed amendment to California Rule of Court 9.7. (This is a required field.)	AGREE ONLY if Modified
ATTACHMENTSYou may upload your comment as an attachment. Only one attachment will be accepted per comment submission. We accept the following file types: text (.txt), Microsoft Word (.doc), WordPerfect (.wpd), Rich Text Format (.rtf) and Adobe Acrobat PDF (.pdf). We do not accept any other file types. Please DO NOT submit scanned documents. Files must be less than 4 megabytes in size.	CLA_comments_on_proposed_amendments_to_civility_pledge.pdf (169 KB)

February 22, 2023

Board of Trustees
The State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: Proposed Amendments Requiring Attorneys to Complete Annual Civility Pledge

Dear Trustees of the State Bar of California:

The California Lawyers Association (CLA) submits these comments in response to the proposed amendments requiring attorneys to complete the annual civility pledge.

The attorney oath was last revised in 2014 to include a civility pledge, which states: “As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy and integrity.” With one recommended modification, CLA supports the proposed amendments to rule 9.7 of the California Rules, which would (1) require attorneys who have not taken the oath with the civility pledge to submit a declaration containing that pledge, and (2) require attorneys to reaffirm the civility pledge on an annual basis.

The existing civility pledge refers to conduct “at all times.” CLA recommends that this language be amended to refer to conduct “in the practice of law or related professional activities.” Requiring attorneys to take an annual pledge to act with “dignity, courtesy and integrity” at all times seems overly broad, particularly because “dignity, courtesy and integrity” are somewhat amorphous and subjective terms.

We recognize that the current language of the civility pledge has been included in the oath taken by attorneys admitted since 2014 (and that CLA has supported the proposal that all attorneys be required to affirm and reaffirm the civility pledge), but recommend that the language be re-visited in the context of the comprehensive civility package currently under consideration. Specifically, the proposed amendments to the Rules of Professional Conduct refer to conduct or incivility “in the practice of law or related professional activities.” The proposed amendments to the MCLE rules would require at least one hour of education addressing “civility in the legal profession” and the proposed definition of civility MCLE provides that the activity must consist of education that addresses “civility in the legal profession.” We believe the language of the civility pledge should be amended to be consistent with this other language governing civility.

Trustees of the State Bar of California
February 22, 2023
Page 2

We appreciate your consideration of our comments.

Sincerely,

A handwritten signature in black ink, appearing to be 'J. Evans', with a large, stylized initial 'J' and a trailing flourish.

Jeremy M. Evans
President

Proposed Changes to Rules of Court

Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	Carl W. Chamberlin, Robert R. Cross, Sarah J. Banola, Kendra Basner, Albert J. Boro, Jr., Cassidy Chivers, Adam Koss, Dianne Jackson McLean, David A. Wolf
Professional Affiliation	no
City	San Francisco
State	California
Email address	carl.chamberlin@jud.ca.gov
From the choices below, we ask that you indicate your position on the proposed amendment to California Rule of Court 9.7. (This is a required field.)	AGREE with the proposed recommendations

Proposed Changes to Rules of Court

Are you an attorney?	Yes
Commenting on behalf of an organization	Yes
Name	Doug Silverstein and Laura Horton
Professional Affiliation	Consumer Attorneys Association of Los Angeles and California Employment Lawyers Association
City	Los Angeles
State	California
Email address	dsilverstein@californialaborlawattorney.com
From the choices below, we ask that you indicate your position on the proposed amendment to California Rule of Court 9.7. (This is a required field.)	AGREE with the proposed recommendations
ATTACHMENTSYou may upload your comment as an attachment. Only one attachment will be accepted per comment submission. We accept the following file types: text (.txt), Microsoft Word (.doc), WordPerfect (.wpd), Rich Text Format (.rtf) and Adobe Acrobat PDF (.pdf). We do not accept any other file types. Please DO NOT submit scanned documents. Files must be less than 4 megabytes in size.	CRC9.7.CAALA.CELA.State.Bar.Civility.Public.Comment.w.Exhibits.pdf (3.96 MB)



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March 1, 2023

Via Electronic Submission to State Bar and email to ruben.duran@bbklaw.com

Ruben Duran, Chair
State Bar Board of Trustees
180 Howard St.
San Francisco, CA 94105

Re: Public Comment on the State Bar of California's Proposed Civility Rules

Dear Mr. Duran:

On behalf of the Consumer Attorneys Association of Los Angeles and the California Employment Lawyers Association, we appreciate the opportunity to provide public comment supporting the Proposed State Bar Civility Rules.

The Consumer Attorneys Association of Los Angeles' (CAALA) membership includes over 3,100 plaintiff attorneys who practice in the areas of personal injury, employment, premises liability, wrongful death, auto, product liability and civil litigation matters throughout the State of California. Our diverse members represent consumers on a contingency basis, meaning that consumers pay *nothing* out of their pockets to hire skilled lawyers who can take their cases all the way through trial and appeal against typically well-funded corporate interests. CAALA provides numerous educational, mentoring, networking, access to member work product and other resources to assist its members in representing their clients.

The California Employment Lawyers Association (CELA) is a nonprofit mutual benefit corporation with approximately 1,200 members. CELA is the largest and strongest statewide organization of private attorneys practicing primarily employment law on behalf of workers. CELA's mission is to help our members protect and expand the legal rights of working people through litigation, education and advocacy.

Both Boards and memberships have closely followed the development of these civility proposals through the California Civility Task Force, which Mr. Silverstein serves on, and their current iteration for public comment. Civility has long been an important value of CAALA and CELA

and their members. All CAALA members sign CAALA's Code of Conduct which requires, among other things, that the member maintain a respectful demeanor and pledge to commit to the California State Bar's Rules of Professional Conduct and Attorney Guidelines of Civility and Professionalism.

Civility is also a hallmark of CAALA and CELA's interactions with other bar associations and the judiciary. CAALA has been the driving force in several Civility Summits with the Los Angeles Superior Court (LASC), Association of Southern California Defense Counsel (ASCDC), and the American Board of Trial Advocates (ABOTA). To continue to foster civility, this past year CAALA organized a Leadership Luncheon with LASC, ASCDC and ABOTA. The event was so well received that CAALA is organizing another Leadership Luncheon to take place this spring.

The Board of Trustees will be considering comments on the following proposals: (1) revising California Rule of Court 9.7 to require all lawyers to take the civility portion of the attorney oath; (2) making significant incivility a disciplinary offense; and (3) requiring lawyers to participate in mandatory continuing legal education (MCLE) about civility, including the connection between bias and incivility.

1. Revisions to California Rule of Court 9.7

CAALA and CELA *fully support* the Board's proposed amendments to California Rule of Court 9.7. All State Bar licensees admitted after June 2014 have, pursuant to Rule 9.7, completed an oath on admission to practice law that includes a civility pledge, "As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy, and integrity." The Board's proposed amendments to Rule 9.7 would require all licensees – regardless of when they were admitted – to take the same civility oath and to take the civility oath annually when paying licensing fees. All specially admitted licensees would also be required to take the civility oath.

2. Revisions to Rules of Professional Conduct

CAALA and CELA *qualifiedly support* the Board's proposed revisions to the Rules of Professional Conduct. CAALA and CELA, of course, support making significant incivility a disciplinary offense, as California courts and the State Bar already have the authority to address a lawyer's incivility. CAALA and CELA join in the California Civility Task Force's January 11, 2023 public comment (Exhibit 1) offering two proposed revisions.

As currently written, the proposed creation of Rule of Professional Conduct 8.4.2 and various comments to existing Rules state, "In representing a client, a lawyer shall not engage in incivility in the practice of law, or related professional activities." CAALA and CELA join with the Task Force in recommending deletion of, "or related professional activities." ("In representing a client, a lawyer shall not engage in incivility in the practice of law, ~~or related professional activities.~~"). CAALA and CELA believe that for clarity, the Rule should be limited to, "incivility in the practice of law."

CAALA and CELA likewise join in the Task Force's proposed revisions to Rule 8.4.2, Comment 4. As currently drafted, the Comment provides, in part, "'Incivility' as used in this rule

does not apply to conduct protected by the First Amendment” CAALA and CELA support adding “speech” to the comment, such that it would read as follows, “‘Incivility’ as used in this rule does not apply to speech or conduct protected by the First Amendment”

We appreciate that some have expressed concern that proposed Rule 8.4.2 could be “weaponized” by a lawyer looking to gain an advantage in litigation, or enforced inconsistently by the State Bar. But the argument that a rule will not function perfectly should not prevent it from being enacted. We believe the benefits of implementing the Rule far outweigh any perceived detriment.

The Rule only makes express, provides clarity and acts as a stronger deterrent for conduct lawyers are already prohibited from engaging in under Rule 8.4(d), “It is professional misconduct for a lawyer to . . . engage in conduct that is prejudicial to the administration of justice[;]” Business & Professions Code sec. 6068 (b) (“To maintain the respect due to the courts of justice and judicial officers”) & (f) (“To advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he or she is charged); California Code of Judicial Ethics, Canon 3B(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*”) (emphasis added); and California courts’ inherent power.

And because proposed Rule 8.4.2 defines incivility as, “significantly unprofessional conduct that is abusive or harassing and shall be determined on the basis of all facts and circumstances surrounding the conduct,” and expressly exempts First Amendment protected speech and conduct, and “standing firm in the position of the client, protecting the record for subsequent review, or preserving professional integrity[;]” we believe the State Bar can and will utilize clear and consistent practices to determine when conduct rises to the level of violating this Rule and warranting further action, as well as offering diversion programs for first time offenders. We also believe that existing Rule 5-100(A), which states, “A member shall not threaten to present criminal, administrative, or disciplinary charges to obtain an advantage in a civil dispute[;]” further mitigates any concern that the proposed Rule will be used improperly.

3. New MCLE Civility Course Requirements

CAALA and CELA **fully support** the Board’s proposed amendments to the MCLE rules that would require all licensees complete one hour of MCLE on civility and the relationship between bias and incivility as part of their existing 25-hour MCLE requirement. CAALA, CELA, and their members enthusiastically support education about the link between bias and incivility. CAALA and CELA express no position on the other proposed MCLE changes unrelated to civility.

* * * *

The California Civility Task Force is jointly sponsored by the California Judges Association (CJA) and the California Lawyers Association. CAALA and CELA are pleased CJA has enthusiastically endorsed the State Bar civility proposals as a deterrent to incivility and providing assistance to judges in doing their job. (Exhibit 2).

In addition to the proposals now out for public comment by the State Bar, the Task Force also has a fourth proposal to: “[p]rovide training to judges on the need to both curtail incivility and model civility, both inside and outside the courtroom, explaining the tools available to them to do so.” While outside the purview of the State Bar, it is important to note that this proposal has already resulted in the development and presentation of judicial education programs aimed at arming judges with tools to improve attorney civility inside and outside the courtroom, and while engaging in discovery and other pre-trial activity. Members of the Center for Judicial Education and Research (CJER) Advisory Committee are also considering ways to integrate civility training into judicial training, including civility among judges. (Exhibit 3). All of this is bound to have a salutary effect on civility.

Thank you for your time and consideration, and we look forward to the Bar’s response to the public comments and improved civility in the practice of law throughout California.

Very truly yours,

Doug Silverstein

Douglas N. Silverstein, Esq.
2022 Consumer Attorneys Association of Los Angeles President

A handwritten signature in blue ink that reads "Laura L. Horton". The signature is fluid and cursive, with the first name "Laura" being more prominent than the last name "Horton".

Laura L. Horton, Esq.
Chair, California Employment Lawyers Association

cc: CAALA Executive Committee
CELA Board

Attachments

Exhibit 1



BRIAN S. CURREY
ASSOCIATE JUSTICE

STATE OF CALIFORNIA
Court of Appeal
SECOND APPELLATE DISTRICT
DIVISION FOUR
300 SOUTH SPRING STREET
LOS ANGELES, CALIFORNIA 90013

TELEPHONE
(213) 830-7438
brian.currey@jud.ca.gov

January 11, 2023

Via electronic submission to the State Bar and email to ruben.duran@bbklaw.com

Ruben Duran, Chair
State Bar Board of Trustees
180 Howard Street
San Francisco, CA 94105

Re: California Civility Task Force Comments to Civility Proposals Being
Considered by the State Bar Board of Trustees

Dear Ruben:

In my capacity as Chair of the California Civility Task Force (CCTF), I write to provide the CCTF's comments on the State Bar's civility proposals, which are based on three of the CCTF's key proposals. I also write to thank you, your colleagues on the State Bar Board of Trustees, and the State Bar staff, for your engagement and leadership on this important topic.

The Board of Trustees will be considering comments on its proposals: (1) Revising California Rule of Court 9.7 to ensure all lawyers take the civility portion of the attorney oath; (2) Making repeated incivility a disciplinary offense; and (3) Requiring lawyers to participate in mandatory continuing legal education (MCLE) about civility, and the connection between bias and incivility. I will address each in turn.

1. Revisions to California Rule of Court 9.7

The CCTF FULLY SUPPORTS the Board's proposed amendments to California Rule of Court 9.7 that would require all licensees who did not take the attorney oath with the civility language, as well as specially admitted attorneys, to submit a declaration with the civility pledge language by February 1, 2024. Also, all licensees and specially admitted attorneys would be required to complete the civility pledge on an annual basis when paying licensing fees or registering as a specially admitted attorney. We have no proposed revisions.

2. Revisions to the Rules of Professional Conduct

The CCTF offers QUALIFIED SUPPORT for the Board's proposed revisions to the Rules of Professional Conduct. Obviously, we support the change to make incivility a disciplinary offense. We offer two minor proposed revisions. The first of our proposed revisions is a substantive change that we believe will eliminate some first amendment concerns that have been expressed to us by members of the bar. The second corrects a numbering error. I have attached a markup showing our proposed revisions.

Scope Revision. On reflection, we believe the proposed civility disciplinary rules should apply only to lawyer speech and conduct when a lawyer is representing a client in the practice of law, and not while the lawyer is engaged in some professional activity other than law practice. Restrictions on lawyers' speech and conduct, including civility rules, inevitably raise the question of whether the First Amendment permits them. (*See generally*, M. Tarkington, Voice of Justice: Reclaiming the First Amendment Rights of Lawyers (2018) ("Tarkington")). As Professor Tarkington explains in her book, courts and commentators have expressed different views on what restrictions on lawyers' speech are permissible under the First Amendment, and why. We believe the modest rule changes being considered by the State Bar do not violate the First Amendment. They merely require lawyers to exercise professionalism and refrain from abusing and harassing others, requirements that judges are already required to enforce with respect to lawyers representing parties in state court litigation. (*See* California Code of Judicial Ethics, Canon 3B, advisory commentary: 3B(2)). These restrictions do not interfere with lawyers' ability to advance their clients' interests and are essential to maintaining the integrity and functioning of the judicial system.

Our proposed scope revision nevertheless limit the civility requirement to lawyers who are representing a client in the practice of law, as opposed to those representing a client in "other professional activities." This may eliminate or discourage some First Amendment challenges. As Professor Tarkington notes, there is significant disagreement among scholars and in the caselaw about the scope of lawyers' First Amendment rights, but if there is a dominant view, it is that lawyers who are engaged in the practice of law on behalf of a client have lesser or no First Amendment rights. (Tarkington at 1-3). We express no view on that. But by deleting "or related professional activities," the State Bar will eliminate challenges to the rules by lawyers who, for example, claim to fear discipline for potentially offensive speech or conduct at bar functions, while teaching MCLE courses, or other professional activities that are not included in the practice of law. Granted, lawyers participating in bar functions or teaching MCLE courses generally are not doing so "[i]n representing a client" and so would not fall within the rules in any event, but we believe our proposed changes make the rules cleaner and more easily defensible. Our other proposed changes make clear that the incivility prohibition applies to both speech and conduct.

Numbering change. Our remaining revision corrects a numbering (typographical) error.

3. New MCLE Civility Course Requirements

The CCTF FULLY SUPPORTS the Board's proposed amendments to the MCLE rules. As it relates to CCTF's recommendations, the Board proposes to amend the MCLE rules to require that all licensees complete one hour of MCLE on the topic of civility in the legal profession as part of their existing 25-hour MCLE requirement, and that approved civility courses cover the relationship between bias and incivility. There are several other non-civility related changes being proposed to the MCLE rules, as to which the CCTF takes no position.

Thank you, as always, for your service to the profession and for considering our views.

Very truly yours,



Brian S. Currey
Associate Justice

cc: Leah Wilson, Executive Director, leaht.wilson@calbar.ca.gov
California Civility Task Force

California Civility Task Force Comments January 11, 2023

State Bar Revisions for comment shown in blue

California Civility Task Force comments shown in red

Rule 1.2 Scope of Representation and Allocation of Authority

(a) Subject to rule 1.2.1, a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by rule 1.4, shall reasonably* consult with the client as to the means by which they are to be pursued. Subject to Business and Professions Code section 6068, subdivision (e)(1) and rule 1.6, a lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. Except as otherwise provided by law in a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer may limit the scope of the representation if the limitation is reasonable* under the circumstances, is not otherwise prohibited by law, and the client gives informed consent.*

Comment

Allocation of Authority between Client and Lawyer

[1] Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. (See, e.g., Cal. Const., art. I, § 16; Pen. Code, § 1018.) A lawyer retained to represent a client is authorized to act on behalf of the client, such as in procedural matters and in making certain tactical decisions. 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. However, a lawyer is not authorized merely by virtue of the lawyer's retention to impair the client's substantive rights or the client's claim itself. (Blanton v. Womancare, Inc. (1985) 38 Cal.3d 396, 404 [212 Cal.Rptr. 151, 156].)

California Civility Task Force Comments January 11, 2023

State Bar Revisions for comment shown in blue

California Civility Task Force comments shown in red

[2] At the outset of, or during a representation, the client may authorize the lawyer to take specific action on the client's behalf without further consultation. Absent a material change in circumstances and subject to rule 1.4, a lawyer may rely on such an advance authorization. The client may revoke such authority at any time.

Independence from Client's Views or Activities

[3] A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

Agreements Limiting Scope of Representation

[4] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. (See, e.g., rules 1.1, 1.8.1, 5.6; see also Cal. Rules of Court, rules 3.35- 3.37 [limited scope rules applicable in civil matters generally], 5.425 [limited scope rule applicable in family law matters].)

California Civility Task Force Comments January 11, 2023

State Bar Revisions for comment shown in blue

California Civility Task Force comments shown in red

CHAPTER 8. MAINTAINING THE INTEGRITY OF THE PROFESSION

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (a) violate these rules or the State Bar Act, knowingly* assist, solicit, or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud,* deceit, or reckless or intentional misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official, or to achieve results by means that violate these rules, the State Bar Act, or other law; or
- (f) knowingly* assist, solicit, or induce a judge or judicial officer in conduct that is a violation of an applicable code of judicial ethics or code of judicial conduct, or other law. For purposes of this rule, "judge" and "judicial officer" have the same meaning as in rule 3.5(c).

Comment

[1] A violation of this rule can occur when a lawyer is acting in propria persona or when a lawyer is not practicing law or acting in a professional capacity.

California Civility Task Force Comments January 11, 2023

State Bar Revisions for comment shown in blue

California Civility Task Force comments shown in red

[2] Paragraph (a) does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.

[3] A lawyer may be disciplined for criminal acts as set forth in Business and Professions Code sections 6101 et seq., or if the criminal act constitutes “other misconduct warranting discipline” as defined by California Supreme Court case law. (See *In re Kelley* (1990) 52 Cal.3d 487 [276 Cal.Rptr. 375].)

[4] A lawyer may be disciplined under Business and Professions Code section 6106 for acts involving moral turpitude, dishonesty, or corruption, whether intentional, reckless, or grossly negligent. Regarding significantly unprofessional conduct that is abusive or harassing, see rule 8.4.2.

[5] Paragraph (c) does not apply where a lawyer advises clients or others about, or supervises, lawful covert activity in the investigation of violations of civil or criminal law or constitutional rights, provided the lawyer’s conduct is otherwise in compliance with these rules and the State Bar Act.

[6] A lawyer’s 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.

[7] This rule does not prohibit those activities of a particular lawyer that are protected by the First Amendment to the United States Constitution or by Article I, section 2 of the California Constitution.

California Civility Task Force Comments January 11, 2023

State Bar Revisions for comment shown in blue

California Civility Task Force comments shown in red

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.

Comment

[1] For guidance on conduct that may be significantly unprofessional, a lawyer should consult the current California Attorney Guidelines of Civility and Professionalism and other applicable civility authorities.

[2] A lawyer does not violate this rule by standing firm in the position of the client, protecting the record for subsequent review, or preserving professional integrity.

[3] A lawyer’s violation of this rule may also constitute a violation of rule 8.4(d).

[54] “Incivility” as used in this rule does not apply to ~~speech or~~ conduct protected by the First Amendment to the United States Constitution or by Article I, section 2 of the California Constitution. “Incivility” as used in this rule includes ~~speech or~~ conduct that violates an attorney’s duties under Business and Professions Code section 6068, subdivisions (b) and (f). (See California Code of Judicial Ethics, Canon 3B, advisory commentary: Canon 3B(2) ~~regarding/for noting~~ a judge’s responsibility to require lawyers under the judge’s direction and control to be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others.)

[5] A disciplinary investigation or proceeding for conduct coming within this rule may also be initiated and maintained if such conduct warrants discipline under California Business and Professions Code sections 6106 and 6068, the California Supreme Court’s inherent authority to impose discipline, or other disciplinary standard.



Exhibit 2

CALIFORNIA JUDGES ASSOCIATION

The Voice of the California Judiciary

2520 VENTURE OAKS WAY
SUITE 150
SACRAMENTO CA 95833
PHONE: 916-239-4068
TOLL FREE: 1-866-432-1CJA
FAX: 916-924-7323
WEB: WWW.CALJUDGES.ORG

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HON. JEFF MANGAR

HON. TILISHA T. MARTIN

HON. DENISE M. McLAUGHLIN-BENNETT

HON. GARY L. PADEN (RET.)

HON. MARIA PUENTE-PORRAS

HON. JAMES R. REILLY

HON. REBECCA S. RILEY (RET.)

HON. ROBERT SCHUIT (RET.)

HON. V. RAYMOND SWOPE III

HON. TERRY T. TRUONG

HON. LARRY P. YELLIN

NICOLE VIRGA BAUTISTA
EXECUTIVE DIRECTOR & CEO

January 31, 2023

Via electronic submission to the California State Bar

Ruben Duran, Chair

State Bar Board of Trustees

180 Howard Street

San Francisco, CA 94105

Re: CJA Comments to Civility Proposals Being Considered by the State Bar Board of Trustees

Dear Chairman Duran:

The California Judges Association (CJA) enthusiastically supports the three civility proposals being considered by the State Bar Board of Trustees and joins in the comments expressed by the California Civility Task Force (CCTF) concerning those proposals.

CJA is the professional organization representing the interests of California's judiciary. Our members include active and retired Judges and Commissioners of the Superior Courts, Justices of the Courts of Appeal and Supreme Court, and State Bar Court Judges. We are governed by an elected, 25-member Executive Board. Because we speak for our members, we often are referred to as the "Voice of the Judiciary" in California.

CJA is a proud co-sponsor – along with the California Lawyers Association (CLA) – of the CCTF. The CCTF's Chair, Justice Brian Currey, is a member of our Executive Board, and several of our other members also serve on the CCTF.

We have followed the CCTF's work, and the State Bar's proposals in response to that work, with great interest. Civility is one of our Board's priorities. Improved civility will be good for all of us in the legal profession, including judges, lawyers, self-represented parties, court personnel, reporters, and lawyers' staff members, as well as clients, jurors, and the public.

As judges, we are bound to conduct ourselves with civility, and to require civility from lawyers engaged in proceedings before us. For example, Canon 3B(3) of the Code of Judicial Ethics states we must "require order and decorum in proceedings before" us. Canon 3B(4) states we must "be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others" with whom we deal in an official capacity, and "require similar conduct of lawyers [and others] under our control." Similarly, the CCTF's focus on reducing bias-driven incivility resonates with us in part because we must perform our work without bias or prejudice (Canon 3B(5)) and require lawyers in proceedings before us to refrain from manifesting bias or prejudice or engaging in harassment (Canon 3B(6)).

The civility proposals now before the State Bar Board of Trustees will help us do our job. An hour of MCLE devoted to civility, and which educates lawyers on the link between bias and incivility, should reduce the number of instances where we must intervene to correct attorney misconduct. Requiring all lawyers to take the civility oath should have the same result, and will allow us to remind all lawyers of their promise to strive for civility. Finally, having a disciplinary rule prohibiting incivility should have a strong deterrent effect on incivility, especially when coupled with warnings from judges to miscreant lawyers that they must change their ways or be referred to the Bar for prosecution. All of this will benefit the justice system and the public at large.

Thank you for considering our views.

Sincerely,

A handwritten signature in black ink, appearing to read "David Rosenberg", with a stylized, flowing script.

Hon. David Rosenberg
President

cc: Hon. Brian S. Currey, Chair, CCTF

Exhibit 3



January 26, 2023

*A communication from California Judges Association,
The VOICE of the California Judiciary*



Dear Colleagues,

A Watershed Moment for Civility

For decades, lawyers and judges have railed against rising levels of incivility in the legal profession, both inside and out of the courtroom. Despite continuing efforts by courts and bar associations to promote professionalism, however, bullying, intimidation, and nastiness have too often replaced discussion, negotiation, and skillful, hard-fought advocacy. In recent years, as more women and people of color entered the profession, a new and more invidious form of incivility has arisen: bias-driven incivility. Instead of the warm welcome they deserve, these newcomers all too often receive insults motivated by prejudice. "The timbre of our time has become unfortunately aggressive and disrespectful. Language addressed to opposing counsel and the courts has lurched off the path of discourse and into the ditch of abuse. This isn't who we are." (In re Mahoney (2021) 65 Cal.App.5th 376).

But change may be afoot. "This is a watershed moment for civility," says CJA Board member Justice Brian Currey of the Second District Court of Appeal, who is Chair of the California Civility Task Force. The State Bar of California currently is taking public comment

on a set of proposals designed by the task force to return more courtesy and professionalism to the legal profession. The task force is a joint project of CJA and the California Lawyers Association (CLA) and is comprised of a diverse group of lawyers and judges from across the state.

In September 2021, the task force issued its initial report, "Beyond the Oath: Recommendations for Improving Civility." The report sets forth four proposals to improve civility in California's legal profession:

1. Enact meaningful changes to State Bar disciplinary rules, prohibiting repeated incivility and clarifying that civility is consistent with zealous representation.
2. Mandate one hour of attorney MCLE devoted to civility training, to be included in the total number of MCLE hours currently required. Approved programs should highlight the connection between bias and incivility, and urge lawyers to eliminate bias-driven incivility.
3. Require all lawyers to affirm or reaffirm during the annual license renewal process that: "As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy and integrity."
4. Provide optional training to judges on the need to model civility and curtail attorney incivility, both inside and outside the courtroom, explaining the tools available to them to do so.

Last month, at the urging of the task force, the State Bar Board of Trustees adopted for public comment three of the task force's key proposals. First, it asked for public comment on proposed changes to the Rules of Professional Conduct that would make incivility subject to disciplinary action. Second, it adopted for public comment a number of changes to the MCLE program, including a requirement that lawyers take one hour of civility training during each compliance period. Finally, it adopted for public comment a proposal to change California Rule of Court 9.7 to require all lawyers to subscribe to the aspirational civility pledge contained in the attorney oath. Currently, only attorneys admitted after 2014 have taken the civility pledge as part of the attorney oath. The State Bar is accepting public comment on these proposals through March 1, 2023.

Meanwhile, judicial members of the task force have been busy moving forward with the task force's fourth proposal, developing and presenting judicial education programs aimed at arming judges with tools to improve attorney civility both inside the courtroom and while engaged in discovery and other pre-trial activity. Several different programs have been tested at the Los Angeles County Superior Court and at the CJA semi-annual meeting. And members of the CJER advisory committee are considering ways to integrate civility training into judicial education. At least one program also emphasizes improved civility among judges.

"The Canons tell us that, as judges, we all have an ethical responsibility to be civil, to require those appearing before us to be civil, and to participate in establishing, maintaining, and enforcing high standards of conduct," notes Justice Currey. "That's why CJA has prioritized civility, and why individual judges and groups of judges should consider commenting favorably on these proposals," he says. This could be the moment when the profession turns the tide on incivility.

For the latest information, navigate to the **CJA website**.

Cordially,

Dave Rosenberg
President

Proposed Changes to Rules of Court

Are you an attorney?	No
Commenting on behalf of an organization	No
Name	David J. Cowan
City	Beverly Hills
State	California
Email address	djcowan@lacourt.org
From the choices below, we ask that you indicate your position on the proposed amendment to California Rule of Court 9.7. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "CRC9.7" to the front of your file's name)	As a member of the Civility Task Force, and as a Judge of the Los Angeles Superior Court, and Former Supervising Judge of its Civil Division, I support these proposed changes and join in the comments of Justice Currey in his letter to the Bar dated January 11, 2023.

Proposed Changes to Rules of Court

Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	John Stephen Durrant
Professional Affiliation	I am a co-chair of the Legislation Subcommittee of LACBA; Comments are my own and not on behalf of LACBA
City	Los Angeles
State	California
Email address	john@durrantlawfirm.com
From the choices below, we ask that you indicate your position on the proposed amendment to California Rule of Court 9.7. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "CRC9.7" to the front of your file's name)	<p>"Civility" is an inherently subjective construct, regarding which reasonable people disagree. For some, it means being very careful about criticizing opposing counsel, even if opposing counsel lie about the facts or misrepresent the law. This is -- in my view -- a dangerous perspective. For others, it means just not being personally unpleasant. That's fine. We should all surely try to be more kind. But what is civil or uncivil, particularly in the heat of litigation, is often in the eye of the beholder. It is a rare attorney who believes they are acting uncivilly and rarer still an attorney who would modify his or her conduct based on taking some pledge like the one proposed.</p> <p>We need judges and the Bar to take action against counsel who overstep, particularly when</p>

counsel are dishonest or personally abusive. A pledge like this -- which does little to define improper conduct -- will do nothing. This seems to be part of a recent pattern of the Bar creating "feel good" initiatives that seem unlikely to impact conduct or redress the Bar's prior failures to effectively police its members.

While I understand and appreciate the desire to "do something" when there is a problem, it is important for all regulations to have reasoned, fact-based demonstration that changes in rules will be effective.

Proposed Changes to Rules of Court

Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	Doug Feinberg
City	Clovis
State	California
Email address	dougfeinberg@yahoo.com
From the choices below, we ask that you indicate your position on the proposed amendment to California Rule of Court 9.7. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "CRC9.7" to the front of your file's name)	This is a stupid rule and I can't stand the fucking idiots who came up with it. (I can write that because I didn't take the civility pledge.) Civility is meaningless if mandatory. Sometimes a lawyer should not act civilly. If anyone believes that the civility pledge will cause attorneys to act better, that person has been smoking crack. The twenty-five lawyers who signed a declaration accusing the King of England of trying to establish an "absolute Tyranny" and stating that the colonies would no longer be part of Great Britain acted uncivilly. Yet we call them our Founding Fathers.

Proposed Changes to Rules of Court

Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	Howard Goodman
Professional Affiliation	n/a
City	AGOURA HILLS
State	California
Email address	hgeep@earthlink.net
From the choices below, we ask that you indicate your position on the proposed amendment to California Rule of Court 9.7. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "CRC9.7" to the front of your file's name)	<p>Once again, the State Bar is obsessed with "form over substance". Instead of concentrating your resources (which I am forced to contribute to) on meaningless initiatives like this, how about concentrating on preventing a replay of the Tom Girardi fiasco.</p> <p>And, it's about time that the State Bar came clean on the lapses which led to millions in client funds being mis-appropriated, rather than making the L.A. Times file an actual lawsuit to get you to reveal what little you did.</p>

Proposed Changes to Rules of Court

Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	Melodie Grace
City	Anaheim
State	California
Email address	mkgraceesq@outlook.com
From the choices below, we ask that you indicate your position on the proposed amendment to California Rule of Court 9.7. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "CRC9.7" to the front of your file's name)	Seems like surface painting.

Proposed Changes to Rules of Court

Are you an attorney?	No
Commenting on behalf of an organization	No
Name	Mariana Harris
Professional Affiliation	No
City	Pittsburg
State	California
Email address	MarianaMHarris@hotmail.com
From the choices below, we ask that you indicate your position on the proposed amendment to California Rule of Court 9.7. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "CRC9.7" to the front of your file's name)	<p>There are good attorneys and bad attorneys.</p> <p>There are attorneys who are civil and there are attorneys who are jerks. Making everyone take a pledge every year is highly unlikely to change the actions of the jerks - mostly because they don't usually think they are being jerks and therefore won't recognize the need to change their behavior.</p>

Proposed Changes to Rules of Court

Are you an attorney?	Yes
Commenting on behalf of an organization	Yes
Name	Japanese American Bar Association
Professional Affiliation	Japanese American Bar Association
City	Los Angeles
State	California
From the choices below, we ask that you indicate your position on the proposed amendment to California Rule of Court 9.7. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "CRC9.7" to the front of your file's name)	The Japanese American Bar Association ("JABA") fully supports the proposed amendments to California Rule of Court 9.7. JABA's Resolution in Support of Proposals of the California Civility Task Force is attached.
ATTACHMENTSYou may upload your comment as an attachment. Only one attachment will be accepted per comment submission. We accept the following file types: text (.txt), Microsoft Word (.doc), WordPerfect (.wpd), Rich Text Format (.rtf) and Adobe Acrobat PDF (.pdf). We do not accept any other file types. Please DO NOT submit scanned documents. Files must be less than 4 megabytes in size.	JABA_Resolution_-_California_Civility_Task_Force_Report.pdf (310 KB)

**Japanese American Bar Association
Resolution in Support of Proposals of the
California Civility Task Force**

Whereas, the California Civility Task Force is a joint project of the California Judges Association (CJA) and the California Lawyers Association (CLA); and

Whereas, the Japanese American Bar Association has reviewed the task force's initial report entitled *Beyond the Oath: Recommendations for Improving Civility*; and

Whereas, the Japanese American Bar Association agrees with and embraces the task force's recommendations contained in that report;

NOW THEREFORE, the Japanese American Bar Association hereby respectfully:

1. Asks the State Bar Board of Trustees to mandate one hour of civility MCLE training for attorneys (without increasing total MCLE hours). Some portion of the civility training should be devoted to making the profession more welcoming to underrepresented groups by addressing the link between incivility and bias.
2. Asks the Chief Justice, as head of the Judicial Council, and the Center for Judicial Education and Research Advisory Committee (CJER) to provide voluntary training to judges on promoting civility inside and outside courtrooms. CJA commits to do the same.
3. Asks the State Bar Board of Trustees to recommend to the Supreme Court revisions to the Rules of Professional Conduct to clarify that repeated incivility constitutes professional misconduct and that civility is not inconsistent with zealous advocacy; and

4. Asks the Supreme Court to amend Rule of Court 9.7 to require all attorneys, when annually renewing their licenses to practice law, to swear or affirm: "As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy and integrity." and,
5. Urges the Chief Justice, Judicial Council, and State Bar to take further appropriate action to improve civility in the practice of law; and

Dated: November 30, 2021



Kira Teshima Conlon
President
Japanese American Bar
Association

Proposed Changes to Rules of Court

Are you an attorney?	No
Commenting on behalf of an organization	No
Name	Barbara Kronlund
City	Stockton
State	California
Email address	bak@sjcourts.org
From the choices below, we ask that you indicate your position on the proposed amendment to California Rule of Court 9.7. (This is a required field.)	AGREE with the proposed recommendations

Proposed Changes to Rules of Court

Are you an attorney?	Yes
Commenting on behalf of an organization	Yes
Name	Brian Thomas Glennon
Professional Affiliation	LACBA Litigation Section Executive Committee
City	Los Angeles
State	California
Email address	brian.glennon@lw.com
From the choices below, we ask that you indicate your position on the proposed amendment to California Rule of Court 9.7. (This is a required field.)	AGREE with the proposed recommendations
ATTACHMENTSYou may upload your comment as an attachment. Only one attachment will be accepted per comment submission. We accept the following file types: text (.txt), Microsoft Word (.doc), WordPerfect (.wpd), Rich Text Format (.rtf) and Adobe Acrobat PDF (.pdf). We do not accept any other file types. Please DO NOT submit scanned documents. Files must be less than 4 megabytes in size.	CRC9.7_LACBA_Litigation_Section_Executive_Committee_Comment.pdf (1014 KB)

Proposed Changes to Rules of Court

Are you an attorney?	Yes
Commenting on behalf of an organization	Yes
Name	Brian Thomas Glennon
Professional Affiliation	LACBA Litigation Section Executive Committee
City	Los Angeles
State	California
Email address	brian.glennon@lw.com
From the choices below, we ask that you indicate your position on the proposed amendment to California Rule of Court 9.7. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "CRC9.7" to the front of your file's name)	Resubmitting with revised attachment name.
ATTACHMENTSYou may upload your comment as an attachment. Only one attachment will be accepted per comment submission. We accept the following file types: text (.txt), Microsoft Word (.doc), WordPerfect (.wpd), Rich Text Format (.rtf) and Adobe Acrobat PDF (.pdf). We do not accept any other file types. Please DO NOT submit scanned documents. Files must be less than 4 megabytes in size.	CRC9.7_LACBA_Litigation_Section_Executive_Committee_Comment.pdf (1014 KB)



To: The State Bar of California

**From: The Executive Committee of the Litigation Section of the Los Angeles
County Bar Association**

The Executive Committee of the Los Angeles County Bar Association Litigation Section (the “LACBA Litigation Section”) respectfully submits this comment in response to the State Bar’s request for public comment on the proposed amendments to certain rules governing attorneys licensed to practice law in California.

The LACBA Litigation Section recognizes that the California Civility Task Force (“CCTF”), a joint project of the California Judges Association and the California Lawyers Association, has recommended that the State Bar of California modify its rules to promote civility in the profession. In making this recommendation, the CCTF observed that incivility disproportionately impacts “young lawyers, women lawyers, lawyers of color, and lawyers from other marginalized groups.”

In light of the foregoing, the LACBA Litigation Section respectfully submits the following public comment in support of the proposed rule amendments:

1. The LACBA Litigation Section reaffirms its prior resolution, adopted on September 20, 2021, endorsing and approving of the CCTF’s recommendations, contained in the CCTF’s initial report: “Beyond the Oath: Recommendations for Improving Civility” (Attachment 1); and
2. Consistent with its September 20, 2021 resolution, the LACBA Litigation Section joins in the comments from the CCTF set forth in the CCTF’s January 11, 2023 letter to the State Bar Board of Trustees speaking in support of the proposed rule amendments (Attachment 2).

The Executive Committee of the LACBA Litigation Section appreciates the opportunity to submit its views on this important topic and urges the State Bar to consider these comments in its endeavor to improve civility in the profession.

Dated: March 1, 2023

A handwritten signature in black ink, appearing to read "Brian T. Glennon", written in a cursive style.

Brian T. Glennon
Chair, Litigation Section
Los Angeles County Bar
Association

Attachment 1

**Los Angeles County Bar Association Litigation Section
Resolution in Support of Proposals of the
California Civility Task Force**

Whereas, the California Civility Task Force is a joint project of the California Judges Association (CJA) and the California Lawyers Association (CLA); and

Whereas, the Los Angeles County Bar Association Litigation Section's Executive Committee members have reviewed and discussed the task force's initial report entitled *Beyond the Oath: Recommendations for Improving Civility*; and

Whereas, the Los Angeles County Bar Association Litigation Section's Executive Committee members, by a majority vote, agree with and embrace the task force's recommendations contained in that report;

NOW THEREFORE, the Los Angeles County Bar Association Litigation Section hereby respectfully:

1. Asks the State Bar Board of Trustees to mandate one hour of civility MCLE training for attorneys (without increasing total MCLE hours). Some portion of the civility training should be devoted to making the profession more welcoming to underrepresented groups by addressing the link between incivility and bias.
2. Asks the Chief Justice, as head of the Judicial Council, and the Center for Judicial Education and Research Advisory Committee (CJER) to provide voluntary training to judges on promoting civility inside and outside courtrooms. CJA commits to do the same.
3. Asks the State Bar Board of Trustees to recommend to the Supreme Court revisions to the Rules of Professional Conduct to clarify that repeated incivility constitutes professional misconduct and that civility is not inconsistent with zealous advocacy; and

4. Asks the Supreme Court to amend Rule of Court 9.7 to require all attorneys, when annually renewing their licenses to practice law, to swear or affirm: "As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy and integrity." And,
5. Urges the Chief Justice, Judicial Council, and State Bar to take further appropriate action to improve civility in the practice of law

Dated: September 20, 2021



Eric Y. Kizirian
Chair, Litigation Section
Los Angeles County Bar
Association

Attachment 2



STATE OF CALIFORNIA
Court of Appeal
SECOND APPELLATE DISTRICT
DIVISION FOUR
300 SOUTH SPRING STREET
LOS ANGELES, CALIFORNIA 90013

BRIAN S. CURREY
ASSOCIATE JUSTICE

TELEPHONE
(213) 830-7438
brian.currey@jud.ca.gov

January 11, 2023

Via electronic submission to the State Bar and email to ruben.duran@bbklaw.com

Ruben Duran, Chair
State Bar Board of Trustees
180 Howard Street
San Francisco, CA 94105

Re: California Civility Task Force Comments to Civility Proposals Being
Considered by the State Bar Board of Trustees

Dear Ruben:

In my capacity as Chair of the California Civility Task Force (CCTF), I write to provide the CCTF's comments on the State Bar's civility proposals, which are based on three of the CCTF's key proposals. I also write to thank you, your colleagues on the State Bar Board of Trustees, and the State Bar staff, for your engagement and leadership on this important topic.

The Board of Trustees will be considering comments on its proposals: (1) Revising California Rule of Court 9.7 to ensure all lawyers take the civility portion of the attorney oath; (2) Making repeated incivility a disciplinary offense; and (3) Requiring lawyers to participate in mandatory continuing legal education (MCLE) about civility, and the connection between bias and incivility. I will address each in turn.

1. Revisions to California Rule of Court 9.7

The CCTF FULLY SUPPORTS the Board's proposed amendments to California Rule of Court 9.7 that would require all licensees who did not take the attorney oath with the civility language, as well as specially admitted attorneys, to submit a declaration with the civility pledge language by February 1, 2024. Also, all licensees and specially admitted attorneys would be required to complete the civility pledge on an annual basis when paying licensing fees or registering as a specially admitted attorney. We have no proposed revisions.

2. Revisions to the Rules of Professional Conduct

The CCTF offers QUALIFIED SUPPORT for the Board's proposed revisions to the Rules of Professional Conduct. Obviously, we support the change to make incivility a disciplinary offense. We offer two minor proposed revisions. The first of our proposed revisions is a substantive change that we believe will eliminate some first amendment concerns that have been expressed to us by members of the bar. The second corrects a numbering error. I have attached a markup showing our proposed revisions.

Scope Revision. On reflection, we believe the proposed civility disciplinary rules should apply only to lawyer speech and conduct when a lawyer is representing a client in the practice of law, and not while the lawyer is engaged in some professional activity other than law practice. Restrictions on lawyers' speech and conduct, including civility rules, inevitably raise the question of whether the First Amendment permits them. (*See generally*, M. Tarkington, Voice of Justice: Reclaiming the First Amendment Rights of Lawyers (2018) ("Tarkington")). As Professor Tarkington explains in her book, courts and commentators have expressed different views on what restrictions on lawyers' speech are permissible under the First Amendment, and why. We believe the modest rule changes being considered by the State Bar do not violate the First Amendment. They merely require lawyers to exercise professionalism and refrain from abusing and harassing others, requirements that judges are already required to enforce with respect to lawyers representing parties in state court litigation. (*See* California Code of Judicial Ethics, Canon 3B, advisory commentary: 3B(2)). These restrictions do not interfere with lawyers' ability to advance their clients' interests and are essential to maintaining the integrity and functioning of the judicial system.

Our proposed scope revision nevertheless limit the civility requirement to lawyers who are representing a client in the practice of law, as opposed to those representing a client in "other professional activities." This may eliminate or discourage some First Amendment challenges. As Professor Tarkington notes, there is significant disagreement among scholars and in the caselaw about the scope of lawyers' First Amendment rights, but if there is a dominant view, it is that lawyers who are engaged in the practice of law on behalf of a client have lesser or no First Amendment rights. (Tarkington at 1-3). We express no view on that. But by deleting "or related professional activities," the State Bar will eliminate challenges to the rules by lawyers who, for example, claim to fear discipline for potentially offensive speech or conduct at bar functions, while teaching MCLE courses, or other professional activities that are not included in the practice of law. Granted, lawyers participating in bar functions or teaching MCLE courses generally are not doing so "[i]n representing a client" and so would not fall within the rules in any event, but we believe our proposed changes make the rules cleaner and more easily defensible. Our other proposed changes make clear that the incivility prohibition applies to both speech and conduct.

Numbering change. Our remaining revision corrects a numbering (typographical) error.

3. New MCLE Civility Course Requirements

The CCTF FULLY SUPPORTS the Board's proposed amendments to the MCLE rules. As it relates to CCTF's recommendations, the Board proposes to amend the MCLE rules to require that all licensees complete one hour of MCLE on the topic of civility in the legal profession as part of their existing 25-hour MCLE requirement, and that approved civility courses cover the relationship between bias and incivility. There are several other non-civility related changes being proposed to the MCLE rules, as to which the CCTF takes no position.

Thank you, as always, for your service to the profession and for considering our views.

Very truly yours,



Brian S. Currey
Associate Justice

cc: Leah Wilson, Executive Director, leaht.wilson@calbar.ca.gov
California Civility Task Force

California Civility Task Force Comments January 11, 2023

State Bar Revisions for comment shown in blue

California Civility Task Force comments shown in red

Rule 1.2 Scope of Representation and Allocation of Authority

(a) Subject to rule 1.2.1, a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by rule 1.4, shall reasonably* consult with the client as to the means by which they are to be pursued. Subject to Business and Professions Code section 6068, subdivision (e)(1) and rule 1.6, a lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. Except as otherwise provided by law in a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer may limit the scope of the representation if the limitation is reasonable* under the circumstances, is not otherwise prohibited by law, and the client gives informed consent.*

Comment

Allocation of Authority between Client and Lawyer

[1] Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. (See, e.g., Cal. Const., art. I, § 16; Pen. Code, § 1018.) A lawyer retained to represent a client is authorized to act on behalf of the client, such as in procedural matters and in making certain tactical decisions. 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. However, a lawyer is not authorized merely by virtue of the lawyer's retention to impair the client's substantive rights or the client's claim itself. (Blanton v. Womancare, Inc. (1985) 38 Cal.3d 396, 404 [212 Cal.Rptr. 151, 156].)

California Civility Task Force Comments January 11, 2023

State Bar Revisions for comment shown in blue

California Civility Task Force comments shown in red

[2] At the outset of, or during a representation, the client may authorize the lawyer to take specific action on the client's behalf without further consultation. Absent a material change in circumstances and subject to rule 1.4, a lawyer may rely on such an advance authorization. The client may revoke such authority at any time.

Independence from Client's Views or Activities

[3] A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

Agreements Limiting Scope of Representation

[4] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. (See, e.g., rules 1.1, 1.8.1, 5.6; see also Cal. Rules of Court, rules 3.35- 3.37 [limited scope rules applicable in civil matters generally], 5.425 [limited scope rule applicable in family law matters].)

California Civility Task Force Comments January 11, 2023

State Bar Revisions for comment shown in blue

California Civility Task Force comments shown in red

CHAPTER 8. MAINTAINING THE INTEGRITY OF THE PROFESSION

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (a) violate these rules or the State Bar Act, knowingly* assist, solicit, or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud,* deceit, or reckless or intentional misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official, or to achieve results by means that violate these rules, the State Bar Act, or other law; or
- (f) knowingly* assist, solicit, or induce a judge or judicial officer in conduct that is a violation of an applicable code of judicial ethics or code of judicial conduct, or other law. For purposes of this rule, "judge" and "judicial officer" have the same meaning as in rule 3.5(c).

Comment

[1] A violation of this rule can occur when a lawyer is acting in propria persona or when a lawyer is not practicing law or acting in a professional capacity.

California Civility Task Force Comments January 11, 2023

State Bar Revisions for comment shown in blue

California Civility Task Force comments shown in red

[2] Paragraph (a) does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.

[3] A lawyer may be disciplined for criminal acts as set forth in Business and Professions Code sections 6101 et seq., or if the criminal act constitutes “other misconduct warranting discipline” as defined by California Supreme Court case law. (See *In re Kelley* (1990) 52 Cal.3d 487 [276 Cal.Rptr. 375].)

[4] A lawyer may be disciplined under Business and Professions Code section 6106 for acts involving moral turpitude, dishonesty, or corruption, whether intentional, reckless, or grossly negligent. Regarding significantly unprofessional conduct that is abusive or harassing, see rule 8.4.2.

[5] Paragraph (c) does not apply where a lawyer advises clients or others about, or supervises, lawful covert activity in the investigation of violations of civil or criminal law or constitutional rights, provided the lawyer’s conduct is otherwise in compliance with these rules and the State Bar Act.

[6] A lawyer’s 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.

[7] This rule does not prohibit those activities of a particular lawyer that are protected by the First Amendment to the United States Constitution or by Article I, section 2 of the California Constitution.

California Civility Task Force Comments January 11, 2023

State Bar Revisions for comment shown in blue

California Civility Task Force comments shown in red

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.

Comment

[1] For guidance on conduct that may be significantly unprofessional, a lawyer should consult the current California Attorney Guidelines of Civility and Professionalism and other applicable civility authorities.

[2] A lawyer does not violate this rule by standing firm in the position of the client, protecting the record for subsequent review, or preserving professional integrity.

[3] A lawyer’s violation of this rule may also constitute a violation of rule 8.4(d).

[54] “Incivility” as used in this rule does not apply to ~~speech or~~ conduct protected by the First Amendment to the United States Constitution or by Article I, section 2 of the California Constitution. “Incivility” as used in this rule includes ~~speech or~~ conduct that violates an attorney’s duties under Business and Professions Code section 6068, subdivisions (b) and (f). (See California Code of Judicial Ethics, Canon 3B, advisory commentary: Canon 3B(2) ~~regarding/for noting~~ a judge’s responsibility to require lawyers under the judge’s direction and control to be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others.)

[5] A disciplinary investigation or proceeding for conduct coming within this rule may also be initiated and maintained if such conduct warrants discipline under California Business and Professions Code sections 6106 and 6068, the California Supreme Court’s inherent authority to impose discipline, or other disciplinary standard.

Proposed Changes to Rules of Court

Are you an attorney?	Yes
Name	Janet Eileen Sobel
Professional Affiliation	Yes, founder Lawyer Wellness Library, a CA 501c3 nonprofit
City	El Cajon
State	California
Email address	janet@lawyerwellness.org
From the choices below, we ask that you indicate your position on the proposed amendment to California Rule of Court 9.7. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "CRC9.7" to the front of your file's name)	<p>The California State Bar, an arm of the California Supreme Court, seeks this Incivility "oath" as a Band-aid on a problem that reflects a much larger systemic problem that the State Bar tries to ignore so they don't have to deal with it. The truth is that so long as the State Bar resorts to adopting proposals that merely address the symptoms of the systemic ailments of our legal system and the profession that monetizes it, it will be no different than the emperor who proudly walked naked through the streets of his town, gloating in the praise from his hypnotized subjects.</p> <p>I have been deeply studying the problem of attorney unwellness, that often results in incivility among lawyers, for over four years now and I am here to start to start shouting that the emperor is naked! I have been practicing law for 40 years in California and I have not met a single lawyer who doesn't agree that the State Bar of California is a</p>

total waste of our dues' dollars. Not a single lawyer has ever told me that the California State Bar does good things for lawyers.

Of course, the State Bar's Mission is to protect the public, which many lawyers consider a big joke. Perhaps providing ethical opinions through the Ethics' Hotline is of value to practicing lawyers, but that's pretty much all I can think of. The State Bar can barely keep up with the investigation and discipline of lawyers who have already hurt members of the public, but actual protection of the public in any proactive way is beyond the abilities of this State Bar. If you folks don't know that, then I can play a role by making public comments to actions you intend to...

... take.

For your edification and information, civility oaths and enforcement rules do little to help anyone but our judges, who inarguably are vexed by cantankerous lawyers. However, making all lawyers sign civility oaths is just another way of distracting the public into thinking that the State Bar is doing something significant for the advancement of our legal system.

This oath and the rules to enforce it can only be enforced by judges who decide that some lawyer crossed some civility line and now will suffer some penalty. Of course, that will only increase the work of appellate courts, who will be called upon to review the imposition of those penalties - which will do nothing for the delays that litigants must endure in seeking justice.

I am sure that judges can fairly argue that getting lawyers to behave with greater "dignity, courtesy

and integrity" will cut incivility off at the pass, but that oath and accompanying rules will really only affect what comes before judges. What about violations of the "civility" oath that injures members of the public but will never come before a judge? What about those?

The truth is that the State Bar of California is completely unable to deal with behind-the-scenes incivility - even when that conduct is brought as a complaint to this body in accordance with Complaint procedures. As a lawyer who is schooled in the law of malicious prosecution, and who pressed a complaint against San Diego lawyers in 2021 for their incivility in pursuing a meritless claim against members of the public, a Complaint that was grounded on several violations of this body's Rules of Professional Conduct, I...

... can attest that the lawyers responsible for this State Bar's enforcement of civility rules do not know what they are doing.

The ability of this State Bar to protect the public from the incivility of lawyers, when the incivility leads to a State Bar Complaint that is outside a court procedure, is hopelessly lacking. I am attaching a letter I wrote to the Office of Chief Trial Counsel, in January 2022, in connection with my clients' appeal from the State Bar's decision to affirm conduct that is a complete violation of the civility "oath."

I know a maliciously prosecuted claim (i.e., devoid of merit) when I see one, and the lawyers, including the Office of Chief Trial Counsel, are unable to understand the issues - giving uncivil lawyers the green light to continue their wrongful behavior. The State Bar of California is part of

the problem.

This raises the important question, namely what is the value of an incivility oath when the State Bar that has a budget of over \$250 million cannot hire prosecutors that understand the core incivility of prosecuting a meritless claim and then refusing to reconsider it?

This kind of hypocrisy is exactly why California lawyers see the State Bar of California as a useless body for the protection of the public.

I am the founder of a California nonprofit, the Lawyer Wellness Library, that seeks to address the systemic causes of incivility, but the State Bar of California has no sensible way to support an idea that can help lawyers to deal with the unhappiness that makes them cranky and uncivil. Half of all lawyers are sorry they went to law school, and the State Bar does nothing...

... of value to address that unhappiness. A civility oath is not the way to address the unhappiness that makes lawyers cranky or ruthless. It might subject lawyers to sanctions, which might make judges and the State Bar think they are doing something, but the problem of lawyer unhappiness will only continue to grow, which ineluctably hurts the public that is not getting the best performance from unhappy lawyers.

The point is that you cannot address incivility as its own problem.

I intend to express my views before this body. Once my Library is up and running, hopefully soon, I will take this discussion to a wider audience. For now, this will have to suffice.

Check it out at www.lawyerwellness.org

Sincerely,
Janet Sobel

ATTACHMENTS You may upload your comment as an attachment. Only one attachment will be accepted per comment submission. We accept the following file types: text (.txt), Microsoft Word (.doc), WordPerfect (.wpd), Rich Text Format (.rtf) and Adobe Acrobat PDF (.pdf). We do not accept any other file types. Please DO NOT submit scanned documents. Files must be less than 4 megabytes in size.

[JES_Letter_to_State_Bar_to_appeal_rejection_of_Complaint_Updated.pdf \(2.07 MB\)](#)

JANET E. SOBEL, Esq. CA#109945
Counselor at Law
San Diego, California
telephone: 619-261-6165
jsobel@counselingatlaw.com

January 17, 2022

State Bar of California
Office of Chief Trial Counsel
845 South Figueroa, CA 90017

Re: Case 21-0-04903

To Whom this May Concern:

This is not an ordinary case for the California State Bar's review. Either this esteemed body does the right thing, as set forth herein, or I intend to make a public issue out of it because if the behavior by the lawyers at issue is declared to be okay in this case, then the public is totally unprotected from all manner of unethical mischief and the California State Bar is failing in its sole mission. As far as I am concerned, there is only one course of action that must be taken in this case, namely that the Chief Trial Counsel must immediately refer this matter to outside counsel with experience in handling matters involving lack of merit under malicious prosecution and anti-SLAPP principles and provide a *de novo* analysis of the Complaint under discussion. If Chief Trial Counsel fails to take that action, and instead declares the conduct of these lawyers to be appropriate, then there needs to be a public outcry.

In short, if the behavior described in the Complaint I helped to draft represents acceptable conduct by licensed lawyers in California, then we have no standards and anything goes. Why should the majority of lawyers in this state take the Rules of Professional Conduct seriously when the State Bar's lawyers are themselves breaching the Rules of Conduct by trying to apply principles they obviously do not understand? As a licensed California lawyer, that bothers me.

There is no need for this Office to defend its analysis. Maybe the Complaint was confusing; maybe the attorneys assigned to the case didn't realize the complexity of the issue; maybe the fact that a third party is the Complainant was too unusual to allow the State Bar lawyers to understand this case. Whatever brought us to this point, this case needs to be assigned to outside counsel who deals regularly with matters involving asserting a legal claim that lacks merit.

As a licensed, dues-paying lawyer of this state, I am offended that the lawyers employed by the State Bar who reviewed this Complaint of unethical conduct failed to understand

the law that applies to analyzing lack of probable cause. If the lawyers considering whether professional conduct rules are being breached don't understand the law of probable cause, then a case like this one cannot be adequately considered – certainly not by a non-lawyer investigator with no legal training in factual and legal support of tort claims.

Don't forget that great harm can be done by lawyers who assert meritless claims against a member of the public, which is what happened here. In this case, my clients (a young couple with young children) received a letter from a California law firm that looked like it was drafted by a high school student demanding they defend a claim that makes no sense. That your investigator thought it made sense shows the deficiency of the California State Bar's ability to analyze the ethical requirement that lawyers not assert meritless claims.

Nonetheless, my clients had to spend their personal money hiring counsel, and that counsel was me. I happen to have substantial experience, both in real estate law and in anti-SLAPP law on the issue of merit, and I could see with one reading that the demand for mediation being pressed by the lawyers for the Buyer was totally lacking in merit; in fact, in all my years advising clients and other lawyers, I do not think I ever saw a more incompetently drafted demand letter. No competent, self-respecting attorney, anywhere in this country, would sign their name to a letter like the one that was sent to my clients.

The unintelligible articulation of the letter, though, paled in comparison to the vacuity of the claims being asserted. There was not a single claim supported by any evidence or reason, and the entire position being asserted on behalf of their client would have led to a malicious prosecution lawsuit if it weren't for the fact that they would never have actually filed a lawsuit on such a ridiculous claim. The obvious intention of the partner who signed the ridiculous demand letter was to give his firm's new associate something to train on; there is no way he read it before he signed it, given how poorly it was constructed, a reflection that it clearly didn't matter to him. Every lawyer I have ever worked with, including at two large firms, would have been mortified to have a letter like that go to an unknown third party on their firm's letterhead. Ethical conduct requires self-respect and a respect for the oath of our law license.

Adding to the ludicrousness of the letter's claims, the lawyers displayed a complete lack of civility when I asked them to take an objective look at what they had sent to my clients, a look that would have led any ethical lawyer to see the foolishness of their positions. For example, they were asserting claims on behalf of a Buyer to the effect there was excessive noise from his upstairs neighbor and that my clients had committed fraud in the sale by not disclosing the noise when they made the required disclosures. The problem, though, was the fact that the upstairs' neighbor causing the noise didn't move into that unit (above the Buyer) until fourteen months after my clients sold the unit to the Buyer; hence, there was no evidence that the Sellers had any awareness of a noise problem in that condominium complex, or that there *was* in fact any noise problem at all in that complex, or even that the level of noise being experienced by the Buyer was even

arguably material to a reasonable person; the entire claim lacked any allegation to support the notion that this was anything other than a hyper-sensitive Buyer, and no court would allow such a claim to proceed beyond a demurrer. How these State Bar lawyers could find merit in such a claim is an embarrassment to this body's disciplinary authority.

In short, there was no factual basis upon which any claim being asserted in the demand letter could support a judgment of liability against my clients, which is the definition of without merit. To make matters worse, the demand letter crossed state lines and attached a falsified document in support of the claim, a violation of federal law.

Chief Trial Counsel of this body should know that the public is harmed when lawyers make claims for which there is no merit and then stubbornly refuse to evaluate their own conduct. There is no oversight of incompetent lawyers if I have to remind this Office of the following principles:

1. Incivility, driven by arrogance and a refusal to consider another lawyer's viewpoint, is against the interests of the legal system. Meritless claims interfere with the smooth operation of our courts and prevent others from getting speedy justice, not to mention the aggravation and difficulty it causes other lawyers and judges. As Supreme Court Justice Sandra Day O'Connor is frequently quoted as saying: *"More civility and greater professionalism can only enhance the pleasure lawyers find in practice, increase the effectiveness of our system of justice, and improve the public's perception of lawyers."*

How can the judges of this state rail against incivility that disrupts their calendars while their State Bar permits the injury to innocent people caused by such misconduct? Put another way, how can the California State Bar permit incivility when the judges of this state complain mightily about the same conduct?

2. The California State Bar supports the Lawyers and Judges Assistance Program (LAP), which acknowledges that the overall emotional health of lawyers and judges is negatively affected when they are forced to put up with lawyers who behaved as these lawyers did. Additionally, the use of alcohol as a way to deal with the stress of practicing law is not to be approved of by the State Bar, yet the lawyers in this case bragged about their alcohol use, which went unnoticed by this disciplinary body.
3. The harm caused by defending any meritless claim is presumed, yet there is no remedy for being victimized by a meritless claim when it is pursued through a demand for mediation under the contractual provisions in the form California Real Estate Purchase and Sale Agreement. It's actually a loophole that permits lawyers to assert meritless claims without the risk of any consequences absent the authority of our State Bar. Accordingly, if lawyers can sometimes collect nuisance money from a meritless demand for a Buyer, then assigning a new associate to prepare the letter is simply a training exercise with some chance of

reward (if the people receiving the letter decide to pay some nuisance money to get rid of it). I would call it a wrongful business practice against public policy, for what else could it be?

The cost of dealing with mediations that lack merit falls on members of the public who lack all protection if the body funded by the state to protect the public from unethical or incompetent attorneys is failing to do its job. My clients' Complaint stressed that this State Bar must send a message to overreaching lawyers that they may be safe from civil consequences if they can avoid filing a lawsuit on a meritless claim, but they won't be safe from facing discipline by the State Bar if they force members of the public to incur expense and aggravation responding to a meritless demand for mediation.

After all, if there are no consequences from pursuing meritless claims by way of mediation and arbitration, then the State Bar is the only one to protect the public; if it does nothing, then it is failing to protect the public from the kind of wrongful business practice that was perpetrated upon my clients – not to mention the harm such misuse of mediations can reap upon the courts' reliance on mediation to settle cases.

By upholding conduct such as happened here, this State Bar is telling lawyers like these that they can assert anything in a demand for mediation, no matter how mindless, because there will be no consequences for forcing innocent people to spend their money to be bothered and upset by idiotic demands under a mediation contract. That is an unethical business practice – developing right under the nose of the California State Bar.

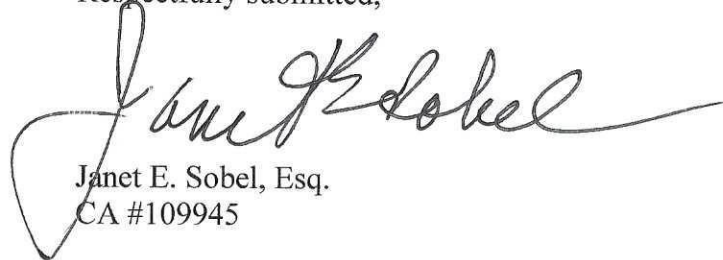
I have been a dues-paying member of this state's roster of licensed attorneys for 39 years and have a lot to say about the outrageous mishandling of this Complaint by this body's lawyers. If this Office does not refer this matter to outside counsel for a *de novo* analysis by a lawyer with substantial experience in handling the issue of merit under anti-SLAPP law, then this Office's acceptance of their behavior – to which I am a percipient witness – deserves a public conversation. An expert on such issues will immediately see how meritless the demand letter to my clients was; actually, its gaping inadequacy should be obvious to any thinking person over the age of sixteen. If that demand letter, including its attachment of a fabricated document, serves to show how the State Bar of California defines the work of reasonable lawyers licensed in this State, then what conduct goes too far? Are our Rules of Professional Conduct enforced only by the Criminal Law of this state? If so, how did the use of a fabricated document not even raise eyebrows?

I will make what happened here part of my Soapbox for 2022. For the sake of licensed lawyers in this state who strive to abide by our professional standards, this is a conversation that must be had.

The point of this letter is this: This Complaint is about more than these particular lawyers who are getting away with wrongdoing; it is about how the State Bar of California must

answer for approving of it. If this conduct is okay with our State Bar, then we as licensed lawyers have a right to complain. The lawyers at issue are simply poster children – allowing the public to know what our State Bar sees as permissible lawyer conduct: Stupid claims, no facts, and fabricated documents. That's a pretty sad statement about the legal profession in 2022 and doesn't make me proud to be a part of it.

Respectfully submitted,


Janet E. Sobel, Esq.
CA #109945

Cc: Chief Justice Tani Gorre Cantil-Sakauye,
The California Supreme Court
350 McAllister Street, Room 25
San Francisco, CA 94012-4797

*not sent
jes 1/18/2022*

California State Senator Tom Umberg, Chair Judiciary Committee
Capitol Office, 1021 O Street, Suite 6730, Sacramento, CA 95814
District Office, 1000 E. Santa Ana Blvd., Ste. 220B, Santa Ana, CA 92701

*not sent
jes 1/18/2022*

California Assemblyman Mark Stone, Chair Judiciary Committee
Capitol Office, 1021 O Street, Suite 5740, Sacramento, CA 94249-0029
Santa Cruz County District Office, 701 Ocean Street, Ste. 318-B, Santa Cruz, CA 95060

*not sent
jes 1/18/2022*

Donna S. Hershkowitz, Interim Executive Director and Chief of Programs
On behalf of the California State Bar Board of Trustees
845 South Figueroa, CA 90017

Proposed Changes to Rules of Court

Are you an attorney?	Yes
Commenting on behalf of an organization	Yes
Name	Zach Newman
Professional Affiliation	Legal Aid Association of California
City	Los Angeles
State	California
Email address	znewman@laaonline.org
From the choices below, we ask that you indicate your position on the proposed amendment to California Rule of Court 9.7. (This is a required field.)	AGREE ONLY if Modified
ATTACHMENTSYou may upload your comment as an attachment. Only one attachment will be accepted per comment submission. We accept the following file types: text (.txt), Microsoft Word (.doc), WordPerfect (.wpd), Rich Text Format (.rtf) and Adobe Acrobat PDF (.pdf). We do not accept any other file types. Please DO NOT submit scanned documents. Files must be less than 4 megabytes in size.	Proposed_Amendment_Requiring_Attorneys_to_Complete_Annual_Civility_Pledge_LAAC_Comment_Draft_1.10.23.pdf (165 KB)

Legal Aid Fights for Justice. We Fight for Them.



January 20, 2023

Board of Trustees
The State Bar of California, San Francisco Office
180 Howard Street
San Francisco, CA 94105

Re: Proposed Amendment Requiring Attorneys to Complete Annual Civility Pledge

To the Board of Trustees,

We are writing on behalf of the Legal Aid Association of California (LAAC) regarding the proposed amendments to Rule 9.7 of the California Rules of Court and the Rules of Professional Conduct based on recommendations by the California Civility Task Force. **We support the requirements as proposed, while noting a few concerns with the annual pledge and its implementation.**

LAAC is the statewide membership association of over 100 public interest law nonprofits that provide free civil legal services to low-income people and communities throughout California. LAAC member organizations provide legal assistance on a broad array of substantive issues, ranging from general poverty law to civil rights to immigration, and also serve a wide range of low-income and vulnerable populations. LAAC serves as California's unified voice for legal services and is a zealous advocate advancing the needs of the clients of legal services on a statewide level regarding funding and access to justice.

All Licensees Should Take the Oath with the Civility Pledge

We support the proposals regarding ensuring all licensees have taken the oath with the civility pledge for the following reasons. We recognize that many Bar licensees already completed an oath on admission to practice law that includes a civility pledge, as required by California Rule of Court 9.7. However, we understand that most Bar licensees have not completed this version of the oath, as just those admitted after June 2014 performed it with this pledge. Further, specially admitted attorneys—like registered legal aid attorneys—have not completed the pledge either.

First, we see a value in ensuring that all Bar licensees complete such a civility pledge. this proposal will work in tandem with the other proposals to increase civility in our profession. While “civility” is a broad concept, as discussed throughout the materials provided by the Bar, it appears that the working definition of *incivility* revolves around

abusive and harassing behavior, which are behaviors that should be limited in our profession. First Amendment concerns exist, but it does seem possible to strike a balance and prohibit uncivil behavior while protecting those rights. Civility is, undoubtedly, an important part of our profession, so there is inherent value in specific and affirmative acknowledgement of the need for civility by all licensees. According to the California Civility Task Force (CCTF), incivility increases stress, job dissatisfaction, costs and delays, and can be the result of bias. All of these impacts of incivility only make the jobs of lawyers and judges harder, with implications pertaining to the relatively high prevalence of mental health issues and substance use in our profession. In legal aid, it likely only increases our recruitment and retention issues. Finally, incivility related to bias further decreases efforts around racial justice and diversity, equity, and inclusion in the legal field.

Second, as described above, not all licensees have performed the oath with the civility pledge. The proposed amendments would fix this imbalance by making sure that *all* licensees, not just those recently admitted, have done so. Specifically, it would require those who took the attorney oath without the civility pledge, and specially admitted attorneys, to submit a declaration affirming their commitment to the civility pledge. Into the future, it would also require all licensees and specially admitted attorneys to do so annually as well. In so doing, this proposal would rectify the imbalance that just some attorneys have made the pledge, while others have not, and maintain the pledge into the future annually.

Concerns with the *Annual Civility Pledge*

Finally, we are concerned with implementation of the annual civility pledge, and are not convinced that it must be annual. The content of the pledge does not itself seem worrisome, but we are curious about what the value is to do it each year, especially in conjunction with other proposed Bar rules, such as those in the Rules of Professional Conduct. Critically, the implementation system is yet to be determined, and this is the aspect we want to address. The memo states:

The proposed rule would also direct the State Bar to develop rules and procedures related to implementation, including how the attorney would affirm the civility pledge and when an attorney must demonstrate compliance. Staff recommends that a licensee or special admissions attorney could sign and submit the initial declaration electronically using the State Bar's DocuSign feature.

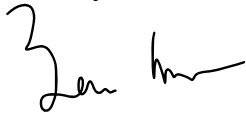
Assuming this "DocuSign feature" refers to the attorney's profile where other requirements are fulfilled, we are wary of yet another "box to check" when time comes for annual renewal and fee payment on the website. The website, as of now, is not the easiest to use, in terms of making sure a licensee has stated, through check boxes or otherwise, that they have met all requirements. For instance, complying with State Bar Rule 2.5 Client Trust Account (CTA) Reporting Requirement is not completely simple. On its face, this does not seem to be more or less difficult, per se, than another type of requirement and the resultant annual reporting. That said, overall, there are

improvements in clarity and user-friendliness that could make compliance more certain across the board, but make this proposal that much more difficult or frustrating.

As with other requirements, it will be important that licensees are sufficiently notified that this oath will be required and that it is easy enough to comply, as with other annual actions they must take, especially given that they may face fees, involuntary inactive enrollment, or have their special admission registration suspended or terminated. It is important for punitive results to be avoided through a user-friendly and clear system, with sufficient notice, to perform the pledge. In other words, we are worried that so many people will fail to do it and that it will be yet another unmet requirement clogging up the Bar's discipline process. **In sum, on balance, we are in favor of the civility pledge, but are not certain about the annual nature. We also hope that the implementation system, including the website, can be as easy to follow as possible, particularly given the disciplinary consequences of potentially failing to comply, whether intentionally or for just missing yet another annual reporting requirement.**

Thank you for giving us the opportunity to provide comment. Please contact us with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Zach Newman', with a stylized flourish at the end.

Zach Newman, *Directing Attorney*, **Legal Aid Association of California**

Proposed Changes to Rules of Court

Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	Dr. Roger M. Lindmark
Professional Affiliation	Calif and Washington DC Bars
City	Los Angeles
State	California
Email address	lawdoctors@juno.com

From the choices below, we ask that you indicate your position on the proposed amendment to California Rule of Court 9.7. (This is a required field.)

DISAGREE with the proposed recommendations

ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "CRC9.7" to the front of your file's name)

In the old...revised..... B&P Code 6068 (State Bar Act) under ---"Duties of Attorney"---there was a subsection which required an attorney to "refrain from all offensive personality"!!!! The Bar was sued in Federal Court due to the vague and overbroad nature of this Duty...as unconstitutional. The 9th Circuit upheld the striking of this clause. NOW the Bar and the WOKE, Progressive, Leftist, Fascist, Nazi Bar and State Legislature want to bring back this requirement by giving it a new name....to fake all of out....which only the old timers know of the former Statute which was Uncon.....but the younger attorneys don't know this clause history or the 9th Circuit Case. But this proposed Statute for "Civility" imposes the same Unconstitutional crap on lawyers. If this statute is enacted and signed by the Woke governor you can be sure that the Bar and State will be SUED and waste more money and time. So if I call you

an SOB or an MF'er, or a S _ _T Head....that may be Civil for me but not Civil for you.....who is to judge what is Civil or not??? This also invokes the State and Federal FREE SPEECH clauses....to call someone an SOB. But this name calling would not be permitted in written pleadings....see Hogan v. State Bar (1951) 36 Cal,2d 807, 810 and In re Philbrook (1895) 105 Cal. 471, 477-478. Nor would such name calling etc.--of course--not be permitted in open court during a hearing or trial or directed to the Judge who may warrant the deserved invective. The whole bone headed notion of "regulating" Civility is NUTS unlawful and opens a can of worms. The first lawyer who is disciplined for being "UNCIVIL" WILL SUE your A _ S and cause the State Bar to spend mucho wasted money just as it did years ago on the Brortherhous and Keller cases which the Bar lost...

... big time. The Bar's function under Keller is two fold.....admissions and discipline for real offenses....NOT Social control/Engineering..... NOR Social discipline NOR being a Vocabulary Police Force.....NOR solving the Drug and Alcohol addictions of attorneys to save their lives and failed careers with the woke "Other Bar" program which wastes our dues money!!!! Bye.....Atty. Roger M. Lindmark....SBN 158-291

Proposed Changes to Rules of Court

Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	Lisa Iulianelli
Professional Affiliation	No
City	Chula Vista
State	California
Email address	lisaiulianelli@gmail.com
From the choices below, we ask that you indicate your position on the proposed amendment to California Rule of Court 9.7. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "CRC9.7" to the front of your file's name)	<p>The Bar's history of ineffective discipline makes the proposed requirements of civility laughable. There are attorneys and judges openly advocating insurrection, and the Bar does nothing to those inherently violating our oath. If you refuse to enforce, sua sponte, our most fundamental principle, to support the US Constitution, the rest of your efforts are pointless in my eyes. Moreover, after reading how, for 40 years, the Bar failed to discipline powerful rich white men like Tom Girardi and his partners for ripping off clients, I have little to no confidence that the Bar will do anything substantive to those with poor attitudes. Finally, I have attended your discipline working group meetings and watched how the defense bar rep attempts to water down attorney discipline by advocating settlements and weak punishments to save time and money. I don't see much in the way of execution that will benefit our profession given how rarely the Bar</p>

enforces its current standards.

Proposed Changes to Rules of Court

Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	Mike Madokoro
City	Torrance
State	California
Email address	mike.madokoro@bowmanandbrooke.com
From the choices below, we ask that you indicate your position on the proposed amendment to California Rule of Court 9.7. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "CRC9.7" to the front of your file's name)	As a member of the California Civility Task Force, I fully support this proposal to amend California Rule of Court 9.7.
ATTACHMENTSYou may upload your comment as an attachment. Only one attachment will be accepted per comment submission. We accept the following file types: text (.txt), Microsoft Word (.doc), WordPerfect (.wpd), Rich Text Format (.rtf) and Adobe Acrobat PDF (.pdf). We do not accept any other file types. Please DO NOT submit scanned documents. Files must be less than 4 megabytes in size.	California_Civility_Task_Force_Letter_and_Comments_to_Proposed_Disciplinary_Rules_Changes_1.11.23._FINAL.pdf (2.47 MB)



STATE OF CALIFORNIA
Court of Appeal
SECOND APPELLATE DISTRICT
DIVISION FOUR
300 SOUTH SPRING STREET
LOS ANGELES, CALIFORNIA 90013

BRIAN S. CURREY
ASSOCIATE JUSTICE

TELEPHONE
(213) 830-7438
brian.currey@jud.ca.gov

January 11, 2023

Via electronic submission to the State Bar and email to ruben.duran@bbklaw.com

Ruben Duran, Chair
State Bar Board of Trustees
180 Howard Street
San Francisco, CA 94105

Re: California Civility Task Force Comments to Civility Proposals Being
Considered by the State Bar Board of Trustees

Dear Ruben:

In my capacity as Chair of the California Civility Task Force (CCTF), I write to provide the CCTF's comments on the State Bar's civility proposals, which are based on three of the CCTF's key proposals. I also write to thank you, your colleagues on the State Bar Board of Trustees, and the State Bar staff, for your engagement and leadership on this important topic.

The Board of Trustees will be considering comments on its proposals: (1) Revising California Rule of Court 9.7 to ensure all lawyers take the civility portion of the attorney oath; (2) Making repeated incivility a disciplinary offense; and (3) Requiring lawyers to participate in mandatory continuing legal education (MCLE) about civility, and the connection between bias and incivility. I will address each in turn.

1. Revisions to California Rule of Court 9.7

The CCTF FULLY SUPPORTS the Board's proposed amendments to California Rule of Court 9.7 that would require all licensees who did not take the attorney oath with the civility language, as well as specially admitted attorneys, to submit a declaration with the civility pledge language by February 1, 2024. Also, all licensees and specially admitted attorneys would be required to complete the civility pledge on an annual basis when paying licensing fees or registering as a specially admitted attorney. We have no proposed revisions.

2. Revisions to the Rules of Professional Conduct

The CCTF offers QUALIFIED SUPPORT for the Board's proposed revisions to the Rules of Professional Conduct. Obviously, we support the change to make incivility a disciplinary offense. We offer two minor proposed revisions. The first of our proposed revisions is a substantive change that we believe will eliminate some first amendment concerns that have been expressed to us by members of the bar. The second corrects a numbering error. I have attached a markup showing our proposed revisions.

Scope Revision. On reflection, we believe the proposed civility disciplinary rules should apply only to lawyer speech and conduct when a lawyer is representing a client in the practice of law, and not while the lawyer is engaged in some professional activity other than law practice. Restrictions on lawyers' speech and conduct, including civility rules, inevitably raise the question of whether the First Amendment permits them. (*See generally*, M. Tarkington, Voice of Justice: Reclaiming the First Amendment Rights of Lawyers (2018) ("Tarkington")). As Professor Tarkington explains in her book, courts and commentators have expressed different views on what restrictions on lawyers' speech are permissible under the First Amendment, and why. We believe the modest rule changes being considered by the State Bar do not violate the First Amendment. They merely require lawyers to exercise professionalism and refrain from abusing and harassing others, requirements that judges are already required to enforce with respect to lawyers representing parties in state court litigation. (*See* California Code of Judicial Ethics, Canon 3B, advisory commentary: 3B(2)). These restrictions do not interfere with lawyers' ability to advance their clients' interests and are essential to maintaining the integrity and functioning of the judicial system.

Our proposed scope revision nevertheless limit the civility requirement to lawyers who are representing a client in the practice of law, as opposed to those representing a client in "other professional activities." This may eliminate or discourage some First Amendment challenges. As Professor Tarkington notes, there is significant disagreement among scholars and in the caselaw about the scope of lawyers' First Amendment rights, but if there is a dominant view, it is that lawyers who are engaged in the practice of law on behalf of a client have lesser or no First Amendment rights. (Tarkington at 1-3). We express no view on that. But by deleting "or related professional activities," the State Bar will eliminate challenges to the rules by lawyers who, for example, claim to fear discipline for potentially offensive speech or conduct at bar functions, while teaching MCLE courses, or other professional activities that are not included in the practice of law. Granted, lawyers participating in bar functions or teaching MCLE courses generally are not doing so "[i]n representing a client" and so would not fall within the rules in any event, but we believe our proposed changes make the rules cleaner and more easily defensible. Our other proposed changes make clear that the incivility prohibition applies to both speech and conduct.

Numbering change. Our remaining revision corrects a numbering (typographical) error.

3. New MCLE Civility Course Requirements

The CCTF FULLY SUPPORTS the Board's proposed amendments to the MCLE rules. As it relates to CCTF's recommendations, the Board proposes to amend the MCLE rules to require that all licensees complete one hour of MCLE on the topic of civility in the legal profession as part of their existing 25-hour MCLE requirement, and that approved civility courses cover the relationship between bias and incivility. There are several other non-civility related changes being proposed to the MCLE rules, as to which the CCTF takes no position.

Thank you, as always, for your service to the profession and for considering our views.

Very truly yours,



Brian S. Currey
Associate Justice

cc: Leah Wilson, Executive Director, leaht.wilson@calbar.ca.gov
California Civility Task Force

California Civility Task Force Comments January 11, 2023

State Bar Revisions for comment shown in blue

California Civility Task Force comments shown in red

Rule 1.2 Scope of Representation and Allocation of Authority

(a) Subject to rule 1.2.1, a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by rule 1.4, shall reasonably* consult with the client as to the means by which they are to be pursued. Subject to Business and Professions Code section 6068, subdivision (e)(1) and rule 1.6, a lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. Except as otherwise provided by law in a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer may limit the scope of the representation if the limitation is reasonable* under the circumstances, is not otherwise prohibited by law, and the client gives informed consent.*

Comment

Allocation of Authority between Client and Lawyer

[1] Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. (See, e.g., Cal. Const., art. I, § 16; Pen. Code, § 1018.) A lawyer retained to represent a client is authorized to act on behalf of the client, such as in procedural matters and in making certain tactical decisions. 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. However, a lawyer is not authorized merely by virtue of the lawyer's retention to impair the client's substantive rights or the client's claim itself. (Blanton v. Womancare, Inc. (1985) 38 Cal.3d 396, 404 [212 Cal.Rptr. 151, 156].)

California Civility Task Force Comments January 11, 2023

State Bar Revisions for comment shown in blue

California Civility Task Force comments shown in red

[2] At the outset of, or during a representation, the client may authorize the lawyer to take specific action on the client's behalf without further consultation. Absent a material change in circumstances and subject to rule 1.4, a lawyer may rely on such an advance authorization. The client may revoke such authority at any time.

Independence from Client's Views or Activities

[3] A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

Agreements Limiting Scope of Representation

[4] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. (See, e.g., rules 1.1, 1.8.1, 5.6; see also Cal. Rules of Court, rules 3.35- 3.37 [limited scope rules applicable in civil matters generally], 5.425 [limited scope rule applicable in family law matters].)

California Civility Task Force Comments January 11, 2023

State Bar Revisions for comment shown in blue

California Civility Task Force comments shown in red

CHAPTER 8. MAINTAINING THE INTEGRITY OF THE PROFESSION

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (a) violate these rules or the State Bar Act, knowingly* assist, solicit, or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud,* deceit, or reckless or intentional misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official, or to achieve results by means that violate these rules, the State Bar Act, or other law; or
- (f) knowingly* assist, solicit, or induce a judge or judicial officer in conduct that is a violation of an applicable code of judicial ethics or code of judicial conduct, or other law. For purposes of this rule, "judge" and "judicial officer" have the same meaning as in rule 3.5(c).

Comment

[1] A violation of this rule can occur when a lawyer is acting in propria persona or when a lawyer is not practicing law or acting in a professional capacity.

California Civility Task Force Comments January 11, 2023

State Bar Revisions for comment shown in blue

California Civility Task Force comments shown in red

[2] Paragraph (a) does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.

[3] A lawyer may be disciplined for criminal acts as set forth in Business and Professions Code sections 6101 et seq., or if the criminal act constitutes “other misconduct warranting discipline” as defined by California Supreme Court case law. (See *In re Kelley* (1990) 52 Cal.3d 487 [276 Cal.Rptr. 375].)

[4] A lawyer may be disciplined under Business and Professions Code section 6106 for acts involving moral turpitude, dishonesty, or corruption, whether intentional, reckless, or grossly negligent. Regarding significantly unprofessional conduct that is abusive or harassing, see rule 8.4.2.

[5] Paragraph (c) does not apply where a lawyer advises clients or others about, or supervises, lawful covert activity in the investigation of violations of civil or criminal law or constitutional rights, provided the lawyer’s conduct is otherwise in compliance with these rules and the State Bar Act.

[6] A lawyer’s 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.

[7] This rule does not prohibit those activities of a particular lawyer that are protected by the First Amendment to the United States Constitution or by Article I, section 2 of the California Constitution.

California Civility Task Force Comments January 11, 2023

State Bar Revisions for comment shown in blue

California Civility Task Force comments shown in red

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.

Comment

[1] For guidance on conduct that may be significantly unprofessional, a lawyer should consult the current California Attorney Guidelines of Civility and Professionalism and other applicable civility authorities.

[2] A lawyer does not violate this rule by standing firm in the position of the client, protecting the record for subsequent review, or preserving professional integrity.

[3] A lawyer’s violation of this rule may also constitute a violation of rule 8.4(d).

[54] “Incivility” as used in this rule does not apply to ~~speech or~~ conduct protected by the First Amendment to the United States Constitution or by Article I, section 2 of the California Constitution. “Incivility” as used in this rule includes ~~speech or~~ conduct that violates an attorney’s duties under Business and Professions Code section 6068, subdivisions (b) and (f). (See California Code of Judicial Ethics, Canon 3B, advisory commentary: Canon 3B(2) ~~regarding/for noting~~ a judge’s responsibility to require lawyers under the judge’s direction and control to be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others.)

[5] A disciplinary investigation or proceeding for conduct coming within this rule may also be initiated and maintained if such conduct warrants discipline under California Business and Professions Code sections 6106 and 6068, the California Supreme Court’s inherent authority to impose discipline, or other disciplinary standard.

Proposed Changes to Rules of Court

Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	Michael Patrick Maguire
Professional Affiliation	Mediator working with ADR Services. Inc.
City	TRABUCO CANYON
State	California
Email address	mmaguiregq57@gmail.com
From the choices below, we ask that you indicate your position on the proposed amendment to California Rule of Court 9.7. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "CRC9.7" to the front of your file's name)	<p>This is an important step forward to reigning in incivility and unprofessional conduct practiced by too many and unfortunately seen by new and impressionable newer attorneys as the expected norm. Incivility is not professional and has high costs in terms of added stress, dissatisfaction and public distrust of our profession. The Bar and profession need the tools to deal with repeated misconduct.</p> <p>I hope the Bar and any other enforcers of the new Rule works to deal with repeat violators and deliberates carefully before severely disciplining a practitioner for a single act of bad behavior.</p>

Proposed Changes to Rules of Court

Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	Michael Patrick Maguire
Professional Affiliation	Mediator working with ADR Services. Inc.
City	Trabuco Canyon
State	California
Email address	mmaguire@adrservices.com
From the choices below, we ask that you indicate your position on the proposed amendment to California Rule of Court 9.7. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "CRC9.7" to the front of your file's name)	Needed in general and provides a foundational basis for disciplinary proceedings in appropriate instances.

Proposed Changes to Rules of Court

Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	D'Artagnan Montrose
City	Fresno
State	California
Email address	dmontroseii@gmail.com
From the choices below, we ask that you indicate your position on the proposed amendment to California Rule of Court 9.7. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "CRC9.7" to the front of your file's name)	<p>Most definitely. As someone who attended business school before law school and worked in the corporate world for 10 years before becoming a lawyer, one thing that is very apparent is the lack of business communication education and etiquette among attorneys.</p> <p>You learn in the corporate world about the benefits of striving for win/win negotiations and always communicating in a respectful and positive manner even when in engaged in conflict.</p> <p>Attorneys unfortunately do not learn this in school or in practice, and so you have extremely rude and disrespectful opposing counsel who do not even know how to start an email with "Dear counsel, I hope this message finds you well" or who appear at depositions and think it is some sort of power play to refuse to engage in standard pleasantries.</p>

Worst case you end up with the nightmare opposing counsel who is so devoid of manners and professionalism that they are rude even to the Judges. Having come up in a firm that is big on professional courtesy, I am always amazed when opposing counsel takes the position that being extremely obnoxious and unnecessarily confrontational is somehow superior lawyering.

I have always wished Judges would sanction such uncivil and unprofessional behavior.

Proposed Changes to Rules of Court

Are you an attorney?	No
Commenting on behalf of an organization	No
Name	Isaac Moreno
City	Los angeles
State	California
Email address	Isaacmoreno19766@gmail.com
From the choices below, we ask that you indicate your position on the proposed amendment to California Rule of Court 9.7. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "CRC9.7" to the front of your file's name)	<p>Yes I think you should be honest , In a fair setting with no b.s. from eighther side or else it's a joke.If I could change my past I would on somethings but I feel a person's past in an unfair playing field sometimes lead to poor judgment so its parents job to set this in kids foundation.im an expert in alot of things in life's lesson as my college.so it's important not include everyone in a discussion as a community and vote on things to help solve some of the issues we are having today.education and parents that should be helped by law to get parenting skills and good ethics hard work and dedication.so if I think that integrity is important so the people that claim to serve and protect should not abuse power or people will keep loosing their fate of integrity, dignity , courtesy,kindness and humbleness, without pre judging and not even helping the person of accusations or the judge not letting fairness play out and community should stick together and vote on what future we leave or kids free of drugs or control it or we will leave or kids</p>

in a crime world with dark consequences.me
myself blind to some of these facts on a world
level of thought what's best for our world is most
important corruption leads to leaders in power
criminal or government.greed and poverty Ying
yang.but maybe I'm crazy to believe that it takes
everyone to come together and in prison or in
high power to people who suffer the unified
decisions over loved ones people fear both sides
but both sides forget about the people in the
middle so civil rights should be there and if some
don't give it that are in power and intimidate or
confuse people seeking truth to be told,and allow
people to get made worse and introduce them to
jail with no educational...

... mandates to be released with tools to better
themselves and community. And I admit some
are hard headed and inside jail should be
disciplined in a way such as not to abuse Tru
disciple in work outs clean up and education .
And rapist and child molester should suffer and
anyone who falsly accuses someone through
use of polygraph test as one of the tools to be
used people who have nothing to hide.so parents
should be heard and helped in raising
Raising better kids to reach for other planets not
stuck in situations of one parent having no justice
and broke home.so I need help with my kids life
and my life has been getting wreck by me and
both sides of the law together we can open
discussion not arrest one who has ideas that will
work and ideas that will lead to better ideas and
a community and world that would be in the light
not darkness it takes people excluded for not
including them and vice versa.

S

Proposed Changes to Rules of Court

Are you an attorney?	Yes
Commenting on behalf of an organization	Yes
Name	Mike Madokoro
Professional Affiliation	Multicultural Bar Alliance of Southern California
City	Woodland Hills
State	California
Email address	mike.madokoro@bowmanandbrooke.com
From the choices below, we ask that you indicate your position on the proposed amendment to California Rule of Court 9.7. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "CRC9.7" to the front of your file's name)	The Multicultural Bar Alliance of Southern California ("MCBA") fully supports the proposed amendments to California Rule of Court 9.7. MCBA's Resolution in Support of Proposals of the California Civility Task Force is attached.
ATTACHMENTSYou may upload your comment as an attachment. Only one attachment will be accepted per comment submission. We accept the following file types: text (.txt), Microsoft Word (.doc), WordPerfect (.wpd), Rich Text Format (.rtf) and Adobe Acrobat PDF (.pdf). We do not accept any other file types. Please DO NOT submit scanned documents. Files must be less than 4 megabytes in size.	California_Civility_Task_Force_Resolution_signed_by_MCBA-SoCal_1-22-22.pdf (85 KB)

**Multicultural Bar Alliance of Southern California
Resolution in Support of Proposals of the
California Civility Task Force**

Whereas, the California Civility Task Force is a joint project of the California Judges Association (CJA) and the California Lawyers Association (CLA); and

Whereas, the Multicultural Bar Alliance of Southern California has reviewed the task force's initial report entitled Beyond the Oath: Recommendations for Improving Civility; and

Whereas, the Multicultural Bar Alliance of Southern California agrees with and embraces the task force's recommendations contained in that report;

NOW THEREFORE, the Multicultural Bar Alliance of Southern California hereby respectfully:

1. Asks the State Bar Board of Trustees to mandate one hour of civility MCLE training for attorneys (without increasing total MCLE hours). Some portion of the civility training should be devoted to making the profession more welcoming to underrepresented groups by addressing the link between incivility and bias.
2. Asks the Chief Justice, as head of the Judicial Council, and the Center for Judicial Education and Research Advisory Committee (CJER) to provide voluntary training to judges on promoting civility inside and outside courtrooms. CJA commits to do the same.
3. Asks the State Bar Board of Trustees to recommend to the Supreme Court revisions to the Rules of Professional Conduct to clarify that repeated incivility constitutes professional misconduct and that civility is not inconsistent with zealous advocacy; and
4. Asks the Supreme Court to amend Rule of Court 9.7 to require all attorneys, when annually renewing their licenses to practice law, to swear or affirm: "As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy and integrity." and,

5. Urges the Chief Justice, Judicial Council, and State Bar to take further appropriate action to improve civility in the practice of law.

Dated: January 22, 2022

MULTICULTURAL
BAR ALLIANCE
OF SOUTHERN CALIFORNIA



VALARIE DEAN

Chair

Multicultural Bar Alliance of
Southern California

Proposed Changes to Rules of Court

Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	Richard Oberto
City	Fresno
State	California
Email address	rmoberto@gmail.com
From the choices below, we ask that you indicate your position on the proposed amendment to California Rule of Court 9.7. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "CRC9.7" to the front of your file's name)	<p>The proposed definition of "incivility" is hopelessly vague. The vagueness will have a chilling effect on constitutionally protected speech and legitimate advocacy for clients. Most attorneys will not be brave enough to wade into the gray area between "incivility" as vaguely defined on the one hand and constitutionally protected free speech and legitimate advocacy on the other hand. That chilling effect will be to the great detriment of client advocacy and diversity of views among attorneys. The vagueness also will lead to arbitrary and capricious enforcement against attorneys who might be different, unorthodox, or standing firm against pressures from judges and opposing counsel (e.g., settlement and other procedural pressures). The attempted definition of "incivility" is hopeless vague on its face, as the attempted definition itself refers for guidance to outside sources, including "the current California Attorney Guidelines of Civility and Professionalism and other applicable civility</p>

authorities." We should expect that many of the attorneys and judges who will be most zealous about enforcing "civility" will be those who most egregiously abuse the norms of civility. Consider for example the Fresno County District Attorney, who frequently blames the Governor and recent legal reforms when specific criminal acts occur in the community. I have had one of the DA's deputies call my client (who is an Afghanistan war veteran) "a guy who likes to abuse women." These violators of civility norms will be the first to call out "incivility" when anybody pushes back against their abuses. This is going to create a terrible mess. In sum, the proposed rule will have a chilling effect on advocacy and constitutionally protected speech; the enforcement will be arbitrary and capricious,...

... targeting attorneys who are different, unorthodox, and standing firm against procedural pressures from judges and opposing counsel; and the greatest abusers of civility norms will be the ones who most zealously invoke "incivility" against their adversaries. Please do not subject us attorneys to this terrible proposed rule.

Proposed Changes to Rules of Court

Are you an attorney?	Yes
Name	James O'Neil
Professional Affiliation	Law Offices of James O'Neil
City	San Francisco
State	California
Email address	james@oneil.legal
From the choices below, we ask that you indicate your position on the proposed amendment to California Rule of Court 9.7. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "CRC9.7" to the front of your file's name)	<p>The proposal is a needlessly overbroad requirement that serves no demonstrable purpose for a large section of California attorneys. As an attorney who practices estate planning and administration, I see no need for me or my fellow colleagues in the practice area to take on additional onerous and essentially toothless/meaningless compliance obligations where issues of incivility are rarely present. This administrative burden would more likely see compliance penalties applied to attorneys who are perfectly civil practitioners but through inadvertence miss the compliance deadline. I have not seen any evidence that such oaths improve the practice of law or attorney civility. Since most of the issues regarding incivility apply to the litigation arena, not the transactional, it would seem that any such proposal should be more narrowly tailored to achieve the desired result. Though I sincerely doubt that the oath would have any impact on attorney civility in any case. The proposal is needless bureaucratic</p>

overreach and the proposed amendments should be rejected.

Proposed Changes to Rules of Court

Are you an attorney?	Yes
Commenting on behalf of an organization	Yes
Name	Michael Gregg
Professional Affiliation	Orange County Bar Association
City	Newport Beach
State	California
Email address	tlevindofske@ocbar.org

From the choices below, we ask that you indicate your position on the proposed amendment to California Rule of Court 9.7. (This is a required field.)

AGREE ONLY if Modified

ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "CRC9.7" to the front of your file's name)

Proposed Amendments to CRC Rule 9.7. While we understand that Rule 9.7 and the civility declaration therein was approved by the Supreme Court effective May 27, 2014, we question the intended meaning of the words “at all times” as used within such pledge which provides: “As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy and integrity”. Do such words mean at all times while a lawyer is engaged in the practice of law, or does it mean at all times of a lawyer’s life including when a lawyer is on vacation or while with friends, family, or the public at large? If the former, we suggest a revision to so clarify. If the latter, then we suggest considering a revision to the pledge limiting the applicable time range of the pledge to the times that a lawyer is engaged in the practice of law.

This clarification seems imperative, especially in

light of the various definitions which can be assigned to such words as “dignity, courtesy and integrity” and the proposed new rule setting a basis for regulation and disciplinary action for pledge violations. Other states’ pledges, such as South Carolina’s and Florida’s, make it clear to whom their pledges apply and that such pledges apply to a lawyer’s conduct while engaged in the practice of law. Both states’ pledges provide: “To the opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in the court, but also in all written and oral communications.” Similarly, proposed new Rule 8.4.2(a) expressly provides: “In representing a client, a lawyer shall not engage in incivility in the practice of law or related...

... professional activities”, thereby limiting the civility requirement to when a lawyer is engaged in the practice of law.

In further support of limiting the applicable time range of the Rule 9.7 pledge to the times that a lawyer is engaged in the practice, Business and Professions Code Section 6060(b)(1) already requires lawyers to be of “good moral character,” which is defined in Rule 4.40 of the Rules of the State Bar of California (Admissions Rules) as including qualities of honesty, fairness, candor, trustworthiness, observance of fiduciary responsibility, respect for and obedience to the law, and respect for the rights of others and the judicial process. Such requirement, while still broad, seems to be a more appropriate standard than requiring lawyers to act, at all times, with the subjective words of dignity, courtesy, and integrity.

As for the proposed amendment that a lawyer

face possible fees and eventually be placed on involuntary inactive enrollment or would have their special admissions registration suspended or terminated for failure to submit to the civility pledge in the manner established by the State Bar, we caution against such regulation as it could be difficult to set standards and would require a significant use of resources to so regulate and discipline.

If Rule 9.7 is amended to provide for regulation and disciplinary proceeding during which a lawyer's license could be suspended or terminated, then it is all the more important to clarify the words "at all times" within the civility pledge.

ATTACHMENTSYou may upload your comment as an attachment. Only one attachment will be accepted per comment submission. We accept the following file types: text (.txt), Microsoft Word (.doc), WordPerfect (.wpd), Rich Text Format (.rtf) and Adobe Acrobat PDF (.pdf). We do not accept any other file types. Please DO NOT submit scanned documents. Files must be less than 4 megabytes in size.

[CRC9.7_OC_Bar_Letter_.pdf \(1.78 MB\)](#)



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BAR ASSOCIATION**

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OC LAVENDER BAR ASSOC.

OC TRIAL LAWYERS ASSOC.

OC WOMEN LAWYERS ASSOC.

THURGOOD MARSHALL BAR ASSOC.

February 28, 2023

Office of Professional Competence, Planning and Development
State Bar of California
180 Howard Street
San Francisco, California 94105-1639

Re: (1) Proposed Amendments to Rules of Professional Conduct
Comments to Rules 1.2 and 8.4 and New Rule 8.4.2 Addressing
Incivility and (2) Proposed Amendments to California Rules of
Court 9.7 Requiring Lawyers to Complete Annual Civility Pledge

Dear Sir/Madam:

The Orange County Bar Association (OCBA) respectfully submits the following comments concerning the (1) Proposed Amendments to Rules of Professional Conduct Comments to Rules 1.2 and 8.4 and New Rule 8.4.2 Addressing Incivility, and (2) Proposed Amendments to California Rules of Court 9.7 Requiring Lawyers to Complete Annual Civility Pledge, both based upon Recommendations by the California Civility Task Force ("CCTF") as provided in a memorandum dated November 17, 2022, from The State Bar of California to Member and Board of Trustees.

Founded over 100 years ago, the OCBA has over 7,000 members, making it one of the largest voluntary bar associations in California. The OCBA Board of Directors made up of practitioners from large and small firms, with varied civil and criminal practices, of different ethnic backgrounds and political learnings, has approved these comments prepared by the Professionalism and Ethics Committee.

We applaud the State Bar's efforts with these proposed amendments on this very important topic of civility. We also greatly appreciate the time and thought expended to review the CCTF's initial report, coordinate with the Committee on Professional Responsibility and Conduct (COPRAC) and the Office of Chief Trial Counsel (OCTC), and propose statutory changes.

In general, we support the purpose of the amendments for lawyers to act with civility and agree it is of utmost importance for the legal profession. At the same time, we caution against a new basis in the rules to discipline lawyers for incivility due to the challenges in setting and enforcing standards. We further offer the following comments.

(1) Proposed Amendments to Comments to CRPC Rules 1.2 and 8.4 and New Rule 8.4.2

(a) Comment [1] to CRPC Rule 1.2. We support this proposed change to Comment [1] providing that lawyers have the authority to conduct themselves with civility even if the client directs otherwise, as long as the lawyer does not prejudice the client's rights, because it affords the lawyer the ability to act as he or she deems professionally appropriate without having to confront such client. We question, though, if the caveat is necessary as it is difficult to imagine a situation where acting with incivility is the only way to not prejudice a client's rights and, as such, it may give a lawyer an excuse to act inappropriately.

(b) Comment [4] to Rule 8.4. As addressed in subparagraph (d) below, we do not support the proposed standalone Rule 8.4.2. If it is not adopted, the proposed amendment to Comment [4] will not be necessary. If Rule 8.4.2 is adopted, then we do not have any opposition to the proposed amendment to Comment [4].

(c) Comment [6] to CRPC Rule 8.4. This proposed Comment provides that a lawyer's violation of Rule 8.4(d) includes engaging in "significantly unprofessional conduct that is abusive or harassing in the practice of law or related professional activities". It is unclear to us what would constitute "significantly unprofessional conduct" and what the definitions of "abusive" or "harassing" are in this context. For such serious conduct that may give rise to attorney discipline, there seems to be a need for further definitions here or perhaps the Board could formulate and adopt standards as to what conduct would presumptively be considered "significantly unprofessional conduct that is abusive or harassing" for purposes of this rule, similar to the Standards adopted under former rule 1-400(E). Simply directing lawyers to consult the current California Lawyer Guidelines of Civility and Professionalism ("Civility Guidelines") for guidance under this proposed Comment seems unhelpful and misplaced because it is unclear which conduct described in the Guidelines would or could be considered "significantly unprofessional conduct." For example, the twenty-one section Civility Guidelines provides in Section 5(b) that attorneys should timely inform the other parties if the attorney will be late to court or a deposition and Section 9(a)(1) provides that, absent "unusual circumstances," attorneys noticing deposition should not set them to take place before previously noticed depositions in the case. While we agree that failure to follow these guidelines is uncivil, we do not believe lawyers should necessarily be disciplined for isolated transgressions of these guidelines. If the reference to the Civility Guidelines remains in Comment [6], it should identify which particular conduct described in the Guidelines could be "significantly unprofessional conduct that is abusive or harassing." Additionally, if there are other applicable civility authorities, as implied by this proposed Comment, we recommend that they be specifically listed.

The proposed Comment purports to clarify that a lawyer does not violate paragraph 8.4(d) by standing firm in the position of the client, protecting the record for subsequent review, or preserving professional integrity. We recommend deleting this provision as it suggests that it is acceptable to act with incivility under the pretense or excuse that such behavior is for any of these reasons. It further seems contrary to the purpose of the proposed Comment [1] to Rule 1.2.

(d) Proposed New Rule 8.4.2. In general, we are not in favor of a new stand-alone rule. While the materials discuss that either proposed Comment [6] be added to existing Rule 8.4 or proposed new Rule 8.4.2 be enacted, the materials presented both as if to possibly co-exist. As such, some of the commentary stated in subparagraph (c) above is repeated here. In Subsection (b) of the proposed rule, it is again unclear what would constitute “significantly unprofessional conduct” that is “abusive” or “harassing,” thereby giving rise to incivility. Again, we find the direction in Comment [1] to lawyers to consult the Civility Guidelines misplaced and recommend that any applicable civility authorities be specifically listed.

As mentioned above, we recommend deleting “by standing firm in the position of the client, protecting the record for subsequent review, or preserving professional integrity” because it provides for an excuse for a lawyer to act with incivility and seems contrary to the purpose of the proposed Comment [1] to Rule 1.2.

(2) Proposed Amendments to CRC Rule 9.7. While we understand that Rule 9.7 and the civility declaration therein was approved by the Supreme Court effective May 27, 2014, we question the intended meaning of the words “at all times” as used within such pledge which provides: “As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy and integrity”. Do such words mean at all times while a lawyer is engaged in the practice of law, or does it mean at all times of a lawyer’s life including when a lawyer is on vacation or while with friends, family, or the public at large? If the former, we suggest a revision to so clarify. If the latter, then we suggest considering a revision to the pledge limiting the applicable time range of the pledge to the times that a lawyer is engaged in the practice of law.

This clarification seems imperative, especially in light of the various definitions which can be assigned to such words as “dignity, courtesy and integrity” and the proposed new rule setting a basis for regulation and disciplinary action for pledge violations. Other states’ pledges, such as South Carolina’s and Florida’s, make it clear to whom their pledges apply and that such pledges apply to a lawyer’s conduct while engaged in the practice of law. Both states’ pledges provide: “To the opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in

2/28/2023

the court, but also in all written and oral communications.” Similarly, proposed new Rule 8.4.2(a) expressly provides: “In representing a client, a lawyer shall not engage in incivility in the practice of law or related professional activities”, thereby limiting the civility requirement to when a lawyer is engaged in the practice of law.

In further support of limiting the applicable time range of the Rule 9.7 pledge to the times that a lawyer is engaged in the practice, Business and Professions Code Section 6060(b)(1) already requires lawyers to be of “good moral character,” which is defined in Rule 4.40 of the Rules of the State Bar of California (Admissions Rules) as including qualities of honesty, fairness, candor, trustworthiness, observance of fiduciary responsibility, respect for and obedience to the law, and respect for the rights of others and the judicial process. Such requirement, while still broad, seems to be a more appropriate standard than requiring lawyers to act, at all times, with the subjective words of dignity, courtesy, and integrity.

As for the proposed amendment that a lawyer face possible fees and eventually be placed on involuntary inactive enrollment or would have their special admissions registration suspended or terminated for failure to submit to the civility pledge in the manner established by the State Bar, we caution against such regulation as it could be difficult to set standards and would require a significant use of resources to so regulate and discipline.

If Rule 9.7 is amended to provide for regulation and disciplinary proceeding during which a lawyer’s license could be suspended or terminated, then it is all the more important to clarify the words “at all times” within the civility pledge.

Thank you for your consideration of our comments and suggestions.

Sincerely,

A handwritten signature in black ink, appearing to be 'MAG', written in a cursive, stylized manner.

Michael A. Gregg
2023 President
Orange County Bar Association

Proposed Changes to Rules of Court

Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	Nicholas Rosen
City	Castro Valley
State	California
Email address	nicholasdrosen@gmail.com
From the choices below, we ask that you indicate your position on the proposed amendment to California Rule of Court 9.7. (This is a required field.)	AGREE with the proposed recommendations

Proposed Changes to Rules of Court

Are you an attorney?	No
Commenting on behalf of an organization	No
Name	ANDREW RUBIN
Professional Affiliation	None
City	LOS ANGELES
State	California
Email address	andrewerubin@gmail.com
From the choices below, we ask that you indicate your position on the proposed amendment to California Rule of Court 9.7. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "CRC9.7" to the front of your file's name)	<p>Civility cannot be legislated. Moreover, those who would violate the rule will have no trouble falsely swearing that they will act with civility.</p> <p>The BAR is putting its emphasis in the wrong places. As usual.</p>

Proposed Changes to Rules of Court

Are you an attorney?	No
Commenting on behalf of an organization	No
Name	Cassandra Sanders
Professional Affiliation	Employee, State Bar of California
City	Evergreen Park
State	Illinois
Email address	sanders.cassandra@gmail.com
From the choices below, we ask that you indicate your position on the proposed amendment to California Rule of Court 9.7. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "CRC9.7" to the front of your file's name)	As a leader of staff who deal with clients as well as attorneys on the phones daily, I believe this could be the most important and impactful rule on the books. I believe if we provided free continuing education in diversity, empathy and compassion, the public trust would improve exponentially. People, including the staff providing assistance, want to be treated with dignity and respect. I can't think of a better way to let the public know who we are and what we do to protect them. It's also something I'd like to see promoted with internal staff, whether they interact with the public or not.

Proposed Changes to Rules of Court

Are you an attorney?	Yes
Name	Eric Schweitzer
City	Clovis
State	California
Email address	lawyericisin@yahoo.com
From the choices below, we ask that you indicate your position on the proposed amendment to California Rule of Court 9.7. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "CRC9.7" to the front of your file's name)	<p>Civility is in the eye of the beholder. If a lawyer is uncivil, his or her colleagues, his clients or the bench will check that in the most effective way possible. Sometimes, lawyers need to be un-civil. Many of the "founding fathers" of this great nation were lawyers who spoke and acted in ways that were less than civil. A civility pledge is un-American and infringes upon free speech and the right to question authority. We don't need this kind of mamby pamby nonsense. We are lawyers. We have real lawyer work to do. Sometimes that makes us unpoplar and sometimes we are deemed incivil whan we are only doing our jobs. Whoever thought of this silly rule, I'd like to say some real un-civil words to that person.</p>

Proposed Changes to Rules of Court

Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	Alice Smith
City	Los Angeles
State	California
Email address	asmith@yokasmith.com
From the choices below, we ask that you indicate your position on the proposed amendment to California Rule of Court 9.7. (This is a required field.)	AGREE with the proposed recommendations

Proposed Changes to Rules of Court

Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	RICHARD L. SOLOMON
Professional Affiliation	LAW OFFICES OF RICHARD L. SOLOMON
City	LOS ANGELES
State	California
Email address	RLS@SOLOMONLAW.NET
From the choices below, we ask that you indicate your position on the proposed amendment to California Rule of Court 9.7. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "CRC9.7" to the front of your file's name)	I am adamantly opposed to this amendment! Is there no area of our lives as lawyers that the State Bar does not seek to regulate or control in some manner or fashion? Is the exercise of such control not a violation of our fundamental constitutional right of free speech and expression? And just how does the Bar intend to enforce any alleged violation of such uncivil expression? Does the Bar have nothing better to do with our dues than this utter nonsense? The stated mission of the State Bar is to protect the public from the lawyers. What about doing something to protect the lawyers and aid them in their practice?

Proposed Changes to Rules of Court

Are you an attorney?	No
Commenting on behalf of an organization	No
Name	+stephanie
City	'sunset beach
State	California
Email address	stephiorourke@yahoo.com
From the choices below, we ask that you indicate your position on the proposed amendment to California Rule of Court 9.7. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "CRC9.7" to the front of your file's name)	<p>]Most attorneys have learned to be uncivil by peers. As they preach civilly before a judge in court, once they leave courthouse they r uncivil to beneficiaries of a trust, opposing parties and opposing counsel. They only time an attorney acts civilly is when forced before jury or judge. Uncivil attorneys are the killer of dreams in my personal point of view.</p> <p>Ask attorneys what it means to them to be civil.</p>

Proposed Changes to Rules of Court

Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	Steven Vosseller
Professional Affiliation	Vosseller Law Firm
City	San Diego
State	California
Email address	steve@vosslawyer.com
From the choices below, we ask that you indicate your position on the proposed amendment to California Rule of Court 9.7. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "CRC9.7" to the front of your file's name)	Please see uploaded attachment.
ATTACHMENTS You may upload your comment as an attachment. Only one attachment will be accepted per comment submission. We accept the following file types: text (.txt), Microsoft Word (.doc), WordPerfect (.wpd), Rich Text Format (.rtf) and Adobe Acrobat PDF (.pdf). We do not accept any other file types. Please DO NOT submit scanned documents. Files must be less than 4 megabytes in size.	2023.2.1_SCV_public_comment_-_CRC9.7.pdf (171 KB)

VOSELLER LAW FIRM

TRIAL ATTORNEYS

February 1, 2023

State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: Public Comment
California Rule of Court 9.7

Dear State Bar of California:

I agree that every attorney should be civil and treat others with dignity and respect. But, I am concerned that the proposed annual “civility pledge” will have no practical impact on the behavior of lawyers.

Does Any Data Support Mandating An Annual Pledge?

The State Bar of California website includes a “Presentation on Proposed Amendments to Rule 9.7”. The presentation materials were prepared by Erika Doherty, Managing Attorney in the Office of Professional Competence. The presentation materials state:

- “Approx. 237,000 licensees (150,000 active) who took the oath without the civility language”
- “Approx. 48,000 licensees who took the oath with the civility language”

Do any peer reviewed studies –or any reliable data– show: (1) a greater level of “civility” among the 48,000 licensees who took the oath with the civility language; and/or (2) a higher incidence of “incivility” among licensees who took the oath before the civility language was added in June 2014?

If a parent forces a child to promise to be nice to his brother, is that effective? If a student is required to write 100 times that she will be nice to other students, does that really make a difference?

Unless evidence or data shows that an annual pledge will actually make a difference, why mandate this nugget of compelled speech?

What Constitutes “Incivility”?

In his concurring opinion in the 1964 *Jacobellis v. Ohio* case involving obscenity, U.S. Supreme Court Justice Potter Stewart offered a nondefinition of “hard-core pornography”. He acknowledged the he could “never succeed in intelligibly” defining the term, “[b]ut I know it when I see it.”

Proposed Rule 8.4.2 purports to define “incivility” as “significantly unprofessional conduct that is abusive or harassing and shall be determined on the basis of all the facts and circumstances surrounding the conduct.”“uuuuhhh, we’ll know it when we see it!”

Will a State Bar Norms and Etiquette Committee be convened to determine whether the following are “incivility” acts that warrant a disciplinary investigation: repeatedly mispronouncing opposing counsel’s name; negative Tweets or social media posts about an opposing lawyer; hanging-up the phone on another lawyer; ignoring insincere or disingenuous meet-and-confer efforts by opposing counsel; telling a lawyer, “You’re really being a jerk about this”; sticking-out your tongue, making faces, sighing, or constant eye-rolling during depositions; not using somebody’s preferred pronouns; not returning phone calls; declining to respond to emails from opposing counsel; telling opposing counsel to “get lost” or “bugger off”; farting in a deposition; telling bad jokes; ...and an infinite list of other behaviors?

Specious Reports of Incivility

I am also concerned that the proposed new Rule 8.4.2 will result in specious accusations incivility and, ironically, unscrupulous lawyers threatening to report other lawyers to the State Bar when no actual incivility occurred.

Comment 5 to the proposed rule advises, “A disciplinary investigation or proceeding for conduct coming within this rule may also be initiated and maintained if such conduct warrants discipline under California Business and Professions Code section 6106 and 6068, the California Supreme Court’s inherent authority to impose discipline, or other disciplinary standard.”

Fiscal Impact

The State Bar’s website claims that the annual civility pledge will have no fiscal/personnel impact. Not so.

Resources will be wasted fielding, investigating, and responding to unwarranted and disingenuous reports of incivility. Resources and personnel time will also be wasted during the inevitable development of “guidelines, rules, and procedures that implement this pointless measure and seek to somehow define “incivility”.

Practice Civility

“You can’t legislate morality”...or civility.

I’m no expert, but I suspect each individual’s civility, professionalism, and integrity are rooted in traits that develop before the age of 7. As a profession, we can cultivate civility through education, mentorship, positive peer influences, and professional organizations.

I’m not aware of any evidence or data showing that civility is instilled by an annual pledge that will likely be a “clickable” field when we annually renew our Bar registration.

Sincerely,



Steven C. Vosseller

Proposed Changes to Rules of Court

Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	Tiffany Walls-Fox
Professional Affiliation	Beverly Hills Bar Association
City	Culver City
State	California
Email address	twallsfox@eghblaw.com
From the choices below, we ask that you indicate your position on the proposed amendment to California Rule of Court 9.7. (This is a required field.)	AGREE with the proposed recommendations

Proposed Changes to Rules of Court

Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	Betty Williams
City	Sacramento
State	California
Email address	betty@williamstaxlaw.com
From the choices below, we ask that you indicate your position on the proposed amendment to California Rule of Court 9.7. (This is a required field.)	AGREE with the proposed recommendations
ATTACHMENTSYou may upload your comment as an attachment. Only one attachment will be accepted per comment submission. We accept the following file types: text (.txt), Microsoft Word (.doc), WordPerfect (.wpd), Rich Text Format (.rtf) and Adobe Acrobat PDF (.pdf). We do not accept any other file types. Please DO NOT submit scanned documents. Files must be less than 4 megabytes in size.	2023-03-01_-_Letter_to_State_Bar_BOT_Re_Civility_Proposals.pdf (2.95 MB)

LAW | WILLIAMS &
OFFICE OF ASSOCIATES
A PROFESSIONAL CORPORATION

March 1, 2023

Ruben Durah, Chair
State Bar Board of Trustees
180 Howard Street
San Francisco, CA 94105

Re: Attorney Civility Proposals

Dear Mr. Duran:

I am writing in support of the California Civility Task Force (CCTF)'s comments to civility proposals being considered by the State Bar Board of Trustees (BOT), submitted by Justice Brian Currey on January 11, 2023, a copy of which is attached.

Unfortunately, the oath lawyers take when they pass the bar examination is not sufficient to last a lifetime of practice. Adding the civility language to California Rule of Court 9.7 is a good start to improve the promise of California's attorneys regarding their behavior, but it will be the regular education on the topic of civility that will help ensure the best conduct by the members of our profession.

When people experience incivility by lawyers, they may lose confidence in the profession, or worse, the law. I appreciate the significant and thoughtful work of the BOT and State Bar staff concerning these important proposed changes.

Sincerely,



Betty J. Williams
Attorney at Law

Enclosure

cc: Justice Brian Currey



BRIAN S. CURREY
ASSOCIATE JUSTICE

STATE OF CALIFORNIA
Court of Appeal
SECOND APPELLATE DISTRICT
DIVISION FOUR
300 SOUTH SPRING STREET
LOS ANGELES, CALIFORNIA 90013

TELEPHONE
(213) 830-7438
brian.currey@jud.ca.gov

January 11, 2023

Via electronic submission to the State Bar and email to ruben.duran@bbklaw.com

Ruben Duran, Chair
State Bar Board of Trustees
180 Howard Street
San Francisco, CA 94105

Re: California Civility Task Force Comments to Civility Proposals Being
Considered by the State Bar Board of Trustees

Dear Ruben:

In my capacity as Chair of the California Civility Task Force (CCTF), I write to provide the CCTF's comments on the State Bar's civility proposals, which are based on three of the CCTF's key proposals. I also write to thank you, your colleagues on the State Bar Board of Trustees, and the State Bar staff, for your engagement and leadership on this important topic.

The Board of Trustees will be considering comments on its proposals: (1) Revising California Rule of Court 9.7 to ensure all lawyers take the civility portion of the attorney oath; (2) Making repeated incivility a disciplinary offense; and (3) Requiring lawyers to participate in mandatory continuing legal education (MCLE) about civility, and the connection between bias and incivility. I will address each in turn.

1. Revisions to California Rule of Court 9.7

The CCTF FULLY SUPPORTS the Board's proposed amendments to California Rule of Court 9.7 that would require all licensees who did not take the attorney oath with the civility language, as well as specially admitted attorneys, to submit a declaration with the civility pledge language by February 1, 2024. Also, all licensees and specially admitted attorneys would be required to complete the civility pledge on an annual basis when paying licensing fees or registering as a specially admitted attorney. We have no proposed revisions.

2. Revisions to the Rules of Professional Conduct

The CCTF offers QUALIFIED SUPPORT for the Board's proposed revisions to the Rules of Professional Conduct. Obviously, we support the change to make incivility a disciplinary offense. We offer two minor proposed revisions. The first of our proposed revisions is a substantive change that we believe will eliminate some first amendment concerns that have been expressed to us by members of the bar. The second corrects a numbering error. I have attached a markup showing our proposed revisions.

Scope Revision. On reflection, we believe the proposed civility disciplinary rules should apply only to lawyer speech and conduct when a lawyer is representing a client in the practice of law, and not while the lawyer is engaged in some professional activity other than law practice. Restrictions on lawyers' speech and conduct, including civility rules, inevitably raise the question of whether the First Amendment permits them. (*See generally*, M. Tarkington, Voice of Justice: Reclaiming the First Amendment Rights of Lawyers (2018) ("Tarkington")). As Professor Tarkington explains in her book, courts and commentators have expressed different views on what restrictions on lawyers' speech are permissible under the First Amendment, and why. We believe the modest rule changes being considered by the State Bar do not violate the First Amendment. They merely require lawyers to exercise professionalism and refrain from abusing and harassing others, requirements that judges are already required to enforce with respect to lawyers representing parties in state court litigation. (*See* California Code of Judicial Ethics, Canon 3B, advisory commentary: 3B(2)). These restrictions do not interfere with lawyers' ability to advance their clients' interests and are essential to maintaining the integrity and functioning of the judicial system.

Our proposed scope revision nevertheless limit the civility requirement to lawyers who are representing a client in the practice of law, as opposed to those representing a client in "other professional activities." This may eliminate or discourage some First Amendment challenges. As Professor Tarkington notes, there is significant disagreement among scholars and in the caselaw about the scope of lawyers' First Amendment rights, but if there is a dominant view, it is that lawyers who are engaged in the practice of law on behalf of a client have lesser or no First Amendment rights. (Tarkington at 1-3). We express no view on that. But by deleting "or related professional activities," the State Bar will eliminate challenges to the rules by lawyers who, for example, claim to fear discipline for potentially offensive speech or conduct at bar functions, while teaching MCLE courses, or other professional activities that are not included in the practice of law. Granted, lawyers participating in bar functions or teaching MCLE courses generally are not doing so "[i]n representing a client" and so would not fall within the rules in any event, but we believe our proposed changes make the rules cleaner and more easily defensible. Our other proposed changes make clear that the incivility prohibition applies to both speech and conduct.

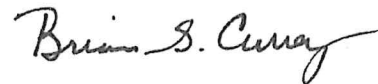
Numbering change. Our remaining revision corrects a numbering (typographical) error.

3. New MCLE Civility Course Requirements

The CCTF FULLY SUPPORTS the Board's proposed amendments to the MCLE rules. As it relates to CCTF's recommendations, the Board proposes to amend the MCLE rules to require that all licensees complete one hour of MCLE on the topic of civility in the legal profession as part of their existing 25-hour MCLE requirement, and that approved civility courses cover the relationship between bias and incivility. There are several other non-civility related changes being proposed to the MCLE rules, as to which the CCTF takes no position.

Thank you, as always, for your service to the profession and for considering our views.

Very truly yours,



Brian S. Currey
Associate Justice

cc: Leah Wilson, Executive Director, leaht.wilson@calbar.ca.gov
California Civility Task Force

California Civility Task Force Comments January 11, 2023

State Bar Revisions for comment shown in blue

California Civility Task Force comments shown in red

Rule 1.2 Scope of Representation and Allocation of Authority

(a) Subject to rule 1.2.1, a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by rule 1.4, shall reasonably* consult with the client as to the means by which they are to be pursued. Subject to Business and Professions Code section 6068, subdivision (e)(1) and rule 1.6, a lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. Except as otherwise provided by law in a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer may limit the scope of the representation if the limitation is reasonable* under the circumstances, is not otherwise prohibited by law, and the client gives informed consent.*

Comment

Allocation of Authority between Client and Lawyer

[1] Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. (See, e.g., Cal. Const., art. I, § 16; Pen. Code, § 1018.) A lawyer retained to represent a client is authorized to act on behalf of the client, such as in procedural matters and in making certain tactical decisions. 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. However, a lawyer is not authorized merely by virtue of the lawyer's retention to impair the client's substantive rights or the client's claim itself. (Blanton v. Womancare, Inc. (1985) 38 Cal.3d 396, 404 [212 Cal.Rptr. 151, 156].)

California Civility Task Force Comments January 11, 2023

State Bar Revisions for comment shown in blue

California Civility Task Force comments shown in red

[2] At the outset of, or during a representation, the client may authorize the lawyer to take specific action on the client's behalf without further consultation. Absent a material change in circumstances and subject to rule 1.4, a lawyer may rely on such an advance authorization. The client may revoke such authority at any time.

Independence from Client's Views or Activities

[3] A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

Agreements Limiting Scope of Representation

[4] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. (See, e.g., rules 1.1, 1.8.1, 5.6; see also Cal. Rules of Court, rules 3.35- 3.37 [limited scope rules applicable in civil matters generally], 5.425 [limited scope rule applicable in family law matters].)

California Civility Task Force Comments January 11, 2023

State Bar Revisions for comment shown in blue

California Civility Task Force comments shown in red

CHAPTER 8. MAINTAINING THE INTEGRITY OF THE PROFESSION

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (a) violate these rules or the State Bar Act, knowingly* assist, solicit, or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud,* deceit, or reckless or intentional misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official, or to achieve results by means that violate these rules, the State Bar Act, or other law; or
- (f) knowingly* assist, solicit, or induce a judge or judicial officer in conduct that is a violation of an applicable code of judicial ethics or code of judicial conduct, or other law. For purposes of this rule, "judge" and "judicial officer" have the same meaning as in rule 3.5(c).

Comment

[1] A violation of this rule can occur when a lawyer is acting in propria persona or when a lawyer is not practicing law or acting in a professional capacity.

California Civility Task Force Comments January 11, 2023

State Bar Revisions for comment shown in blue

California Civility Task Force comments shown in red

[2] Paragraph (a) does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.

[3] A lawyer may be disciplined for criminal acts as set forth in Business and Professions Code sections 6101 et seq., or if the criminal act constitutes “other misconduct warranting discipline” as defined by California Supreme Court case law. (See *In re Kelley* (1990) 52 Cal.3d 487 [276 Cal.Rptr. 375].)

[4] A lawyer may be disciplined under Business and Professions Code section 6106 for acts involving moral turpitude, dishonesty, or corruption, whether intentional, reckless, or grossly negligent. Regarding significantly unprofessional conduct that is abusive or harassing, see rule 8.4.2.

[5] Paragraph (c) does not apply where a lawyer advises clients or others about, or supervises, lawful covert activity in the investigation of violations of civil or criminal law or constitutional rights, provided the lawyer’s conduct is otherwise in compliance with these rules and the State Bar Act.

[6] A lawyer’s 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.

[7] This rule does not prohibit those activities of a particular lawyer that are protected by the First Amendment to the United States Constitution or by Article I, section 2 of the California Constitution.

California Civility Task Force Comments January 11, 2023

State Bar Revisions for comment shown in blue

California Civility Task Force comments shown in red

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.

Comment

[1] For guidance on conduct that may be significantly unprofessional, a lawyer should consult the current California Attorney Guidelines of Civility and Professionalism and other applicable civility authorities.

[2] A lawyer does not violate this rule by standing firm in the position of the client, protecting the record for subsequent review, or preserving professional integrity.

[3] A lawyer’s violation of this rule may also constitute a violation of rule 8.4(d).

[54] “Incivility” as used in this rule does not apply to ~~speech or~~ conduct protected by the First Amendment to the United States Constitution or by Article I, section 2 of the California Constitution. “Incivility” as used in this rule includes ~~speech or~~ conduct that violates an attorney’s duties under Business and Professions Code section 6068, subdivisions (b) and (f). (See California Code of Judicial Ethics, Canon 3B, advisory commentary: Canon 3B(2) ~~regarding/for noting~~ a judge’s responsibility to require lawyers under the judge’s direction and control to be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others.)

[5] A disciplinary investigation or proceeding for conduct coming within this rule may also be initiated and maintained if such conduct warrants discipline under California Business and Professions Code sections 6106 and 6068, the California Supreme Court’s inherent authority to impose discipline, or other disciplinary standard.

Proposed Changes to Rules of Court

Are you an attorney?	No
Commenting on behalf of an organization	No
Name	David Wolf
Professional Affiliation	Kern County Superior Court
City	Bakersfield
State	California
Email address	david.wolf@kern.courts.ca.gov
From the choices below, we ask that you indicate your position on the proposed amendment to California Rule of Court 9.7. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "CRC9.7" to the front of your file's name)	<p>William of Wykeham, former chancellor of England used to say that "Manners maketh the man."</p> <p>We have an opportunity to make the practice of law more civil for all people. Civility reflects well on all of us.</p> <p>I support the improvement of civility within the legal practice for everyone - judges, attorneys, staff and society.</p> <p>Thank you.</p> <p>David Wolf</p>

Proposed Changes to Rules of Court

Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	sherri woods
City	los angeles
State	California
Email address	sherri.woods@att.net
From the choices below, we ask that you indicate your position on the proposed amendment to California Rule of Court 9.7. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "CRC9.7" to the front of your file's name)	Obligaton to be civil already exists. Redundant.

Proposed Changes to Rules of Court

Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	Greg Zbylut
City	Pasadena
State	California
Email address	greg@breyerandrew.com
From the choices below, we ask that you indicate your position on the proposed amendment to California Rule of Court 9.7. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "CRC9.7" to the front of your file's name)	<p>Most attorneys act civilly on a day-to-day basis, and there is nothing to show that whether you were admitted prior to 2014 or since 2014 impacts whether you act more or less civilly toward another attorney.</p> <p>When I have experienced incivility, it has been during the course of litigation. Ad hominem attacks, unjustified delays, and so on are not unusual, and often ignored by judges, or dealt with minimally (repeated warnings about behavior, etc.). Most assuredly, if judges came down harder on attorneys who file frivolous motions, or engage in ad hominem filings, such behavior would cease.</p> <p>Making everyone promise to behave means nothing, and forcing people to make a pledge is insulting to those of us who act professionally without the bar finger-wagging at us.</p> <p>Consequently, I am against this amendment.</p>

A better example would be what happened this week in OH, where a male attorney who made misogynistic remarks to a female attorney was called out in social media, and subsequently terminated by his firm. That is a much more effective method, and sends the clear message that such behavior has no place in the legal profession (even still, there were plenty of apologists for is behavior).

CHAPTER 1.
LAWYER-CLIENT RELATIONSHIP

Rule 1.2 Scope of Representation and Allocation of Authority

(a) Subject to rule 1.2.1, a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by rule 1.4, shall reasonably* consult with the client as to the means by which they are to be pursued. Subject to Business and Professions Code section 6068, subdivision (e)(1) and rule 1.6, a lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. Except as otherwise provided by law in a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer may limit the scope of the representation if the limitation is reasonable* under the circumstances, is not otherwise prohibited by law, and the client gives informed consent.*

Comment

Allocation of Authority between Client and Lawyer

[1] Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. (See, e.g., Cal. Const., art. I, § 16; Pen. Code, § 1018.) A lawyer retained to represent a client is authorized to act on behalf of the client, such as in procedural matters and in making certain tactical decisions. Notwithstanding a client's direction, a lawyer retains the authority to agree to reasonable requests of opposing counsel or self-represented parties 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. However, a lawyer is not authorized merely by virtue of the lawyer's retention to impair the client's substantive rights or the client's claim itself. (*Blanton v. Womancare, Inc.* (1985) 38 Cal.3d 396, 404 [212 Cal.Rptr. 151, 156].)

[2] At the outset of, or during a representation, the client may authorize the lawyer to take specific action on the client's behalf without further consultation. Absent a material change in circumstances and subject to rule 1.4, a lawyer may rely on such an advance authorization. The client may revoke such authority at any time.

Independence from Client's Views or Activities

[3] A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

Agreements Limiting Scope of Representation

[4] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. (See, e.g., rules 1.1, 1.8.1, 5.6; see also Cal. Rules of Court,

rules 3.35-3.37 [limited scope rules applicable in civil matters generally], 5.425 [limited scope rule applicable in family law matters].)

CHAPTER 8.

MAINTAINING THE INTEGRITY OF THE PROFESSION

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (a) violate these rules or the State Bar Act, knowingly* assist, solicit, or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud,* deceit, or reckless or intentional misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official, or to achieve results by means that violate these rules, the State Bar Act, or other law; or
- (f) knowingly* assist, solicit, or induce a judge or judicial officer in conduct that is a violation of an applicable code of judicial ethics or code of judicial conduct, or other law. For purposes of this rule, "judge" and "judicial officer" have the same meaning as in rule 3.5(c).

Comment

[1] A violation of this rule can occur when a lawyer is acting in propria persona or when a lawyer is not practicing law or acting in a professional capacity.

[2] Paragraph (a) does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.

[3] A lawyer may be disciplined for criminal acts as set forth in Business and Professions Code sections 6101 et seq., or if the criminal act constitutes "other misconduct warranting discipline" as defined by California Supreme Court case law. (See *In re Kelley* (1990) 52 Cal.3d 487 [276 Cal.Rptr. 375].)

[4] A lawyer may be disciplined under Business and Professions Code section 6106 for acts involving moral turpitude, dishonesty, or corruption, whether intentional, reckless, or grossly negligent. A lawyer also may be disciplined regarding significantly unprofessional conduct that is abusive or harassing, see rule 8.4.2.

[5] Paragraph (c) does not apply where a lawyer advises clients or others about, or supervises, lawful covert activity in the investigation of violations of civil or criminal law or constitutional rights, provided the lawyer's conduct is otherwise in compliance with these rules and the State Bar Act.

[6] A lawyer's violation of paragraph (d) includes engaging in significantly unprofessional conduct that is abusive or harassing in the practice of law as defined in rule 8.4.2. A lawyer does not violate paragraph (d) merely by, for example, 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, such as the local rules of court and bar associations' codes of civility.

[7] This rule does not prohibit those activities of a particular lawyer that are protected by the First Amendment to the United States Constitution or by Article I, section 2 of the California Constitution.

Rule 8.4.2 Prohibited Incivility

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

(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.

Comment

[1] For guidance on conduct that may be significantly unprofessional that is abusive or harassing, a lawyer should consult the current California Attorney Guidelines of Civility and Professionalism and other relevant legal authorities, such as the local rules of court and bar associations' codes of civility.

[2] A lawyer does not violate this rule merely by, for example, standing firm in the position of the client, protecting the record for subsequent review, or preserving professional integrity.

[3] A lawyer's violation of this rule may also constitute a violation of rule 8.4(d).

[4] "Incivility" as used in this rule does not apply to speech or conduct protected by the First Amendment to the United States Constitution or by Article I, section 2 of the California Constitution. "Incivility" as used in this rule may include speech or conduct that violates an attorney's duties under Business and Professions Code section 6068, subdivisions (b) and (f). (See California Code of Judicial Ethics, Canon 3B, advisory commentary: Canon 3B(2) noting a judge's responsibility to require lawyers under the judge's direction and control to be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others.)

[5] A disciplinary investigation or proceeding for conduct coming within this rule may also be initiated and maintained if such conduct warrants discipline under California Business and Professions Code sections 6106 and 6068, the California Supreme Court's inherent authority to impose discipline, or other disciplinary standard.

CHAPTER 1. LAWYER-CLIENT RELATIONSHIP

Rule 1.2 Scope of Representation and Allocation of Authority

(a) Subject to rule 1.2.1, a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by rule 1.4, shall reasonably* consult with the client as to the means by which they are to be pursued. Subject to Business and Professions Code section 6068, subdivision (e)(1) and rule 1.6, a lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. Except as otherwise provided by law in a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer may limit the scope of the representation if the limitation is reasonable* under the circumstances, is not otherwise prohibited by law, and the client gives informed consent.*

Comment

Allocation of Authority between Client and Lawyer

[1] Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. (See, e.g., Cal. Const., art. I, § 16; Pen. Code, § 1018.) A lawyer retained to represent a client is authorized to act on behalf of the client, such as in procedural matters and in making certain tactical decisions. Notwithstanding a client's direction, a lawyer retains the authority to agree to reasonable requests of opposing counsel or self-represented parties 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. However, a lawyer is not authorized merely by virtue of the lawyer's retention to impair the client's substantive rights or the client's claim itself. (*Blanton v. Womancare, Inc.* (1985) 38 Cal.3d 396, 404 [212 Cal.Rptr. 151, 156].)

[2] At the outset of, or during a representation, the client may authorize the lawyer to take specific action on the client's behalf without further consultation. Absent a material change in circumstances and subject to rule 1.4, a lawyer may rely on such an advance authorization. The client may revoke such authority at any time.

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CHAPTER 8. MAINTAINING THE INTEGRITY OF THE PROFESSION

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- (c) engage in conduct involving dishonesty, fraud,* deceit, or reckless or intentional misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official, or to achieve results by means that violate these rules, the State Bar Act, or other law; or
- (f) knowingly* assist, solicit, or induce a judge or judicial officer in conduct that is a violation of an applicable code of judicial ethics or code of judicial conduct, or other law. For purposes of this rule, "judge" and "judicial officer" have the same meaning as in rule 3.5(c).

Comment

[1] A violation of this rule can occur when a lawyer is acting in propria persona or when a lawyer is not practicing law or acting in a professional capacity.

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[6] A lawyer's violation of paragraph (d) includes engaging in significantly unprofessional conduct that is abusive or harassing in the practice of law as defined in rule 8.4.2. A lawyer does not violate paragraph (d) merely by, for example, 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 legal authorities, such as the local rules of court and bar associations' codes of civility.

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(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.

Comment

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[2] A lawyer does not violate this rule merely by, for example, standing firm in the position of the client, protecting the record for subsequent review, or preserving professional integrity.

[3] A lawyer's violation of this rule may also constitute a violation of rule 8.4(d).

[4] "Incivility" as used in this rule does not apply to speech or conduct protected by the First Amendment to the United States Constitution or by Article I, section 2 of the California Constitution. "Incivility" as used in this rule may include speech or conduct that violates an attorney's duties under Business and Professions Code section 6068, subdivisions (b) and (f). (See California Code of Judicial Ethics, Canon 3B, advisory commentary: Canon 3B(2) noting a judge's responsibility to require lawyers under the judge's direction and control to be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others.)

[5] A disciplinary investigation or proceeding for conduct coming within this rule may also be initiated and maintained if such conduct warrants discipline under California Business and Professions Code sections 6106 and 6068, the California Supreme Court's inherent authority to impose discipline, or other disciplinary standard.

RULE 1.2 TOTAL = 65A = 42 AM = 5
D = 17 NP = 1**RULE 8.4 TOTAL = 65**A = 34 AM = 10
D = 20 NP = 1**RULE 8.4.2 TOTAL = 65**A = 34 AM = 11
D = 20 NP = 0**ATTACHMENT G****Proposed New and Amended Rules
Synopsis of Public Comments**

File No.	Commenter/Signatory	Org ¹	Atty/ Nonatt ²	Pos. 1.2 ³	Comment	Pos. 8.4 ³		Pos. 8.4.2 ³	
23823188	Anonymous	No	A	D		D		D	
23848239	Anonymous	No	A	A		D	I oppose both 8.4 and 8.4.2 for the same reasons. I believe both of these rules could be wielded against criminal defense attorneys, who have a strict duty to their clients and who wish to act as zealous advocates. Because some defendants are particularly maligned by communities, and in turn, by victim advocates, DAs, and some courts, zealous advocacy could become the basis of charges -- though if the letter of the law is followed, I assume those changes would be unfounded by the state bar. Regardless, I think this strikes too broadly and should be narrowed.	D	I oppose both 8.4 and 8.4.2 for the same reasons. I believe both of these rules could be wielded against criminal defense attorneys, who have a strict duty to their clients and who wish to act as zealous advocates. Because some defendants are particularly maligned by communities, and in turn, by victim advocates, DAs, and some courts, zealous advocacy could become the basis of charges -- though if the letter of the law is followed, I assume those changes would be unfounded by the state bar. Regardless, I think this strikes too broadly and should be narrowed.

¹ Are you commenting on behalf of an organization?² Are you an attorney or nonattorney? A = Attorney NA = Nonattorney³ What is your position on the proposal? A = Agree D = Disagree AM = Agree if Modified NP = No Position

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Synopsis of Public Comments**

File No.	Commenter/Signatory	Org ¹	Atty/ Nonatt ²	Pos. 1.2 ³	Comment	Pos. 8.4 ³		Pos. 8.4.2 ³	
24006236	Anonymous	No	A	D	Civility is way too subjective a term. This could lead to targeting for ulterior motives.	D	Civility is way too subjective a term. This could lead to targeting for ulterior motives.	D	Civility is way too subjective a term. This could lead to targeting and unjustified reporting for ulterior motives.
24013092	Anonymous	No		A		D	the definition of what is abusive or harassment is a business the State Bar should not be involved in. It's a slippery slope and we already have laws against a lot of conduct that is already illegal. if you setup this rule, you will see a flood of complaints for people thinking they were abused or harassed. every defendant thinks the plaintiff's case is frivolous. you'll have ever pro se defendant claiming harassment and abuse. it will not be a productive endeavor for the state bar to be involved in this business.	D	"significantly" unprofessional conduct that is abusive of harassing and determined on the basis of the facts and circumstances surrounding the conduct is too vague.
24041189	Anonymous	No	A	D	Is this really a problem? Isn't this already required or implied as attorneys are the buffers between irrational clients and their	D	All too often, zealous advocacy is interpreted as being mean, hostile or incivil to a party or attorney. Challenging the accuracy of	D	Incivility: "Significantly unprofessional conduct that is abusive or harassing and determined on the basis of facts and

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**Proposed New and Amended Rules
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					<p>misunderstandings and strict technical legal rules? Isn't this already contained in many retainer agreements that delegate the authority to an attorney?</p> <p>Too much bureaucracy seeking changes that appear to try to justify the bureaucrats' time and effort.</p>		<p>one's statements or the general credibility or integrity of a party or attorney is often necessary to cull inaccuracies from the truth, like by cross examination or deposition, or negotiation at the table. Yet pointing out those inaccuracies to a party or counsel has an insulting or "incivil" dimension. These common practices may be improperly interpreted under these proposed changes as "incivility" practices to test a witness or his/her allegations or version of events. Moreover, in a world of changing definitions or attacks on common English usage, like pronouns, one may too quickly ascribe incivility to those traditional practices.</p> <p>For those who have practiced a decade, two decades or more (like me), we have matured beyond incivility practices often learned by over-eager new</p>		<p>circumstances surrounding the conduct." In a world with growing feelings of being abused or harassed by any innocent or innocuous comment, this tripwire would be readily alleged and subject attorneys to a growth of bar complaints to respond to. "He harassed me" would become another very common cry to the Bar by opposing clients, opposing attorneys, hostile witnesses or others, when the attorney is merely doing her job trying to seek the truth. This would harm the practice of law by its unworthy distractions from advocating for one's client. The time and energy required to respond to these complaints will distract and chill one from zealously defending a client's rights.</p> <p>All too often, zealous advocacy is interpreted as being mean, hostile or incivil to a party or attorney.</p>

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**Proposed New and Amended Rules
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File No.	Commenter/Signatory	Org ¹	Atty/ Nona tty ²	Pos. 1.2 ³	Comment	Pos. 8.4 ³		Pos. 8.4.2 ³	
						attorneys or those insulting practices observed on TV or movies. There are enough rules with more objective criteria to deal with those who objectively engage in ethical improprieties, like those who pursue false claims or defenses, produce false evidence, or submit irrelevant malicious insults about parties, witnesses or counsel			Challenging the accuracy of one's statements or the general credibility or integrity of a party or attorney is often necessary to cull inaccuracies from the truth, like by cross examination or deposition, or negotiation at the table. Yet pointing out those inaccuracies to a party or counsel has an insulting or "incivil" dimension. These common practices may be improperly interpreted under these proposed changes as "incivility" practices to test a witness or his/her allegations or version of events. Moreover, in a world of changing definitions or attacks on common English usage, like pronouns, one may too quickly ascribe incivility to those traditional practices. For those who have practiced a decade, two decades or more (like me), we have matured beyond incivility practices often

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									<p>learned by over-eager newer attorneys or those insulting practices observed on TV or movies. We don't engage in those practices nor condone or tolerate those who do. We are also not humored by those who would complain that our advocacy was not civil in violation of new untested ethical rules.</p> <p>There are enough rules with more objective criteria to deal with those who objectively engage in ethical improprieties, like those who pursue false claims or defenses, produce false evidence, or submit irrelevant malicious insults about parties, witnesses or counsel</p>

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File No.	Commenter/Signatory	Org ¹	Atty/ Nona tty ²	Pos. 1.2 ³	Comment	Pos. 8.4 ³		Pos. 8.4.2 ³	
24368996	Anonymous	No	A	D	Civility/incivility is a completely subjective notion.	D	Civility/incivility is a completely subjective notion. The end effect of this amendment will be lawyers who are punished for hurting someone's feelings and/or for zealously advocating for their clients. No amount of "examples" or "guidelines" will turn a subjective standard into an objective one.	D	Civility/incivility is a completely subjective notion. Lawyers must already pass the professional responsibility portion of the bar exam and they have continuing duties of professionalism to their client and duties of candor to the courts. The end effect of this amendment will be lawyers who are punished for hurting someone's feelings and for zealously advocating for their clients. No amount of "examples" or "guidelines" will turn a subjective standard into an objective one.
24449418	Anonymous	No	NA	A		A		A	
23860156	Anthes, Louis	No	A	A		AM	"Comment [6] would state that significantly unprofessional conduct that is abusive or harassing in the practice of law or related professional activities would violate rule 8.4(d)." "related professional activities" violates the First	AM	"rule 8.4.2. Subparagraph (a) of the rule would state that a lawyer shall not engage in incivility in the practice of law or related professional activities." "related professional activities" violates the First Amendment to the US Constitution because of

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							Amendment to the US Constitution because of VAGUENESS. If the rule and comment are adopted, it should only apply to limited circumstances directly involving the practice of law.		VAGUENESS. If the rule is adopted, it should only apply to limited circumstances directly involving the practice of law.
24545888	Asian Pacific American Bar Association of Los Angeles (Yen)	Yes	A	AM	See attached. https://fs22.formsite.com/sbcta/files/f-316-86-24545888_Rs2UqiPn_PA2_and_PA3_APABA_Civility_Amendment_Comments_Letter_-_2023.03.01.pdf	AM	See attached. https://fs22.formsite.com/sbcta/files/f-316-86-24545888_Rs2UqiPn_PA2_and_PA3_APABA_Civility_Amendment_Comments_Letter_-_2023.03.01.pdf	AM	See attached. https://fs22.formsite.com/sbcta/files/f-316-86-24545888_Rs2UqiPn_PA2_and_PA3_APABA_Civility_Amendment_Comments_Letter_-_2023.03.01.pdf
24542436	Asian Pacific American Women Lawyers Alliance (Ro)	Yes	A	NP	Please note APAWLA does not take a position on this proposed rule, but the form requires checking off one of the choices. https://fs22.formsite.com/sbcta/files/f-316-86-24542436_DsJQ6fZT_PA3_APAWLA_Comments_re_Proposed_Civility_Rules.pdf	NP	Please note APAWLA does not take a position on this proposed rule, but the form requires checking off one of the choices. https://fs22.formsite.com/sbcta/files/f-316-86-24542436_DsJQ6fZT_PA3_APAWLA_Comments_re_Proposed_Civility_Rules.pdf	AM	Please see attached comments. https://fs22.formsite.com/sbcta/files/f-316-86-24542436_DsJQ6fZT_PA3_APAWLA_Comments_re_Proposed_Civility_Rules.pdf

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24360709	Association of Business Trial Lawyers (Orange County) (O'Neill)	Yes	A	A	On behalf of the Orange County, San Diego, San Joaquin, and Los Angeles chapters of the Association of Business Trial Lawyers, we attach a letter joining in CCTF's comments to those proposals, as set forth in Justice Brian Currey's January 11, 2023 letter. https://fs22.formsite.com/sbcta/files/f-316-86-24360709_ip22w4ZU_PA3_ABTL_Letter_-_civility.pdf	AM	On behalf of the Orange County, San Diego, San Joaquin, and Los Angeles chapters of the Association of Business Trial Lawyers, we attach a letter joining in CCTF's comments to those proposals, as set forth in Justice Brian Currey's January 11, 2023 letter. https://fs22.formsite.com/sbcta/files/f-316-86-24360709_ip22w4ZU_PA3_ABTL_Letter_-_civility.pdf	AM	On behalf of the Orange County, San Diego, San Joaquin, and Los Angeles chapters of the Association of Business Trial Lawyers, we attach a letter joining in CCTF's comments to those proposals, as set forth in Justice Brian Currey's January 11, 2023 letter. https://fs22.formsite.com/sbcta/files/f-316-86-24360709_ip22w4ZU_PA3_ABTL_Letter_-_civility.pdf
24035537	Association of Business Trial Lawyers, Northern California Chapter (Patchen)	Yes	A	A	The Association of Business Trial Lawyers, Northern California Chapter (https://abtl.org/northerncalifornia/) has been a leader in promoting civility guidelines in the legal profession. On behalf of our nearly 2000 members, we submit this comment to state that our Chapter AGREES with the Proposal and encourages the State Bar to adopt it.	A	The Association of Business Trial Lawyers, Northern California Chapter (https://abtl.org/northerncalifornia/) has been a leader in promoting civility guidelines in the legal profession. On behalf of our nearly 2000 members, we submit this comment to state that our Chapter AGREES with the Proposal and encourages the State Bar to adopt it.	A	The Association of Business Trial Lawyers, Northern California Chapter (https://abtl.org/northerncalifornia/) has been a leader in promoting civility guidelines in the legal profession. On behalf of our nearly 2000 members, we submit this comment to state that our Chapter AGREES with the Proposal and encourages the State Bar to adopt it.

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24544895	Association of Southern California Defense Counsel (Saroukhanioff)	Yes	A	D	Please see attached correspondence. https://fs22.formsite.com/sbcta/files/f-316-86-24544895_XyRsYUfP_ASCD_C_Letter_Re_Proposed_Rules_-_Civility_Feb_2023.pdf	D	Please see attached correspondence. https://fs22.formsite.com/sbcta/files/f-316-86-24544895_XyRsYUfP_ASCD_C_Letter_Re_Proposed_Rules_-_Civility_Feb_2023.pdf	D	Please see attached correspondence. https://fs22.formsite.com/sbcta/files/f-316-86-24544895_XyRsYUfP_ASCD_C_Letter_Re_Proposed_Rules_-_Civility_Feb_2023.pdf
24356878	Awoniyi, Bunmi	No	NA	A		A		A	
24356799	Baltodano, Hernaldo		NA	A		A		A	
24507185	Bentacourt, Shiloh	No	A	A	I've been a lawyer for the past 2 years and I have witnessed how a lawyers incivility can negatively affect a persons ability to access the justice system and judges allow it.	A	I've been a lawyer for the past 2 years and I have witnessed how a lawyers incivility can negatively affect a persons ability to access the justice system and judges allow it.	A	I've been a lawyer for the past 2 years and I have witnessed how a lawyers incivility can negatively affect a persons ability to access the justice system and judges allow it.
23994468	Beverly Hills Bar Association (Macauley)	Yes	A	A		A	The California Civility Task Force (CCTF), a joint project of the California Judges Association and the California Lawyers Association, has recommended that the State Bar of California modify its rules to state that incivility constitutes professional misconduct,	A	

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**Proposed New and Amended Rules
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File No.	Commenter/Signatory	Org ¹	Atty/ Nonatt ²	Pos. 1.2 ³	Comment	Pos. 8.4 ³		Pos. 8.4.2 ³	
							and subjects offending attorneys to discipline by the State Bar of California. This proposal follows observations of growing incivility that undermines our whole profession and the justice system, including by heightening stress and job dissatisfaction among lawyers and judges and increasing costs and delays in litigation and transactions. The CCTF also notes that incivility disproportionately impacts “young lawyers, women lawyers, lawyers of color, and lawyers from other marginalized groups.” The Beverly Hills Bar Association supports this proposal. Civility must be a cornerstone of the legal profession—essential for our advocates to demonstrate and foster. In order for civility obligations to be meaningful, they must be backed by the State Bar’s enforcement mechanisms.		

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							As a voluntary bar, the Beverly Hills Bar Association has adopted a civility policy and expects behavior consistent with it from our members, leaders, and staff. That expectation is reasonable and achievable, and benefits the legal profession, our justice system, and the public. But the consequences a voluntary bar can impose are limited. When incivility rises to the level of professional misconduct, it is appropriate that an attorney face the wider range of repercussions that the State Bar of California, as our licensing entity, can impose.		
24545052	CAL-ABOTA (McMonigle)	Yes	A	D	No comment. https://fs22.formsite.com/sbcta/files/f-316-86-24545052_9H4Uq86Y_PA3_Cal-ABOTA_Public_Comment_Regarding_Proposed_Rule_8.4.2.pdf	D	No comment https://fs22.formsite.com/sbcta/files/f-316-86-24545052_9H4Uq86Y_PA3_Cal-ABOTA_Public_Comment_Regarding_Proposed_Rule_8.4.2.pdf	D	See attached. https://fs22.formsite.com/sbcta/files/f-316-86-24545052_9H4Uq86Y_PA3_Cal-ABOTA_Public_Comment_Regarding_Proposed_Rule_8.4.2.pdf

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24503728	California Access to Justice Commission (Londen)	Yes	A	A	<p>We Support the Proposed Amendments to California Rules of Professional Conduct 1.2 and 8.4, and Creation of New Rule 8.4.2, Addressing Civility – with Proposed Modifications to Comment [1] to Rule 1.2 and Comment [4] to Rule 8.4.</p> <p>The proposed amendments to the California Rules of Professional Conduct will further support civility in the legal profession.</p> <p>First, the proposed amendment to Rule of Professional Conduct 1.2 would add language in comment [1] regarding the allocation of authority between a client and a lawyer. This amended comment appropriately clarifies that while the client controls the decisions concerning the objectives of representation, the attorney retains the authority and professional responsibility to act with</p>	A	<p>We Support the Proposed Amendments to California Rules of Professional Conduct 1.2 and 8.4, and Creation of New Rule 8.4.2, Addressing Civility – with Proposed Modifications to Comment [1] to Rule 1.2 and Comment [4] to Rule 8.4.</p> <p>The proposed amendments to the California Rules of Professional Conduct will further support civility in the legal profession.</p> <p>First, the proposed amendment to Rule of Professional Conduct 1.2 would add language in comment [1] regarding the allocation of authority between a client and a lawyer. This amended comment appropriately clarifies that while the client controls the decisions concerning the objectives of representation, the attorney retains the authority and professional responsibility to act with</p>	A	<p>We Support the Proposed Amendments to California Rules of Professional Conduct 1.2 and 8.4, and Creation of New Rule 8.4.2, Addressing Civility – with Proposed Modifications to Comment [1] to Rule 1.2 and Comment [4] to Rule 8.4.</p> <p>The proposed amendments to the California Rules of Professional Conduct will further support civility in the legal profession.</p> <p>First, the proposed amendment to Rule of Professional Conduct 1.2 would add language in comment [1] regarding the allocation of authority between a client and a lawyer. This amended comment appropriately clarifies that while the client controls the decisions concerning the objectives of representation, the attorney retains the authority and professional responsibility to act with</p>

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					<p>civility in pursuing those objectives. Because, as noted, the Access Commission is particularly interested in the professional responsibility of civility in dealing with self-represented parties, we recommend that the language in comment [1] not unnecessarily be limited to “requests of opposing counsel” but instead also include requests by self-represented parties, as follows:</p> <p>Notwithstanding a client’s direction, a lawyer retains the authority to agree to reasonable requests of opposing counsel or self-represented parties 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.</p>		<p>civility in pursuing those objectives. Because, as noted, the Access Commission is particularly interested in the professional responsibility of civility in dealing with self-represented parties, we recommend that the language in comment [1] not unnecessarily be limited to “requests of opposing counsel” but instead also include requests by self-represented parties, as follows:</p> <p>Notwithstanding a client’s direction, a lawyer retains the authority to agree to reasonable requests of opposing counsel or self-represented parties 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.</p>		<p>civility in pursuing those objectives. Because, as noted, the Access Commission is particularly interested in the professional responsibility of civility in dealing with self-represented parties, we recommend that the language in comment [1] not unnecessarily be limited to “requests of opposing counsel” but instead also include requests by self-represented parties, as follows:</p> <p>Notwithstanding a client’s direction, a lawyer retains the authority to agree to reasonable requests of opposing counsel or self-represented parties 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.</p>

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					<p>Calling attention to an attorney's professional responsibility to agree to reasonable requests by self-represented parties will further the objectives of increasing civility in the profession, supporting access to justice, and reducing barriers to justice for those that do not have counsel.</p> <p>Second, the proposed amendment to Rule of Professional Conduct 8.4 regarding misconduct adds the following language in comment [6] explaining that significant unprofessional conduct can be prejudicial to the administration of justice, as follows:</p> <p>[6] A lawyer's 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</p>			<p>Calling attention to an attorney's professional responsibility to agree to reasonable requests by self-represented parties will further the objectives of increasing civility in the profession, supporting access to justice, and reducing barriers to justice for those that do not have counsel.</p> <p>Second, the proposed amendment to Rule of Professional Conduct 8.4 regarding misconduct adds the following language in comment [6] explaining that significant unprofessional conduct can be prejudicial to the administration of justice, as follows:</p> <p>[6] A lawyer's 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</p>		<p>Calling attention to an attorney's professional responsibility to agree to reasonable requests by self-represented parties will further the objectives of increasing civility in the profession, supporting access to justice, and reducing barriers to justice for those that do not have counsel.</p> <p>Second, the proposed amendment to Rule of Professional Conduct 8.4 regarding misconduct adds the following language in comment [6] explaining that significant unprofessional conduct can be prejudicial to the administration of justice, as follows:</p> <p>[6] A lawyer's 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</p>

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					<p>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.</p> <p>This proposed comment appropriately explains that significantly unprofessional conduct can be a basis for a finding of attorney misconduct and that it undermines the profession and the administration of justice. The additional proposed amendment to comment [4], cross-referencing the proposed new stand-alone rule 8.4.2, also is helpful. However, this comment can be further clarified by expressly stating that such conduct may be a basis for discipline, as follows:</p>				<p>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.</p> <p>This proposed comment appropriately explains that significantly unprofessional conduct can be a basis for a finding of attorney misconduct and that it undermines the profession and the administration of justice. The additional proposed amendment to comment [4], cross-referencing the proposed new stand-alone rule 8.4.2, also is helpful. However, this comment can be further clarified by expressly stating that such conduct may be a basis for discipline, as follows:</p>

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					<p>[4] A lawyer may be disciplined under Business and Professions Code section 6106 for acts involving moral turpitude, dishonesty, or corruption, whether intentional, reckless, or grossly negligent. A lawyer also may be disciplined rRegarding significantly unprofessional conduct that is abusive or harassing, see rule 8.4.2.</p> <p>Clarifying that civility is a professional responsibility of attorneys and significantly unprofessional conduct that is abusive or harassing can be a basis for a finding of attorney misconduct and discipline will further the objectives of increasing civility in the profession and, as noted, reducing barriers to justice for those that do not have counsel. In addition, we expect this may help reduce bias-based incivility and, therefore, further promote racial justice and diversity,</p>		<p>[4] A lawyer may be disciplined under Business and Professions Code section 6106 for acts involving moral turpitude, dishonesty, or corruption, whether intentional, reckless, or grossly negligent. A lawyer also may be disciplined rRegarding significantly unprofessional conduct that is abusive or harassing, see rule 8.4.2.</p> <p>Clarifying that civility is a professional responsibility of attorneys and significantly unprofessional conduct that is abusive or harassing can be a basis for a finding of attorney misconduct and discipline will further the objectives of increasing civility in the profession and, as noted, reducing barriers to justice for those that do not have counsel. In addition, we expect this may help reduce bias-based incivility and, therefore, further promote racial justice and diversity,</p>		<p>[4] A lawyer may be disciplined under Business and Professions Code section 6106 for acts involving moral turpitude, dishonesty, or corruption, whether intentional, reckless, or grossly negligent. A lawyer also may be disciplined rRegarding significantly unprofessional conduct that is abusive or harassing, see rule 8.4.2.</p> <p>Clarifying that civility is a professional responsibility of attorneys and significantly unprofessional conduct that is abusive or harassing can be a basis for a finding of attorney misconduct and discipline will further the objectives of increasing civility in the profession and, as noted, reducing barriers to justice for those that do not have counsel. In addition, we expect this may help reduce bias-based incivility and, therefore, further promote racial justice and diversity,</p>

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					<p>equity, and inclusion in the legal profession.</p> <p>Third, the proposed new stand-alone rule, rule 8.4.2, discussing prohibited incivility, is a helpful addition to explain what is expected and required. Separating prohibited incivility in a new separate rule, as suggested by State Bar staff, has several benefits, including highlighting the importance of civility; providing a further explanation, references, and examples of misconduct; and assisting in interpretation, education, and enforcement of civility guidelines and potential misconduct and discipline related to abusive or harassing misconduct.</p> <p>We again thank the California Civility Task Force, the CJA, the CLA, and the State Bar for moving forward with proposed amendments to the Rules of Professional Conduct</p>		<p>equity, and inclusion in the legal profession.</p> <p>Third, the proposed new stand-alone rule, rule 8.4.2, discussing prohibited incivility, is a helpful addition to explain what is expected and required. Separating prohibited incivility in a new separate rule, as suggested by State Bar staff, has several benefits, including highlighting the importance of civility; providing a further explanation, references, and examples of misconduct; and assisting in interpretation, education, and enforcement of civility guidelines and potential misconduct and discipline related to abusive or harassing misconduct.</p> <p>We again thank the California Civility Task Force, the CJA, the CLA, and the State Bar for moving forward with proposed amendments to the Rules of Professional Conduct</p>		<p>equity, and inclusion in the legal profession.</p> <p>Third, the proposed new stand-alone rule, rule 8.4.2, discussing prohibited incivility, is a helpful addition to explain what is expected and required. Separating prohibited incivility in a new separate rule, as suggested by State Bar staff, has several benefits, including highlighting the importance of civility; providing a further explanation, references, and examples of misconduct; and assisting in interpretation, education, and enforcement of civility guidelines and potential misconduct and discipline related to abusive or harassing misconduct.</p> <p>We again thank the California Civility Task Force, the CJA, the CLA, and the State Bar for moving forward with proposed amendments to the Rules of Professional Conduct</p>

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					<p>focused on the importance of civility in the legal profession and clarifying the possibility of findings of misconduct and discipline for significantly unprofessional conduct that is abusive or harassing. We support the proposed amendments to California Rules of Professional Conduct 1.2 and 8.4, and the creation of a new rule 8.4.2. As noted, we have suggested language changes to the proposed amendments to Comment [1] to Rule of Professional Conduct 1.2 and Comment [4] to Rule of Professional Conduct 8.4.</p> <p>https://fs22.formsite.com/s/bcta/files/f-316-86-24503728_Sk6SKezr_StateBarCommentsCivilityMCLE_FI_NAL_002.pdf</p>		<p>focused on the importance of civility in the legal profession and clarifying the possibility of findings of misconduct and discipline for significantly unprofessional conduct that is abusive or harassing. We support the proposed amendments to California Rules of Professional Conduct 1.2 and 8.4, and the creation of a new rule 8.4.2. As noted, we have suggested language changes to the proposed amendments to Comment [1] to Rule of Professional Conduct 1.2 and Comment [4] to Rule of Professional Conduct 8.4.</p> <p>https://fs22.formsite.com/s/bcta/files/f-316-86-24503728_Sk6SKezr_StateBarCommentsCivilityMCLE_FI_NAL_002.pdf</p>		<p>focused on the importance of civility in the legal profession and clarifying the possibility of findings of misconduct and discipline for significantly unprofessional conduct that is abusive or harassing. We support the proposed amendments to California Rules of Professional Conduct 1.2 and 8.4, and the creation of a new rule 8.4.2. As noted, we have suggested language changes to the proposed amendments to Comment [1] to Rule of Professional Conduct 1.2 and Comment [4] to Rule of Professional Conduct 8.4.</p> <p>https://fs22.formsite.com/s/bcta/files/f-316-86-24503728_Sk6SKezr_StateBarCommentsCivilityMCLE_FI_NAL_002.pdf</p>

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24006178	California Civility Task Force (Currey)		NA	A	https://fs22.formsite.com/sbcta/files/f-316-86-24006178_JJWKCe6u_PA3.California_Civility_Task_Force_Letter_and_Comments_to_Proposed_Disciplinary_Rules_Changes_1.11.23.FINAL.pdf	A	https://fs22.formsite.com/sbcta/files/f-316-86-24006178_JJWKCe6u_PA3.California_Civility_Task_Force_Letter_and_Comments_to_Proposed_Disciplinary_Rules_Changes_1.11.23.FINAL.pdf	A	Please see written submission. https://fs22.formsite.com/sbcta/files/f-316-86-24006178_JJWKCe6u_PA3.California_Civility_Task_Force_Letter_and_Comments_to_Proposed_Disciplinary_Rules_Changes_1.11.23.FINAL.pdf
24509989	California Lawyers Association (Evans)	Yes	A	A	https://fs22.formsite.com/sbcta/files/f-316-86-24509989_pdcPymMa_CLA_comments_on_proposed_amendments_to_rules_of_professional_conduct_addressing_incivility.pdf	AM	https://fs22.formsite.com/sbcta/files/f-316-86-24509989_pdcPymMa_CLA_comments_on_proposed_amendments_to_rules_of_professional_conduct_addressing_incivility.pdf	AM	https://fs22.formsite.com/sbcta/files/f-316-86-24509989_pdcPymMa_CLA_comments_on_proposed_amendments_to_rules_of_professional_conduct_addressing_incivility.pdf
24544121	Chamberlin, Cross, Banola, Basner, Boro, Chivers, Koss, McLean, Wolf	No	A	A	https://fs22.formsite.com/sbcta/files/f-316-86-24544121_LGclRtnR_PA3_Letter_re_Proposed_Civility_Changes.final.pdf	A	https://fs22.formsite.com/sbcta/files/f-316-86-24544121_LGclRtnR_PA3_Letter_re_Proposed_Civility_Changes.final.pdf	A	We fully support the addition of a new rule that prohibits incivility in the practice of law. We generally support proposed new rule 8.4.2 but suggest that the State Bar consider whether some of the language is sufficiently clear, as set forth and further discussed in our attached letter. https://fs22.formsite.com/sbcta/files/f-316-86-

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									24544121_LGclRtnR_PA3_Letter_re_Proposed_Civility_Changes.final.pdf
24543577	Consumer Attorneys Association of Los Angeles and California Employment Lawyers Association (Horton)	Yes	A	A	https://fs22.formsite.com/sbcta/files/f-316-86-24543577_GMZU656R_PA1.2.3_CAALA.CELA.State.Bar.Civility.Public.Comment.w.Exhibits.pdf	AM	https://fs22.formsite.com/sbcta/files/f-316-86-24543577_GMZU656R_PA1.2.3_CAALA.CELA.State.Bar.Civility.Public.Comment.w.Exhibits.pdf	AM	https://fs22.formsite.com/sbcta/files/f-316-86-24543577_GMZU656R_PA1.2.3_CAALA.CELA.State.Bar.Civility.Public.Comment.w.Exhibits.pdf
24543991	Cowan, David	No	NA	A	As a member of the Civility Task Force, and a Judge of the Los Angeles Superior Court, and former Supervising Judge of its Civil Division, I support these proposed changes and join in the comments of Justice Currey in his letter to the Bar dated January 11, 2023.	A	See California Civility Task Force (Currey) letter above.	A	See California Civility Task Force (Currey) letter above.
24431116	Culver, Julie		NA	A		A		A	
24393737	Distaso, Joseph	No	NA	A		A		A	
24013159	Ginzburg, alexander	No	A	AM	I support the idea of having these "Civility" rules, but I have concerns that the proposed language is too ambiguous. The comments must also be better worded to put attorneys on notice	AM	I support the idea of having these "Civility" rules, but I have concerns that the proposed language is too ambiguous. The comments must also be better worded to put attorneys on notice	AM	I support the idea of having these "Civility" rules, but I have concerns that the proposed language is too ambiguous. The comments must also be better worded to put attorneys on notice

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					<p>what actions may trigger violations of the Rule.</p> <p>1.Reference to “conduct that is prejudicial to the administration of justice” is not good enough.</p> <p>2.“[U]nprofessional conduct that is abusive or harassing in the practice of law or related professional activities” is too broad, vague and imprecise.</p> <p>The above language should be changed to make it more clear what will constitute a violation of the Rules, especially if it will lead to any disciplinary action by the Bar.</p> <p>https://fs22.formsite.com/sbcta/files/f-316-86-24013159_eTacF1lx_Comments_re_new_Civility_Rules.pdf</p>		<p>what actions may trigger violations of the Rule.</p> <p>1.Reference to “conduct that is prejudicial to the administration of justice” is not good enough.</p> <p>2.“[U]nprofessional conduct that is abusive or harassing in the practice of law or related professional activities” is too broad, vague and imprecise.</p> <p>The above language should be changed to make it more clear what will constitute a violation of the Rules, especially if it will lead to any disciplinary action by the Bar.</p> <p>https://fs22.formsite.com/sbcta/files/f-316-86-24013159_eTacF1lx_Comments_re_new_Civility_Rules.pdf</p>		<p>what actions may trigger violations of the Rule.</p> <p>1.Reference to “conduct that is prejudicial to the administration of justice” is not good enough.</p> <p>2.“[U]nprofessional conduct that is abusive or harassing in the practice of law or related professional activities” is too broad, vague and imprecise.</p> <p>The above language should be changed to make it more clear what will constitute a violation of the Rules, especially if it will lead to any disciplinary action by the Bar.</p> <p>https://fs22.formsite.com/sbcta/files/f-316-86-24013159_eTacF1lx_Comments_re_new_Civility_Rules.pdf</p>
24345087	Grace, Melodie	No	A	D	Seems like enforcement would be difficult and civility is not well defined.	D	There are sufficient enforcement rules if actually enforced.	D	
24361650	Greenwood, Mary	No	NA	A		A		A	

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23817721	Ham, James	No	A	D	Attempts at regulating civility through discipline are improper and subject to abuse. In the progressive cancel culture of California, and given the history of corruption at the Office of Chief Trial Counsel, there is little reason to believe that rules and pronouncements such as these will not be used for political purposes and to suppress positions and speech with which the progressive left, which controls California politically, disagrees.	D	The proposed rule violates First Amendment protections, and is void for vagueness as defining the conduct subject to discipline is exceptionally problematic. Business and Professions Code § 6068(f), prohibiting "offensive personality," was previously found to be unconstitutional. That decision remains good law. It is unclear why the State Bar and its Committees are ignoring that precedent. The proposed rule also invites abuse and political manipulation .Further, such a rule is subject to abuse, particularly by an agency like the Office of Chief Trial Counsel.	D	he proposed rule violates First Amendment protections, and is void for vagueness as defining the conduct subject to discipline is exceptionally problematic. Business and Professions Code § 6068(f), prohibiting "offensive personality," was previously found to be unconstitutional. That decision remains good law. It is unclear why the State Bar and its Committees are ignoring that precedent. The proposed rule also invites abuse and political manipulation .Further, such a rule is subject to abuse, particularly by an agency like the Office of Chief Trial Counsel.
23818030	Harris, Mariana	No	NA	A	A jerk won't change his behavior unless forced to change. Holding people accountable is a good idea.	A		A	
24376622	Japanese American Bar Association	Yes	A	AM	The Japanese American Bar Association offers qualified support of the Board's proposed revisions to the	AM	The Japanese American Bar Association offers qualified support of the Board's proposed revisions to the	AM	The Japanese American Bar Association offers qualified support of the Board's proposed revisions to the

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					Rules of Professional Conduct as set forth in the attached correspondence dated January 11, 2023, from Justice Brian S. Currey, Chair of the California Civility Task Force. https://fs22.formsite.com/sbcta/files/f-316-86-24376622_YgARDEfN_California_Civility_Task_Force_Letter_and_Comments_to_Proposed_Disciplinary_Rules_Changes_1.11.23_FINAL.pdf		Rules of Professional Conduct as set forth in the attached correspondence dated January 11, 2023, from Justice Brian S. Currey, Chair of the California Civility Task Force. https://fs22.formsite.com/sbcta/files/f-316-86-24376622_YgARDEfN_California_Civility_Task_Force_Letter_and_Comments_to_Proposed_Disciplinary_Rules_Changes_1.11.23_FINAL.pdf		Rules of Professional Conduct as set forth in the attached correspondence dated January 11, 2023, from Justice Brian S. Currey, Chair of the California Civility Task Force. https://fs22.formsite.com/sbcta/files/f-316-86-24376622_YgARDEfN_California_Civility_Task_Force_Letter_and_Comments_to_Proposed_Disciplinary_Rules_Changes_1.11.23_FINAL.pdf
24040988	Karton, David		A	D	This amendment is not workable. The definition of "civility" is far too subjective and would often be used as a weapon. Who defines "conduct prejudicial to the administration of justice" either generally or in a specific instance.	D		D	
24094682	Khosravirad, Vanda	No	A	A		AM	Unless and until rampant statewide discovery abuse is addressed through the Rules of Professional Conduct, lawyer incivility will continue. I cannot stress enough how rampant discovery abuse is in this	AM	Unless and until rampant statewide discovery abuse is addressed through the Rules of Professional Conduct, lawyer incivility will continue. I cannot stress enough how rampant discovery abuse is in this

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							state. State court judges largely ignore discovery abuse, and seldom, if ever, issue sanctions for discovery abuse. At best, courts will merely grant discovery motions and not address the discovery abuse portion of counsel's briefing. Therefore, the comments must include discovery abuse as an example of conduct that is prejudicial to the administration of justice. Since discovery abuse is requires a conclusion of fact and law, the comment could clarify that to be in violation of this rule requires a court to either hold that the attorney's conduct amounts to discovery abuse, regardless of whether or not sanctions are issued.		state. State court judges largely ignore discovery abuse, and seldom, if ever, issue sanctions for discovery abuse. At best, courts will merely grant discovery motions and not address the discovery abuse portion of counsel's briefing. Therefore, the comments must include discovery abuse as an example of conduct that is prejudicial to the administration of justice. Since discovery abuse is requires a conclusion of fact and law, the comment could clarify that to be in violation of this rule requires a court to either hold that the attorney's conduct amounts to discovery abuse, regardless of whether or not sanctions are issued.
24344343	Khosravirad, Vandad	No	A	A		AM	The proposed rule needs an enforcement mechanism for it work. I propose that state bar allow attorneys to file monetary sanctions motions with the state bar against the offending attorney.	AM	The proposed rule needs an enforcement mechanism for it work. I propose that state bar allow attorneys to file monetary sanctions motions with the state bar against the offending attorney.

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24537083	Kronlund, Barbara	No	NA	A		A		A	
24542716	LACBA Litigation Section Executive Committee (Glennon)	Yes	A	A	https://fs22.formsite.com/sbcta/files/f-316-86-24542716 IEsTjLDy PA1 PA 2 PA3 LACBA Litigation Section Executive Committee Comment.pdf	A	https://fs22.formsite.com/sbcta/files/f-316-86-24542716 IEsTjLDy PA1 PA 2 PA3 LACBA Litigation Section Executive Committee Comment.pdf	A	https://fs22.formsite.com/sbcta/files/f-316-86-24542716 IEsTjLDy PA1 PA 2 PA3 LACBA Litigation Section Executive Committee Comment.pdf
24543057	LACBA Litigation Section Executive Committee (Glennon)	Yes	A	A	Resubmitting with revised attachment name. https://fs22.formsite.com/sbcta/files/f-316-86-24543057 6wIC0J04 PA1 P A2 PA3 LACBA Litigation Section Executive Committee Comment.pdf	A	Resubmitting with revised attachment name. https://fs22.formsite.com/sbcta/files/f-316-86-24543057 6wIC0J04 PA1 P A2 PA3 LACBA Litigation Section Executive Committee Comment.pdf	A	Resubmitting with revised attachment name. https://fs22.formsite.com/sbcta/files/f-316-86-24543057 6wIC0J04 PA1 P A2 PA3 LACBA Litigation Section Executive Committee Comment.pdf
24438628	LACBA Professional Responsibility and Ethics Committee (Cohen)	Yes	A	A	https://fs22.formsite.com/sbcta/files/f-316-86-24438628 fAwtcVEU PREC Comment Letter on Civility Final 2-7-23.pdf	A	https://fs22.formsite.com/sbcta/files/f-316-86-24438628 fAwtcVEU PREC Comment Letter on Civility Final 2-7-23.pdf	A	https://fs22.formsite.com/sbcta/files/f-316-86-24438628 fAwtcVEU PREC Comment Letter on Civility Final 2-7-23.pdf
24067085	Legal Aid Association of California (Newman)	Yes	A	A	https://fs22.formsite.com/sbcta/files/f-316-86-24067085 gzpAihKa Proposed Amendments to the Rules of Professional Conduct Addressing Incivility L AAC Comment Submitted 1.20.23.pdf	A	https://fs22.formsite.com/sbcta/files/f-316-86-24067085 gzpAihKa Proposed Amendments to the Rules of Professional Conduct Addressing Incivility L AAC Comment Submitted 1.20.23.pdf	A	https://fs22.formsite.com/sbcta/files/f-316-86-24067085 gzpAihKa Proposed Amendments to the Rules of Professional Conduct Addressing Incivility L AAC Comment Submitted 1.20.23.pdf

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24023543	Madokoro, Mike	No	A	A	As a member of the California Civility Task Force, I offer qualified support of the Board's proposed revisions to the Rules of Professional Conduct as set forth in the attached correspondence dated January 11, 2023, from Justice Brian S. Currey, Chair of the California Civility Task Force. https://fs22.formsite.com/sbcta/files/f-316-86-24023543_CNa8woB9_California_Civility_Task_Force_Letter_and_Comments_to_Proposed_Disciplinary_Rules_Changes_1.11.23_FINAL.pdf	A	As a member of the California Civility Task Force, I offer qualified support of the Board's proposed revisions to the Rules of Professional Conduct as set forth in the attached correspondence dated January 11, 2023, from Justice Brian S. Currey, Chair of the California Civility Task Force. https://fs22.formsite.com/sbcta/files/f-316-86-24023543_CNa8woB9_California_Civility_Task_Force_Letter_and_Comments_to_Proposed_Disciplinary_Rules_Changes_1.11.23_FINAL.pdf	A	As a member of the California Civility Task Force, I offer qualified support of the Board's proposed revisions to the Rules of Professional Conduct as set forth in the attached correspondence dated January 11, 2023, from Justice Brian S. Currey, Chair of the California Civility Task Force. https://fs22.formsite.com/sbcta/files/f-316-86-24023543_CNa8woB9_California_Civility_Task_Force_Letter_and_Comments_to_Proposed_Disciplinary_Rules_Changes_1.11.23_FINAL.pdf
24545681	Marin County Bar Association (Christo)	Yes	A	A	https://fs22.formsite.com/sbcta/files/f-316-86-24545681_atLpXawu_Ltr_Civility_StateBar_3.1.23.pdf	A	https://fs22.formsite.com/sbcta/files/f-316-86-24545681_atLpXawu_Ltr_Civility_StateBar_3.1.23.pdf	A	https://fs22.formsite.com/sbcta/files/f-316-86-24545681_atLpXawu_Ltr_Civility_StateBar_3.1.23.pdf
24026132	Maviglio, Steven	No	NA	A		A	Long overdue.	A	I strongly support this rule. I was recently served by an attorney who yelled "fuck you, fuck you" as he served me with papers. This attorney also has written numerous threatening

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									letters and trespassed on my property. He has been admonished for his behavior by judges, but nothing happens. This is definitely needed.
24012833	Medina, Jonathan	No	A	D	"Civility" is too broad a term. I find it highly uncivil when fellow colleagues, with a very recent specific example, fail to cite scientific studies and common knowledge that very much undermines their arguments. This would become a tit-for-tat festival of litigation and "tattletale"-ism as attorneys rush to file frivolous uncivil claims. Similar to how SLAPP has taken on its own burdens, this would add extra bureaucracy. As we can see, Californians have had enough and are fleeing the state in droves. It's time to simplify and not add new requirements, as much as it sounds pleasant to have everyone be "civil", it is very much so in the eye of the beholder.	D	Soon, citing scientific studies will be labelled abusive or harassing behavior. No more bureaucracy please.	D	I hold it that a little rebellion now and then is a good thing, and is as necessary in the political world as storms in the physical." - Thomas Jefferson, 1787

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24357097	Moberly, Jamoa	No	A	A		A		A	
23876191	Montrose, D'Artagnan	No	A	A	<p>Most definitely. As someone who attended business school before law school and worked in the corporate world for 10 years before becoming a lawyer, one thing that is very apparent is the lack of business communication education and etiquette among attorneys.</p> <p>You learn in the corporate world about the benefits of striving for win/win negotiations and always communicating in a respectful and positive manner even when in engaged in conflict.</p> <p>Attorneys unfortunately do not learn this in school or in practice, and so you have extremely rude and disrespectful opposing counsel who do not even know how to start an email with "Dear counsel, I hope this message finds you well" or who appear at</p>	A	<p>Most definitely. As someone who attended business school before law school and worked in the corporate world for 10 years before becoming a lawyer, one thing that is very apparent is the lack of business communication education and etiquette among attorneys.</p> <p>You learn in the corporate world about the benefits of striving for win/win negotiations and always communicating in a respectful and positive manner even when in engaged in conflict.</p> <p>Attorneys unfortunately do not learn this in school or in practice, and so you have extremely rude and disrespectful opposing counsel who do not even know how to start an email with "Dear counsel, I hope this message finds you well" or who appear at</p>	A	<p>Most definitely. As someone who attended business school before law school and worked in the corporate world for 10 years before becoming a lawyer, one thing that is very apparent is the lack of business communication education and etiquette among attorneys.</p> <p>You learn in the corporate world about the benefits of striving for win/win negotiations and always communicating in a respectful and positive manner even when in engaged in conflict.</p> <p>Attorneys unfortunately do not learn this in school or in practice, and so you have extremely rude and disrespectful opposing counsel who do not even know how to start an email with "Dear counsel, I hope this message finds you well" or who appear at</p>

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					<p>depositions and think it is some sort of power play to refuse to engage in standard pleasantries.</p> <p>Worst case you end up with the nightmare opposing counsel who is so devoid of manners and professionalism that they are rude even to the Judges. Having come up in a firm that is big on professional courtesy, I am always amazed when opposing counsel takes the position that being extremely obnoxious and unnecessarily confrontational is somehow superior lawyering.</p> <p>I have always wished Judges would sanction such uncivil and unprofessional behavior.</p>		<p>depositions and think it is some sort of power play to refuse to engage in standard pleasantries.</p> <p>Worst case you end up with the nightmare opposing counsel who is so devoid of manners and professionalism that they are rude even to the Judges. Having come up in a firm that is big on professional courtesy, I am always amazed when opposing counsel takes the position that being extremely obnoxious and unnecessarily confrontational is somehow superior lawyering.</p> <p>I have always wished Judges would sanction such uncivil and unprofessional behavior.</p>		<p>depositions and think it is some sort of power play to refuse to engage in standard pleasantries.</p> <p>Worst case you end up with the nightmare opposing counsel who is so devoid of manners and professionalism that they are rude even to the Judges. Having come up in a firm that is big on professional courtesy, I am always amazed when opposing counsel takes the position that being extremely obnoxious and unnecessarily confrontational is somehow superior lawyering.</p> <p>I have always wished Judges would sanction such uncivil and unprofessional behavior.</p>
24531273	Multicultural Bar Alliance of Southern California (Madokoro)	Yes	A	A	The Multicultural Bar Alliance of Southern California offers qualified support of the Board's proposed revisions to the Rules of Professional Conduct as set forth in the	A	The Multicultural Bar Alliance of Southern California offers qualified support of the Board's proposed revisions to the Rules of Professional Conduct as set forth in the	A	The Multicultural Bar Alliance of Southern California offers qualified support of the Board's proposed revisions to the Rules of Professional Conduct as set forth in the

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					attached correspondence dated January 11, 2023, from Justice Brian S. Currey, Chair of the California Civility Task Force. https://fs22.formsite.com/sbcta/files/f-316-86-24531273_gAcwwcmu_California_Civility_Task_Force_Letter_and_Comments_to_Proposed_Disciplinary_Rules_Changes_1.11.23_FINAL.pdf		attached correspondence dated January 11, 2023, from Justice Brian S. Currey, Chair of the California Civility Task Force. https://fs22.formsite.com/sbcta/files/f-316-86-24531273_gAcwwcmu_California_Civility_Task_Force_Letter_and_Comments_to_Proposed_Disciplinary_Rules_Changes_1.11.23_FINAL.pdf		attached correspondence dated January 11, 2023, from Justice Brian S. Currey, Chair of the California Civility Task Force. https://fs22.formsite.com/sbcta/files/f-316-86-24531273_gAcwwcmu_California_Civility_Task_Force_Letter_and_Comments_to_Proposed_Disciplinary_Rules_Changes_1.11.23_FINAL.pdf
24368670	Naderi, Arvand	No	A	A		A		A	
24418023	Oberto, Richard	No	A	D	This proposed rule is seeking to spread "civility" language into an area where the rules are already clear. As it is already is, clients do not have the power to direct their attorney to be uncivil. Clients have numerous important powers in the legal process, but they absolutely do not have the authority to direct how their attorneys deport themselves. Accordingly, this proposed rule is	D	The proposed definition of "incivility" is hopelessly vague. The vagueness will have a chilling effect on constitutionally protected speech and legitimate advocacy for clients. Most attorneys will not be brave enough to wade into the gray area between "incivility" as vaguely defined on the one hand and constitutionally protected free speech and legitimate advocacy on the other hand. That chilling	D	The proposed rule subjecting attorneys to discipline under a hopelessly vague definition of "incivility" will create terrible consequences for client advocacy and the legal profession. The definition is so hopelessly vague that the comment refers attorneys to consult a voluminous tome called the "California Attorney Guidelines of Civility and Professionalism", as well as some unknown "other

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					completely ludicrous. The real purpose here is to spread "civility" language into another facet of the professional rules. That pretextual purpose connects the present proposed rule with the serious problems that all the other proposed civility rules would create. The proposed civility rules will have a chilling effect on advocacy and constitutionally protected speech. The enforcement of those proposed rules will be arbitrary and capricious, targeting attorneys who are different, unorthodox, and standing firm against procedural pressures from judges and opposing counsel. The greatest abusers of civility norms will be the ones who most zealously invoke "incivility" against their adversaries. Please do not subject us attorneys to these terrible proposed rules.	effect will be to the great detriment of client advocacy and diversity of views among attorneys. The vagueness also will lead to arbitrary and capricious enforcement against attorneys who might be different, unorthodox, or standing firm against pressures from judges and opposing counsel (e.g., settlement and other procedural pressures). The attempted definition of "incivility" is hopeless vague on its face, as the attempted definition itself refers for guidance to outside sources, including "the current California Attorney Guidelines of Civility and Professionalism and other applicable civility authorities." We should expect that many of the attorneys and judges who will be most zealous about enforcing "civility" will be those who most egregiously abuse the norms of civility. Consider for example the	applicable civility authorities." This is completely unacceptable for clients and the legal profession. I have submitted my views on this subject elsewhere in my comments on related proposed rules. In sum, the proposed rule here will have a chilling effect on advocacy and constitutionally protected speech; the enforcement will be arbitrary and capricious, targeting attorneys who are different, unorthodox, and standing firm against procedural pressures from judges and opposing counsel; and the greatest abusers of civility norms will be the ones who most zealously invoke "incivility" against their adversaries. Please do not subject us attorneys to this terrible proposed rule.

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							Fresno County District Attorney, who frequently blames the Governor and recent legal reforms when specific criminal acts occur in the community. I have had one of the DA's deputies call my client (who is an Afghanistan war veteran) "a guy who likes to abuse women." These violators of civility norms will be the first to call out "incivility" when anybody pushes back against their abuses. The proposed rule here would create a terrible mess. Please do not subject us attorneys to this terrible proposed rule.		
24538674	Orange County Bar Association (Gregg)	Yes	A	AM	Comment [1] to CRPC Rule 1.2. We support this proposed change to Comment [1] providing that lawyers have the authority to conduct themselves with civility even if the client directs otherwise, as long as the lawyer does not prejudice the client's rights, because it affords the lawyer the ability to act as	D	Comment [4] to Rule 8.4. As addressed in subparagraph (d) below, we do not support the proposed standalone Rule 8.4.2. If it is not adopted, the proposed amendment to Comment [4] will not be necessary. If Rule 8.4.2 is adopted, then we do not have any opposition to the proposed amendment to	D	Proposed New Rule 8.4.2. In general, we are not in favor of a new stand-alone rule. While the materials discuss that either proposed Comment [6] be added to existing Rule 8.4 or proposed new Rule 8.4.2 be enacted, the materials presented both as if to possibly co-exist. As such, some of the commentary

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					<p>he or she deems professionally appropriate without having to confront such client. We question, though, if the caveat is necessary as it is difficult to imagine a situation where acting with incivility is the only way to not prejudice a client's rights and, as such, it may give a lawyer an excuse to act inappropriately.</p> <p>https://fs22.formsite.com/sbcta/files/f-316-86-24538674_lrz9Crtt_PA1_PA2_PA3_OC_Bar_Letter.pdf</p>	<p>Comment [4].</p> <p>(c)Comment [6] to CRPC Rule 8.4. This proposed Comment provides that a lawyer's violation of Rule 8.4(d) includes engaging in "significantly unprofessional conduct that is abusive or harassing in the practice of law or related professional activities". It is unclear to us what would constitute "significantly unprofessional conduct" and what the definitions of "abusive" or "harassing" are in this context. For such serious conduct that may give rise to attorney discipline, there seems to be a need for further definitions here or perhaps the Board could formulate and adopt standards as to what conduct would presumptively be considered "significantly unprofessional conduct that is abusive or harassing" for purposes of this rule, similar to the Standards adopted under former rule 1-400(E).</p>	<p>stated in subparagraph (c) above is repeated here.</p> <p>In Subsection (b) of the proposed rule, it is again unclear what would constitute "significantly unprofessional conduct" that is "abusive" or "harassing," thereby giving rise to incivility. Again, we find the direction in Comment [1] to lawyers to consult the Civility Guidelines misplaced and recommend that any applicable civility authorities be specifically listed.</p> <p>As mentioned above, we recommend deleting "by standing firm in the position of the client, protecting the record for subsequent review, or preserving professional integrity" because it provides for an excuse for a lawyer to act with incivility and seems contrary to the purpose of the proposed Comment [1] to Rule 1.2.</p>

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							Simply directing lawyers to consult the current California Lawyer Guidelines of Civility and Professionalism ("Civility Guidelines") for guidance under this proposed Comment seems unhelpful and misplaced because it is unclear which conduct described in the Guidelines would or could be considered "significantly unprofessional conduct." For example, the twenty-one section Civility Guidelines provides in Section 5(b) that attorneys should timely inform the other parties if the attorney will be late to court or a deposition and Section 9(a)(1) provides that, absent "unusual circumstances," attorneys noticing deposition should not set them to take place before previously noticed depositions in the case. While we agree that failure to follow these guidelines is uncivil, we do not believe		https://fs22.formsite.com/sbcta/files/f-316-86-24538674_lrz9Crtt_PA1_P_A2_PA3_OC_Bar_Letter_.pdf

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							lawyers should necessarily be disciplined for isolated transgressions of these guidelines. If the reference to the Civility Guidelines remains in Comment [6], it should identify which particular conduct described in the Guidelines could be “significantly unprofessional conduct that is abusive or harassing.” Additionally, if there are other applicable civility authorities, as implied by this proposed Comment, we recommend that they be specifically listed. The proposed Comment purports to clarify that a lawyer does not violate paragraph 8.4(d) by standing firm in the position of the client, protecting the record for subsequent review, or preserving professional integrity. We recommend deleting this provision as it suggests that it is acceptable to act with incivility under the pretense or excuse that such		

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							behavior is for any of these reasons. It further seems contrary to the purpose of the proposed Comment [1] to Rule 1.2. https://fs22.formsite.com/sbcta/files/f-316-86-24538674_lrz9Crtt_PA1_PA2_PA3_OC_Bar_Letter.pdf		
24356834	Riley, Rebecca	No	NA	A	Incivility has no place in a court of law. Sadly, it often requires the possibility of discipline to get that message through-- particularly it seems to newer attorneys.	A	Guidelines make it easier both to follow the law and to make it more difficult to claim ignorance.	A	
24006489	Shaneyfelt, David		A	A	As a long-time litigation attorney, I am concerned with the lack of civility that exists in the profession. In 2020, I published an article in the University of St. Thomas Law Review entitled, "Confessions of a Catholic Litigator," that addresses this issue and comments favorably on previous actions of the Bar to address the subject of civility.	A	As a long-time litigation attorney, I am concerned with the lack of civility that exists in the profession. In 2020, I published an article in the University of St. Thomas Law Review entitled, "Confessions of a Catholic Litigator," that addresses this issue and comments favorably on previous actions of the Bar to address the subject of civility.	A	As a long-time litigation attorney, I am concerned with the lack of civility that exists in the profession. In 2020, I published an article in the University of St. Thomas Law Review entitled, "Confessions of a Catholic Litigator," that addresses this issue and comments favorably on previous actions of the Bar to address the subject of civility.

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File No.	Commenter/Signatory	Org ¹	Atty/ Nona tty ²	Pos. 1.2 ³	Comment	Pos. 8.4 ³		Pos. 8.4.2 ³	
					See attached. https://fs22.formsite.com/sbcta/files/f-316-86-24006489_GgKOIYKF_PA1_Confessions_of_a_Catholic_Litigator.pdf		See attached. https://fs22.formsite.com/sbcta/files/f-316-86-24006489_GgKOIYKF_PA1_Confessions_of_a_Catholic_Litigator.pdf		See attached. https://fs22.formsite.com/sbcta/files/f-316-86-24006489_GgKOIYKF_PA1_Confessions_of_a_Catholic_Litigator.pdf
23841301	Sirkin, Mina	No	A	D	This is a useless amendment. Lawyers always have to act not to prejudice the clients, and often let the other side save face. This amendment achieves nothing.	D	This is very subjective and will allow all kinds of complaints to the Bar for no reason. Who is to say what is unprofessional or abusive? other lawyers? It is unnecessary and just a way for the Bar to file more complaints subjectively.	D	These are unnecessary and will just result in more complaints to the Bar. This is just a way for the Bar to make more money and does not help clients in any way.
24544416	Smith, Alice	No	A	D		D		D	
24519648	Sobel, Janet		A	D	This rule seems likely to chill the relationship between the lawyer and the client. Lawyers are going to be worried about disciplinary action against their licenses because sometimes getting sanctioned is simply something that comes with the territory of jealousy. If an attorney gets sanctioned for pushing too hard - which is a very subjective determination -	D	I think it is irresponsible and entirely unfair for the State Bar of California to hold lawyers liable for incivility when the disciplinary arm of the California State Bar itself has very recently affirmed undeniably uncivil behavior as within the parameters of acceptable attorney conduct in this state. No lawyer should be held by some judge as having behaved unethically	D	There is no way this State Bar can adopt a rule that is so obviously in the mind of the beholder and so dangerous to the lawyer's livelihood. When a judge determines behavior to be uncivil, appellate courts are likely to affirm, and what one judge determines to be uncivil will be imposed upon each situation, making lawyers afraid to speak up for their clients, which flies

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A = 42 AM = 5
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RULE 8.4 TOTAL = 65

A = 34 AM = 10
D = 20 NP = 1

RULE 8.4.2 TOTAL = 65

A = 34 AM = 11
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**Proposed New and Amended Rules
Synopsis of Public Comments**

File No.	Commenter/Signatory	Org ¹	Atty/ Nonatt ²	Pos. 1.2 ³	Comment	Pos. 8.4 ³	Pos. 8.4.2 ³
					<p>then who is to account for lawyers holding back their zealously because they fear for their own licenses.</p> <p>Now the State Bar of California considers adopting an ethical obligation on the part of lawyers to place their interests in avoiding actions against them for ethical transgressions related to zealously ahead of their clients' interests - a direct violation of a lawyer's fiduciary duty.</p> <p>In fact, this proposed rule goes so far as to make "incivility" an ethical transgression that can occur even where no judge or the courts are affected because the transaction involving the clients may be simply between two opposing lawyers. This rule will chill the zealously of any lawyer who fears their opponent will make a Complaint against them with the State Bar. If a</p>	<p>under this new Proposed set of rules when the prosecutors of the State Bar of California have declared worse behavior to be ethical enough to protect the public, which is the Mission of the State Bar.</p> <p>How can it be otherwise? The California State Bar is created and overseen by the California Supreme Court, which presumably understands how to know when conduct is "prejudicial to the administration of justice," and how to fairly enforce the rules that assure the smooth administration of justice. Can the California Supreme Court adopt rules that the California State Bar does not enforce when a Complaint from a member of the public is up for review? Put another way, if the California State Bar prosecutors determine certain conduct to be "civil," can judges determine similar conduct to be</p>	<p>in the face of the primary duty owed by lawyers to their clients, one of zealous representation.</p> <p>The patent impossibility of constructing a definition that can allow for the application of an objective standard makes this Proposed Rule fertile ground for appeals and unfair outcomes. As noted in my comments to Amendment to 8.4, this State Bar cannot expose lawyers to judicial action against their licenses for unethical conduct based on incivility when the prosecutors of this State Bar have declared clearly uncivil conduct to meet the ethical standards of this State Bar, as laid out in my attachment to my comments regarding the Oath of Civility, namely a January 2022 letter to the Office of Chief Trial Counsel.</p> <p>Moreover, this Proposed Rule would empower</p>

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**Proposed New and Amended Rules
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					<p>lawyer were to threaten such a thing, it would be an act of extortion, but the threat that someone might later accuse a lawyer uncivil demand letters. for example, then what?</p> <p>Additionally, this rule, like the Amendment to Rule 8.4 and Proposed Rule 8.4.2, will add to the mental and emotional burden of this profession. As my Comments on Proposed Amendment to Rule 8.4 Rule and Proposed Rule 8.4.2 will expand upon, the Rules of Professional Responsibility are already to blame for the stigma that undeniably leads to lawyers staying silent when they should be seeking help. The greater the fear that they will misstep the ethical boundaries and subject themselves to scrutiny by this State Bar, the more likely lawyers will be to betray their clients, which is an emotional and mental burden on lawyers, adding</p>	<p>unethical? If so, can State Bar prosecutors agree and take action against the licenses of lawyers whose conduct was nowhere near as uncivil as the ones the State Bar prosecutors declared to be fine and dandy? How can that be?</p> <p>In connection with the comments I submitted regarding the "Civility Oath" expansion, I attached a letter I sent to the Office of the Chief Trial Counsel in January of 2022, regarding precisely that scenario. In that case, my clients, members of the public, complained about undeniably uncivil behavior that this State Bar's prosecutors thought was within the standard of practicing lawyers in California. That case shows the kind of uncivil conduct that meets with the approval of this State Bar, and no Rules should be imposed upon other lawyers in this state that is</p>	<p>adverse counsel and parties to accuse a lawyer of engaging in uncivil conduct outside of a judicial proceeding, i.e., in demand letters and negotiations for pre-litigation resolutions, leading to increased numbers of Complaint to this overworked State Bar's prosecutors. This would lead to a financial impact of this Rule on the budget of this State Bar. In short, it would defeat the value of pre-litigation solutions to empower parties to use the threat of using Rule 8.4.2 against them as a negotiating tool. Think of the appellate law that is just waiting to be explored in the violations of all the rules and statutes that are meant to protect every lawyer's right and duty to be zealous on their clients' behalf, including at peril to themselves.</p> <p>Additionally, this is exactly the kind of Professional Rule of Conduct that makes</p>

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File No.	Commenter/Signatory	Org ¹	Atty/ Nonatt ²	Pos. 1.2 ³	Comment	Pos. 8.4 ³	Pos. 8.4.2 ³
					<p>to the stress and anxiety of this already difficult job.</p> <p>The public is substantially injured by the addictions, untreated mental illness, and suicides that mark every part of this profession. The American Bar Association was formed soon after the Civil War and its paradigm, which set the standard for all legal organizations, established the nature of how we practice law. It took almost 150 years for lawyers in marginalized groups to find positions of leadership in how this profession is run.</p> <p>The stigma of this profession falls hardest on people in marginalized groups because they will worry about being misjudged by people with the power to impair their livelihood and who hold different cultural views, or who interpret words to be uncivil when they are not seen that way by the</p>	<p>stricter than what this State Bar's own Chief Trial Counsel deems ethical. What passed ethical muster in that case should be the standard. How can it be otherwise?</p> <p>And if it cannot be otherwise, what can the definition of "incivility" be when all we have are examples of the kinds of incivility that meet the standard expected from this State Bar? Hypocrisy in what this State Bar expects of practicing attorneys, and the impossibility of assuring fairness to all lawyers, renders this Rule one that is impossible to execute.</p>	<p>practicing law so difficult. As of now, close to half of all lawyers are sorry they went to law school. That makes for a lot of unhappy lawyers who are probably not doing their best work. The primary interest of the State Bar should be to do what it can to support lawyers to be happy and healthy. Civility is driven in large part by the cutthroat attitude of attorneys (and sometimes judges) and cannot be isolated away from the emotional and mental well-being of lawyers, which is often made problematic by the rest of the Rules of Professional Conduct.</p> <p>This State Bar should not add another rule that puts fear in the hearts of lawyers, because that fear is not in the public's interest, which is promoted by lawyers whose undivided loyalty is to the clients. This is not to say that lawyers should behave contrary to the many rules that already</p>

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					<p>speaker, or who have a different standard of propriety. Monetary sanctions are one thing, but being accused of an ethical breach is an entirely different thing. Making lawyers worried about being subjected to claims of misfeasance for the manner of presenting an argument is certain to chill the very zealously that is the hallmark of a lawyer's duty to their clients.</p> <p>This Proposed Rule forces conflicts between lawyer and client and is an inappropriate rule to be imposed upon lawyers because it puts the lawyer's personal interests ahead of their clients. Not to mention the claims of malpractice that will accompany an attorney's being accused of ethical transgressions related to some adverse person's determination that they crossed some invisible line of incivility. This Proposed Rule, and the</p>				<p>exist to prohibit uncivil behavior, like the rules against abusive or harassing conduct towards members of the public. But, as noted earlier in my comments, even this State Bar's prosecutors have approved of egregious uncivil conduct by lawyers in violation of existing rules of conduct - so one more rule will serve only to hurt some lawyers and not others.</p> <p>This State Bar has existing rules for taking action against lawyers who engage in uncivil conduct, and the State Bar already exercises its power of investigation and disciplinary authority in its own arguably inconsistent and whimsical ways – and that is how it should continue to be. Arming judges with a new basis for punishing lawyers they don't like will not further the interests of our system of justice; it will further impair it.</p>

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					other two up for Public Comment on March 1, are a Can of Worms with injurious consequences that will not be fully recognized for a decade. Respectfully, Janet Sobel Bar#109945				Janet Sobel Bar #109945
24014188	Solomon, Richard		A	D	I am adamantly opposed to this proposed rule! Is there no area of our lives as lawyers that the State Bar does not seek to regulate or control in some manner or fashion? Is the exercise of such control not a violation of our fundamental constitutional right of free speech and expression? And just how does the Bar intend to enforce any alleged violation of such uncivil expression? Does the Bar have nothing better to do with our dues than this utter nonsense? The stated mission of the State Bar is to protect the public from the lawyers. What	D	I am adamantly opposed to this amendment! Is there no area of our lives as lawyers that the State Bar does not seek to regulate or control in some manner or fashion? Is the exercise of such control not a violation of our fundamental constitutional right of free speech and expression? And just how does the Bar intend to enforce any alleged violation of such uncivil expression? Does the Bar have nothing better to do with our dues than this utter nonsense? The stated mission of the State Bar is to protect the public from the lawyers. What	D	I am adamantly opposed to this amendment! Is there no area of our lives as lawyers that the State Bar does not seek to regulate or control in some manner or fashion? Is the exercise of such control not a violation of our fundamental constitutional right of free speech and expression? And just how does the Bar intend to enforce any alleged violation of such uncivil expression? Does the Bar have nothing better to do with our dues than this utter nonsense? The stated mission of the State Bar is to protect the public from the lawyers. What

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					about doing something to protect the lawyers and aid them in their practice?		about doing something to protect the lawyers and aid them in their practice?		about doing something to protect the lawyers and aid them in their practice?
23818506	stephanie	No	NA	A	To me acting civilly is a natural ethic. Sanctions should be imposed if attorney breaches the civility pledge.	A	Im happy state bar is proposing civil guidelines for attorneys and it's sad that they need the guidelines.	A	Attorneys r allowed to self govern which is a huge mistake and gives attorneys too much authority, therefore guidelines can help some from being uncivil to beneficiaries of trust, opposing party, 3rd party, witnesses, opposing counsel, etc...
23841326	StopCorruptLawyers.com (Beck)	Yes		D	I disagree with any regulation by The State Bar of California and it's unconstitutional "State Bar Court" because it is selectively used to steal from the public under color of State law.	D	I disagree with any regulation by The State Bar of California and it's unconstitutional use of "State Bar Court" - where the Board of Trustees is concealing a writ petition G061896 and the federal case 3:22-CV-01616-BAS-DDL from CSC and Legislature.	D	I disagree, since the Board of Trustees has ratified criminal conduct repeatedly yet continues to discuss rules as if they weren't leveraged in favor of themselves to the detriment of public interest.
23846755	The Consumer Bar (Carlson)	Yes	NA	A		A		A	
24408075	Vander Feer, Hon. John P.	No	NA	A		A		A	

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24536556	Wilbur, Lisa	No	NA	AM	My opinion is based upon my experiences after litigation was filed since 1993. The State Bar has my documentation since July 1993. It is the Client unless the Client's mental or emotional capacity presents as impaired at the onset of representation. For example, a mother in a post partum crisis accused of harm/death to her child/children. Otherwise I believe it should be written into the lawyer-client contract that a lawyer will be not be racist or discriminatory, exploit vulnerable clients like children, domestic violence victims, or non-American born clients in any and all proceedings. This would include all fee arbitration proceedings. For example, a lawyer mocked me in MFA before his local bar association per issues involving an estate lawyer who did everything to me a lawyer is never supposed to	AM	The State Bar has my documentation since July 1993. In addition, my opinions are based upon my experiences which reflect the State Bar's failure to protect the public for decades, especially vulnerable people or protected classes. The foundation of conduct for a lawyer should be to uphold loyalty and avoid all conflicts of interests. Further, that lawyers should tell on each other. If an issue of uncivil conduct is towards a member of a reported class, as I have been, the lawyer must be disbarred. Further, it should be written into the lawyer client contract that the lawyer will give up his or her law license if uncivil towards a protected class in Sanctuary State CA. The lawyer client contract should be the foundation of the relationship or presentation and it must include all issues of civility	AM	Please refer to my opinions in Proposals 1 and 2. All issues of civility or incivility must be in the lawyer client contract. The burden of proof should not be on the victimized client or having to jump through the State Bar's hoops to prove uncivil conduct. I have read the CA State Bar's RPC before and after 11/2018. They are complicated and presents as job security for the State Bar Court. What needs to be stated is that white privileged lawyers have gotten away with being uncivil, exploitation, and racist because lawyers in CA don't have to tell on each other. For example, I submitted a detailed complaint April 2013 and the response from the State Bar was that my complaint was rejected. To me, an Eurasian former immigrant from a Muslim country, that represented the State Bar's complicity in White Supremacy.

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					do to a client, and protected by the State Bar since 1993.		and anti-racist conduct. Until lawyers are held accountable for racism, exploiting domestic violence victims, vulnerable children, and protected classes, have to tell on each other, lawyers must state in their contract to be civil et al. I know it is a rule that the lawyer must give the client a signed copy of the related contract.		Again, the CA State Bar has had my documentation since July 1993.
24356816	Wiley, Monica		NA	A		A		A	
24376557	Women Lawyers Association of Los Angeles (Natoli)	Yes	A	A	https://fs22.formsite.com/sbcta/files/f-316-86-24376557_kZgKs6aV_PA3_WLALA_FORMAL_COMMENT_ON_NEW_RULES_OF_CIVILITY_PROPOSED_BY_THE_CALIFORNIA_CIVILITY_TASK_FORCE_-_sdj-edits_Y6yx.pdf	A	https://fs22.formsite.com/sbcta/files/f-316-86-24376557_kZgKs6aV_PA3_WLALA_FORMAL_COMMENT_ON_NEW_RULES_OF_CIVILITY_PROPOSED_BY_THE_CALIFORNIA_CIVILITY_TASK_FORCE_-_sdj-edits_Y6yx.pdf	A	https://fs22.formsite.com/sbcta/files/f-316-86-24376557_kZgKs6aV_PA3_WLALA_FORMAL_COMMENT_ON_NEW_RULES_OF_CIVILITY_PROPOSED_BY_THE_CALIFORNIA_CIVILITY_TASK_FORCE_-_sdj-edits_Y6yx.pdf
24043146	Woods, Sherri	No	A	D	Redundant and unnecessary. The obligation to behave already exists.	D	Redundant and unnecessary. The obligation to behave already exists.	D	Redundant and unnecessary. The obligation to behave already exists.
24374537	Worley, Kurt	No	A	A		A		A	

Proposed Changes to Lawyer Ethics Rules

Are you an attorney? Yes

Commenting on behalf of an organization No

Name Anonymous

From the choices below, we ask that you indicate DISAGREE with the proposed recommendations your position on Proposed Amendment 1. (This is a required field.)

From the choices below, we ask that you indicate DISAGREE with the proposed recommendations your position on Proposed Amendment 2. (This is a required field.)

From the choices below, we ask that you indicate DISAGREE with the proposed recommendations your position on Proposed Amendment 3. (This is a required field.)

Proposed Changes to Lawyer Ethics Rules

Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	Anonymous
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA2_" to the front of your file's name)	I oppose both 8.4 and 8.4.2 for the same reasons. I believe both of these rules could be wielded against criminal defense attorneys, who have a strict duty to their clients and who wish to act as zealous advocates. Because some defendants are particularly maligned by communities, and in turn, by victim advocates, DAs, and some courts, zealous advocacy could become the basis of charges -- though if the letter of the law is followed, I assume those changes would be unfounded by the state bar. Regardless, I think this strikes too broadly and should be narrowed.
From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA3_" to the front of your file's name)	I oppose both 8.4 and 8.4.2 for the same reasons. I believe both of these rules could be wielded against criminal defense attorneys, who have a strict duty to their clients and who wish to act as zealous advocates. Because some defendants are particularly maligned by communities, and in turn, by victim advocates,

DAs, and some courts, zealous advocacy could become the basis of charges -- though if the letter of the law is followed, I assume those changes would be unfounded by the state bar. Regardless, I think this strikes too broadly and should be narrowed.

Proposed Changes to Lawyer Ethics Rules

Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	Anonymous
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA1_" to the front of your file's name)	Civility is way too subjective a term. This could lead to targeting for ulterior motives.
From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA2_" to the front of your file's name)	Civility is way too subjective a term. This could lead to targeting for ulterior motives.
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ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA3_" to the front of your file's name)	Civility is way too subjective a term. This could lead to targeting and unjustified reporting for ulterior motives.

Proposed Changes to Lawyer Ethics Rules

Are you an attorney?	Decline to state
Commenting on behalf of an organization	No
Name	anonymous
City	berkeley
State	California
Email address	bp@hey.com
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA2_" to the front of your file's name)	the definition of what is abusive or harassment is a business the State Bar should not be involved in. It's a slippery slope and we already have laws against a lot of conduct that is already illegal. if you setup this rule, you will see a flood of complaints for people thinking they were abused or harassed. every defendant thinks the plaintiff's case is frivolous. you'll have ever pro se defendant claiming harassment and abuse. it will not be a productive endeavor for the state bar to be involved in this business.
From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA3_" to the front of your file's name)	"significantly" unprofessional conduct that is abusive of harassing and determined on the basis of the facts and circumstances surrounding the conduct is too vague.

Proposed Changes to Lawyer Ethics Rules

Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	Anonymous
City	Murrieta
State	California
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA1_" to the front of your file's name)	<p>Is this really a problem? Isn't this already required or implied as attorneys are the buffers between irrational clients and their misunderstandings and strict technical legal rules? Isn't this already contained in many retainer agreements that delegate the authority to an attorney?</p> <p>Too much bureaucracy seeking changes that appear to try to justify the bureaucrats' time and effort.</p>
From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA2_" to the front of your file's name)	<p>All too often, zealous advocacy is interpreted as being mean, hostile or incivil to a party or attorney. Challenging the accuracy of one's statements or the general credibility or integrity of a party or attorney is often necessary to cull inaccuracies from the truth, like by cross examination or deposition, or negotiation at the table. Yet pointing out those inaccuracies to a party or counsel has an insulting or "incivil"</p>

dimension. These common practices may be improperly interpreted under these proposed changes as "incivility" practices to test a witness or his/her allegations or version of events. Moreover, in a world of changing definitions or attacks on common English usage, like pronouns, one may too quickly ascribe incivility to those traditional practices.

For those who have practiced a decade, two decades or more (like me), we have matured beyond incivility practices often learned by over-eager new attorneys or those insulting practices observed on TV or movies.

There are enough rules with more objective criteria to deal with those who objectively engage in ethical improprieties, like those who pursue false claims or defenses, produce false evidence, or submit irrelevant malicious insults about parties, witnesses or counsel

From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.)

DISAGREE with the proposed recommendations

ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA3_" to the front of your file's name)

Incivility: "Significantly unprofessional conduct that is abusive or harassing and determined on the basis of facts and circumstances surrounding the conduct." In a world with growing feelings of being abused or harassed by any innocent or innocuous comment, this tripwire would be readily alleged and subject attorneys to a growth of bar complaints to respond to. "He harassed me" would become another very common cry to the Bar by opposing clients, opposing attorneys, hostile witnesses or others, when the attorney is merely doing her job trying to seek the truth. This would harm the practice of law by its

unworthy distractions from advocating for one's client. The time and energy required to respond to these complaints will distract and chill one from zealously defending a client's rights.

All too often, zealous advocacy is interpreted as being mean, hostile or incivil to a party or attorney. Challenging the accuracy of one's statements or the general credibility or integrity of a party or attorney is often necessary to cull inaccuracies from the truth, like by cross examination or deposition, or negotiation at the table. Yet pointing out those inaccuracies to a party or counsel has an insulting or "incivil" dimension. These common practices may be improperly interpreted under these proposed changes as "incivility" practices to test a witness or his/her allegations or version of events. Moreover, in a world of changing definitions or attacks on common English usage, like pronouns, one may too quickly ascribe incivility to those traditional practices.

For those who have practiced a decade, two decades or more (like me), we have matured beyond incivility...

... practices often learned by over-eager newer attorneys or those insulting practices observed on TV or movies. We don't engage in those practices nor condone or tolerate those who do. We are also not humored by those who would complain that our advocacy was not civil in violation of new untested ethical rules.

There are enough rules with more objective criteria to deal with those who objectively engage in ethical improprieties, like those who pursue false claims or defenses, produce false evidence,

or submit irrelevant malicious insults about
parties, witnesses or counsel

Proposed Changes to Lawyer Ethics Rules

Are you an attorney?	Yes
Commenting on behalf of an organization	No
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA1_" to the front of your file's name)	Civility/incivility is a completely subjective notion.
From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA2_" to the front of your file's name)	Civility/incivility is a completely subjective notion. The end effect of this amendment will be lawyers who are punished for hurting someone's feelings and/or for zealously advocating for their clients. No amount of "examples" or "guidelines" will turn a subjective standard into an objective one.
From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA3_" to the front of your file's name)	Civility/incivility is a completely subjective notion. Lawyers must already pass the professional responsibility portion of the bar exam and they have continuing duties of professionalism to their client and duties of candor to the courts. The end effect of this amendment will be lawyers who are punished for hurting someone's feelings and for zealously advocating for their clients. No amount of "examples" or "guidelines" will turn a subjective standard into an objective one.

Proposed Changes to Lawyer Ethics Rules

Are you an attorney? No

Commenting on behalf of an organization No

Name Anonymous

From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.) AGREE with the proposed recommendations

From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.) AGREE with the proposed recommendations

From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.) AGREE with the proposed recommendations

Proposed Changes to Lawyer Ethics Rules

Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	Louis Anthes
City	Long Beach
State	California
Email address	dr.louis.anthes@gmail.com
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)	AGREE ONLY if Modified
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA2_" to the front of your file's name)	<p>"Comment [6] would state that significantly unprofessional conduct that is abusive or harassing in the practice of law or related professional activities would violate rule 8.4(d)."</p> <p>"related professional activities" violates the First Amendment to the US Constitution because of VAGUENESS. If the rule and comment are adopted, it should only apply to limited circumstances directly involving the practice of law.</p>
From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.)	AGREE ONLY if Modified
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA3_" to the front of your file's name)	"rule 8.4.2. Subparagraph (a) of the rule would state that a lawyer shall not engage in incivility in the practice of law or related professional activities."

"related professional activities" violates the First Amendment to the US Constitution because of VAGUENESS. If the rule is adopted, it should only apply to limited circumstances directly involving the practice of law.

Proposed Changes to Lawyer Ethics Rules

Are you an attorney?	Yes
Commenting on behalf of an organization	Yes
Name	Erica Yen
Professional Affiliation	Asian Pacific American Bar Association of Los Angeles County
City	Los Angeles
State	California
Email address	ericayen.apaba@gmail.com
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	AGREE ONLY if Modified
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA1_" to the front of your file's name)	See attached.
From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)	AGREE ONLY if Modified
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA2_" to the front of your file's name)	See attached.
From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.)	AGREE ONLY if Modified
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA3_" to the front of your file's name)	See attached.

ATTACHMENTS You may upload your comment as an attachment. Only one attachment will be accepted per comment submission. We accept the following file types: text (.txt), Microsoft Word (.doc), WordPerfect (.wpd), Rich Text Format (.rtf) and Adobe Acrobat PDF (.pdf). We do not accept any other file types. Please **DO NOT** submit scanned documents. Files must be less than 4 megabytes in size.

[PA2_and_PA3_APABA_Civility_Amendment_Comments_Letter_-_2023.03.01.pdf \(164 KB\)](#)



**ASIAN PACIFIC AMERICAN BAR ASSOCIATION
OF LOS ANGELES COUNTY**

1145 Wilshire Boulevard, 2nd Floor
Los Angeles, CA 90017
www.apaba.org

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Flora Yin

March 1, 2023

Via Online Public Comment Form

Ruben Duran, Chair
California State Bar Board of Trustees
180 Howard Street
San Francisco, California 94105

**Re: Comments On Proposed Amendments To California Rule Of Court 9.7,
The California Rules Of Professional Conduct, and New MCLE Civility
Course Requirements**

Dear Mr. Duran:

The Asian Pacific American Bar Association (APABA) of Los Angeles County hereby writes in response to the State Bar's invitation for public comment on certain amendments to the California Rules of Court, Rules of Professional Conduct, and Rules Governing Minimum Continuing Legal Education.

As you may be aware, in December 2021, APABA issued a resolution supporting the California Civility Task Force's ("Task Force") four recommendations, dated September 2021. We are pleased to see the State Bar taking action to adopt those recommendations to improve the quality and collegiality of law practice in California.

1. Proposed Amendments To California Rule of Court 9.7

APABA endorses the positions taken in the Task Force's letter to you, from Justice Brian S. Currey, dated January 23, 2023. In other words, APABA fully supports the Board of Trustees' proposed amendments to California Rule of Court 9.7 that would require all licensees who did not take the attorney oath with the civility language, as well as specially admitted attorneys, to submit a declaration with the civility pledge by February 1, 2024. We also fully support all licensees and specially admitted attorneys being required to complete the civility pledge on an annual basis when paying licensing fees or registering as a specially admitted attorney.

2. Proposed Amendments To Rules of Professional Conduct

APABA endorses the positions taken in the Task Force's letter to you dated January 23, 2023, with additional comments as follows:

The Task Force's proposed revision to the State Bar's proposed Rule 8.4.2(a) focused on removing conduct in "related professional activities" from being covered under prohibited incivility, such as speech or conduct at bar functions, presentations



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OF LOS ANGELES COUNTY

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in CLE courses, and other related activities. It appears that this proposed revision excludes from the civility requirement even those attorneys acting on behalf of a client while *not* in the course of practicing law. For example, as currently worded, it appears the Task Force's revisions would not have the civility requirement apply to an attorney who gives a press conference on behalf of a client and makes inflammatory statements that are abusive or harassing. APABA recommends additional clarity and confirmation that incivility is prohibited in conduct and speech in the course of client representation not just in a courtroom or in communications with opposing counsel, but also in any actions taken on behalf of a client.

Otherwise, application of the proposed amendments to the Rules of Professional Conduct could contain potential unconstitutional vagueness pitfalls since a common root cause of incivility is the effect on the listener (e.g., **perceived** personal insult or dislike). This would invite a purely subjective standard.

In addition, the State Bar revisions add the language of "significantly unprofessional conduct" as part of the definition for "incivility." There does not appear to be a legal standard for conduct that is "significantly" unprofessional. While there are California Attorney Guidelines of Civility and Professionalism and other civility authorities, these guidelines do not provide a scale or standard to determine to what extent certain conduct (whether a single incident or continuous) could be considered significantly unprofessional. The State Bar should consider clarifying whether an appropriate standard should exist for this, or if it should merely be vested in the discretion of a fact finder (e.g., a State Bar judge).

3. Proposed Amendments To Minimum Continuing Legal Education Rules

APABA endorses the position taken in the Task Force's letter to you dated January 23, 2023 regarding the proposed amendments to the rules regarding minimum continuing legal education (MCLE) requirements. In other words, APABA fully supports the Board of Trustees' proposal to amend the MCLE rules to require that all licensees complete one hour of MCLE on the topic of civility in the legal profession as part of their existing 25-hour MCLE requirement, and that approved civility courses cover the relationship between bias and incivility.

We appreciate the opportunity to express our views. Thank you for your consideration.

Sincerely,

Erica Yen
President

Proposed Changes to Lawyer Ethics Rules

Are you an attorney?	Yes
Commenting on behalf of an organization	Yes
Name	Esther Ro
Professional Affiliation	Asian Pacific American Women Lawyers Alliance
City	Los Angeles
State	California
Email address	erothehero@gmail.com
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA1_" to the front of your file's name)	Please note APAWLA does not take a position on this proposed rule, but the form requires checking off one of the choices.
From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA2_" to the front of your file's name)	Please note APAWLA does not take a position on this proposed rule, but the form requires checking off one of the choices.
From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.)	AGREE ONLY if Modified
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA3_" to the front of your file's name)	Please see attached comments.
ATTACHMENTS You may upload your comment	PA3_APAWLA_Comments_re_Proposed_

as an attachment. Only one attachment will be accepted per comment submission. We accept the following file types: text (.txt), Microsoft Word (.doc), WordPerfect (.wpd), Rich Text Format (.rtf) and Adobe Acrobat PDF (.pdf). We do not accept any other file types. Please DO NOT submit scanned documents. Files must be less than 4 megabytes in size.

[Civility_Rules.pdf \(419 KB\)](#)

Via State Bar comments portal

Re: Asian Pacific American Women Lawyers Alliance Comments to Civility Proposals
Being Considered by the State Bar Board of Trustees

The Asian Pacific American Women Lawyers Alliance (APAWLA) submits the following comments on amendments to California Rules of Court, rule 9.7 and on the new proposed rule, California Rules of Professional Conduct, rule 8.4.2.

Regarding amendments to California Rules of Court, rule 9.7, APAWLA supports the amendments requiring that active attorneys practicing in California be required to take an oath of civility and to reaffirm their commitment annually. The annual recommitment will serve as an ongoing reminder of the importance of practicing law with dignity, courtesy and integrity.

Regarding the new proposed rule to California Rules of Professional Conduct, rule 8.4.2, APAWLA generally supports the inclusion of a rule to discipline attorneys who engage in conduct that is abusive and harassing. Similar to the comments submitted by the California Task Force on Civility (Jan. 11, 2023, Justice Brian S. Currey), we believe the phrase “and professional activities” may implicate First Amendment issues and fails to clearly define the activities at which an attorney may be subjected to discipline.

We stress, however, that even if certain conduct may not be subject to or rise to the level of discipline, that does not countenance incivility in any form or at any venue. As set forth in the addendum to the Civility Task Force Report, and as experienced by members of APAWLA in the course of their legal careers, experiencing incivility, including incivility resulting from explicit and implicit biases, stubbornly remains a problem in our profession. As set forth in the addendum to the Civility Task Force Report, studies demonstrate that women and attorneys of color, among others, find themselves on the receiving end of bias-driven incivility. Experiencing incivility because of one’s identity may be deeply and personally felt by attorneys of color and women attorneys; it hits differently, for example, than incivility an attorney may experience from opposing counsel because they are engaged in a highly contentious matter. The State Bar should be clear that removing the possibility of discipline does not diminish each attorney’s responsibility to eliminate incivility in the workplace and at professional activities.

Further, we recognize the good intentions behind the proposed rule to protect lawyers who are subjected to abusive or harassing levels of incivility in their practices. But in order to have its intended effect, the State Bar and attorneys writ large need to be vigilant to ensure the rule is applied equitably in practice and does not result in disproportionate application to attorneys who stand to be protected by the new rule. The State Bar needs to remain cognizant that the rule could have an adverse and disproportionate impact on the same attorneys it intends to protect, if the rule is used against them by individuals claiming incivility based on conduct that is perceived as “inappropriate” or “out of line.”¹ Prejudices, stereotypes and biases may impact the perspective of the individual reporting incivility or the State Bar investigator’s perception of what happened. For example, the same conduct by a woman attorney of color versus a white male attorney may be perceived differently due to racism and sexism. In recent memory, the phrase

¹ *When Civility Is Used As A Cudgel Against People Of Color* (Karen Grigsby Bates, Mar. 14, 2019) available at <https://www.npr.org/sections/codeswitch/2019/03/14/700897826/when-civility-is-used-as-a-cudgel-against-people-of-color>. In the efforts of fighting for civil rights and changing the status quo to increase equity, explaining how “pushing back against the status quo will be seen as inherently uncivil by the people who want to maintain it.”

"nasty woman" comes to mind as an example of trying to label a woman leader as uncivil and disagreeable. We urge the State Bar to provide appropriate training to its investigators to ensure sensitivity to these issues that may arise during enforcement of the rule.

* * *

APAWLA is a Los Angeles-based bar association that promotes the inclusion, empowerment and advancement of Asian American and Pacific Islander women in the legal profession through advocacy, mentoring, and educational programming. APAWLA's mission statement is inspired by the ongoing movement for civil rights and for gender and racial equity for all. Our members represent a broad cross-section of the legal community, including lawyers, judges, and law students throughout California who work for law firms, non-profit organizations and government agencies.

Via State Bar comments portal

Re: Asian Pacific American Women Lawyers Alliance Comments to Civility Proposals
Being Considered by the State Bar Board of Trustees

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Further, we recognize the good intentions behind the proposed rule to protect lawyers who are subjected to abusive or harassing levels of incivility in their practices. But in order to have its intended effect, the State Bar and attorneys writ large need to be vigilant to ensure the rule is applied equitably in practice and does not result in disproportionate application to attorneys who stand to be protected by the new rule. The State Bar needs to remain cognizant that the rule could have an adverse and disproportionate impact on the same attorneys it intends to protect, if the rule is used against them by individuals claiming incivility based on conduct that is perceived as “inappropriate” or “out of line.”¹ Prejudices, stereotypes and biases may impact the perspective of the individual reporting incivility or the State Bar investigator’s perception of what happened. For example, the same conduct by a woman attorney of color versus a white male attorney may be perceived differently due to racism and sexism. In recent memory, the phrase

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* * *

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Proposed Changes to Lawyer Ethics Rules

Are you an attorney?	Yes
Commenting on behalf of an organization	Yes
Name	William C. O'Neill
Professional Affiliation	President, Association of Business Trial Lawyers (Orange County)
City	Costa Mesa
State	California
Email address	wco@rossllp.com
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA1_" to the front of your file's name)	On behalf of the Orange County, San Diego, San Joaquin, and Los Angeles chapters of the Association of Business Trial Lawyers, we attach a letter joining in CCTF's comments to those proposals, as set forth in Justice Brian Currey's January 11, 2023 letter.
From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)	AGREE ONLY if Modified
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA2_" to the front of your file's name)	On behalf of the Orange County, San Diego, San Joaquin, and Los Angeles chapters of the Association of Business Trial Lawyers, we attach a letter joining in CCTF's comments to those proposals, as set forth in Justice Brian Currey's January 11, 2023 letter.
From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.)	AGREE ONLY if Modified

ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA3_" to the front of your file's name)

On behalf of the Orange County, San Diego, San Joaquin, and Los Angeles chapters of the Association of Business Trial Lawyers, we attach a letter joining in CCTF's comments to those proposals, as set forth in Justice Brian Currey's January 11, 2023 letter.

ATTACHMENTSYou may upload your comment as an attachment. Only one attachment will be accepted per comment submission. We accept the following file types: text (.txt), Microsoft Word (.doc), WordPerfect (.wpd), Rich Text Format (.rtf) and Adobe Acrobat PDF (.pdf). We do not accept any other file types. Please DO NOT submit scanned documents. Files must be less than 4 megabytes in size.

[PA3__ABTL_Letter_-_civility.pdf \(67 KB\)](#)



Via electronic submission to the State Bar

Ruben Duran, Chair
State Bar Board of Trustees
180 Howard Street
San Francisco, CA 94105

Re: ABTL Comments to State Bar Civility Proposals

Dear Mr. Duran and Members of the Board of Trustees:

With chapters in Los Angeles, Northern California, Orange County, San Diego, and the San Joaquin Valley, the Association of Business Trial Lawyers – commonly known as ABTL – is California's premier professional association for business trial lawyers. By design, we have a diverse membership, including practitioners from the plaintiff and defense bars from law firms of all sizes, solo practitioners, and members of the state and federal judiciary. Civility and professionalism are at the heart of everything we do. We recognize that building and strengthening relationships with colleagues – including potential adversaries – enhances the professional environment for members and better serves clients and the public.

As detailed in its initial report, the California Civility Task Force (CCTF) is, in a very real sense, an outgrowth of our efforts to improve professionalism and civility in the legal profession. We have followed the work of the CCTF closely and support the various civility proposals now being considered by the State Bar. We join in CCTF's comments to those proposals, as set forth in Justice Brian Currey's January 11, 2023 letter.

Thank you for considering our views.

A handwritten signature in black ink, appearing to read "K. Boyle".

Kevin R. Boyle
President
Los Angeles

A handwritten signature in black ink, appearing to read "W. O'Neill".

William C. O'Neill
President
Orange County

A handwritten signature in blue ink, appearing to read "Mandy L. Jeffcoach".

Mandy L. Jeffcoach
President
San Joaquin Valley

A handwritten signature in black ink, appearing to read "Paul Reynolds".

Paul Reynolds
President
San Diego

Proposed Changes to Lawyer Ethics Rules

Reference #	24035537
Status	Complete
Are you an attorney?	Yes
Commenting on behalf of an organization	Yes
Name	Jonathan Patchen
Professional Affiliation	Association of Business Trial Lawyers, Northern California Chapter
City	San Francisco
State	California
Email address	jpatchen@willkie.com
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA1_" to the front of your file's name)	The Association of Business Trial Lawyers, Northern California Chapter (https://abtl.org/northerncalifornia/) has been a leader in promoting civility guidelines in the legal profession. On behalf of our nearly 2000 members, we submit this comment to state that our Chapter AGREES with the Proposal and encourages the State Bar to adopt it.
From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA2_" to the front of your file's name)	The Association of Business Trial Lawyers, Northern California Chapter (https://abtl.org/northerncalifornia/) has been a leader in promoting civility guidelines in the legal profession. On behalf of our nearly 2000

members, we submit this comment to state that our Chapter AGREES with the Proposal and encourages the State Bar to adopt it.

From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.)

ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA3_" to the front of your file's name)

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Last Update	2023-01-16 20:17:03
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Start Time	2023-01-16 20:16:28
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Finish Time	2023-01-16 20:17:03
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IP	Anonymous
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Browser	Other
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Device	Other
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Referrer	N/A
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Proposed Changes to Lawyer Ethics Rules

Are you an attorney?	Yes
Commenting on behalf of an organization	Yes
Name	Ninos Saroukhanioff
Professional Affiliation	Association of Southern California Defense Counsel
City	Los Angeles
State	California
Email address	jennifer@caladmanagement.com
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA1_" to the front of your file's name)	Please see attached correspondence.
From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA2_" to the front of your file's name)	Please see attached correspondence.
From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA3_" to the front of your file's name)	Please see attached correspondence.

ATTACHMENTSYou may upload your comment as an attachment. Only one attachment will be accepted per comment submission. We accept the following file types: text (.txt), Microsoft Word (.doc), WordPerfect (.wpd), Rich Text Format (.rtf) and Adobe Acrobat PDF (.pdf). We do not accept any other file types. Please **DO NOT** submit scanned documents. Files must be less than 4 megabytes in size.

[ASCDC_Letter_Re_Proposed_Rules_-_Civility_Feb_2023.pdf \(555 KB\)](#)



ASSOCIATION OF
SOUTHERN CALIFORNIA
DEFENSE COUNSEL

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March 1, 2023

Ruben Duran, Chair
State Bar Board of Trustees
180 Howard St.
San Francisco, CA 94105

Re: Public Comment on the State Bar of California's Proposed Civility Rules

Dear Mr. Duran:

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VENTURA COUNTY
Michael LeBow

The Association of Southern California Defense Counsel (ASCDC), provides the following public comment in support of the Proposed State Bar Civility Rules.

ASCDC has approximately 1,200 members and is the largest regional organization in the country devoted to the interests of civil defense attorneys. ASCDC has long been a proponent of supporting civility amongst lawyers, the judiciary and our clients both in and outside of the courtroom. ASCDC provides educational seminars and webinars throughout the year to both members and non-members. We routinely host a seminar devoted to encouraging civility with panels consisting of judges, plaintiff's attorneys, and defense attorneys. The ASCDC leadership works closely with the leadership of Consumer Attorneys Association of Los Angeles, the American Board of Trial Advocates, the California Judges Association as well as numerous bar associations to promote civility, as well as providing and participating in diversity, equality and inclusion programs.

ASCDC hereby submits its public comment on the following proposals:

1. ASCDC **SUPPORTS Proposal 1** of the Task Force Initial Report. ASCDC SUPPORTS the Board's proposed amendments to the MCLE rules requiring all licensees complete one hour of MCLE on civility in the legal profession, and that the approved course cover

the relationship between bias and incivility as part of their existing 25-hour MCLE requirement. ASCDC asks the State Bar Board of Trustees to mandate one hour of civility MCLE training for attorneys, without increasing total MCLE hours.

2. ASCDC **SUPPORTS Proposal 2** of the Task Force Initial Report and asks the Chief Justice, as head of the Judicial Council, and the Center for Judicial Education and Research Advisory Committee (CJER) to provide voluntary training to judges on promoting civility inside and outside courtrooms.
3. ASCDC **SUPPORTS Proposal 4** of the Task Force Initial Report and asks the Supreme Court to amend Rule of Court 9.7 to require all attorneys, when annually renewing their licenses to practice law, to swear or affirm: "As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy and integrity." ASCDC also **SUPPORTS** the Board's proposed amendments to California Rule of Court 9.7 which would require all State Bar licensees and specially admitted licensees who did not take the civility pledge to submit a declaration with the civility pledge by February 1, 2024.
4. With respect to **Proposal 3** of the Task Force Initial Report and the related proposed changes to the Rules of Professional Conduct, attached as Appendix 8 to the Initial Report. After careful consideration of the Proposal and the related changes to the Rules of Professional Conduct, the **ASCDC is unable to support Proposal 3 at this time.** While ASCDC fully supports promoting civility in our profession, we find some of the proposed language to be unclear and could have the consequence of creating a conflict between a lawyer and his or her client. Specifically, the following proposed language of 1.2 is unclear: "*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..." Comment 6 is unclear: "A lawyer's violation of paragraph (d) includes engaging in significantly *unprofessional conduct that is abusive or harassing* in the practice of law *or related professional activities*. We have concerns that proposed Rule 8.4.2 could be used by a lawyer looking to gain an advantage during litigation. ASCDC also believes that the Rule should be limited to, "incivility in the practice of law." The ASCDC finds the language "or related professional activities" to be unclear and potentially unrelated to the practice of law.

ASCDC wishes to thank the leadership of the California Civility Task Force for their hard work on these important topics. We look forward to learning the Bar's response to the public comment and how it continues to work to promote civility within the practice of law.

Very truly yours,

Ninos Saroukhanioff

Ninos Saroukhanioff
ASCDC President

Proposed Changes to Lawyer Ethics Rules

Are you an attorney?	No
Commenting on behalf of an organization	No
Name	Bunmi Awoniyi
Professional Affiliation	CJA
City	Sacramento
State	California
Email address	Awoniyb@saccourt.ca.gov
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.)	AGREE with the proposed recommendations

Proposed Changes to Lawyer Ethics Rules

Are you an attorney?	No
Name	Hernaldo Jose Baltodano
Professional Affiliation	Appellate Justice
City	San Luis Obispo
State	California
Email address	hernaldo.baltodano@jud.ca.gov
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.)	AGREE with the proposed recommendations

Proposed Changes to Lawyer Ethics Rules

Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	Shiloh Bentacourt
City	Brentwood
State	California
Email address	shiloh.bentacourt@icloud.com
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA1_" to the front of your file's name)	I've been a lawyer for the past 2 years and I have witnessed how a lawyers incivility can negatively affect a persons ability to access the justice system and judges allow it.
From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA2_" to the front of your file's name)	I've been a lawyer for the past 2 years and I have witnessed how a lawyers incivility can negatively affect a persons ability to access the justice system and judges allow it.
From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA3_" to the front of your file's name)	I've been a lawyer for the past 2 years and I have witnessed how a lawyers incivility can negatively affect a persons ability to access the justice system and judges allow it.

Proposed Changes to Lawyer Ethics Rules

Are you an attorney?	Yes
Commenting on behalf of an organization	Yes
Name	Belinda Macauley
Professional Affiliation	Beverly Hills Bar Association
City	Beverly Hills
State	California
Email address	bmacauley@bhba.org
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA2_" to the front of your file's name)	<p>The California Civility Task Force (CCTF), a joint project of the California Judges Association and the California Lawyers Association, has recommended that the State Bar of California modify its rules to state that incivility constitutes professional misconduct, and subjects offending attorneys to discipline by the State Bar of California.</p> <p>This proposal follows observations of growing incivility that undermines our whole profession and the justice system, including by heightening stress and job dissatisfaction among lawyers and judges and increasing costs and delays in litigation and transactions. The CCTF also notes that incivility disproportionately impacts “young lawyers, women lawyers, lawyers of color, and lawyers from other marginalized groups.”</p>

The Beverly Hills Bar Association supports this proposal. Civility must be a cornerstone of the legal profession—essential for our advocates to demonstrate and foster. In order for civility obligations to be meaningful, they must be backed by the State Bar’s enforcement mechanisms.

As a voluntary bar, the Beverly Hills Bar Association has adopted a civility policy and expects behavior consistent with it from our members, leaders, and staff. That expectation is reasonable and achievable, and benefits the legal profession, our justice system, and the public. But the consequences a voluntary bar can impose are limited. When incivility rises to the level of professional misconduct, it is appropriate that an attorney face the wider range of repercussions that the State Bar of California, as our licensing entity, can impose.

From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.) ☐ AGREE with the proposed recommendations

Proposed Changes to Lawyer Ethics Rules

Are you an attorney?	Yes
Commenting on behalf of an organization	Yes
Name	Joseph P. McMonigle
Professional Affiliation	CAL-ABOTA
City	San Francisco
State	California
Email address	jmcmonigle@longlevit.com
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA1_" to the front of your file's name)	No comment.
From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA2_" to the front of your file's name)	No comment
From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA3_" to the front of your file's name)	See attached.
ATTACHMENTS You may upload your comment	PA3_Cal-ABOTA_Public_Comment_Regarding_

as an attachment. Only one attachment will be accepted per comment submission. We accept the following file types: text (.txt), Microsoft Word (.doc), WordPerfect (.wpd), Rich Text Format (.rtf) and Adobe Acrobat PDF (.pdf). We do not accept any other file types. Please DO NOT submit scanned documents. Files must be less than 4 megabytes in size.

[Proposed_Rule_8.4.2.pdf \(539 KB\)](#)



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* Deceased

VIA ELECTRONIC SUBMISSION TO THE STATE BAR & EMAIL

Ruben Duran, Chair
State Bar Board of Trustees
180 Howard St.
San Francisco, CA 94105

Re: CAL-ABOTA's Public Comment Regarding Proposed Rule 8.4.2

Dear Mr. Ruben Duran:

In my capacity as Vice President of the California Chapters of American Board of Trial Advocates (CAL-ABOTA), an organization representing over 1700 trial lawyers, I write to express the organization's serious concerns regarding Proposed Rule 8.4.2 to the California Rules of Professional Conduct (the "Proposed Rule.") While CAL-ABOTA certainly values the intended purpose of the Proposed Rule – namely, the prevention of incivility in the legal profession – CAL-ABOTA is of the strong opinion that the Proposed Rule is not the right method by which to achieve this objective.

The primary reason that CAL-ABOTA opposes adoption of the Proposed Rule is that the organization believes that the Proposed Rule is likely to be exploited and weaponized by opposing attorneys during adversarial proceedings. CAL-ABOTA is of the impression that, if the Proposed Rule was adopted, it would serve as a vehicle for the very conduct it seeks to prohibit (i.e., unprofessional, abusive, and harassing conduct.) CAL-ABOTA believes that attorneys may make less-than-meritorious disciplinary complaints against other attorneys claiming that they violated the Proposed Rule in an effort to gain leverage in litigation.

The Proposed Rule is particularly susceptible to weaponization because, as drafted, it is strikingly nebulous and amorphous. Apart from vaguely stating that, "'incivility' means significantly unprofessional conduct that is abusive or harassing," the Proposed Rule fails to give any clear indication of what specific types of conduct fall under its purview. The Proposed Rule does not define the terms "*significantly* unprofessional conduct" or "related professional activities" – leaving the meaning of these phrases up to subjective interpretation and conjecture. The Proposed Rule also does not define two key words: "abusive" and "harassing." Moreover, the Proposed Rule states that, "incivility...shall be determined on the basis of all the facts and circumstances surrounding the conduct" – further evidencing the Proposed Rule's open-ended ambiguity. Overall, the

Proposed Rule is problematic because the average, California-licensed attorney, upon reading the Proposed Rule, will not be able to readily determine what types of conduct constitute a violation (not including the most egregious examples) and what types of conduct do not.

Comment 1 directs one to the California Attorney Guidelines of Civility and Professionalism for guidance, but the Guidelines do not provide examples of the types of activities and/or behavior that are “abusive,” “harassing,” or amount to “significantly unprofessional conduct.” A review of the Guidelines arguably leaves attorneys with more questions than answers.

Furthermore, CAL-ABOTA is of the opinion that current Rule 8.4(d) would encompass the vast majority, if not all, of the uncivil conduct contemplated by the Proposed Rule. Surely if an attorney engaged in “significantly unprofessional conduct that is abusive or harassing,” this would amount to conduct that is “prejudicial to the administration of justice,” and thus, constitute a violation of Rule 8.4(d). Conduct contemplated by the Proposed Rule would necessarily be “prejudicial to the administration of justice” because it would undermine the public’s trust and confidence in the legal system. Arguably, current Rule 8.4(d) obviates any need for the Proposed Rule.

CAL-ABOTA acknowledges the existence of Rule 3.10 of the California Rules of Professional Conduct that provides: “(a) A lawyer shall not threaten to present disciplinary charges to obtain an advantage in a civil dispute.” Our experience is that this Rule is rarely invoked as a basis for discipline and does not represent a deterrent to members of the Bar to refrain from filing frivolous State Bar complaints. Notably, Rule 3.10’s commentary specifically indicates that the rule “does not prohibit actually presenting...disciplinary charges.”

It should be noted that CAL-ABOTA prides itself on being a leader in promoting civil and ethical behavior in the legal profession – in fact, fostering civility in the practice of law is one of the organization’s primary goals. CAL-ABOTA’s commitment to civility in the legal profession is unequivocally demonstrated by CAL-ABOTA’s October 2021 Resolution in Support of the California Civility Task Force, which, amongst other things, requested that the State Bar mandate one hour of civility MCLE training for all practicing attorneys. In recognition of the incivility present in the legal profession and its disproportionate impact on members of marginalized communities, CAL-ABOTA specifically asserted that, “[s]ome portion of the civility training should be devoted to making the profession more welcoming to underrepresented groups by addressing the link between incivility and bias.” CAL-ABOTA’s prioritization of civility is also shown by the fact that the organization regularly conducts “Civility Matters” presentations at law schools and law firms statewide – in an effort to ensure that aspiring and seasoned attorneys alike appreciate and understand the importance of civility in the practice of law.

Despite CAL-ABOTA's dedication to cultivating civility in the legal profession, the organization has insurmountable reservations regarding the Proposed Rule, and is concerned about the likelihood of abuse if it is adopted. Therefore, CAL-ABOTA does not support the adoption and incorporation of the Proposed Rule into the Rules of Professional Conduct.

CAL-ABOTA of course remains steadfast in its mission to promote civility and intends to spearhead civility-related initiatives in the near future – aspiring to make the legal profession more collaborative, welcoming, and civility-focused.

Sincerely,

A handwritten signature in blue ink that reads "J. P. McMonigle". The signature is written in a cursive, flowing style.

Joseph P. McMonigle
Vice President of CAL-ABOTA

Proposed Changes to Lawyer Ethics Rules

Are you an attorney?	Yes
Commenting on behalf of an organization	Yes
Name	Jack Londen
Professional Affiliation	California Access to Justice Commission
City	Oakland
State	California
Email address	jlonden@calatj.org
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA1_" to the front of your file's name)	<p>We Support the Proposed Amendments to California Rules of Professional Conduct 1.2 and 8.4, and Creation of New Rule 8.4.2, Addressing Civility – with Proposed Modifications to Comment [1] to Rule 1.2 and Comment [4] to Rule 8.4.</p> <p>The proposed amendments to the California Rules of Professional Conduct will further support civility in the legal profession.</p> <p>First, the proposed amendment to Rule of Professional Conduct 1.2 would add language in comment [1] regarding the allocation of authority between a client and a lawyer. This amended comment appropriately clarifies that while the client controls the decisions concerning the objectives of representation, the attorney retains the authority and professional responsibility to act with civility in pursuing those objectives. Because, as noted, the Access Commission is particularly interested in the professional</p>

responsibility of civility in dealing with self-represented parties, we recommend that the language in comment [1] not unnecessarily be limited to “requests of opposing counsel” but instead also include requests by self-represented parties, as follows:

Notwithstanding a client’s direction, a lawyer retains the authority to agree to reasonable requests of opposing counsel or self-represented parties 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.

Calling attention to an attorney’s professional responsibility to agree to reasonable requests by self-represented parties will further the objectives of increasing...

... civility in the profession, supporting access to justice, and reducing barriers to justice for those that do not have counsel.

Second, the proposed amendment to Rule of Professional Conduct 8.4 regarding misconduct adds the following language in comment [6] explaining that significant unprofessional conduct can be prejudicial to the administration of justice, as follows:

[6] A lawyer’s 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.

This proposed comment appropriately explains that significantly unprofessional conduct can be a basis for a finding of attorney misconduct and that it undermines the profession and the administration of justice. The additional proposed amendment to comment [4], cross-referencing the proposed new stand-alone rule 8.4.2, also is helpful. However, this comment can be further clarified by expressly stating that such conduct may be a basis for discipline, as follows:

[4] A lawyer may be disciplined under Business and Professions Code section 6106 for acts involving moral turpitude, dishonesty, or corruption, whether intentional, reckless, or grossly negligent. A lawyer also may be disciplined rRegarding significantly unprofessional conduct that is...

... abusive or harassing, see rule 8.4.2.

Clarifying that civility is a professional responsibility of attorneys and significantly unprofessional conduct that is abusive or harassing can be a basis for a finding of attorney misconduct and discipline will further the objectives of increasing civility in the profession and, as noted, reducing barriers to justice for those that do not have counsel. In addition, we expect this may help reduce bias-based incivility and, therefore, further promote racial justice and diversity, equity, and inclusion in the legal profession.

Third, the proposed new stand-alone rule, rule 8.4.2, discussing prohibited incivility, is a helpful addition to explain what is expected and

required. Separating prohibited incivility in a new separate rule, as suggested by State Bar staff, has several benefits, including highlighting the importance of civility; providing a further explanation, references, and examples of misconduct; and assisting in interpretation, education, and enforcement of civility guidelines and potential misconduct and discipline related to abusive or harassing misconduct.

We again thank the California Civility Task Force, the CJA, the CLA, and the State Bar for moving forward with proposed amendments to the Rules of Professional Conduct focused on the importance of civility in the legal profession and clarifying the possibility of findings of misconduct and discipline for significantly unprofessional conduct that is abusive or harassing. We support the proposed amendments to California Rules of Professional Conduct 1.2 and 8.4, and the creation of a new rule 8.4.2. As noted, we have suggested...

... language changes to the proposed amendments to Comment [1] to Rule of Professional Conduct 1.2 and Comment [4] to Rule of Professional Conduct 8.4.

From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)

AGREE with the proposed recommendations

ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA2_" to the front of your file's name)

We Support the Proposed Amendments to California Rules of Professional Conduct 1.2 and 8.4, and Creation of New Rule 8.4.2, Addressing Civility – with Proposed Modifications to Comment [1] to Rule 1.2 and Comment [4] to Rule 8.4.

The proposed amendments to the California Rules of Professional Conduct will further

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Notwithstanding a client’s direction, a lawyer retains the authority to agree to reasonable requests of opposing counsel or self-represented parties 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.

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... justice, and reducing barriers to justice for those that do not have counsel.

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as follows:

[6] A lawyer's 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.

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counsel. In addition, we expect this may help reduce bias-based incivility and, therefore, further promote racial justice and diversity, equity, and inclusion in the legal profession. Third, the proposed new stand-alone rule, rule 8.4.2, discussing prohibited incivility, is a helpful addition to explain what is expected and required. Separating prohibited incivility in a new separate rule, as suggested by State Bar staff, has several benefits, including highlighting the importance of civility; providing a further explanation, references, and examples of misconduct; and assisting in interpretation, education, and enforcement of civility guidelines and potential misconduct and discipline related to abusive or harassing misconduct.

We again thank the California Civility Task Force, the CJA, the CLA, and the State Bar for moving forward with proposed amendments to the Rules of Professional Conduct focused on the importance of civility in the legal profession and clarifying the possibility of findings of misconduct and discipline for significantly unprofessional conduct that is abusive or harassing. We support the proposed amendments to California Rules of Professional Conduct 1.2 and 8.4, and the creation of a new rule 8.4.2. As noted, we have suggested language changes to the proposed amendments to Comment [1] to Rule of Professional Conduct 1.2 and Comment [4] to Rule of Professional Conduct 8.4.

From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.)

AGREE with the proposed recommendations

ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA3_" to the front of your file's

We Support the Proposed Amendments to California Rules of Professional Conduct 1.2 and 8.4, and Creation of New Rule 8.4.2, Addressing

name)

Civility – with Proposed Modifications to
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Clarifying that civility is a professional responsibility of...

... attorneys and significantly unprofessional

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Thai Community Development Ctr.

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Interpreters Guild of America

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First District Court of Appeal

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Lawyers' Comm. for Civil Rights

EMILIO VARANINI
California Department of Justice

HON. MONICA WILEY
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Court

HON. ERICA R. YEW
Santa Clara County Superior Court

JACK W. LONDEN
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February 22, 2023

Board of Trustees

The State Bar of California

180 Howard Street

San Francisco, CA 94105

Submitted online: <https://fs22.formsite.com/sbcta/knrig7ggze/index.html>,

<https://fs22.formsite.com/sbcta/i4r185mk2h/index.html>,

<https://fs22.formsite.com/sbcta/jtdtpgyb4a/index.html>

Re: Support for Proposed Amendments to the Rules of Court, the Rules of Professional Conduct, and MCLE Requirements Related to Promoting Civility in the Legal Profession

To the State Bar Board of Trustees:

The California Access to Justice Commission writes in support of three of the recommendations of the California Civility Task Force, a joint project of the California Judges Association (CJA) and the California Lawyers Association (CLA). Specifically, the Access Commission supports the proposed amendment to California Rule of Court 9.7 requiring California attorneys to take a civility pledge, revisions to Rules of Professional Conduct 1.2, 8.4, and 8.4.2 addressing civility, and requiring one hour of MCLE credit for training related to civility in the profession. We believe a focus on increasing and improving civility in the profession will, in particular, promote the needs and experiences of self-represented parties who often face significant barriers to court access and incivility by attorneys.

The California Access to Justice Commission advances access to civil justice for all Californians, expands civil justice resources for low and moderate-income people, and develops innovations that reduce barriers to civil justice for Californians from diverse backgrounds. To do so, the Access Commission facilitates collaboration among the courts, the Bar, and the public—including all three branches of government and stakeholders throughout the state.

We Support the Proposed Amendment to California Rule of Court 9.7 Requiring Attorneys to Complete a Civility Oath and Annually Reconfirm their Civility Pledge.

The attorney oath in California was modified in 2014 to include a civility pledge that provides “As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy and integrity.” However, only attorneys admitted to practice after May 2014 have taken an attorney oath that includes a civility pledge.

This means most practicing California attorneys have not taken a civility pledge.

The proposed amendments to California Rule of Court 9.7 would address this by requiring attorneys who have not taken the oath with the civility pledge to submit a one-time declaration to the State Bar affirming that they will conduct themselves with civility, and by requiring all active attorneys to reaffirm their commitment to civility on an annual basis, most likely when paying annual licensing fees.

Attorneys acting with civility promote access to justice, especially for unrepresented parties. While there are many reasons to support civility in the profession, the impact on access to justice motivates the Access Commission to support the proposed required civility pledge for all active California attorneys.

Every attorney’s conduct should reflect well on the judicial system, the profession, and the fair administration of justice. Attorneys should avoid frivolous disputes and inspire public regard for the profession and the judicial system. Rude, abusive, or disrespectful tactics neither reflect well on the legal profession nor inspire the public’s confidence. Moreover, civility improves the ability of self-represented parties to navigate the judicial system. This includes when attorneys communicate in a professional manner; respond to communications within a reasonable time and in a reasonable manner; avoid personal attacks, demeaning comments, and misleading characterizations; agree to reasonable requests and honor commitments; and behave professionally. Self-represented parties are already disadvantaged and stressed.

Unprofessional, abusive, and disrespectful conduct by attorneys towards people who are unrepresented creates unnecessary and inappropriate additional stresses and barriers. Incivility also can be a manifestation of bias. Incivility related to bias further undermines efforts around racial justice and diversity, equity, and inclusion in the legal profession.

In addition, attorneys need to understand that public respect for the judicial process is essential to sustaining the rule of law as well as our democratic institutions, civility need not be at odds with zealous advocacy, and each attorney has a role. This can be accomplished in MCLE training. We also recommend that the State Bar consider modifying the civility oath to be more specific in acknowledging and addressing these issues, as follows:

As an officer of the court, **I understand that public respect for the judiciary and the judicial process is essential to sustaining the rule of law and our democracy and that my conduct as an attorney directly affects individuals’ trust in the administration of**

justice in California. Therefore, even when engaged in advocacy for my client, I will strive to conduct myself at all times with dignity, courtesy, and integrity.

We thank the California Civility Task Force, the CJA, the CLA, and the State Bar for moving forward with a focus on the importance of civility in the legal profession. We support the proposed amendments to California Rule of Court 9.7.

We Support the Proposed Amendments to California Rules of Professional Conduct 1.2 and 8.4, and Creation of New Rule 8.4.2, Addressing Civility – with Proposed Modifications to Comment [1] to Rule 1.2 and Comment [4] to Rule 8.4.

The proposed amendments to the California Rules of Professional Conduct will further support civility in the legal profession.

First, the proposed amendment to Rule of Professional Conduct 1.2 would add language in comment [1] regarding the allocation of authority between a client and a lawyer. This amended comment appropriately clarifies that while the client controls the decisions concerning the objectives of representation, the attorney retains the authority and professional responsibility to act with civility in pursuing those objectives. Because, as noted, the Access Commission is particularly interested in the professional responsibility of civility in dealing with self-represented parties, we recommend that the language in comment [1] not unnecessarily be limited to “requests of opposing counsel” but instead also include requests by self-represented parties, as follows:

Notwithstanding a client’s direction, a lawyer retains the authority to agree to reasonable requests of opposing counsel or self-represented parties 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.

Calling attention to an attorney’s professional responsibility to agree to reasonable requests by self-represented parties will further the objectives of increasing civility in the profession, supporting access to justice, and reducing barriers to justice for those that do not have counsel.

Second, the proposed amendment to Rule of Professional Conduct 8.4 regarding misconduct adds the following language in comment [6] explaining that significant unprofessional conduct can be prejudicial to the administration of justice, as follows:

[6] A lawyer’s 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.

This proposed comment appropriately explains that significantly unprofessional conduct can be a basis for a finding of attorney misconduct and that it undermines the profession and the administration of justice. The additional proposed amendment to comment [4], cross-referencing the proposed new stand-alone rule 8.4.2, also is helpful. However, this comment can be further clarified by expressly stating that such conduct may be a basis for discipline, as follows:

[4] A lawyer may be disciplined under Business and Professions Code section 6106 for acts involving moral turpitude, dishonesty, or corruption, whether intentional, reckless, or grossly negligent. **A lawyer also may be disciplined** rRegarding significantly unprofessional conduct that is abusive or harassing, see rule 8.4.2.

Clarifying that civility is a professional responsibility of attorneys and significantly unprofessional conduct that is abusive or harassing can be a basis for a finding of attorney misconduct and discipline will further the objectives of increasing civility in the profession and, as noted, reducing barriers to justice for those that do not have counsel. In addition, we expect this may help reduce bias-based incivility and, therefore, further promote racial justice and diversity, equity, and inclusion in the legal profession.

Third, the proposed new stand-alone rule, rule 8.4.2, discussing prohibited incivility, is a helpful addition to explain what is expected and required. Separating prohibited incivility in a new separate rule, as suggested by State Bar staff, has several benefits, including highlighting the importance of civility; providing a further explanation, references, and examples of misconduct; and assisting in interpretation, education, and enforcement of civility guidelines and potential misconduct and discipline related to abusive or harassing misconduct.

We again thank the California Civility Task Force, the CJA, the CLA, and the State Bar for moving forward with proposed amendments to the Rules of Professional Conduct focused on the importance of civility in the legal profession and clarifying the possibility of findings of misconduct and discipline for significantly unprofessional conduct that is abusive or harassing. We support the proposed amendments to California Rules of Professional Conduct 1.2 and 8.4, and the creation of a new rule 8.4.2. As noted, we have suggested language changes to the proposed amendments to Comment [1] to Rule of Professional Conduct 1.2 and Comment [4] to Rule of Professional Conduct 8.4.

We Support the Proposed Revisions to MCLE Requirements Adding Civility to the Legal Profession, and Would Support the Exploration of MCLE Requirements to Support and Promote Pro Bono Legal Services.

In combination with the proposed updates to the civility oath and amendments to the Rules of Professional Conduct regarding civility, we agree with the recommendations of the California Civility Task Force and State Bar staff regarding the addition of civility in the legal profession as a subfield of required mandatory continued legal education. It is our understanding that this would not increase the existing requirement of 25 hours of legal education every three years. Instead, it would add one hour of civility in the practice of law as one of the required areas of education, supplementing existing required areas including legal ethics (four hours), recognition and elimination of bias (two hours), and substance abuse or other mental or physical issues that impair the ability to perform legal service with competence (one hour). This addition of one hour of civility as a required area of legal education will support the goals of actively educating and promoting attorneys about the importance and impact of civility in the profession.

In particular, the Access Commission agrees with the California Civility Task Force that a civility MCLE requirement would “educate attorneys about the economic and human costs of incivility; provide lawyers with reasons and tools to change their own behavior if they are uncivil; teach lawyers how to help those who are uncivil change their behavior; help lawyers deal with stress and dissatisfaction caused by toxic uncivil behavior; and reduce bias-driven incivility.” (CCTF report, pp. 8-9.) We further agree with the California Civility Task Force that a civility MCLE requirement should highlight the link between bias and incivility and urge lawyers to eliminate bias-driven incivility, especially bias-based incivility that can be abusing or harassing. The Access Commission further encourages civility training to include the impact of civility on self-represented parties and access to justice, as well as public respect for the judiciary and the judicial process as important in sustaining the Rule of Law and democracy.

Separately, the request for public comment asked: “Should the State Bar consider adding a requirement for education regarding opportunities for attorneys to render pro bono legal services?” The Access Commission supports efforts to increase the provision of pro bono legal services and is interested in exploring potential opportunities to use MCLE requirements to support and promote pro bono legal services with the State Bar. However, further exploration and input from stakeholders are necessary before moving forward with this initiative.

The California Access to Justice Commission appreciates the State Bar’s implementation of the recommendations of the California Civility Task Force. The Access Commission supports the proposed changes with the suggested modifications noted.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mark Juhas".

Judge Mark Juhas
Chair

Proposed Changes to Lawyer Ethics Rules

Are you an attorney?	No
Name	Justice Brian S. Currey
Professional Affiliation	California Civility Task Force
City	Los Angeles
State	California
Email address	brian.currey@jud.ca.gov
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA3_" to the front of your file's name)	Please see written submission.
ATTACHMENTS You may upload your comment as an attachment. Only one attachment will be accepted per comment submission. We accept the following file types: text (.txt), Microsoft Word (.doc), WordPerfect (.wpd), Rich Text Format (.rtf) and Adobe Acrobat PDF (.pdf). We do not accept any other file types. Please DO NOT submit scanned documents. Files must be less than 4 megabytes in size.	PA3.California_Civility_Task_Force_Letter_and_Comments_to_Proposed_Disciplinary_Rules_Changes_1.11.23._FINAL.pdf (2.47 MB)



STATE OF CALIFORNIA
Court of Appeal
SECOND APPELLATE DISTRICT
DIVISION FOUR
300 SOUTH SPRING STREET
LOS ANGELES, CALIFORNIA 90013

BRIAN S. CURREY
ASSOCIATE JUSTICE

TELEPHONE
(213) 830-7438
brian.currey@jud.ca.gov

January 11, 2023

Via electronic submission to the State Bar and email to ruben.duran@bbklaw.com

Ruben Duran, Chair
State Bar Board of Trustees
180 Howard Street
San Francisco, CA 94105

Re: California Civility Task Force Comments to Civility Proposals Being
Considered by the State Bar Board of Trustees

Dear Ruben:

In my capacity as Chair of the California Civility Task Force (CCTF), I write to provide the CCTF's comments on the State Bar's civility proposals, which are based on three of the CCTF's key proposals. I also write to thank you, your colleagues on the State Bar Board of Trustees, and the State Bar staff, for your engagement and leadership on this important topic.

The Board of Trustees will be considering comments on its proposals: (1) Revising California Rule of Court 9.7 to ensure all lawyers take the civility portion of the attorney oath; (2) Making repeated incivility a disciplinary offense; and (3) Requiring lawyers to participate in mandatory continuing legal education (MCLE) about civility, and the connection between bias and incivility. I will address each in turn.

1. Revisions to California Rule of Court 9.7

The CCTF FULLY SUPPORTS the Board's proposed amendments to California Rule of Court 9.7 that would require all licensees who did not take the attorney oath with the civility language, as well as specially admitted attorneys, to submit a declaration with the civility pledge language by February 1, 2024. Also, all licensees and specially admitted attorneys would be required to complete the civility pledge on an annual basis when paying licensing fees or registering as a specially admitted attorney. We have no proposed revisions.

2. Revisions to the Rules of Professional Conduct

The CCTF offers QUALIFIED SUPPORT for the Board's proposed revisions to the Rules of Professional Conduct. Obviously, we support the change to make incivility a disciplinary offense. We offer two minor proposed revisions. The first of our proposed revisions is a substantive change that we believe will eliminate some first amendment concerns that have been expressed to us by members of the bar. The second corrects a numbering error. I have attached a markup showing our proposed revisions.

Scope Revision. On reflection, we believe the proposed civility disciplinary rules should apply only to lawyer speech and conduct when a lawyer is representing a client in the practice of law, and not while the lawyer is engaged in some professional activity other than law practice. Restrictions on lawyers' speech and conduct, including civility rules, inevitably raise the question of whether the First Amendment permits them. (*See generally*, M. Tarkington, Voice of Justice: Reclaiming the First Amendment Rights of Lawyers (2018) ("Tarkington")). As Professor Tarkington explains in her book, courts and commentators have expressed different views on what restrictions on lawyers' speech are permissible under the First Amendment, and why. We believe the modest rule changes being considered by the State Bar do not violate the First Amendment. They merely require lawyers to exercise professionalism and refrain from abusing and harassing others, requirements that judges are already required to enforce with respect to lawyers representing parties in state court litigation. (*See* California Code of Judicial Ethics, Canon 3B, advisory commentary: 3B(2)). These restrictions do not interfere with lawyers' ability to advance their clients' interests and are essential to maintaining the integrity and functioning of the judicial system.

Our proposed scope revision nevertheless limit the civility requirement to lawyers who are representing a client in the practice of law, as opposed to those representing a client in "other professional activities." This may eliminate or discourage some First Amendment challenges. As Professor Tarkington notes, there is significant disagreement among scholars and in the caselaw about the scope of lawyers' First Amendment rights, but if there is a dominant view, it is that lawyers who are engaged in the practice of law on behalf of a client have lesser or no First Amendment rights. (Tarkington at 1-3). We express no view on that. But by deleting "or related professional activities," the State Bar will eliminate challenges to the rules by lawyers who, for example, claim to fear discipline for potentially offensive speech or conduct at bar functions, while teaching MCLE courses, or other professional activities that are not included in the practice of law. Granted, lawyers participating in bar functions or teaching MCLE courses generally are not doing so "[i]n representing a client" and so would not fall within the rules in any event, but we believe our proposed changes make the rules cleaner and more easily defensible. Our other proposed changes make clear that the incivility prohibition applies to both speech and conduct.

Numbering change. Our remaining revision corrects a numbering (typographical) error.

3. New MCLE Civility Course Requirements

The CCTF FULLY SUPPORTS the Board's proposed amendments to the MCLE rules. As it relates to CCTF's recommendations, the Board proposes to amend the MCLE rules to require that all licensees complete one hour of MCLE on the topic of civility in the legal profession as part of their existing 25-hour MCLE requirement, and that approved civility courses cover the relationship between bias and incivility. There are several other non-civility related changes being proposed to the MCLE rules, as to which the CCTF takes no position.

Thank you, as always, for your service to the profession and for considering our views.

Very truly yours,



Brian S. Currey
Associate Justice

cc: Leah Wilson, Executive Director, leaht.wilson@calbar.ca.gov
California Civility Task Force

California Civility Task Force Comments January 11, 2023

State Bar Revisions for comment shown in blue

California Civility Task Force comments shown in red

Rule 1.2 Scope of Representation and Allocation of Authority

(a) Subject to rule 1.2.1, a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by rule 1.4, shall reasonably* consult with the client as to the means by which they are to be pursued. Subject to Business and Professions Code section 6068, subdivision (e)(1) and rule 1.6, a lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. Except as otherwise provided by law in a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer may limit the scope of the representation if the limitation is reasonable* under the circumstances, is not otherwise prohibited by law, and the client gives informed consent.*

Comment

Allocation of Authority between Client and Lawyer

[1] Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. (See, e.g., Cal. Const., art. I, § 16; Pen. Code, § 1018.) A lawyer retained to represent a client is authorized to act on behalf of the client, such as in procedural matters and in making certain tactical decisions. 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. However, a lawyer is not authorized merely by virtue of the lawyer's retention to impair the client's substantive rights or the client's claim itself. (Blanton v. Womancare, Inc. (1985) 38 Cal.3d 396, 404 [212 Cal.Rptr. 151, 156].)

California Civility Task Force Comments January 11, 2023

State Bar Revisions for comment shown in blue

California Civility Task Force comments shown in red

[2] At the outset of, or during a representation, the client may authorize the lawyer to take specific action on the client's behalf without further consultation. Absent a material change in circumstances and subject to rule 1.4, a lawyer may rely on such an advance authorization. The client may revoke such authority at any time.

Independence from Client's Views or Activities

[3] A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

Agreements Limiting Scope of Representation

[4] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. (See, e.g., rules 1.1, 1.8.1, 5.6; see also Cal. Rules of Court, rules 3.35- 3.37 [limited scope rules applicable in civil matters generally], 5.425 [limited scope rule applicable in family law matters].)

California Civility Task Force Comments January 11, 2023

State Bar Revisions for comment shown in blue

California Civility Task Force comments shown in red

CHAPTER 8. MAINTAINING THE INTEGRITY OF THE PROFESSION

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (a) violate these rules or the State Bar Act, knowingly* assist, solicit, or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud,* deceit, or reckless or intentional misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official, or to achieve results by means that violate these rules, the State Bar Act, or other law; or
- (f) knowingly* assist, solicit, or induce a judge or judicial officer in conduct that is a violation of an applicable code of judicial ethics or code of judicial conduct, or other law. For purposes of this rule, "judge" and "judicial officer" have the same meaning as in rule 3.5(c).

Comment

[1] A violation of this rule can occur when a lawyer is acting in propria persona or when a lawyer is not practicing law or acting in a professional capacity.

California Civility Task Force Comments January 11, 2023

State Bar Revisions for comment shown in blue

California Civility Task Force comments shown in red

[2] Paragraph (a) does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.

[3] A lawyer may be disciplined for criminal acts as set forth in Business and Professions Code sections 6101 et seq., or if the criminal act constitutes “other misconduct warranting discipline” as defined by California Supreme Court case law. (See *In re Kelley* (1990) 52 Cal.3d 487 [276 Cal.Rptr. 375].)

[4] A lawyer may be disciplined under Business and Professions Code section 6106 for acts involving moral turpitude, dishonesty, or corruption, whether intentional, reckless, or grossly negligent. Regarding significantly unprofessional conduct that is abusive or harassing, see rule 8.4.2.

[5] Paragraph (c) does not apply where a lawyer advises clients or others about, or supervises, lawful covert activity in the investigation of violations of civil or criminal law or constitutional rights, provided the lawyer’s conduct is otherwise in compliance with these rules and the State Bar Act.

[6] A lawyer’s 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.

[7] This rule does not prohibit those activities of a particular lawyer that are protected by the First Amendment to the United States Constitution or by Article I, section 2 of the California Constitution.

California Civility Task Force Comments January 11, 2023

State Bar Revisions for comment shown in blue

California Civility Task Force comments shown in red

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.

Comment

[1] For guidance on conduct that may be significantly unprofessional, a lawyer should consult the current California Attorney Guidelines of Civility and Professionalism and other applicable civility authorities.

[2] A lawyer does not violate this rule by standing firm in the position of the client, protecting the record for subsequent review, or preserving professional integrity.

[3] A lawyer’s violation of this rule may also constitute a violation of rule 8.4(d).

[54] “Incivility” as used in this rule does not apply to speech or conduct protected by the First Amendment to the United States Constitution or by Article I, section 2 of the California Constitution. “Incivility” as used in this rule includes speech or conduct that violates an attorney’s duties under Business and Professions Code section 6068, subdivisions (b) and (f). (See California Code of Judicial Ethics, Canon 3B, advisory commentary: Canon 3B(2) regarding/for-noting a judge’s responsibility to require lawyers under the judge’s direction and control to be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others.)

[5] A disciplinary investigation or proceeding for conduct coming within this rule may also be initiated and maintained if such conduct warrants discipline under California Business and Professions Code sections 6106 and 6068, the California Supreme Court’s inherent authority to impose discipline, or other disciplinary standard.

Proposed Changes to Lawyer Ethics Rules

Are you an attorney?	Yes
Commenting on behalf of an organization	Yes
Name	Jeremy M. Evans
Professional Affiliation	California Lawyers Association
City	Los Angeles
State	California
Email address	jeremy@csllegal.com
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)	AGREE ONLY if Modified
From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.)	AGREE ONLY if Modified
ATTACHMENTSYou may upload your comment as an attachment. Only one attachment will be accepted per comment submission. We accept the following file types: text (.txt), Microsoft Word (.doc), WordPerfect (.wpd), Rich Text Format (.rtf) and Adobe Acrobat PDF (.pdf). We do not accept any other file types. Please DO NOT submit scanned documents. Files must be less than 4 megabytes in size.	CLA_comments_on_proposed_amendments_to_rules_of_professional_conduct_addressing_incivility.pdf (212 KB)

February 22, 2023

Board of Trustees
The State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: Proposed Amendments to the Rules of Professional Conduct Addressing Incivility

Dear Trustees of the State Bar of California:

The California Lawyers Association (CLA) submits these comments in response to the proposed amendments to the Rules of Professional Conduct addressing incivility.

As an initial matter, CLA commends the work of the California Civility Task Force (CCTF), the Committee on Professional Responsibility and Conduct (COPRAC), the Office of Chief Trial Counsel (OCTC), State Bar staff, and the Board of Trustees for all the time and effort spent on this proposal. CLA supports the overarching goal of this and related proposals aimed at improving civility in the legal profession and appreciates being part of the CCTF process.¹ We remain concerned, however, with some of the language in the proposed amendments to the Rules of Professional Conduct.

We note that COPRAC, in its October 25, 2022 transmittal memo to the Board of Trustees, expressed concerns that “CCTF’s proposed amendments would pose interpretation issues, be difficult to enforce as disciplinary standards, and chill a lawyer’s protected activities” under the First Amendment of the United States Constitution.² The November 17, 2022 memo from Office of Professional Competence staff to the Board of Trustees also notes that OCTC shared COPRAC’s concerns about potential interpretation issues with the proposed amendments and that the rule changes may be difficult to enforce as disciplinary standards given the ambiguity inherent in CCTF’s proposed definition of incivility. We appreciate the revisions that have been made to help alleviate these concerns, resulting in the current proposal.

¹ CLA is submitting separate comments on the pending proposal to add at least one hour of education addressing civility in the legal profession as part of the existing MCLE requirements (which CLA supports) and to amend the requirement that attorneys complete the annual civility pledge (which CLA supports, with one recommended modification).

² CLA raised similar concerns in its November 29, 2021 letter sent in response to the Initial Report of the CCTF.

Notwithstanding the refinements, CLA still has a general concern about a Rule of Professional Conduct regulating civility to the extent it could be fairly amorphous in providing guidance for a lawyer to know precisely what conduct is and is not prohibited. Ultimately, the purpose and function of the Rules of Professional Conduct will only be served if there is a clear warning about what conduct is to be performed or avoided. Otherwise, a rule will be relegated to a reactive, rather than a preventative role.

We recognize that words in rules can always be subject to interpretation and are not suggesting that the inability to define “incivility” with absolute precision means there should be nothing addressing incivility in the Rules of Professional Conduct. However, we do have suggestions for improving definitional clarity.

Proposed rule 8.4.2(b) provides as follows: “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 Comment [2] provides: “A lawyer does not violate this rule by standing firm in the position of the client, protecting the record for subsequent review, or preserving professional integrity.” Proposed Comment [6] to rule 8.4 contains the same language about when a lawyer does *not* violate the rule. Although we understand the intent behind providing clarifying language in a Comment concerning conduct that does “not violate” a particular Rule of Professional Conduct (as included in Comments to several existing rules), we believe the language proposed in this case potentially creates more confusion than it resolves.

We find it difficult at best to envision a circumstance under which a lawyer standing firm in the position of the client, protecting the record for subsequent review, or preserving professional integrity—without more—would constitute conduct violating a rule prohibiting incivility. It is therefore not clear why these need to be called out as three examples of conduct that would not violate the rule. These examples do not appear to be close to the line of a violation, or even in a gray area. Providing these examples also raises the question of whether other conduct of a similar nature that is not specifically identified would somehow violate the rule. For these reasons, we suggest deleting the language in the two Comments discussed above, or possibly modifying the Comments to clarify the general category of conduct that would not violate the rule, potentially providing some non-exclusive examples that are noted as such within that context, along with the reasoning.

We also suggest one potential refinement to further sharpen the focus of the proposed rule. As presented to the Board of Trustees, proposed Rule 8.4.2 contained paragraph (b), which provided as follows:

(b) In appearing as a lawyer before a tribunal, a lawyer shall not engage in incivility by conduct solely intended to:

- (1) disrupt the tribunal; or
- (2) degrade a witness or other person.

Although paragraph (b) was not ultimately included in the proposal that the Board of Trustees voted to release for public comment, we believe inclusion of the word “solely” in that paragraph was significant. Code of Civil Procedure section 128.5 contains this same qualifier in connection with sanctions that a court may order under that statute. Subdivision (a) provides in part that a “trial court may order a party, the party’s attorney, or both, to pay the reasonable expenses, including attorney’s fees, incurred by another party as a result of actions or tactics, made in bad faith, that are frivolous or *solely* intended to cause unnecessary delay.” (emphasis added). Subdivision (b)(2) similarly provides that “frivolous” under the statute “means totally and completely without merit or for the *sole* purpose of harassing an opposing party.” (emphasis added).

We certainly do not condone “significantly unprofessional conduct that is abusive or harassing” (as prohibited under the language of the proposed rule). At the same time, we believe further definitional clarity would assist in minimizing interpretation issues, potential difficulties of enforcement as a disciplinary standards, and potential use of a well-intentioned rule in a manner that could undermine its purpose. We therefore recommend that consideration be given to modifying the proposed rule so it applies to significantly unprofessional conduct that is “solely” or “primarily” intended to abuse or harass.³

We anticipate that any Rule of Professional Conduct addressing incivility will most likely be invoked in the context of discovery and other routine out-of-court matters. It is not uncommon, in the context of discovery disputes for example, for a lawyer to accuse opposing counsel of “harassing” the lawyer, which could also be viewed by that lawyer as “significantly unprofessional.” It is relatively easy to file a complaint with the State

³ We recognize that the words “harass” and “harassment” currently exist in other Rules of Professional Conduct. In fact, COPRAC recommended that if the Board of Trustees believed the text of the rules, not only the comments, should be revised in connection with this proposal, the Board consider a standalone rule addressing civility that would be similar to rule 8.4.1 of the Rules of Professional Conduct that covers prohibited discrimination, harassment and retaliation. But that rule states a lawyer shall not “unlawfully” harass or knowingly permit “unlawful” harassment, adding an important modifier.

Bar and trigger an investigation. Defending against an accusation can cost a significant amount of time and money, even for a successful exoneration. To the extent possible, any Rule of Professional Conduct should be crafted in a manner that clearly draws a line between acceptable conduct under the rules that might occur during a “garden-variety” dispute or negotiation between lawyers and misconduct that is subject to State Bar discipline.

With respect to enforcement as a disciplinary standard, we note the following from COPRAC’s October 25, 2022 transmittal memo to the Board of Trustees:

COPRAC is concerned that CCTF’s proposed amendments would pose interpretation issues, be difficult to enforce as disciplinary standards, and chill a lawyer’s protected activities. In addition, COPRAC does not believe that many of CCTF’s proposed amendments fall within the scope and intended purpose of the rules. As such, COPRAC does not recommend that all of CCTF’s proposed amendments be further considered or presented for public comment. Instead, COPRAC recommends that CCTF’s proposed amendments to rules 1.0.1, 1.3, 3.3, 3.4, and 3.5 be incorporated conceptually into new rule 8.4, comment [6]. COPRAC also recommends that the Board adopt CCTF’s proposed amendment to rule 1.2, comment [1], with modifications. COPRAC’s proposed amendments to rules 1.2, comment [1], and 8.4, comment [6], as well as suggested edits to CCTF’s proposed amendments to the other rules, which COPRAC does not recommend, are provided below.

State Bar staff recommended that two *options* for proposed amendments be issued for public comment: (1) COPRAC’s recommended proposed amendments to certain comments; and (2) a staff-drafted proposed standalone rule and an amendment to rule 8.4 Comment [4] that provides a cross-reference to the standalone rule. The Board of Trustees ultimately voted to release the current proposal, which includes *both* proposed amendments to comments *and* a proposed new standalone rule. CLA believes the adoption of amendments to comments only is worthy of further consideration.

We have a related concern about the potential impact of a definition of incivility—along with complaints and enforcement that would follow—on lawyers that the rule would otherwise be aimed at protecting. The Initial Report of the CCTF and the attached material repeatedly mention bias and prejudice with the goal of reducing or eliminating both. We share this goal and do not dispute, as that report notes, that “young lawyers, women lawyers, lawyers of color, and lawyers from other marginalized groups are disproportionately on the receiving end” of incivility. At the same time, the identical rule could have a disproportionate impact on these same lawyers when used against them by others making claims of incivility. Although not the intended outcome of this

proposed Rule of Professional Conduct (or any other Rule of Professional Conduct) the State Bar's own 2019 study demonstrated racial disparities in attorney discipline, with the largest gender/race disparities found between black male attorneys and their white male counterparts.⁴ This further underscores the need for definitional clarity in the rule itself in order to minimize the possibility of unintended consequences.

Finally, we support inclusion of the following language in Comment [5] to proposed rule 8.4.2: "Incivility" as used in the rule does not apply to conduct protected by the First Amendment to the United States Constitution or by Article I, section 2 of the California Constitution." This proposed Comment differs from the Comments discussed above because it provides a clear statement of intent in what could become a gray area as actual cases arise, insofar as enforcing a rule consistent with the First Amendment may raise issues that are the subject of ongoing discussion.⁵

We appreciate your consideration of our comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Evans', with a stylized, flowing script.

Jeremy M. Evans
President

⁴ See State Bar Conducts First of Its Kind Study on Racial Disparities in Attorney Discipline (<https://www.calbar.ca.gov/Portals/0/documents/factSheets/Racial-Disparities-in-Attorney-Discipline-Fact-Sheet.pdf>) and November 14, 2019 Agenda Item, Report on Disparities in the Discipline System (<https://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000025090.pdf>).

⁵ See, e.g., Green, Bruce and Roiphe, Rebecca, *ABA Model Rule 8.4(g), Discriminatory Speech, and the First Amendment* (2022). Articles & Chapters. 1506. https://digitalcommons.nyls.edu/cgi/viewcontent.cgi?article=2510&context=fac_articles_chapters; Rebecca Aviel, *Rule 8.4(g) and the First Amendment: Distinguishing Between Discrimination and Free Speech*, 31 GEO. J. LEGAL ETHICS 31, 32 (2018), <https://www.law.georgetown.edu/legal-ethics-journal/wp-content/uploads/sites/24/2019/01/GT-GJLE180002.pdf> ("The extent to which lawyer speech is protected by the First Amendment has troubled courts, scholars, and regulators for decades.")

Proposed Changes to Lawyer Ethics Rules

Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	Carl W. Chamberlin, Robert R. Cross, Sarah J. Banola, Kendra Basner, Albert J. Boro, Jr., Cassidy Chivers, Adam Koss, Dianne Jackson McLean, David A. Wolf
Professional Affiliation	No
City	San Francisco
State	California
Email address	carl.chamberlin@jud.ca.gov
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA3_" to the front of your file's name)	We fully support the addition of a new rule that prohibits incivility in the practice of law. We generally support proposed new rule 8.4.2 but suggest that the State Bar consider whether some of the language is sufficiently clear, as set forth and further discussed in our attached letter.
ATTACHMENTSYou may upload your comment as an attachment. Only one attachment will be accepted per comment submission. We accept the following file types: text (.txt), Microsoft Word (.doc), WordPerfect (.wpd), Rich Text Format	PA3_Letter_re_Proposed_Civility_Changes.final.pdf (120 KB)

(.rtf) and Adobe Acrobat PDF (.pdf). We do not accept any other file types. Please DO NOT submit scanned documents. Files must be less than 4 megabytes in size.

March 1, 2023

Via electronic submission to the State Bar
Ruben Duran, Chair
State Bar Board of Trustees
180 Howard Street
San Francisco, CA 94105

Re: Comments on State Bar Civility Proposals

Dear Mr. Duran,

We submit this letter in support of the State Bar's proposed amendments to California Rules of Professional Conduct (CRPC) 1.2 and 8.4 and its proposed new rule, CRPC 8.4.2. We also support the proposed changes to California Rule of Court 9.7 and the proposed requirement that all licensees complete one hour of MCLE on the topic of civility in the legal profession as part of the existing 25-hour MCLE requirement.

Although we are members of the Bar Association of San Francisco's Legal Ethics Committee, due to time constraints we write in our individual capacity and not on behalf of our entire committee or the Bar Association of San Francisco. We commend the work of the California Civility Task Force, the Committee on Professional Responsibility and Conduct, and the Board of Trustees of the State Bar of California.

A. Rules of Professional Conduct

1. Amendment to CRPC 1.2

We fully support the amendment to CRPC 1.2, which states that, 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."

2. Amendments to CRPC 8.4

We support the proposed addition of Comment [4] to CRPC 8.4, which adds a reference to new proposed CRPC 8.4.2. Further, we agree with the concept that incivility, as defined in new proposed CRPC 8.4.2, may also constitute a violation of CRPC 8.4(d). Because this principle is clearly expressed in Comment [3] to CRPC 8.4.2, however, we question the necessity of including new Comment [6] to CRPC 8.4, as it duplicates the language of CRPC 8.4.2 and its Comments.

3. New CRPC 8.4.2

We fully support the addition of a new rule that prohibits incivility in the practice of law. We generally support proposed new CRPC 8.4.2 but suggest that the State Bar consider whether some of the language is sufficiently clear, including the following:

Subdivision (a): What does “related professional activities” mean in this context? What “related professional activities” are envisioned “*in* representing a client” that would not be the “practice of law”? In light of this ambiguity and other concerns, we recommend that subdivision (a) read: “A lawyer shall not engage in incivility in the practice of law.”

Comment [1]: Are “significantly unprofessional conduct” and “abusive or harassing” separate elements of incivility as defined in subdivision (b)? Should the phrase “and abusive or harassing” be inserted after the phrase “significantly unprofessional conduct” in Comment [1]? Or should a sentence be added to Comment [1] to the following effect: “Such conduct, if abusive or harassing, may fall within the definition of incivility in this rule.” In addition, should “applicable civility authorities” be replaced with the phrase “relevant legal authorities” for clarity?

Comment [2]: Should the word “merely” be inserted in Comment [2], such that it reads “A lawyer does not violate this rule **merely** by standing firm in the position of the client...,” since standing firm in the client’s position could conceivably be done in a significantly unprofessional manner? A lawyer should not be allowed to engage in incivility with the excuse that they are standing firm in the position of the client.

Comment [4]: The Comment is misnumbered as Comment [5]. We support the first sentence of Comment [4] and appreciate the efforts to provide further guidance as to what may constitute incivility. It is unclear whether the reference to Business and Professions Code sections 6068(b) and 6068(f), and the reference to the California Code of Judicial Ethics, Canon 3B, advisory commentary suggest that the conduct described in those provisions would constitute incivility only if such conduct is found to be abusive or harassing.

B. California Rule of Court 9.7

We fully support the Board's proposed amendment to California Rule of Court 9.7, which would require each licensee and specially admitted attorney to declare by February 1, 2024 (if they have not done so already) that they will “strive to conduct myself at all times with dignity, courtesy, and integrity,” and repeat the declaration annually when paying license fees or registering as a specially admitted attorney.

C. New MCLE Civility Course Requirements

We fully support the Board's proposed amendments to the MCLE rules to require that all licensees complete one hour of MCLE on the topic of civility in the legal profession as part of

the existing 25-hour MCLE requirement, and that approved civility courses cover the relationship between bias and incivility.

Thank you for your consideration.

/s/ Carl W. Chamberlin
/s/ Robert R. Cross
/s/ Sarah J. Banola
/s/ Kendra Basner
/s/ Albert J. Boro, Jr.
/s/ Cassidy Chivers
/s/ Adam Koss
/s/ Dianne Jackson McLean
/s/ David A. Wolf

Proposed Changes to Lawyer Ethics Rules

Are you an attorney?	Yes
Commenting on behalf of an organization	Yes
Name	Doug Silverstein and Laura Horton
Professional Affiliation	Consumer Attorneys Association of Los Angeles and California Employment Lawyers Association
City	Los Angeles
State	California
Email address	dsilverstein@californialaborlawattorney.com
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)	AGREE ONLY if Modified
From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.)	AGREE ONLY if Modified
ATTACHMENTS You may upload your comment as an attachment. Only one attachment will be accepted per comment submission. We accept the following file types: text (.txt), Microsoft Word (.doc), WordPerfect (.wpd), Rich Text Format (.rtf) and Adobe Acrobat PDF (.pdf). We do not accept any other file types. Please DO NOT submit scanned documents. Files must be less than 4 megabytes in size.	PA1.2.3_ .CAALA.CELA.State.Bar.Civility.Public.Comment .w.Exhibits.pdf (3.96 MB)

Proposed Changes to Lawyer Ethics Rules

Are you an attorney?	No
Commenting on behalf of an organization	No
Name	David J. Cowan
City	Beverly Hills
State	California
Email address	djcowan@lacourt.org
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA1_" to the front of your file's name)	As a member of the Civility Task Force, and a Judge of the Los Angeles Superior Court, and former Supervising Judge of its Civil Division, I support these proposed changes and join in the comments of Justice Currey in his letter to the Bar dated January 11, 2023.
From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA2_" to the front of your file's name)	See above.
From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA3_" to the front of your file's name)	See above.

Proposed Changes to Lawyer Ethics Rules

Are you an attorney?	No
Name	Julie R Culver
Professional Affiliation	Superior Court, Monterey County
City	CARMEL
State	California
Email address	culverj@monterey.courts.ca.gov
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.)	AGREE with the proposed recommendations

Proposed Changes to Lawyer Ethics Rules

Are you an attorney?	No
Commenting on behalf of an organization	No
Name	Joseph Distaso
City	Modesto
State	California
Email address	rick.distaso@stanct.org
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.)	AGREE with the proposed recommendations

Proposed Changes to Lawyer Ethics Rules

Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	alexander r ginzburg
City	CALABASAS
State	California
Email address	alexander@gbllp-law.com
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	AGREE ONLY if Modified
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA1_" to the front of your file's name)	<p>I support the idea of having these “Civility” rules, but I have concerns that the proposed language is too ambiguous. The comments must also be better worded to put attorneys on notice what actions may trigger violations of the Rule.</p> <p>1.Reference to “conduct that is prejudicial to the administration of justice” is not good enough.</p> <p>2.“[U]nprofessional conduct that is abusive or harassing in the practice of law or related professional activities” is too broad, vague and imprecise.</p> <p>The above language should be changed to make it more clear what will constitute a violation of the Rules, especially if it will lead to any disciplinary action by the Bar.</p>
From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)	AGREE ONLY if Modified
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below.	I support the idea of having these “Civility” rules, but I have concerns that the proposed language

(Please add "PA2_" to the front of your file's name)

is too ambiguous. The comments must also be better worded to put attorneys on notice what actions may trigger violations of the Rule.

1.Reference to "conduct that is prejudicial to the administration of justice" is not good enough.

2. "[U]nprofessional conduct that is abusive or harassing in the practice of law or related professional activities" is too broad, vague and imprecise.

The above language should be changed to make it more clear what will constitute a violation of the Rules, especially if it will lead to any disciplinary action by the Bar.

From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.)

AGREE ONLY if Modified

ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA3_" to the front of your file's name)

I support the idea of having these "Civility" rules, but I have concerns that the proposed language is too ambiguous. The comments must also be better worded to put attorneys on notice what actions may trigger violations of the Rule.

1.Reference to "conduct that is prejudicial to the administration of justice" is not good enough.

2. "[U]nprofessional conduct that is abusive or harassing in the practice of law or related professional activities" is too broad, vague and imprecise.

The above language should be changed to make it more clear what will constitute a violation of the Rules, especially if it will lead to any disciplinary action by the Bar.

ATTACHMENTS You may upload your comment as an attachment. Only one attachment will be

[Comments_re_new_Civility_Rules.pdf \(50 KB\)](#)

accepted per comment submission. We accept the following file types: text (.txt), Microsoft Word (.doc), WordPerfect (.wpd), Rich Text Format (.rtf) and Adobe Acrobat PDF (.pdf). We do not accept any other file types. Please DO NOT submit scanned documents. Files must be less than 4 megabytes in size.

I support the idea of having these “civility” rules, but I have concerns that the proposed language is too ambiguous. The comments must also be better worded to put attorneys on notice what actions may trigger violations of the Rule.

1. Reference to “conduct that is prejudicial to the administration of justice” is not good enough.
2. “[U]nprofessional conduct that is abusive or harassing in the practice of law or related professional activities” is too broad, vague and imprecise.

Proposed Changes to Lawyer Ethics Rules

Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	Melodie Grace
City	Anaheim
State	California
Email address	mkgraceesq@outlook.com
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA1_" to the front of your file's name)	Seems like enforcement would be difficult and civility is not well defined.
From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA2_" to the front of your file's name)	There are sufficient enforcement rules if actually enforced.
From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.)	DISAGREE with the proposed recommendations

Proposed Changes to Lawyer Ethics Rules

Are you an attorney?	No
Commenting on behalf of an organization	No
Name	Mary J. Greenwood
City	San Jose
State	California
Email address	Mary.Greenwood@jud.ca.gov
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.)	AGREE with the proposed recommendations

Proposed Changes to Lawyer Ethics Rules

Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	James I. Ham
Professional Affiliation	Law Office of James I. Ham APC
City	Glendale and San Francisco
State	California
Email address	jham@hamlawoffice.com
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA1_" to the front of your file's name)	Attempts at regulating civility through discipline are improper and subject to abuse. In the progressive cancel culture of California, and given the history of corruption at the Office of Chief Trial Counsel, there is little reason to believe that rules and pronouncements such as these will not be used for political purposes and to suppress positions and speech with which the progressive left, which controls California politically, disagrees.
From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA2_" to the front of your file's name)	The proposed rule violates First Amendment protections, and is void for vagueness as defining the conduct subject to discipline is exceptionally problematic. Business and Professions Code § 6068(f), prohibiting "offensive personality," was previously found to be unconstitutional. That decision remains good

law. It is unclear why the State Bar and its Committees are ignoring that precedent.

The proposed rule also invites abuse and political manipulation .Further, such a rule is subject to abuse, particularly by an agency like the Office of Chief Trial Counsel.

From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.)

DISAGREE with the proposed recommendations

ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA3_" to the front of your file's name)

he proposed rule violates First Amendment protections, and is void for vagueness as defining the conduct subject to discipline is exceptionally problematic. Business and Professions Code § 6068(f), prohibiting “offensive personality,” was previously found to be unconstitutional. That decision remains good law. It is unclear why the State Bar and its Committees are ignoring that precedent.

The proposed rule also invites abuse and political manipulation .Further, such a rule is subject to abuse, particularly by an agency like the Office of Chief Trial Counsel.

Proposed Changes to Lawyer Ethics Rules

Are you an attorney?	No
Commenting on behalf of an organization	No
Name	Mariana Harris
Professional Affiliation	No
City	Pittsburg
State	California
Email address	MarianaMHarris@hotmail.com
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA1_" to the front of your file's name)	A jerk won't change his behavior unless forced to change. Holding people accountable is a good idea.
From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.)	AGREE with the proposed recommendations

Proposed Changes to Lawyer Ethics Rules

Are you an attorney?	Yes
Commenting on behalf of an organization	Yes
Name	Japanese American Bar Association
Professional Affiliation	Japanese American Bar Association
City	Los Angeles
State	California
Email address	info@jabaonline.org
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	AGREE ONLY if Modified
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA1_" to the front of your file's name)	The Japanese American Bar Association offers qualified support of the Board's proposed revisions to the Rules of Professional Conduct as set forth in the attached correspondence dated January 11, 2023, from Justice Brian S. Currey, Chair of the California Civility Task Force.
From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)	AGREE ONLY if Modified
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA2_" to the front of your file's name)	The Japanese American Bar Association offers qualified support of the Board's proposed revisions to the Rules of Professional Conduct as set forth in the attached correspondence dated January 11, 2023, from Justice Brian S. Currey, Chair of the California Civility Task Force.
From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.)	AGREE ONLY if Modified
ENTER COMMENTS HERE. To upload files	The Japanese American Bar Association offers

proceed to the ATTACHMENTS section below.
(Please add "PA3_" to the front of your file's name)

qualified support of the Board's proposed revisions to the Rules of Professional Conduct as set forth in the attached correspondence dated January 11, 2023, from Justice Brian S. Currey, Chair of the California Civility Task Force.

ATTACHMENTS You may upload your comment as an attachment. Only one attachment will be accepted per comment submission. We accept the following file types: text (.txt), Microsoft Word (.doc), WordPerfect (.wpd), Rich Text Format (.rtf) and Adobe Acrobat PDF (.pdf). We do not accept any other file types. Please DO NOT submit scanned documents. Files must be less than 4 megabytes in size.

[California_Civility_Task_Force_Letter_and_Comments_to_Proposed_Disciplinary_Rules_Changes_1.11.23._FINAL.pdf](#) (2.47 MB)



STATE OF CALIFORNIA
Court of Appeal
SECOND APPELLATE DISTRICT
DIVISION FOUR
300 SOUTH SPRING STREET
LOS ANGELES, CALIFORNIA 90013

BRIAN S. CURREY
ASSOCIATE JUSTICE

TELEPHONE
(213) 830-7438
brian.currey@jud.ca.gov

January 11, 2023

Via electronic submission to the State Bar and email to ruben.duran@bbklaw.com

Ruben Duran, Chair
State Bar Board of Trustees
180 Howard Street
San Francisco, CA 94105

Re: California Civility Task Force Comments to Civility Proposals Being
Considered by the State Bar Board of Trustees

Dear Ruben:

In my capacity as Chair of the California Civility Task Force (CCTF), I write to provide the CCTF's comments on the State Bar's civility proposals, which are based on three of the CCTF's key proposals. I also write to thank you, your colleagues on the State Bar Board of Trustees, and the State Bar staff, for your engagement and leadership on this important topic.

The Board of Trustees will be considering comments on its proposals: (1) Revising California Rule of Court 9.7 to ensure all lawyers take the civility portion of the attorney oath; (2) Making repeated incivility a disciplinary offense; and (3) Requiring lawyers to participate in mandatory continuing legal education (MCLE) about civility, and the connection between bias and incivility. I will address each in turn.

1. Revisions to California Rule of Court 9.7

The CCTF FULLY SUPPORTS the Board's proposed amendments to California Rule of Court 9.7 that would require all licensees who did not take the attorney oath with the civility language, as well as specially admitted attorneys, to submit a declaration with the civility pledge language by February 1, 2024. Also, all licensees and specially admitted attorneys would be required to complete the civility pledge on an annual basis when paying licensing fees or registering as a specially admitted attorney. We have no proposed revisions.

2. Revisions to the Rules of Professional Conduct

The CCTF offers QUALIFIED SUPPORT for the Board's proposed revisions to the Rules of Professional Conduct. Obviously, we support the change to make incivility a disciplinary offense. We offer two minor proposed revisions. The first of our proposed revisions is a substantive change that we believe will eliminate some first amendment concerns that have been expressed to us by members of the bar. The second corrects a numbering error. I have attached a markup showing our proposed revisions.

Scope Revision. On reflection, we believe the proposed civility disciplinary rules should apply only to lawyer speech and conduct when a lawyer is representing a client in the practice of law, and not while the lawyer is engaged in some professional activity other than law practice. Restrictions on lawyers' speech and conduct, including civility rules, inevitably raise the question of whether the First Amendment permits them. (*See generally*, M. Tarkington, Voice of Justice: Reclaiming the First Amendment Rights of Lawyers (2018) ("Tarkington")). As Professor Tarkington explains in her book, courts and commentators have expressed different views on what restrictions on lawyers' speech are permissible under the First Amendment, and why. We believe the modest rule changes being considered by the State Bar do not violate the First Amendment. They merely require lawyers to exercise professionalism and refrain from abusing and harassing others, requirements that judges are already required to enforce with respect to lawyers representing parties in state court litigation. (*See* California Code of Judicial Ethics, Canon 3B, advisory commentary: 3B(2)). These restrictions do not interfere with lawyers' ability to advance their clients' interests and are essential to maintaining the integrity and functioning of the judicial system.

Our proposed scope revision nevertheless limit the civility requirement to lawyers who are representing a client in the practice of law, as opposed to those representing a client in "other professional activities." This may eliminate or discourage some First Amendment challenges. As Professor Tarkington notes, there is significant disagreement among scholars and in the caselaw about the scope of lawyers' First Amendment rights, but if there is a dominant view, it is that lawyers who are engaged in the practice of law on behalf of a client have lesser or no First Amendment rights. (Tarkington at 1-3). We express no view on that. But by deleting "or related professional activities," the State Bar will eliminate challenges to the rules by lawyers who, for example, claim to fear discipline for potentially offensive speech or conduct at bar functions, while teaching MCLE courses, or other professional activities that are not included in the practice of law. Granted, lawyers participating in bar functions or teaching MCLE courses generally are not doing so "[i]n representing a client" and so would not fall within the rules in any event, but we believe our proposed changes make the rules cleaner and more easily defensible. Our other proposed changes make clear that the incivility prohibition applies to both speech and conduct.


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The CCTF FULLY SUPPORTS the Board's proposed amendments to the MCLE rules. As it relates to CCTF's recommendations, the Board proposes to amend the MCLE rules to require that all licensees complete one hour of MCLE on the topic of civility in the legal profession as part of their existing 25-hour MCLE requirement, and that approved civility courses cover the relationship between bias and incivility. There are several other non-civility related changes being proposed to the MCLE rules, as to which the CCTF takes no position.

Thank you, as always, for your service to the profession and for considering our views.

Very truly yours,



Brian S. Currey
Associate Justice

cc: Leah Wilson, Executive Director, leaht.wilson@calbar.ca.gov
California Civility Task Force

California Civility Task Force Comments January 11, 2023

State Bar Revisions for comment shown in blue

California Civility Task Force comments shown in red

Rule 1.2 Scope of Representation and Allocation of Authority

(a) Subject to rule 1.2.1, a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by rule 1.4, shall reasonably* consult with the client as to the means by which they are to be pursued. Subject to Business and Professions Code section 6068, subdivision (e)(1) and rule 1.6, a lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. Except as otherwise provided by law in a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer may limit the scope of the representation if the limitation is reasonable* under the circumstances, is not otherwise prohibited by law, and the client gives informed consent.*

Comment

Allocation of Authority between Client and Lawyer

[1] Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. (See, e.g., Cal. Const., art. I, § 16; Pen. Code, § 1018.) A lawyer retained to represent a client is authorized to act on behalf of the client, such as in procedural matters and in making certain tactical decisions. 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. However, a lawyer is not authorized merely by virtue of the lawyer's retention to impair the client's substantive rights or the client's claim itself. (Blanton v. Womancare, Inc. (1985) 38 Cal.3d 396, 404 [212 Cal.Rptr. 151, 156].)

California Civility Task Force Comments January 11, 2023

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[2] At the outset of, or during a representation, the client may authorize the lawyer to take specific action on the client's behalf without further consultation. Absent a material change in circumstances and subject to rule 1.4, a lawyer may rely on such an advance authorization. The client may revoke such authority at any time.

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[3] A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

Agreements Limiting Scope of Representation

[4] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. (See, e.g., rules 1.1, 1.8.1, 5.6; see also Cal. Rules of Court, rules 3.35- 3.37 [limited scope rules applicable in civil matters generally], 5.425 [limited scope rule applicable in family law matters].)

California Civility Task Force Comments January 11, 2023

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CHAPTER 8. MAINTAINING THE INTEGRITY OF THE PROFESSION

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (a) violate these rules or the State Bar Act, knowingly* assist, solicit, or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud,* deceit, or reckless or intentional misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official, or to achieve results by means that violate these rules, the State Bar Act, or other law; or
- (f) knowingly* assist, solicit, or induce a judge or judicial officer in conduct that is a violation of an applicable code of judicial ethics or code of judicial conduct, or other law. For purposes of this rule, "judge" and "judicial officer" have the same meaning as in rule 3.5(c).

Comment

[1] A violation of this rule can occur when a lawyer is acting in propria persona or when a lawyer is not practicing law or acting in a professional capacity.

California Civility Task Force Comments January 11, 2023

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[2] Paragraph (a) does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.

[3] A lawyer may be disciplined for criminal acts as set forth in Business and Professions Code sections 6101 et seq., or if the criminal act constitutes “other misconduct warranting discipline” as defined by California Supreme Court case law. (See *In re Kelley* (1990) 52 Cal.3d 487 [276 Cal.Rptr. 375].)

[4] A lawyer may be disciplined under Business and Professions Code section 6106 for acts involving moral turpitude, dishonesty, or corruption, whether intentional, reckless, or grossly negligent. Regarding significantly unprofessional conduct that is abusive or harassing, see rule 8.4.2.

[5] Paragraph (c) does not apply where a lawyer advises clients or others about, or supervises, lawful covert activity in the investigation of violations of civil or criminal law or constitutional rights, provided the lawyer’s conduct is otherwise in compliance with these rules and the State Bar Act.

[6] A lawyer’s 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.

[7] This rule does not prohibit those activities of a particular lawyer that are protected by the First Amendment to the United States Constitution or by Article I, section 2 of the California Constitution.

California Civility Task Force Comments January 11, 2023

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California Civility Task Force comments shown in red

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.

Comment

[1] For guidance on conduct that may be significantly unprofessional, a lawyer should consult the current California Attorney Guidelines of Civility and Professionalism and other applicable civility authorities.

[2] A lawyer does not violate this rule by standing firm in the position of the client, protecting the record for subsequent review, or preserving professional integrity.

[3] A lawyer’s violation of this rule may also constitute a violation of rule 8.4(d).

[54] “Incivility” as used in this rule does not apply to ~~speech or~~ conduct protected by the First Amendment to the United States Constitution or by Article I, section 2 of the California Constitution. “Incivility” as used in this rule includes ~~speech or~~ conduct that violates an attorney’s duties under Business and Professions Code section 6068, subdivisions (b) and (f). (See California Code of Judicial Ethics, Canon 3B, advisory commentary: Canon 3B(2) ~~regarding/for noting~~ a judge’s responsibility to require lawyers under the judge’s direction and control to be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others.)

[5] A disciplinary investigation or proceeding for conduct coming within this rule may also be initiated and maintained if such conduct warrants discipline under California Business and Professions Code sections 6106 and 6068, the California Supreme Court’s inherent authority to impose discipline, or other disciplinary standard.

Proposed Changes to Lawyer Ethics Rules

Reference #	24040988
Status	Complete
Are you an attorney?	Yes
Name	David S. Karton
Professional Affiliation	David S. Karton, A Law Corporation
City	Beverly Hills, CA.
State	California
Email address	dkarton@dskartonalc.com
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA1_" to the front of your file's name)	This amendment is not workable. The definition of "civility" is far too subjective and would often be used as a weapon. Who defines "conduct prejudicial to the administration of justice" either generally or in a specific instance.
From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)	DISAGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.)	DISAGREE with the proposed recommendations
Last Update	2023-01-17 15:41:13
Start Time	2023-01-17 15:36:49
Finish Time	2023-01-17 15:41:13
IP	Anonymous
Browser	Other

Device	Other
Referrer	N/A

Proposed Changes to Lawyer Ethics Rules

Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	Vandad Khosravirad
City	Los Angeles
State	California
Email address	vandad@sgoldsobel.com
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)	AGREE ONLY if Modified
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA2_" to the front of your file's name)	The proposed rule needs an enforcement mechanism for it work. I propose that state bar allow attorneys to file monetary sanctions motions with the state bar against the offending attorney.
From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.)	AGREE ONLY if Modified
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA3_" to the front of your file's name)	The proposed rule needs an enforcement mechanism for it work. I propose that state bar allow attorneys to file monetary sanctions motions with the state bar against the offending attorney.

Proposed Changes to Lawyer Ethics Rules

Reference #	24094682
Status	Complete
Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	Vandad Khosravirad
City	Los Angeles
State	California
Email address	vandad@sgoldsobel.com
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)	AGREE ONLY if Modified
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA2_" to the front of your file's name)	Unless and until rampant statewide discovery abuse is addressed through the Rules of Professional Conduct, lawyer incivility will continue. I cannot stress enough how rampant discovery abuse is in this state. State court judges largely ignore discovery abuse, and seldom, if ever, issue sanctions for discovery abuse. At best, courts will merely grant discovery motions and not address the discovery abuse portion of counsel's briefing. Therefore, the comments must include discovery abuse as an example of conduct that is prejudicial to the administration of justice. Since discovery abuse is requires a conclusion of fact and law, the comment could clarify that to be in violation of this rule requires a court to either hold that the

attorney's conduct amounts to discovery abuse, regardless of whether or not sanctions are issued.

From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.)

ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA3_" to the front of your file's name)

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Last Update	2023-01-22 08:15:02
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Start Time	2023-01-22 08:05:51
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Finish Time	2023-01-22 08:15:02
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IP	Anonymous
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Browser	Other
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Device	Other
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Referrer	N/A
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Proposed Changes to Lawyer Ethics Rules

Are you an attorney?	No
Commenting on behalf of an organization	No
Name	Barbara Kronlund
City	Stockton
State	California
Email address	bak@sjcourts.org
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.)	AGREE with the proposed recommendations

Proposed Changes to Lawyer Ethics Rules

Are you an attorney?	Yes
Commenting on behalf of an organization	Yes
Name	Brian Thomas Glennon
Professional Affiliation	LACBA Litigation Section Executive Committee
City	Los Angeles
State	California
Email address	brian.glennon@lw.com
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.)	AGREE with the proposed recommendations
ATTACHMENTSYou may upload your comment as an attachment. Only one attachment will be accepted per comment submission. We accept the following file types: text (.txt), Microsoft Word (.doc), WordPerfect (.wpd), Rich Text Format (.rtf) and Adobe Acrobat PDF (.pdf). We do not accept any other file types. Please DO NOT submit scanned documents. Files must be less than 4 megabytes in size.	PA1_PA2_PA3_LACBA_Litigation_Section_Executive_Committee_Comment.pdf (1014 KB)



To: The State Bar of California

**From: The Executive Committee of the Litigation Section of the Los Angeles
County Bar Association**

The Executive Committee of the Los Angeles County Bar Association Litigation Section (the “LACBA Litigation Section”) respectfully submits this comment in response to the State Bar’s request for public comment on the proposed amendments to certain rules governing attorneys licensed to practice law in California.

The LACBA Litigation Section recognizes that the California Civility Task Force (“CCTF”), a joint project of the California Judges Association and the California Lawyers Association, has recommended that the State Bar of California modify its rules to promote civility in the profession. In making this recommendation, the CCTF observed that incivility disproportionately impacts “young lawyers, women lawyers, lawyers of color, and lawyers from other marginalized groups.”

In light of the foregoing, the LACBA Litigation Section respectfully submits the following public comment in support of the proposed rule amendments:

1. The LACBA Litigation Section reaffirms its prior resolution, adopted on September 20, 2021, endorsing and approving of the CCTF’s recommendations, contained in the CCTF’s initial report: “Beyond the Oath: Recommendations for Improving Civility” (Attachment 1); and
2. Consistent with its September 20, 2021 resolution, the LACBA Litigation Section joins in the comments from the CCTF set forth in the CCTF’s January 11, 2023 letter to the State Bar Board of Trustees speaking in support of the proposed rule amendments (Attachment 2).

The Executive Committee of the LACBA Litigation Section appreciates the opportunity to submit its views on this important topic and urges the State Bar to consider these comments in its endeavor to improve civility in the profession.

Dated: March 1, 2023

A handwritten signature in black ink, appearing to read "Brian T. Glennon", written in a cursive style.

Brian T. Glennon
Chair, Litigation Section
Los Angeles County Bar
Association

Attachment 1

**Los Angeles County Bar Association Litigation Section
Resolution in Support of Proposals of the
California Civility Task Force**

Whereas, the California Civility Task Force is a joint project of the California Judges Association (CJA) and the California Lawyers Association (CLA); and

Whereas, the Los Angeles County Bar Association Litigation Section's Executive Committee members have reviewed and discussed the task force's initial report entitled *Beyond the Oath: Recommendations for Improving Civility*; and

Whereas, the Los Angeles County Bar Association Litigation Section's Executive Committee members, by a majority vote, agree with and embrace the task force's recommendations contained in that report;

NOW THEREFORE, the Los Angeles County Bar Association Litigation Section hereby respectfully:

1. Asks the State Bar Board of Trustees to mandate one hour of civility MCLE training for attorneys (without increasing total MCLE hours). Some portion of the civility training should be devoted to making the profession more welcoming to underrepresented groups by addressing the link between incivility and bias.
2. Asks the Chief Justice, as head of the Judicial Council, and the Center for Judicial Education and Research Advisory Committee (CJER) to provide voluntary training to judges on promoting civility inside and outside courtrooms. CJA commits to do the same.
3. Asks the State Bar Board of Trustees to recommend to the Supreme Court revisions to the Rules of Professional Conduct to clarify that repeated incivility constitutes professional misconduct and that civility is not inconsistent with zealous advocacy; and

4. Asks the Supreme Court to amend Rule of Court 9.7 to require all attorneys, when annually renewing their licenses to practice law, to swear or affirm: "As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy and integrity." And,
5. Urges the Chief Justice, Judicial Council, and State Bar to take further appropriate action to improve civility in the practice of law

Dated: September 20, 2021



Eric Y. Kizirian
Chair, Litigation Section
Los Angeles County Bar
Association

Attachment 2



STATE OF CALIFORNIA
Court of Appeal
SECOND APPELLATE DISTRICT
DIVISION FOUR
300 SOUTH SPRING STREET
LOS ANGELES, CALIFORNIA 90013

BRIAN S. CURREY
ASSOCIATE JUSTICE

TELEPHONE
(213) 830-7438
brian.currey@jud.ca.gov

January 11, 2023

Via electronic submission to the State Bar and email to ruben.duran@bbklaw.com

Ruben Duran, Chair
State Bar Board of Trustees
180 Howard Street
San Francisco, CA 94105

Re: California Civility Task Force Comments to Civility Proposals Being
Considered by the State Bar Board of Trustees

Dear Ruben:

In my capacity as Chair of the California Civility Task Force (CCTF), I write to provide the CCTF's comments on the State Bar's civility proposals, which are based on three of the CCTF's key proposals. I also write to thank you, your colleagues on the State Bar Board of Trustees, and the State Bar staff, for your engagement and leadership on this important topic.

The Board of Trustees will be considering comments on its proposals: (1) Revising California Rule of Court 9.7 to ensure all lawyers take the civility portion of the attorney oath; (2) Making repeated incivility a disciplinary offense; and (3) Requiring lawyers to participate in mandatory continuing legal education (MCLE) about civility, and the connection between bias and incivility. I will address each in turn.

1. Revisions to California Rule of Court 9.7

The CCTF FULLY SUPPORTS the Board's proposed amendments to California Rule of Court 9.7 that would require all licensees who did not take the attorney oath with the civility language, as well as specially admitted attorneys, to submit a declaration with the civility pledge language by February 1, 2024. Also, all licensees and specially admitted attorneys would be required to complete the civility pledge on an annual basis when paying licensing fees or registering as a specially admitted attorney. We have no proposed revisions.

2. Revisions to the Rules of Professional Conduct

The CCTF offers QUALIFIED SUPPORT for the Board's proposed revisions to the Rules of Professional Conduct. Obviously, we support the change to make incivility a disciplinary offense. We offer two minor proposed revisions. The first of our proposed revisions is a substantive change that we believe will eliminate some first amendment concerns that have been expressed to us by members of the bar. The second corrects a numbering error. I have attached a markup showing our proposed revisions.

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Thank you, as always, for your service to the profession and for considering our views.

Very truly yours,



Brian S. Currey
Associate Justice

cc: Leah Wilson, Executive Director, leaht.wilson@calbar.ca.gov
California Civility Task Force

California Civility Task Force Comments January 11, 2023

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[4] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. (See, e.g., rules 1.1, 1.8.1, 5.6; see also Cal. Rules of Court, rules 3.35- 3.37 [limited scope rules applicable in civil matters generally], 5.425 [limited scope rule applicable in family law matters].)

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- (c) engage in conduct involving dishonesty, fraud,* deceit, or reckless or intentional misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official, or to achieve results by means that violate these rules, the State Bar Act, or other law; or
- (f) knowingly* assist, solicit, or induce a judge or judicial officer in conduct that is a violation of an applicable code of judicial ethics or code of judicial conduct, or other law. For purposes of this rule, "judge" and "judicial officer" have the same meaning as in rule 3.5(c).

Comment

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California Civility Task Force Comments January 11, 2023

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[5] Paragraph (c) does not apply where a lawyer advises clients or others about, or supervises, lawful covert activity in the investigation of violations of civil or criminal law or constitutional rights, provided the lawyer’s conduct is otherwise in compliance with these rules and the State Bar Act.

[6] A lawyer’s 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.

[7] This rule does not prohibit those activities of a particular lawyer that are protected by the First Amendment to the United States Constitution or by Article I, section 2 of the California Constitution.

California Civility Task Force Comments January 11, 2023

State Bar Revisions for comment shown in blue

California Civility Task Force comments shown in red

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.

Comment

[1] For guidance on conduct that may be significantly unprofessional, a lawyer should consult the current California Attorney Guidelines of Civility and Professionalism and other applicable civility authorities.

[2] A lawyer does not violate this rule by standing firm in the position of the client, protecting the record for subsequent review, or preserving professional integrity.

[3] A lawyer’s violation of this rule may also constitute a violation of rule 8.4(d).

[54] “Incivility” as used in this rule does not apply to ~~speech or~~ conduct protected by the First Amendment to the United States Constitution or by Article I, section 2 of the California Constitution. “Incivility” as used in this rule includes ~~speech or~~ conduct that violates an attorney’s duties under Business and Professions Code section 6068, subdivisions (b) and (f). (See California Code of Judicial Ethics, Canon 3B, advisory commentary: Canon 3B(2) ~~regarding/for noting~~ a judge’s responsibility to require lawyers under the judge’s direction and control to be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others.)

[5] A disciplinary investigation or proceeding for conduct coming within this rule may also be initiated and maintained if such conduct warrants discipline under California Business and Professions Code sections 6106 and 6068, the California Supreme Court’s inherent authority to impose discipline, or other disciplinary standard.

Proposed Changes to Lawyer Ethics Rules

Are you an attorney?	Yes
Commenting on behalf of an organization	Yes
Name	Brian Thomas Glennon
Professional Affiliation	LACBA Litigation Section Executive Committee
City	Los Angeles
State	California
Email address	brian.glennon@lw.com
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA1_" to the front of your file's name)	Resubmitting with revised attachment name.
From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA2_" to the front of your file's name)	Resubmitting with revised attachment name.
From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA3_" to the front of your file's name)	Resubmitting with revised attachment name.
ATTACHMENTS You may upload your comment	PA1_PA2_PA3_LACBA_Litigation_Section_

as an attachment. Only one attachment will be accepted per comment submission. We accept the following file types: text (.txt), Microsoft Word (.doc), WordPerfect (.wpd), Rich Text Format (.rtf) and Adobe Acrobat PDF (.pdf). We do not accept any other file types. Please DO NOT submit scanned documents. Files must be less than 4 megabytes in size.

[Executive_Committee_Comment.pdf \(1014 KB\)](#)

Proposed Changes to Lawyer Ethics Rules

Are you an attorney?	Yes
Commenting on behalf of an organization	Yes
Name	Rachelle Cohen
Professional Affiliation	LACBA Professional Responsibility and Ethics Committee
City	Los Angeles
State	California
Email address	rcohen@ksccllegal.com
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.)	AGREE with the proposed recommendations
ATTACHMENTS You may upload your comment as an attachment. Only one attachment will be accepted per comment submission. We accept the following file types: text (.txt), Microsoft Word (.doc), WordPerfect (.wpd), Rich Text Format (.rtf) and Adobe Acrobat PDF (.pdf). We do not accept any other file types. Please DO NOT submit scanned documents. Files must be less than 4 megabytes in size.	PREC_Comment_Letter_on_Civility_Final_2-7-23.pdf (150 KB)



LOS ANGELES COUNTY BAR ASSOCIATION

444 South Flower Street, Suite 2500 | Los Angeles, CA 90071

Telephone: 213.627.2727 | www.lacba.org

February 7, 2023

Board of Trustees
State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: Proposed Amendments to the Rules of Professional
Conduct Addressing Incivility

Dear Trustees:

This letter is written on behalf of the Professional Responsibility and Ethics Committee of the Los Angeles County Bar Association, with respect to the proposed new Rule of Professional Conduct 8.4.2 and amendments to Rules of Professional Conduct 1.2 and 8.4. We support the goals and language of the proposed changes.

We commend the work of the California Civility Task and the Committee on Professional Responsibility and Conduct, as well as the Board of Trustees of the State Bar of California, for the time and effort spent in analyzing the Rules of Professional Conduct in order to propose (and hopefully enact) meaningful changes to the State Bar disciplinary rules, prohibiting repeated incivility and clarifying that civility is not inconsistent with zealous representation.

As Justice Brian S. Currey, the Chair of the California Civility Task Force, wrote in his submission of the Task Force's proposals to the State Bar of California, "incivility among lawyers is bad for the legal profession and the public. Incivility increases stress and job dissatisfaction among lawyers and judges. Stress can contribute to mistakes, burnout, or substance abuse by lawyers. Incivility also increases costs and delays in litigation and legal transactions, thereby increasing costs for the public. Moreover, some incivility is a manifestation of bias, with young lawyers, women lawyers, and lawyers from underrepresented groups disproportionately on the receiving end of intemperate remarks and abusive misbehavior."

We believe that the three rule changes being proposed will go a long way in promoting civility in the legal profession, and recommend that the Board of Trustees approve all three proposed rule changes.

Thank you for your consideration of our comments.

Sincerely,

A handwritten signature in blue ink that reads "Rachelle Cohen". The signature is written in a cursive, flowing style.

Rachelle Cohen
Chair
Professional Responsibility and Ethics Committee

Proposed Changes to Lawyer Ethics Rules

Reference #	24067085
Status	Complete
Are you an attorney?	Yes
Commenting on behalf of an organization	Yes
Name	Zach Newman
Professional Affiliation	Legal Aid Association of California
City	Los Angeles
State	California
Email address	znewman@laaonline.org
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.)	AGREE with the proposed recommendations
ATTACHMENTSYou may upload your comment as an attachment. Only one attachment will be accepted per comment submission. We accept the following file types: text (.txt), Microsoft Word (.doc), WordPerfect (.wpd), Rich Text Format (.rtf) and Adobe Acrobat PDF (.pdf). We do not accept any other file types. Please DO NOT submit scanned documents. Files must be less than 4 megabytes in size.	Proposed_Amendments_to_the_Rules_of_Professional_Conduct_Addressing_Incivility_LAAC_Comment_Submitted_1.20.23.pdf (197 KB)
Last Update	2023-01-20 11:45:33
Start Time	2023-01-20 11:40:58

Finish Time	2023-01-20 11:45:33
IP	Anonymous
Browser	Other
Device	Other
Referrer	N/A

Legal Aid Fights for Justice. We Fight for Them.



January 20, 2023

Board of Trustees
The State Bar of California, San Francisco Office
180 Howard Street
San Francisco, CA 94105

Re: Proposed Amendments to the Rules of Professional Conduct Addressing Incivility

To the Board of Trustees,

We are writing on behalf of the Legal Aid Association of California (LAAC) regarding the proposed amendments to California Rules of Professional Conduct 1.2 and 8.4 and on a new rule, 8.4.2.

LAAC is the statewide membership association of over 100 public interest law nonprofits that provide free civil legal services to low-income people and communities throughout California. LAAC member organizations provide legal assistance on a broad array of substantive issues, ranging from general poverty law to civil rights to immigration, and also serve a wide range of low-income and vulnerable populations. LAAC serves as California's unified voice for legal services and is a zealous advocate advancing the needs of the clients of legal services on a statewide level regarding funding and access to justice.

We understand that there are two options for proposed amendments that are currently issued for public comment: (1) COPRAC's recommended proposed amendments to rules 1.2 Comment and 8.4 Comment and (2) a staff-drafted proposed standalone rule and an amendment to rule 8.4 Comment that provides a cross-reference to the standalone rule. **We are in favor of the staff-drafted proposal—a standalone rule with an amendment to 8.4 Comment 4—for the following reasons.**

First, this proposal will work in tandem with the other proposals to increase civility in our profession. While "civility" is a broad concept, as discussed throughout the materials provided by the Bar, it appears that the working definition of *incivility* revolves around abusive and harassing behavior, which are behaviors that should be limited in our profession. First Amendment concerns exist, but it does seem possible to strike a balance and prohibit uncivil behavior while protecting those rights. Civility is, undoubtedly, an important part of our profession, so there is inherent value in specific and affirmative acknowledgement of the need for civility by all licensees. According to the California Civility Task Force (CCTF), incivility increases stress, job dissatisfaction,

350 Frank H. Ogawa Plaza Suite 701 | Oakland, CA 94612 | (510) 893-3000
LAACOnline.org LawHelpCA.org

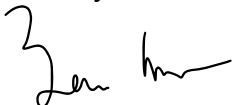
costs and delays, and can be the result of bias. All of these impacts of incivility only make the jobs of lawyers and judges harder, with implications pertaining to the relatively high prevalence of mental health issues and substance use in our profession. In legal aid, it likely only increases our recruitment and retention issues. Finally, incivility related to bias further decreases efforts around racial justice and diversity, equity, and inclusion in the legal field.

In this context of the value of the promotion of civility, both COPRAC's and staff's recommendations would likely achieve the goal of promoting civility, but it appears that staff's standalone rule could be the better route. COPRAC's amendments to the comments of Rule 8.4 would indeed provide more guidance to practitioners. Further, the substance of the rule changes as proposed by COPRAC and staff largely mirror each other, in terms of how they formulate what constitutes civility and incivility, along with what they are not (e.g., "standing firm in the position of the client"). However, it seems that having a standalone rule would make interpretation and enforcement clearer and more specific. The proposed rule (8.4.2), as drafted by staff, provides a more in-depth discussion of civility and illuminates the nuances more effectively than just the comments to Rule 8.4 as proposed by COPRAC. In regard to enforcement, having one singular, overarching rule (Rule 8.4.2) instead of limiting the discussion of civility to a sub-topic within other rules would appear to make it both easier for licensees to understand the duty as well as easier for the Bar to enforce that singular, delineated rule. Finally, it appears to more clearly describe the First Amendment issues.

Last, we are concerned about disparate impact if "civility" is ever used as coded language against attorneys of color. For this reason, it will be important to track the data of those being referred for civility issues. The Bar should also track how much time is being used to investigate whether someone is being uncivil. It can then use that to determine, in conjunction with the other data, if implicit or explicit biases are at play and whether, ultimately, the rule and its enforcement are actually achieving the original goals or are a waste of Bar resources. These data could help ensure that the system is actually enforcing the rule against "bad actors" who are uncivil and not due to implicit or explicit bias within the profession.

In sum, between the alternatives, we support staff's standalone rule, for reasons of clarity and specificity, enforcement, and interpretation. Thank you for giving us the opportunity to provide comment. Please contact us with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Zach Newman", with a stylized flourish at the end.

Zach Newman, *Directing Attorney*, **Legal Aid Association of California**

Proposed Changes to Lawyer Ethics Rules

Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	Mike Madokoro
City	Whittier
State	California
Email address	mike.madokoro@bowmanandbrooke.com
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA1_" to the front of your file's name)	As a member of the California Civility Task Force, I offer qualified support of the Board's proposed revisions to the Rules of Professional Conduct as set forth in the attached correspondence dated January 11, 2023, from Justice Brian S. Currey, Chair of the California Civility Task Force.
From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA2_" to the front of your file's name)	As a member of the California Civility Task Force, I offer qualified support of the Board's proposed revisions to the Rules of Professional Conduct as set forth in the attached correspondence dated January 11, 2023, from Justice Brian S. Currey, Chair of the California Civility Task Force.
From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files	As a member of the California Civility Task

proceed to the ATTACHMENTS section below.
(Please add "PA3_" to the front of your file's
name)

Force, I offer qualified support of the Board's
proposed revisions to the Rules of Professional
Conduct as set forth in the attached
correspondence dated January 11, 2023, from
Justice Brian S. Currey, Chair of the California
Civility Task Force.

ATTACHMENTSYou may upload your comment
as an attachment. Only one attachment will be
accepted per comment submission. We accept
the following file types: text (.txt), Microsoft Word
(.doc), WordPerfect (.wpd), Rich Text Format
(.rtf) and Adobe Acrobat PDF (.pdf). We do not
accept any other file types. Please DO NOT
submit scanned documents. Files must be less
than 4 megabytes in size.

[California_Civility_Task_Force_Letter_and_
Comments_to_Proposed_Disciplinary_Rules_
Changes_1.11.23._FINAL.pdf \(2.47 MB\)](#)



STATE OF CALIFORNIA

Court of Appeal

SECOND APPELLATE DISTRICT

DIVISION FOUR

300 SOUTH SPRING STREET
LOS ANGELES, CALIFORNIA 90013

BRIAN S. CURREY
ASSOCIATE JUSTICE

TELEPHONE
(213) 830-7438
brian.currey@jud.ca.gov

January 11, 2023

Via electronic submission to the State Bar and email to ruben.duran@bbklaw.com

Ruben Duran, Chair
State Bar Board of Trustees
180 Howard Street
San Francisco, CA 94105

Re: California Civility Task Force Comments to Civility Proposals Being
Considered by the State Bar Board of Trustees

Dear Ruben:

In my capacity as Chair of the California Civility Task Force (CCTF), I write to provide the CCTF's comments on the State Bar's civility proposals, which are based on three of the CCTF's key proposals. I also write to thank you, your colleagues on the State Bar Board of Trustees, and the State Bar staff, for your engagement and leadership on this important topic.

The Board of Trustees will be considering comments on its proposals: (1) Revising California Rule of Court 9.7 to ensure all lawyers take the civility portion of the attorney oath; (2) Making repeated incivility a disciplinary offense; and (3) Requiring lawyers to participate in mandatory continuing legal education (MCLE) about civility, and the connection between bias and incivility. I will address each in turn.

1. Revisions to California Rule of Court 9.7

The CCTF FULLY SUPPORTS the Board's proposed amendments to California Rule of Court 9.7 that would require all licensees who did not take the attorney oath with the civility language, as well as specially admitted attorneys, to submit a declaration with the civility pledge language by February 1, 2024. Also, all licensees and specially admitted attorneys would be required to complete the civility pledge on an annual basis when paying licensing fees or registering as a specially admitted attorney. We have no proposed revisions.

2. Revisions to the Rules of Professional Conduct

The CCTF offers QUALIFIED SUPPORT for the Board's proposed revisions to the Rules of Professional Conduct. Obviously, we support the change to make incivility a disciplinary offense. We offer two minor proposed revisions. The first of our proposed revisions is a substantive change that we believe will eliminate some first amendment concerns that have been expressed to us by members of the bar. The second corrects a numbering error. I have attached a markup showing our proposed revisions.

Scope Revision. On reflection, we believe the proposed civility disciplinary rules should apply only to lawyer speech and conduct when a lawyer is representing a client in the practice of law, and not while the lawyer is engaged in some professional activity other than law practice. Restrictions on lawyers' speech and conduct, including civility rules, inevitably raise the question of whether the First Amendment permits them. (*See generally*, M. Tarkington, Voice of Justice: Reclaiming the First Amendment Rights of Lawyers (2018) ("Tarkington")). As Professor Tarkington explains in her book, courts and commentators have expressed different views on what restrictions on lawyers' speech are permissible under the First Amendment, and why. We believe the modest rule changes being considered by the State Bar do not violate the First Amendment. They merely require lawyers to exercise professionalism and refrain from abusing and harassing others, requirements that judges are already required to enforce with respect to lawyers representing parties in state court litigation. (*See* California Code of Judicial Ethics, Canon 3B, advisory commentary: 3B(2)). These restrictions do not interfere with lawyers' ability to advance their clients' interests and are essential to maintaining the integrity and functioning of the judicial system.

Our proposed scope revision nevertheless limit the civility requirement to lawyers who are representing a client in the practice of law, as opposed to those representing a client in "other professional activities." This may eliminate or discourage some First Amendment challenges. As Professor Tarkington notes, there is significant disagreement among scholars and in the caselaw about the scope of lawyers' First Amendment rights, but if there is a dominant view, it is that lawyers who are engaged in the practice of law on behalf of a client have lesser or no First Amendment rights. (Tarkington at 1-3). We express no view on that. But by deleting "or related professional activities," the State Bar will eliminate challenges to the rules by lawyers who, for example, claim to fear discipline for potentially offensive speech or conduct at bar functions, while teaching MCLE courses, or other professional activities that are not included in the practice of law. Granted, lawyers participating in bar functions or teaching MCLE courses generally are not doing so "[i]n representing a client" and so would not fall within the rules in any event, but we believe our proposed changes make the rules cleaner and more easily defensible. Our other proposed changes make clear that the incivility prohibition applies to both speech and conduct.


Numbering change. Our remaining revision corrects a numbering (typographical) error.

3. New MCLE Civility Course Requirements

The CCTF FULLY SUPPORTS the Board's proposed amendments to the MCLE rules. As it relates to CCTF's recommendations, the Board proposes to amend the MCLE rules to require that all licensees complete one hour of MCLE on the topic of civility in the legal profession as part of their existing 25-hour MCLE requirement, and that approved civility courses cover the relationship between bias and incivility. There are several other non-civility related changes being proposed to the MCLE rules, as to which the CCTF takes no position.

Thank you, as always, for your service to the profession and for considering our views.

Very truly yours,



Brian S. Currey
Associate Justice

cc: Leah Wilson, Executive Director, leaht.wilson@calbar.ca.gov
California Civility Task Force

California Civility Task Force Comments January 11, 2023

State Bar Revisions for comment shown in blue

California Civility Task Force comments shown in red

Rule 1.2 Scope of Representation and Allocation of Authority

(a) Subject to rule 1.2.1, a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by rule 1.4, shall reasonably* consult with the client as to the means by which they are to be pursued. Subject to Business and Professions Code section 6068, subdivision (e)(1) and rule 1.6, a lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. Except as otherwise provided by law in a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer may limit the scope of the representation if the limitation is reasonable* under the circumstances, is not otherwise prohibited by law, and the client gives informed consent.*

Comment

Allocation of Authority between Client and Lawyer

[1] Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. (See, e.g., Cal. Const., art. I, § 16; Pen. Code, § 1018.) A lawyer retained to represent a client is authorized to act on behalf of the client, such as in procedural matters and in making certain tactical decisions. 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. However, a lawyer is not authorized merely by virtue of the lawyer's retention to impair the client's substantive rights or the client's claim itself. (Blanton v. Womancare, Inc. (1985) 38 Cal.3d 396, 404 [212 Cal.Rptr. 151, 156].)

California Civility Task Force Comments January 11, 2023

State Bar Revisions for comment shown in blue

California Civility Task Force comments shown in red

[2] At the outset of, or during a representation, the client may authorize the lawyer to take specific action on the client's behalf without further consultation. Absent a material change in circumstances and subject to rule 1.4, a lawyer may rely on such an advance authorization. The client may revoke such authority at any time.

Independence from Client's Views or Activities

[3] A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

Agreements Limiting Scope of Representation

[4] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. (See, e.g., rules 1.1, 1.8.1, 5.6; see also Cal. Rules of Court, rules 3.35- 3.37 [limited scope rules applicable in civil matters generally], 5.425 [limited scope rule applicable in family law matters].)

California Civility Task Force Comments January 11, 2023

State Bar Revisions for comment shown in blue

California Civility Task Force comments shown in red

CHAPTER 8. MAINTAINING THE INTEGRITY OF THE PROFESSION

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (a) violate these rules or the State Bar Act, knowingly* assist, solicit, or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud,* deceit, or reckless or intentional misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official, or to achieve results by means that violate these rules, the State Bar Act, or other law; or
- (f) knowingly* assist, solicit, or induce a judge or judicial officer in conduct that is a violation of an applicable code of judicial ethics or code of judicial conduct, or other law. For purposes of this rule, "judge" and "judicial officer" have the same meaning as in rule 3.5(c).

Comment

[1] A violation of this rule can occur when a lawyer is acting in propria persona or when a lawyer is not practicing law or acting in a professional capacity.

California Civility Task Force Comments January 11, 2023

State Bar Revisions for comment shown in blue

California Civility Task Force comments shown in red

[2] Paragraph (a) does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.

[3] A lawyer may be disciplined for criminal acts as set forth in Business and Professions Code sections 6101 et seq., or if the criminal act constitutes “other misconduct warranting discipline” as defined by California Supreme Court case law. (See *In re Kelley* (1990) 52 Cal.3d 487 [276 Cal.Rptr. 375].)

[4] A lawyer may be disciplined under Business and Professions Code section 6106 for acts involving moral turpitude, dishonesty, or corruption, whether intentional, reckless, or grossly negligent. Regarding significantly unprofessional conduct that is abusive or harassing, see rule 8.4.2.

[5] Paragraph (c) does not apply where a lawyer advises clients or others about, or supervises, lawful covert activity in the investigation of violations of civil or criminal law or constitutional rights, provided the lawyer’s conduct is otherwise in compliance with these rules and the State Bar Act.

[6] A lawyer’s 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.

[7] This rule does not prohibit those activities of a particular lawyer that are protected by the First Amendment to the United States Constitution or by Article I, section 2 of the California Constitution.

California Civility Task Force Comments January 11, 2023

State Bar Revisions for comment shown in blue

California Civility Task Force comments shown in red

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.

Comment

[1] For guidance on conduct that may be significantly unprofessional, a lawyer should consult the current California Attorney Guidelines of Civility and Professionalism and other applicable civility authorities.

[2] A lawyer does not violate this rule by standing firm in the position of the client, protecting the record for subsequent review, or preserving professional integrity.

[3] A lawyer’s violation of this rule may also constitute a violation of rule 8.4(d).

[54] “Incivility” as used in this rule does not apply to ~~speech or~~ conduct protected by the First Amendment to the United States Constitution or by Article I, section 2 of the California Constitution. “Incivility” as used in this rule includes ~~speech or~~ conduct that violates an attorney’s duties under Business and Professions Code section 6068, subdivisions (b) and (f). (See California Code of Judicial Ethics, Canon 3B, advisory commentary: Canon 3B(2) ~~regarding/for noting~~ a judge’s responsibility to require lawyers under the judge’s direction and control to be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others.)

[5] A disciplinary investigation or proceeding for conduct coming within this rule may also be initiated and maintained if such conduct warrants discipline under California Business and Professions Code sections 6106 and 6068, the California Supreme Court’s inherent authority to impose discipline, or other disciplinary standard.

Proposed Changes to Lawyer Ethics Rules

Are you an attorney?	Yes
Commenting on behalf of an organization	Yes
Name	Robyn Christo
Professional Affiliation	Board of Director
City	San Rafael
State	California
Email address	robyn@ehc.law
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.)	AGREE with the proposed recommendations
ATTACHMENTSYou may upload your comment as an attachment. Only one attachment will be accepted per comment submission. We accept the following file types: text (.txt), Microsoft Word (.doc), WordPerfect (.wpd), Rich Text Format (.rtf) and Adobe Acrobat PDF (.pdf). We do not accept any other file types. Please DO NOT submit scanned documents. Files must be less than 4 megabytes in size.	Ltr_Civility_StateBar_3.1.23.pdf (52 KB)

March 1, 2023

State Bar of California

Re: MCBA'S Comments on the State Bar's Proposed Amendments to the Rules of Professional Conduct and Rules of Court Aimed at Increasing Civility in the Legal Profession

To Whom It May Concern:

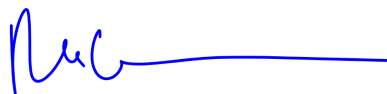
The Marin County Bar Association ("MCBA") strongly supports the State Bar's goal of increasing civility in the legal profession. We commend the hard work of the California Civility Task Force ("CCTF") members and staff who noticed the increase in incivility within the profession and dedicated their time to examining ways to solve the problem.

Like the CCTF, MCBA has observed a significant increase in incivility and dishonesty within the profession, particularly over the last three years. The added stress of the pandemic, the overall state of our country and its political climate, the down economy, and civil unrest around the globe were likely contributing factors. We also think this only exacerbated what we view as a systemic issue deeply rooted in how prior generations of lawyers, directly or indirectly, may have modeled that lawyering and zealous advocacy requires a certain level of incivility. As the State Bar recognized long ago, this is not so.

MCBA is eager to see the Bar continue its efforts to engage the judiciary and lawyers at all levels to acknowledge this systemic problem, identify its root cause, and promote civility in the practice of law. The proposed rule changes are a good start.

We offer the attached comments with respect and appreciation for your service and efforts to improve the legal profession.

Sincerely,

A handwritten signature in blue ink, appearing to be "Mc", followed by a long horizontal line.

MCBA Board of Directors

MCBA COMMENTS ON STATE'S BAR'S PROPOSED CIVILITY RULES

CRPC 1.2 - Scope of Representation and Allocation of Authority

The proposed changes say a lawyer “retains the right” to, among other things, agree to opposing counsel’s reasonable requests “that do not prejudice the rights of the client,” avoid offensive tactics,” and “treat all persons involved in the legal process with dignity, courtesy, and integrity.”

MCBA is concerned the proposal does not go far enough to promote civility. We also think the phrase “retains the right” may cause some to consider this optional. To address the issue, MCBA suggests the following additional comment:

In pursuing the objectives of representation, Lawyers shall, at all times, preserve the integrity of the profession by avoiding offensive tactics and treating all persons involved in the legal process with dignity, courtesy, and respect. Regarding significantly unprofessional conduct, refer to Rule 8.4.2

The phrase “offensive tactics” is also vague. One way to remedy this issue would be to add one or more examples of behavior that constitutes an “offensive tactic.”

CRPC 8.4 - Attorney Misconduct

MCBA is concerned the proposed changes to this Rule are vague and ambiguous for a few reasons. First, there is no clear definition or explanation of the phrase “significantly unprofessional conduct.” While the proposed change to Comment 4 expressly refers to new Rule 8.4.2, which uses and defines the quoted term, the general reference does not make that clear in our view. Second, Comment 4’s reference to 8.4.2 is redundant as Comment 6 also refers, without citing the specific Rule, to 8.4.2. Finally, although 8.4.2 uses the phrase “significantly unprofessional conduct,” it does so to define “incivility.” This is unnecessarily confusing and inconsistent.

To address these issues, MCBA suggests the following:

1. Delete Comment 4’s reference to Rule 8.4.2.

[4] A lawyer may be disciplined under Business and Professions Code section 6106 for acts involving moral turpitude, dishonesty, or corruption, whether intentional, reckless, or grossly negligent. ~~Regarding significantly unprofessional conduct that is abusive or harassing, see rule 8.4.2.~~

2. Make specific reference to Rule 8.4.2 in Comment 6 with clarification to create consistency between 8.4. and 8.4.2.

[6] A lawyer's violation of paragraph (d) includes incivility as defined in Rule 8.4.2, which includes significantly unprofessional conduct that is abusive or harassing. ~~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.

Additionally, it would be helpful if the guidance toward "other applicable civility authorities" were more specific to state that applicable civility authorities include local rules of court and bar associations' codes of civility.

CRPC 8.4.2 – Incivility in the Practice of Law

MCBA is concerned the proposed new Rule does not do enough to protect attorneys who are members of historically marginalized groups from unfounded accusations of incivility, which are themselves abusive and harassing. We are also concerned that the proposed definition of "incivility" may exacerbate the potential for confusion and abuse. While there are no easy answers, language defining *civility*, in addition to *incivility*, would be helpful, as would providing examples of each in the comments. We also suggest adding the following language to the comments:

Lawyers must, at all times, preserve the integrity of the profession by treating all persons involved in the legal process with dignity, courtesy, and respect.

MCBA joins in the suggestion made by the Legal Aid Associations of California (LAAC) that the State Bar collect, analyze, and publish data to detect trends around explicit or implicit bias intersecting with civility referrals.

CRPC 9.7 – Civility Oath

MCBA generally agrees that all licensed attorneys should take the civility pledge. We question whether a form declaration re-submitted annually will genuinely promote the pledge's goals. We suggest encouraging attorneys to swear the oath orally in group settings, through local bar associations, as part of a CLE on civility, or through employer-sponsored events. For equity purposes, a written declaration should be allowed as a substitute. Additionally, annual affirmation may be unnecessary and overly burdensome. Consider requiring re-affirmation to coincide with the CLE reporting requirements.

Proposed Changes to Lawyer Ethics Rules

Are you an attorney?	No
Commenting on behalf of an organization	No
Name	Steven Maviglio
City	Sacramento
State	California
Email address	steven.maviglio@gmail.com
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA2_" to the front of your file's name)	Long overdue.
From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA3_" to the front of your file's name)	I strongly support this rule. I was recently served by an attorney who yelled "fuck you, fuck you" as he served me with papers. This attorney also has written numerous threatening letters and trespassed on my property. He has been admonished for his behavior by judges, but nothing happens. This is definitely needed.

Proposed Changes to Lawyer Ethics Rules

Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	Jonathan Medina
City	La Puente
State	California
Email address	jonathan.r.medina@gmail.com
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA1_" to the front of your file's name)	"Civility" is too broad a term. I find it highly uncivil when fellow colleagues, with a very recent specific example, fail to cite scientific studies and common knowledge that very much undermines their arguments. This would become a tit-for-tat festival of litigation and "tattletale"-ism as attorneys rush to file frivolous uncivil claims. Similar to how SLAPP has taken on its own burdens, this would add extra bureaucracy. As we can see, Californians have had enough and are fleeing the state in droves. It's time to simplify and not add new requirements, as much as it sounds pleasant to have everyone be "civil", it is very much so in the eye of the beholder.
From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA2_" to the front of your file's name)	Soon, citing scientific studies will be labelled abusive or harassing behavior. No more bureaucracy please.

From the choices below, we ask that you indicate DISAGREE with the proposed recommendations your position on Proposed Amendment 3. (This is a required field.)

ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA3_" to the front of your file's name)

I hold it that a little rebellion now and then is a good thing, and is as necessary in the political world as storms in the physical." - Thomas Jefferson, 1787

Proposed Changes to Lawyer Ethics Rules

Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	Jamoa A. Moberly
Professional Affiliation	ADR Services, Inc.
City	Irvine
State	California
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.)	AGREE with the proposed recommendations

Proposed Changes to Lawyer Ethics Rules

Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	D'Artagnan Montrose
City	Fresno
State	California
Email address	dmontroseii@gmail.com
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA1_" to the front of your file's name)	<p>Most definitely. As someone who attended business school before law school and worked in the corporate world for 10 years before becoming a lawyer, one thing that is very apparent is the lack of business communication education and etiquette among attorneys.</p> <p>You learn in the corporate world about the benefits of striving for win/win negotiations and always communicating in a respectful and positive manner even when in engaged in conflict.</p> <p>Attorneys unfortunately do not learn this in school or in practice, and so you have extremely rude and disrespectful opposing counsel who do not even know how to start an email with "Dear counsel, I hope this message finds you well" or who appear at depositions and think it is some sort of power play to refuse to engage in standard pleasantries.</p> <p>Worst case you end up with the nightmare</p>

opposing counsel who is so devoid of manners and professionalism that they are rude even to the Judges. Having come up in a firm that is big on professional courtesy, I am always amazed when opposing counsel takes the position that being extremely obnoxious and unnecessarily confrontational is somehow superior lawyering.

I have always wished Judges would sanction such uncivil and unprofessional behavior.

From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)

AGREE with the proposed recommendations

ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA2_" to the front of your file's name)

Most definitely. As someone who attended business school before law school and worked in the corporate world for 10 years before becoming a lawyer, one thing that is very apparent is the lack of business communication education and etiquette among attorneys.

You learn in the corporate world about the benefits of striving for win/win negotiations and always communicating in a respectful and positive manner even when engaged in conflict.

Attorneys unfortunately do not learn this in school or in practice, and so you have extremely rude and disrespectful opposing counsel who do not even know how to start an email with "Dear counsel, I hope this message finds you well" or who appear at depositions and think it is some sort of power play to refuse to engage in standard pleasantries.

Worst case you end up with the nightmare opposing counsel who is so devoid of manners

and professionalism that they are rude even to the Judges. Having come up in a firm that is big on professional courtesy, I am always amazed when opposing counsel takes the position that being extremely obnoxious and unnecessarily confrontational is somehow superior lawyering.

I have always wished Judges would sanction such uncivil and unprofessional behavior.

From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.)

AGREE with the proposed recommendations

ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA3_" to the front of your file's name)

Most definitely. As someone who attended business school before law school and worked in the corporate world for 10 years before becoming a lawyer, one thing that is very apparent is the lack of business communication education and etiquette among attorneys.

You learn in the corporate world about the benefits of striving for win/win negotiations and always communicating in a respectful and positive manner even when engaged in conflict.

Attorneys unfortunately do not learn this in school or in practice, and so you have extremely rude and disrespectful opposing counsel who do not even know how to start an email with "Dear counsel, I hope this message finds you well" or who appear at depositions and think it is some sort of power play to refuse to engage in standard pleasantries.

Worst case you end up with the nightmare opposing counsel who is so devoid of manners and professionalism that they are rude even to

the Judges. Having come up in a firm that is big on professional courtesy, I am always amazed when opposing counsel takes the position that being extremely obnoxious and unnecessarily confrontational is somehow superior lawyering.

I have always wished Judges would sanction such uncivil and unprofessional behavior.

Proposed Changes to Lawyer Ethics Rules

Are you an attorney?	Yes
Commenting on behalf of an organization	Yes
Name	Mike Madokoro
Professional Affiliation	Multicultural Bar Alliance of Southern California
City	Woodland Hills
State	California
Email address	mike.madokoro@bowmanandbrooke.com
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA1_" to the front of your file's name)	The Multicultural Bar Alliance of Southern California offers qualified support of the Board's proposed revisions to the Rules of Professional Conduct as set forth in the attached correspondence dated January 11, 2023, from Justice Brian S. Currey, Chair of the California Civility Task Force.
From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA2_" to the front of your file's name)	The Multicultural Bar Alliance of Southern California offers qualified support of the Board's proposed revisions to the Rules of Professional Conduct as set forth in the attached correspondence dated January 11, 2023, from Justice Brian S. Currey, Chair of the California Civility Task Force.
From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.)	AGREE with the proposed recommendations

ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA3_" to the front of your file's name)

The Multicultural Bar Alliance of Southern California offers qualified support of the Board's proposed revisions to the Rules of Professional Conduct as set forth in the attached correspondence dated January 11, 2023, from Justice Brian S. Currey, Chair of the California Civility Task Force.

ATTACHMENTS You may upload your comment as an attachment. Only one attachment will be accepted per comment submission. We accept the following file types: text (.txt), Microsoft Word (.doc), WordPerfect (.wpd), Rich Text Format (.rtf) and Adobe Acrobat PDF (.pdf). We do not accept any other file types. Please DO NOT submit scanned documents. Files must be less than 4 megabytes in size.

[California_Civility_Task_Force_Letter_and_Comments_to_Proposed_Disciplinary_Rules_Changes_1.11.23._FINAL.pdf \(2.47 MB\)](#)



STATE OF CALIFORNIA
Court of Appeal
SECOND APPELLATE DISTRICT
DIVISION FOUR
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LOS ANGELES, CALIFORNIA 90013

BRIAN S. CURREY
ASSOCIATE JUSTICE

TELEPHONE
(213) 830-7438
brian.currey@jud.ca.gov

January 11, 2023

Via electronic submission to the State Bar and email to ruben.duran@bbklaw.com

Ruben Duran, Chair
State Bar Board of Trustees
180 Howard Street
San Francisco, CA 94105

Re: California Civility Task Force Comments to Civility Proposals Being
Considered by the State Bar Board of Trustees

Dear Ruben:

In my capacity as Chair of the California Civility Task Force (CCTF), I write to provide the CCTF's comments on the State Bar's civility proposals, which are based on three of the CCTF's key proposals. I also write to thank you, your colleagues on the State Bar Board of Trustees, and the State Bar staff, for your engagement and leadership on this important topic.

The Board of Trustees will be considering comments on its proposals: (1) Revising California Rule of Court 9.7 to ensure all lawyers take the civility portion of the attorney oath; (2) Making repeated incivility a disciplinary offense; and (3) Requiring lawyers to participate in mandatory continuing legal education (MCLE) about civility, and the connection between bias and incivility. I will address each in turn.

1. Revisions to California Rule of Court 9.7

The CCTF FULLY SUPPORTS the Board's proposed amendments to California Rule of Court 9.7 that would require all licensees who did not take the attorney oath with the civility language, as well as specially admitted attorneys, to submit a declaration with the civility pledge language by February 1, 2024. Also, all licensees and specially admitted attorneys would be required to complete the civility pledge on an annual basis when paying licensing fees or registering as a specially admitted attorney. We have no proposed revisions.

2. Revisions to the Rules of Professional Conduct

The CCTF offers QUALIFIED SUPPORT for the Board's proposed revisions to the Rules of Professional Conduct. Obviously, we support the change to make incivility a disciplinary offense. We offer two minor proposed revisions. The first of our proposed revisions is a substantive change that we believe will eliminate some first amendment concerns that have been expressed to us by members of the bar. The second corrects a numbering error. I have attached a markup showing our proposed revisions.

Scope Revision. On reflection, we believe the proposed civility disciplinary rules should apply only to lawyer speech and conduct when a lawyer is representing a client in the practice of law, and not while the lawyer is engaged in some professional activity other than law practice. Restrictions on lawyers' speech and conduct, including civility rules, inevitably raise the question of whether the First Amendment permits them. (*See generally*, M. Tarkington, Voice of Justice: Reclaiming the First Amendment Rights of Lawyers (2018) ("Tarkington")). As Professor Tarkington explains in her book, courts and commentators have expressed different views on what restrictions on lawyers' speech are permissible under the First Amendment, and why. We believe the modest rule changes being considered by the State Bar do not violate the First Amendment. They merely require lawyers to exercise professionalism and refrain from abusing and harassing others, requirements that judges are already required to enforce with respect to lawyers representing parties in state court litigation. (*See* California Code of Judicial Ethics, Canon 3B, advisory commentary: 3B(2)). These restrictions do not interfere with lawyers' ability to advance their clients' interests and are essential to maintaining the integrity and functioning of the judicial system.

Our proposed scope revision nevertheless limit the civility requirement to lawyers who are representing a client in the practice of law, as opposed to those representing a client in "other professional activities." This may eliminate or discourage some First Amendment challenges. As Professor Tarkington notes, there is significant disagreement among scholars and in the caselaw about the scope of lawyers' First Amendment rights, but if there is a dominant view, it is that lawyers who are engaged in the practice of law on behalf of a client have lesser or no First Amendment rights. (Tarkington at 1-3). We express no view on that. But by deleting "or related professional activities," the State Bar will eliminate challenges to the rules by lawyers who, for example, claim to fear discipline for potentially offensive speech or conduct at bar functions, while teaching MCLE courses, or other professional activities that are not included in the practice of law. Granted, lawyers participating in bar functions or teaching MCLE courses generally are not doing so "[i]n representing a client" and so would not fall within the rules in any event, but we believe our proposed changes make the rules cleaner and more easily defensible. Our other proposed changes make clear that the incivility prohibition applies to both speech and conduct.

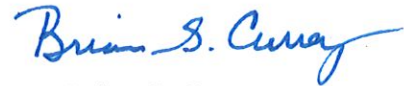
Numbering change. Our remaining revision corrects a numbering (typographical) error.

3. New MCLE Civility Course Requirements

The CCTF FULLY SUPPORTS the Board's proposed amendments to the MCLE rules. As it relates to CCTF's recommendations, the Board proposes to amend the MCLE rules to require that all licensees complete one hour of MCLE on the topic of civility in the legal profession as part of their existing 25-hour MCLE requirement, and that approved civility courses cover the relationship between bias and incivility. There are several other non-civility related changes being proposed to the MCLE rules, as to which the CCTF takes no position.

Thank you, as always, for your service to the profession and for considering our views.

Very truly yours,



Brian S. Currey
Associate Justice

cc: Leah Wilson, Executive Director, leaht.wilson@calbar.ca.gov
California Civility Task Force

California Civility Task Force Comments January 11, 2023

State Bar Revisions for comment shown in blue

California Civility Task Force comments shown in red

Rule 1.2 Scope of Representation and Allocation of Authority

(a) Subject to rule 1.2.1, a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by rule 1.4, shall reasonably* consult with the client as to the means by which they are to be pursued. Subject to Business and Professions Code section 6068, subdivision (e)(1) and rule 1.6, a lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. Except as otherwise provided by law in a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer may limit the scope of the representation if the limitation is reasonable* under the circumstances, is not otherwise prohibited by law, and the client gives informed consent.*

Comment

Allocation of Authority between Client and Lawyer

[1] Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. (See, e.g., Cal. Const., art. I, § 16; Pen. Code, § 1018.) A lawyer retained to represent a client is authorized to act on behalf of the client, such as in procedural matters and in making certain tactical decisions. 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. However, a lawyer is not authorized merely by virtue of the lawyer's retention to impair the client's substantive rights or the client's claim itself. (Blanton v. Womancare, Inc. (1985) 38 Cal.3d 396, 404 [212 Cal.Rptr. 151, 156].)

California Civility Task Force Comments January 11, 2023

State Bar Revisions for comment shown in blue

California Civility Task Force comments shown in red

[2] At the outset of, or during a representation, the client may authorize the lawyer to take specific action on the client's behalf without further consultation. Absent a material change in circumstances and subject to rule 1.4, a lawyer may rely on such an advance authorization. The client may revoke such authority at any time.

Independence from Client's Views or Activities

[3] A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

Agreements Limiting Scope of Representation

[4] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. (See, e.g., rules 1.1, 1.8.1, 5.6; see also Cal. Rules of Court, rules 3.35- 3.37 [limited scope rules applicable in civil matters generally], 5.425 [limited scope rule applicable in family law matters].)

California Civility Task Force Comments January 11, 2023

State Bar Revisions for comment shown in blue

California Civility Task Force comments shown in red

CHAPTER 8. MAINTAINING THE INTEGRITY OF THE PROFESSION

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (a) violate these rules or the State Bar Act, knowingly* assist, solicit, or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud,* deceit, or reckless or intentional misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official, or to achieve results by means that violate these rules, the State Bar Act, or other law; or
- (f) knowingly* assist, solicit, or induce a judge or judicial officer in conduct that is a violation of an applicable code of judicial ethics or code of judicial conduct, or other law. For purposes of this rule, "judge" and "judicial officer" have the same meaning as in rule 3.5(c).

Comment

[1] A violation of this rule can occur when a lawyer is acting in propria persona or when a lawyer is not practicing law or acting in a professional capacity.

California Civility Task Force Comments January 11, 2023

State Bar Revisions for comment shown in blue

California Civility Task Force comments shown in red

[2] Paragraph (a) does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.

[3] A lawyer may be disciplined for criminal acts as set forth in Business and Professions Code sections 6101 et seq., or if the criminal act constitutes “other misconduct warranting discipline” as defined by California Supreme Court case law. (See *In re Kelley* (1990) 52 Cal.3d 487 [276 Cal.Rptr. 375].)

[4] A lawyer may be disciplined under Business and Professions Code section 6106 for acts involving moral turpitude, dishonesty, or corruption, whether intentional, reckless, or grossly negligent. Regarding significantly unprofessional conduct that is abusive or harassing, see rule 8.4.2.

[5] Paragraph (c) does not apply where a lawyer advises clients or others about, or supervises, lawful covert activity in the investigation of violations of civil or criminal law or constitutional rights, provided the lawyer’s conduct is otherwise in compliance with these rules and the State Bar Act.

[6] A lawyer’s 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.

[7] This rule does not prohibit those activities of a particular lawyer that are protected by the First Amendment to the United States Constitution or by Article I, section 2 of the California Constitution.

California Civility Task Force Comments January 11, 2023

State Bar Revisions for comment shown in blue

California Civility Task Force comments shown in red

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.

Comment

[1] For guidance on conduct that may be significantly unprofessional, a lawyer should consult the current California Attorney Guidelines of Civility and Professionalism and other applicable civility authorities.

[2] A lawyer does not violate this rule by standing firm in the position of the client, protecting the record for subsequent review, or preserving professional integrity.

[3] A lawyer’s violation of this rule may also constitute a violation of rule 8.4(d).

[54] “Incivility” as used in this rule does not apply to ~~speech or~~ conduct protected by the First Amendment to the United States Constitution or by Article I, section 2 of the California Constitution. “Incivility” as used in this rule includes ~~speech or~~ conduct that violates an attorney’s duties under Business and Professions Code section 6068, subdivisions (b) and (f). (See California Code of Judicial Ethics, Canon 3B, advisory commentary: Canon 3B(2) ~~regarding/for noting~~ a judge’s responsibility to require lawyers under the judge’s direction and control to be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others.)

[5] A disciplinary investigation or proceeding for conduct coming within this rule may also be initiated and maintained if such conduct warrants discipline under California Business and Professions Code sections 6106 and 6068, the California Supreme Court’s inherent authority to impose discipline, or other disciplinary standard.

Proposed Changes to Lawyer Ethics Rules

Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	Arvand Naderi
City	San Fernando
State	California
Email address	wehatejail@hotmail.com
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.)	AGREE with the proposed recommendations

Proposed Changes to Lawyer Ethics Rules

Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	Richard Oberto
City	Fresno
State	California
Email address	rmoberto@gmail.com
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA1_" to the front of your file's name)	<p>This proposed rule is seeking to spread “civility” language into an area where the rules are already clear. As it is already is, clients do not have the power to direct their attorney to be uncivil. Clients have numerous important powers in the legal process, but they absolutely do not have the authority to direct how their attorneys deport themselves. Accordingly, this proposed rule is completely ludicrous. The real purpose here is to spread “civility” language into another facet of the professional rules. That pretextual purpose connects the present proposed rule with the serious problems that all the other proposed civility rules would create. The proposed civility rules will have a chilling effect on advocacy and constitutionally protected speech. The enforcement of those proposed rules will be arbitrary and capricious, targeting attorneys who are different, unorthodox, and standing firm against procedural pressures from judges and opposing counsel. The greatest abusers of civility norms will be the ones who most zealously invoke “incivility” against their adversaries.</p>

Please do not subject us attorneys to these terrible proposed rules.

From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)

DISAGREE with the proposed recommendations

ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA2_" to the front of your file's name)

The proposed definition of "incivility" is hopelessly vague. The vagueness will have a chilling effect on constitutionally protected speech and legitimate advocacy for clients. Most attorneys will not be brave enough to wade into the gray area between "incivility" as vaguely defined on the one hand and constitutionally protected free speech and legitimate advocacy on the other hand. That chilling effect will be to the great detriment of client advocacy and diversity of views among attorneys. The vagueness also will lead to arbitrary and capricious enforcement against attorneys who might be different, unorthodox, or standing firm against pressures from judges and opposing counsel (e.g., settlement and other procedural pressures). The attempted definition of "incivility" is hopeless vague on its face, as the attempted definition itself refers for guidance to outside sources, including "the current California Attorney Guidelines of Civility and Professionalism and other applicable civility authorities." We should expect that many of the attorneys and judges who will be most zealous about enforcing "civility" will be those who most egregiously abuse the norms of civility. Consider for example the Fresno County District Attorney, who frequently blames the Governor and recent legal reforms when specific criminal acts occur in the community. I have had one of the DA's deputies call my client (who is an Afghanistan war veteran) "a guy who likes to abuse women."

These violators of civility norms will be the first to call out "incivility" when anybody pushes back against their abuses. The proposed rule here would create a terrible mess. Please do not subject us attorneys to this terrible proposed rule.

From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.)

DISAGREE with the proposed recommendations

ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA3_" to the front of your file's name)

The proposed rule subjecting attorneys to discipline under a hopelessly vague definition of "incivility" will create terrible consequences for client advocacy and the legal profession. The definition is so hopelessly vague that the comment refers attorneys to consult a voluminous tome called the "California Attorney Guidelines of Civility and Professionalism", as well as some unknown "other applicable civility authorities." This is completely unacceptable for clients and the legal profession. I have submitted my views on this subject elsewhere in my comments on related proposed rules. In sum, the proposed rule here will have a chilling effect on advocacy and constitutionally protected speech; the enforcement will be arbitrary and capricious, targeting attorneys who are different, unorthodox, and standing firm against procedural pressures from judges and opposing counsel; and the greatest abusers of civility norms will be the ones who most zealously invoke "incivility" against their adversaries. Please do not subject us attorneys to this terrible proposed rule.

Proposed Changes to Lawyer Ethics Rules

Are you an attorney?	Yes
Commenting on behalf of an organization	Yes
Name	Michael Gregg
Professional Affiliation	Orange County Bar Association
City	Newport Beach
State	California
Email address	tlevindofske@ocbar.org
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	AGREE ONLY if Modified
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA1_" to the front of your file's name)	Comment [1] to CRPC Rule 1.2. We support this proposed change to Comment [1] providing that lawyers have the authority to conduct themselves with civility even if the client directs otherwise, as long as the lawyer does not prejudice the client's rights, because it affords the lawyer the ability to act as he or she deems professionally appropriate without having to confront such client. We question, though, if the caveat is necessary as it is difficult to imagine a situation where acting with incivility is the only way to not prejudice a client's rights and, as such, it may give a lawyer an excuse to act inappropriately.
From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA2_" to the front of your file's name)	Comment [4] to Rule 8.4. As addressed in subparagraph (d) below, we do not support the proposed standalone Rule 8.4.2. If it is not adopted, the proposed amendment to Comment

[4] will not be necessary. If Rule 8.4.2 is adopted, then we do not have any opposition to the proposed amendment to Comment [4].

(c)Comment [6] to CRPC Rule 8.4. This proposed Comment provides that a lawyer's violation of Rule 8.4(d) includes engaging in "significantly unprofessional conduct that is abusive or harassing in the practice of law or related professional activities". It is unclear to us what would constitute "significantly unprofessional conduct" and what the definitions of "abusive" or "harassing" are in this context. For such serious conduct that may give rise to attorney discipline, there seems to be a need for further definitions here or perhaps the Board could formulate and adopt standards as to what conduct would presumptively be considered "significantly unprofessional conduct that is abusive or harassing" for purposes of this rule, similar to the Standards adopted under former rule 1-400(E). Simply directing lawyers to consult the current California Lawyer Guidelines of Civility and Professionalism ("Civility Guidelines") for guidance under this proposed Comment seems unhelpful and misplaced because it is unclear which conduct described in the Guidelines would or could be considered "significantly unprofessional conduct." For example, the twenty-one section Civility Guidelines provides in Section 5(b) that attorneys should timely inform the other parties if the attorney will be late to court or a deposition and Section 9(a)(1) provides that, absent "unusual circumstances," attorneys noticing...

... deposition should not set them to take place before previously noticed depositions in the case. While we agree that failure to follow these

guidelines is uncivil, we do not believe lawyers should necessarily be disciplined for isolated transgressions of these guidelines. If the reference to the Civility Guidelines remains in Comment [6], it should identify which particular conduct described in the Guidelines could be “significantly unprofessional conduct that is abusive or harassing.” Additionally, if there are other applicable civility authorities, as implied by this proposed Comment, we recommend that they be specifically listed.

The proposed Comment purports to clarify that a lawyer does not violate paragraph 8.4(d) by standing firm in the position of the client, protecting the record for subsequent review, or preserving professional integrity. We recommend deleting this provision as it suggests that it is acceptable to act with incivility under the pretense or excuse that such behavior is for any of these reasons. It further seems contrary to the purpose of the proposed Comment [1] to Rule 1.2.

From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.)

DISAGREE with the proposed recommendations

ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA3_" to the front of your file's name)

Proposed New Rule 8.4.2. In general, we are not in favor of a new stand-alone rule. While the materials discuss that either proposed Comment [6] be added to existing Rule 8.4 or proposed new Rule 8.4.2 be enacted, the materials presented both as if to possibly co-exist. As such, some of the commentary stated in subparagraph (c) above is repeated here. In Subsection (b) of the proposed rule, it is again unclear what would constitute “significantly unprofessional conduct” that is “abusive” or

“harassing,” thereby giving rise to incivility. Again, we find the direction in Comment [1] to lawyers to consult the Civility Guidelines misplaced and recommend that any applicable civility authorities be specifically listed.

As mentioned above, we recommend deleting “by standing firm in the position of the client, protecting the record for subsequent review, or preserving professional integrity” because it provides for an excuse for a lawyer to act with incivility and seems contrary to the purpose of the proposed Comment [1] to Rule 1.2.

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[PA1__PA2_PA3_OC_Bar_Letter_.pdf \(1.78 MB\)](#)



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BAR ASSOCIATION**

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OC WOMEN LAWYERS ASSOC.

THURGOOD MARSHALL BAR ASSOC.

February 28, 2023

Office of Professional Competence, Planning and Development
State Bar of California
180 Howard Street
San Francisco, California 94105-1639

Re: (1) Proposed Amendments to Rules of Professional Conduct
Comments to Rules 1.2 and 8.4 and New Rule 8.4.2 Addressing
Incivility and (2) Proposed Amendments to California Rules of
Court 9.7 Requiring Lawyers to Complete Annual Civility Pledge

Dear Sir/Madam:

The Orange County Bar Association (OCBA) respectfully submits the following comments concerning the (1) Proposed Amendments to Rules of Professional Conduct Comments to Rules 1.2 and 8.4 and New Rule 8.4.2 Addressing Incivility, and (2) Proposed Amendments to California Rules of Court 9.7 Requiring Lawyers to Complete Annual Civility Pledge, both based upon Recommendations by the California Civility Task Force ("CCTF") as provided in a memorandum dated November 17, 2022, from The State Bar of California to Member and Board of Trustees.

Founded over 100 years ago, the OCBA has over 7,000 members, making it one of the largest voluntary bar associations in California. The OCBA Board of Directors made up of practitioners from large and small firms, with varied civil and criminal practices, of different ethnic backgrounds and political learnings, has approved these comments prepared by the Professionalism and Ethics Committee.

We applaud the State Bar's efforts with these proposed amendments on this very important topic of civility. We also greatly appreciate the time and thought expended to review the CCTF's initial report, coordinate with the Committee on Professional Responsibility and Conduct (COPRAC) and the Office of Chief Trial Counsel (OCTC), and propose statutory changes.

In general, we support the purpose of the amendments for lawyers to act with civility and agree it is of utmost importance for the legal profession. At the same time, we caution against a new basis in the rules to discipline lawyers for incivility due to the challenges in setting and enforcing standards. We further offer the following comments.

(1) Proposed Amendments to Comments to CRPC Rules 1.2 and 8.4 and New Rule 8.4.2

(a) Comment [1] to CRPC Rule 1.2. We support this proposed change to Comment [1] providing that lawyers have the authority to conduct themselves with civility even if the client directs otherwise, as long as the lawyer does not prejudice the client's rights, because it affords the lawyer the ability to act as he or she deems professionally appropriate without having to confront such client. We question, though, if the caveat is necessary as it is difficult to imagine a situation where acting with incivility is the only way to not prejudice a client's rights and, as such, it may give a lawyer an excuse to act inappropriately.

(b) Comment [4] to Rule 8.4. As addressed in subparagraph (d) below, we do not support the proposed standalone Rule 8.4.2. If it is not adopted, the proposed amendment to Comment [4] will not be necessary. If Rule 8.4.2 is adopted, then we do not have any opposition to the proposed amendment to Comment [4].

(c) Comment [6] to CRPC Rule 8.4. This proposed Comment provides that a lawyer's violation of Rule 8.4(d) includes engaging in "significantly unprofessional conduct that is abusive or harassing in the practice of law or related professional activities". It is unclear to us what would constitute "significantly unprofessional conduct" and what the definitions of "abusive" or "harassing" are in this context. For such serious conduct that may give rise to attorney discipline, there seems to be a need for further definitions here or perhaps the Board could formulate and adopt standards as to what conduct would presumptively be considered "significantly unprofessional conduct that is abusive or harassing" for purposes of this rule, similar to the Standards adopted under former rule 1-400(E). Simply directing lawyers to consult the current California Lawyer Guidelines of Civility and Professionalism ("Civility Guidelines") for guidance under this proposed Comment seems unhelpful and misplaced because it is unclear which conduct described in the Guidelines would or could be considered "significantly unprofessional conduct." For example, the twenty-one section Civility Guidelines provides in Section 5(b) that attorneys should timely inform the other parties if the attorney will be late to court or a deposition and Section 9(a)(1) provides that, absent "unusual circumstances," attorneys noticing deposition should not set them to take place before previously noticed depositions in the case. While we agree that failure to follow these guidelines is uncivil, we do not believe lawyers should necessarily be disciplined for isolated transgressions of these guidelines. If the reference to the Civility Guidelines remains in Comment [6], it should identify which particular conduct described in the Guidelines could be "significantly unprofessional conduct that is abusive or harassing." Additionally, if there are other applicable civility authorities, as implied by this proposed Comment, we recommend that they be specifically listed.

The proposed Comment purports to clarify that a lawyer does not violate paragraph 8.4(d) by standing firm in the position of the client, protecting the record for subsequent review, or preserving professional integrity. We recommend deleting this provision as it suggests that it is acceptable to act with incivility under the pretense or excuse that such behavior is for any of these reasons. It further seems contrary to the purpose of the proposed Comment [1] to Rule 1.2.

(d) Proposed New Rule 8.4.2. In general, we are not in favor of a new stand-alone rule. While the materials discuss that either proposed Comment [6] be added to existing Rule 8.4 or proposed new Rule 8.4.2 be enacted, the materials presented both as if to possibly co-exist. As such, some of the commentary stated in subparagraph (c) above is repeated here. In Subsection (b) of the proposed rule, it is again unclear what would constitute “significantly unprofessional conduct” that is “abusive” or “harassing,” thereby giving rise to incivility. Again, we find the direction in Comment [1] to lawyers to consult the Civility Guidelines misplaced and recommend that any applicable civility authorities be specifically listed.

As mentioned above, we recommend deleting “by standing firm in the position of the client, protecting the record for subsequent review, or preserving professional integrity” because it provides for an excuse for a lawyer to act with incivility and seems contrary to the purpose of the proposed Comment [1] to Rule 1.2.

(2) Proposed Amendments to CRC Rule 9.7. While we understand that Rule 9.7 and the civility declaration therein was approved by the Supreme Court effective May 27, 2014, we question the intended meaning of the words “at all times” as used within such pledge which provides: “As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy and integrity”. Do such words mean at all times while a lawyer is engaged in the practice of law, or does it mean at all times of a lawyer’s life including when a lawyer is on vacation or while with friends, family, or the public at large? If the former, we suggest a revision to so clarify. If the latter, then we suggest considering a revision to the pledge limiting the applicable time range of the pledge to the times that a lawyer is engaged in the practice of law.

This clarification seems imperative, especially in light of the various definitions which can be assigned to such words as “dignity, courtesy and integrity” and the proposed new rule setting a basis for regulation and disciplinary action for pledge violations. Other states’ pledges, such as South Carolina’s and Florida’s, make it clear to whom their pledges apply and that such pledges apply to a lawyer’s conduct while engaged in the practice of law. Both states’ pledges provide: “To the opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in

2/28/2023

the court, but also in all written and oral communications.” Similarly, proposed new Rule 8.4.2(a) expressly provides: “In representing a client, a lawyer shall not engage in incivility in the practice of law or related professional activities”, thereby limiting the civility requirement to when a lawyer is engaged in the practice of law.

In further support of limiting the applicable time range of the Rule 9.7 pledge to the times that a lawyer is engaged in the practice, Business and Professions Code Section 6060(b)(1) already requires lawyers to be of “good moral character,” which is defined in Rule 4.40 of the Rules of the State Bar of California (Admissions Rules) as including qualities of honesty, fairness, candor, trustworthiness, observance of fiduciary responsibility, respect for and obedience to the law, and respect for the rights of others and the judicial process. Such requirement, while still broad, seems to be a more appropriate standard than requiring lawyers to act, at all times, with the subjective words of dignity, courtesy, and integrity.

As for the proposed amendment that a lawyer face possible fees and eventually be placed on involuntary inactive enrollment or would have their special admissions registration suspended or terminated for failure to submit to the civility pledge in the manner established by the State Bar, we caution against such regulation as it could be difficult to set standards and would require a significant use of resources to so regulate and discipline.

If Rule 9.7 is amended to provide for regulation and disciplinary proceeding during which a lawyer’s license could be suspended or terminated, then it is all the more important to clarify the words “at all times” within the civility pledge.

Thank you for your consideration of our comments and suggestions.

Sincerely,

A handwritten signature in black ink, appearing to read 'MAG', is positioned above the typed name.

Michael A. Gregg
2023 President
Orange County Bar Association

Proposed Changes to Lawyer Ethics Rules

Are you an attorney?	No
Commenting on behalf of an organization	No
Name	Rebecca Riley
Professional Affiliation	Retired Judge
City	Ventura
State	California
Email address	beca104@aol.com
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA1_" to the front of your file's name)	Incivility has no place in a court of law. Sadly, it often requires the possibility of discipline to get that message through--particularly it seems to newer attorneys.
From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA2_" to the front of your file's name)	Guidelines make it easier both to follow the law and to make it more difficult to claim ignorance.
From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.)	AGREE with the proposed recommendations

Proposed Changes to Lawyer Ethics Rules

Are you an attorney?	Yes
Name	David A. Shaneyfelt
City	calabasas
State	California
Email address	dshaneyfelt@alvarezfirm.com
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA1_" to the front of your file's name)	<p>As a long-time litigation attorney, I am concerned with the lack of civility that exists in the profession. In 2020, I published an article in the University of St. Thomas Law Review entitled, "Confessions of a Catholic Litigator," that addresses this issue and comments favorably on previous actions of the Bar to address the subject of civility.</p> <p>See attached..</p>
From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA2_" to the front of your file's name)	<p>As a long-time litigation attorney, I am concerned with the lack of civility that exists in the profession. In 2020, I published an article in the University of St. Thomas Law Review entitled, "Confessions of a Catholic Litigator," that addresses this issue and comments favorably on previous actions of the Bar to address the subject of civility.</p> <p>See attached..</p>

From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.)

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AGREE with the proposed recommendations

As a long-time litigation attorney, I am concerned with the lack of civility that exists in the profession. In 2020, I published an article in the University of St. Thomas Law Review entitled, "Confessions of a Catholic Litigator," that addresses this issue and comments favorably on previous actions of the Bar to address the subject of civility.

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[PA1_Confessions_of_a_Catholic_Litigator.pdf](#)
(152 KB)

University of St. Thomas Law Journal

Volume 17
Issue 1 *Restorative Justice, Law, and Healing*
Symposium

Article 7

November 2020

Confessions of a Catholic Litigator

David A. Shaneyfelt

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Recommended Citation

David A. Shaneyfelt, *Confessions of a Catholic Litigator*, 17 U. ST. THOMAS L.J. 111 (2020).
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SUBMISSION

CONFESSIONS OF A CATHOLIC LITIGATOR

DAVID A. SHANEYFELT*

I imagine there are Navy Seals whose consciences prick them when they swim aboard an enemy's base in the dead of night, slit the throats of guards on duty, retrieve a hostage, gun down pursuers, and swim back to their escape boat. They do what is necessary under the circumstances, within a framework that renders their actions morally unobjectionable. I am not a Navy Seal. I am a civil litigator. And I am a Catholic, just as I know there are Catholic Navy Seals. I feel like the same lessons that apply to them apply to me, because I, too, seem to be doing the moral equivalent of slitting throats and gunning down enemies, while operating in a framework—the legal profession—that renders my actions morally unobjectionable.

For more than thirty years, I have struggled over my role within the framework of litigation. I want to be a good Catholic. I want to be a good lawyer. Can I be both? Are there things I must do in my practice that offend my faith (and thus offend God)? Conversely, will practicing my faith to the fullest make me an inferior lawyer? Am I binding myself to some higher standard than legal ethics require?

For more than thirty years, I have tried to answer these questions. Try is the operative word, and my reflections may not accord with the reflections of others. As the old saying goes, put two attorneys in one room and you get three opinions. But as Chesterton says, “[i]f a thing is worth doing, it is worth doing badly,”¹ and so I am content to *try* to answer these questions, because they are important questions, even if I may answer them badly according to others.

* David A. Shaneyfelt is among the five percent of attorneys recognized as a Southern California Super Lawyer and has the highest possible ranking for ethical standards and legal ability from Martindale Hubbell. He is a former trial attorney with the U.S. Department of Justice in Washington, D.C., and has more than thirty years' experience in litigating complex civil matters in state and federal courts across the country. He is a graduate of Thomas Aquinas College and Willamette College of Law. He practices with The Alvarez Firm in Calabasas, California.

1. GILBERT KEITH CHESTERTON, *WHAT'S WRONG WITH THE WORLD*, ch. 14 (1910). For the record, Chesterton did not mean to excuse poor performance, but to encourage the pursuit of goals worthy in themselves.

My focus is simple. I first look to the external effects I have on others. Second, I think of the internal risks to me. Combat soldiers certainly do. Allow me, then, to look through the lens of my faith and reflect on the external and internal effects of my life as a Catholic litigator.

I. A LITIGATOR'S EXTERNAL EFFECTS: MAKE WAR, NOT LOVE

How can we not reflect on any of our actions and their external effects? "For," as the Apostle says, "we must all appear before the judgment seat of Christ, so that each one may receive compensation for his deeds done through the body, in accordance with what he has done, whether good or bad."² Five questions come to mind: (1) What does a litigator do, generally? (2) Why is killing, as it were, part of the job? (3) What are the limits on killing? (4) What is dirty fighting, and should you engage in it? and (5) Is virtue relevant?

A. *Litigators as a Breed*

To repeat, I am a litigator. I handle court cases. I file and answer complaints; launch and respond to discovery; file, brief, and argue motions; negotiate settlements; and, uncommonly, try cases. We litigators are distinct from those many attorneys who do not handle court cases, but who trade in other vast areas of the law—business formation, estate planning, government contracts, real estate, intellectual property, bankruptcy, and tax law to name just a few. And criminal law is about as foreign to us as the Justinian Code.

We litigators are a dime a dozen among lawyers who, as a class, are a nickel a dozen. There are more than 1.3 million licensed attorneys in the United States, roughly one for every three hundred Americans.³ Three out of four are in private practice, meaning that they do not work for the government or a private company, and that same proportion accounts for attorneys who work in firms of two to five lawyers.⁴ About one-third of all lawyers work as litigators,⁵ although that proportion increases if you add

2. 2 *Corinthians* 5:10. Biblical references herein are taken from the New American Standard Bible translation (NASB) from <https://www.biblegateway.com/versions/New-American-Standard-Bible-NASB>.

3. AM. BAR ASS'N, ABA PROFILE OF THE LEGAL PROFESSION, 5 (Aug. 2019), <https://www.americanbar.org/content/dam/aba/images/news/2019/08/ProfileOfProfession-total-hi.pdf>.

4. AM. BAR ASS'N, LAWYER DEMOGRAPHICS YEAR 2016 (2016), <https://45e2ly1gtqp9jmqme2fiw751-wpengine.netdna-ssl.com/wp-content/uploads/sites/3/2016/11/Incubators-The-Next-Wave-in-the-Access-to-Justice-Movement.pdf>.

5. Normally, this footnote would provide support for this claim. But I cannot find any current statistical source to support it. I suspect this is because litigation extends, in theory, to every area of the law and every practicing lawyer may claim, at one time or another, to be involved, or not involved, in litigation. In other words, whether one is a "litigator" depends on the definition, and the definition may take many forms. I take it in the sense I think most practitioners do—a "litigator" is one whose predominant practice is involved in litigation. Many lawyers will be quick to say "never;" many will say, "occasionally;" and (according to my reckoning) maybe as much as

those who occasionally venture into litigation. Indeed, we litigators are distinct from “trial lawyers” because we rarely try cases. Like some 90 percent of all cases, most of our cases settle short of trial,⁶ and we know we have achieved the perfect settlement when all sides in the case are equally miserable.

We litigators, by definition, litigate, meaning that we prosecute or defend cases in the court system. And because we litigate, we are fighters who must battle an opponent, either willingly or unwillingly. Our job is to win, to trounce our opponents, to kill them every bit as thoroughly as if life were on the line. Litigators, like soldiers, come in all sorts of shapes and personae, from brash cowboys to quiet assassins. But all of us, as a friend of mine once put it, are “quirky.” We have to be, because our common characteristic is uncommon to most practitioners—we are uniquely confident in our ability to fight. Herein lies the recurring itch: How am I supposed to be a good Catholic and a trained fighter?

B. *Our Job is to Kill*

Law is war carried on by other means, whether through politics or a courtroom, and litigators, consciously or unconsciously, track Sun Tzu’s *Art of War* and Carl von Clausewitz’s *On War*.⁷ The lexicon of the legal system is drawn almost entirely from bellicose action imagery. Professor Elizabeth Thornburg has a fine compilation of war (and sports and sex) metaphors commonly used in litigation practice—we shoot down arguments, draw battle lines, compile war chests, plan preemptive strikes, fire opening salvos, undertake frontal assaults, sandbag opponents, drop bombs, throw hand grenades, launch missiles, fight in trenches, and make arguments ironclad or bombproof, as we skirmish, battle, or vanquish an oppo-

a third will say, “predominantly.” That means (again, by my reckoning) that about two-thirds of all lawyers do not litigate, primarily.

6. Actual settlement numbers are hard to pin down. See e.g. Theodore Eisenberg and Charlotte Lanvers, *What is the Settlement Rate and Why Should We Care?*, 6 J. EMPIRICAL LEGAL STUD. 111, 111 (2009) (“[N]o reasonable estimate of settlement rates supports an aggregate rate of over 90 percent of filed cases, despite frequent references to 90 percent or higher settlement rates.”); John Barkai et al., *A Profile of Settlement*, 42 J. AM. JUDGES ASS’N 34, 35 (2006) (“Although ‘most cases settle,’ the percentage of cases that settle varies dramatically by the type of case. About 84% of tort, 45% of contract, 20% of foreclosure, and 51% of ‘other’ cases settle. Contrary to the popular saying, nowhere near 90% or more of cases settle (although torts come close).”).

7. *The Art of War*, an ancient Chinese military treatise dating from the 5th century BC, and Clausewitz’s treatise, written mostly after the Napoleonic Wars between 1816 and 1830, are both regarded as among the most important treatises on military strategy ever written; both have spawned extensive application to litigation tactics. See generally David C. Nelson, *On Military Strategy and Litigation*, 31 VT. L. REV. 557 (2007); see also Antonin I. Pribetic, *The “Trial Warrior”: Applying Sun Tzu’s The Art of War to Trial Advocacy*, 45 ALTA. L. REV. 1017 (2008); see also MELINDA L. DAVIS-PERRITANO, *CLAUSEWITZ ON TRIAL: AN APPLICATION OF MILITARY STRATEGIC THOUGHT TO LITIGATION* (BiblioScholar 2012).

nent or win by attrition. Our tactics are scorched earth, we take no prisoners, and we go Rambo, Pearl Harbor, or Hiroshima.⁸

The analogy to war is apt because at the root of every war and every lawsuit is a conflict. Conflicts are not inherently bad. They are a natural occurrence on this side of the Garden of Eden. Indeed, conflict can be good, as even the Good Book admits: *Iron sharpens iron*.⁹ But sharp iron also cuts and causes one to bleed; I am that iron. Someone has hired me to cut and cause another to bleed. Clients do not hire litigators to get justice. They hire us to win a dispute that has arisen in law. We are participants in the adversarial system. Adversaries fight; judges resolve fights. There are rules for the fight, but those rules make it no less a fight than the rules of the Geneva Convention make a war not a war.

I am not a pacifist; the Church neither encourages nor discourages me to be one. Indeed, Catholic “just war” theory parallels sound litigation advice in many ways. Before you sue, you must consider whether (1) the damage inflicted by the aggressor is lasting, grave, and certain; (2) all other means of resolving the conflict are impractical or ineffective; (3) serious prospects of success exist; and (4) the measures taken will not produce evils graver than the evil to be eliminated.¹⁰ I have counseled many clients not to sue, based roughly on these same criteria. There is nothing particularly Catholic about my counsel; it just makes sense given financial realities and judicial uncertainties. All litigators offer this counsel, more or less. And so did Our Lord: “For when you are going with your accuser to appear before the magistrate, on the way, make an effort to settle with him, so that he does not drag you before the judge, and the judge hand you over to the officer, and the officer throw you into prison.”¹¹

The operative words are “make an effort.” Sometimes efforts fail. I may want to mediate; I may want to settle. My opponent does not. I have no choice but to go to court. If I cannot heal wounds (try as I might and try as I should), I must aim to avenge them or defend against their affliction. In the end, the choice to go to court is not mine; it is the client’s. As a litigator, I strive to get the client the best result possible. It is for the client to decide whether to walk an extra mile when someone presses him to walk it, or to give the cloak off his back when he is asked for his shirt.¹² That is not my job.

My job, as the law permits it, is to take the other’s cloak and shirt, to seek damages for making my client walk one mile, to obtain injunctive relief to prevent him from walking another one, and to make him pay my

8. Elizabeth G. Thornburg, *Metaphors Matter: How Images of Battle, Sports, and Sex Shape the Adversary System*, 10 WIS. WOMEN’S L.J. 225, 232–37 (1995).

9. *Proverbs* 27:17.

10. CATECHISM OF THE CATHOLIC CHURCH, ¶ 2309 (2nd ed. 1997).

11. *Luke* 12:58–59.

12. *See Matthew* 5:40–41.

fees for my efforts. The love of money may be the root of all sorts of evil,¹³ but I leave that love to my client to address. My job is to get or protect someone's money, and my prayer is not a prayer for peace, but for success: "Blessed be the Lord, my rock, who trains my hands for war, *And* my fingers for battle."¹⁴

As a litigator, I start wars, and I defend wars. I am not insensitive to the fact that litigation is war. Often, more than just expense is at stake. I understand the proverb's truth that "he who goes to law for a sheep loses his cow."¹⁵ I see why Romani makes this curse: "May you have a lawsuit in which you know you are right."¹⁶ The emotional toll is considerable. The esteemed Judge Learned Hand echoed this gravity when he said, "I should dread a lawsuit beyond almost anything else short of sickness and death."¹⁷ A friend of mine never imagined he would be an agent in proximate cause; a witness he was cross-examining at trial had a heart attack and died on the witness stand. I once gave a witness a bloody nose under similar circumstances. Extreme stress abounds on both sides of the witness box. It comes when least expected, which is why the maxim applied to a soldier's life applies in force to the life of the litigator—litigation entails hours and hours of endless boredom punctuated by brief moments of abject terror. Anything can happen; anything will happen. You can be destroyed in an instant. Your life can be made hell with one email, one phone call, one letter: "We are going to do this to you." What now? *Quo vadis?*

"Blessed are the peacemakers, for they will be called sons of God."¹⁸ I love to be a peacemaker when I can, but sometimes I can't. Cutting and running is not always an option, either. Sometimes you have to be the plaintiff when the defendant is a bully. Sometimes you have to be the defendant when the plaintiff is a bully. Sometimes you have to be the bully.

C. *Limits on Killing*

Whether you are the bullied or the bully, limits exist on how you may fight. As in war, some conduct crosses the line and is wrong.¹⁹ In war, we do not shoot medics, we do not kill prisoners, we do not bomb schools or

13. See 1 Timothy 6:10.

14. Psalm 144:1.

15. HAROLD V. CORDRY, THE MULTICULTURAL DICTIONARY OF PROVERBS: OVER 20,000 ADAGES FROM MORE THAN 120 LANGUAGES, NATIONALITIES, AND ETHNIC GROUPS 152 (No. 10429).

16. ROSEMARIE JARSKI, WORDS FROM THE WISE: OVER 6,000 OF THE SMARTEST THINGS EVER SAID 289 (Skyhorse Publishing 2007).

17. JUSTICE LEARNED HAND, *Deficiencies of Trials to Reach to the Heart of the Matter*, 3 LECTURES ON LEGAL TOPICS 89, 105 (N.Y., Macmillan 1926), quoted in FRED R. SHAPIRO, THE OXFORD DICTIONARY OF AMERICAN LEGAL QUOTATIONS 304 (1993).

18. Matthew 5:9.

19. "The Geneva Conventions and their Additional Protocols is a body of Public International Law, also known as the Humanitarian Law of Armed Conflicts, whose purpose is to provide minimum protections, standards of humane treatment, and fundamental guarantees of respect to individuals who become victims of armed conflicts." *Geneva Conventions and their Additional*

hospitals, and we do not deny treatment to wounded enemies. Rules of professional ethics offer similar limits on litigators. We do not contact opponents apart from their attorneys,²⁰ we do not make secret contact with the judge,²¹ we do not trade on privileged information,²² we do not suborn perjury,²³ and (this is hard for nonlawyers to believe) we do not misrepresent facts or law.²⁴ These are rules of fairness and fair applications of the natural law. Because a litigator may receive the professional equivalent of capital punishment for violating them—loss of license, loss of job—litigators tend to observe them strictly. Not necessarily because they have integrity, but because they are risk averse.

Other rules of fairness cannot be written down or can be written down but not enforced. Litigators must observe those, too. In 2014, the California State Bar added this language to the oaths taken by all new attorneys: “As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy, and integrity.”²⁵ Many bar associations, including the Los Angeles County Bar Association, of which I am a member, go further and offer particulars on civility:

I pledge to be able to disagree without being disagreeable . . . I will seek to present information truthfully, and will not knowingly misrepresent, mischaracterize, or misquote information in seeking to advance any point of view . . . I will not use language that is rude, demeaning, insulting, hostile, threatening or slanderous.²⁶

These terms will not prevent attorneys from crossing lines when they want to. Many find it odd—and sad—that such lines had to be expressed, when they have always been assumed. Whether codified or not, these rules

Protocols, LEGAL INFORMATION INSTITUTE, https://www.law.cornell.edu/wex/geneva_conventions_and_their_additional_protocols (last visited Dec. 5, 2020).

20. MODEL RULES OF PRO. CONDUCT r. 4.2 (AM. BAR ASS’N 2020) (“In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.”).

21. MODEL RULES OF PRO. CONDUCT r. 3.5(b) (AM. BAR ASS’N 2020) (“A lawyer shall not: * * (b) communicate ex parte with [a judge] during the proceeding unless authorized to do so by law or court order”).

22. *See* *Rico v. Mitsubishi Motors*, 272 P.3d 1092 (Cal. 2007).

23. MODEL RULES OF PRO. CONDUCT r. 3.3(a)(3) (AM. BAR ASS’N 2020) (“A lawyer shall not knowingly: . . . (3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer’s client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.”).

24. MODEL RULES OF PRO. CONDUCT r. 3.3(a)(1) (AM. BAR ASS’N 2020) (“(a) A lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer . . .”).

25. CAL. R. CT., 9.7 (2018).

26. CODE OF CIVILITY GUIDELINES (2015) (L.A. CNTY. BAR ASS’N, amended 2018), <https://www.lacba.org/docs/default-source/lacba-overall/code-of-civility-guidelines.pdf>.

are certainly worthy and noble aspirations that all should observe, because they are grounded in natural law. Civility is good for its own sake, because it presumes the dignity of the participants, and all participants deserve for us to treat them as we would be treated, as the Golden Rule requires. Civility tends to degrade in proportion to the likelihood that adversaries will never see each other again. It is always easier to be an ass to a stranger than to an acquaintance.

Many judges post their own rules about how to behave in their courtrooms. Not infrequently, others admonish the parties explicitly to “follow the Golden Rule.” The rule is oxymoronic for fighters. How are you supposed to fight if you don’t want someone fighting you? But nobody thinks about the contradiction; everybody knows *what* the admonition means—fight fairly, fight reasonably.

Litigators say they love litigation best when they can fight someone hard and never take it personally. Friends can litigate against each other and remain friends, just as boxers or wrestlers do. I have developed lasting friendships with adversaries against whom I have had the hardest fights. One of the highest compliments a litigator can get is a client referral from a past opponent. But, to paraphrase Sherman,²⁷ litigation is still Hell, and it surely is when your opponent is a demon. You come to hate your opponent and to hate your case, and if the judge favors the demon over you, you hate the judge, too.

D. *Fighting Dirty*

Most litigators respect the line and can tell when someone has crossed it. Some cross it with glee. Everyone knows that if you cross the line, you give your opponent cause to cross it against you. *Do unto others as you would have them do unto you*. This is a hard saying when your opponent is sneaky or cunning and living at the edge of unethical behavior. These “sharp practices” (as they are called) are not professionally unethical, and they are too difficult to catalogue and punish under even the state bar guidelines. Most litigators, I think, eschew sharp practices and regard them as offensive. I do. I even regard them as morally objectionable. To return to the war metaphor, it may or *may not* be morally appropriate to slit throats in the middle of the night. It may or may not be morally appropriate to file certain motions at certain times or on certain issues, or to make objections regarding certain documents or certain testimony. To borrow Justice Potter Stewart’s definition of pornography,²⁸ I may not be able to define a sharp practice, but I know it when I see it.

27. The words commonly attributed to William Tecumseh Sherman—“war is hell”—have no contemporary verification, but have several sources, including, “There is many a boy here today who looks on war as all glory, but, boys, it is all hell.” See MARGARET MINER & HUGH RAWSON, *War*, THE OXFORD DICTIONARY OF AM. QUOTATIONS 703 (2nd ed. 2006).

28. *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J. concurring).

And so, when I see it done to me, am I excused from the Golden Rule? Must I fight fairly, even if my opponent does not? Do I, as a Catholic, have to answer to some higher standard and “turn the other cheek”?

I once took a course titled “Dealing with the S.O.B. Litigator.” The SOB litigator is insulting, demeaning, bullying, threatening, obstructing, and, most often, accusatory. The term “Satan” is drawn from the Hebrew (שטן) “accuser,”²⁹ and Scripture tells us he “accuses” the faithful “before our God day and night.”³⁰ He is one hell of a lawyer. He has many imitators whose technique is to make incessant accusations against their adversaries, often to detract from their own wrongdoing. Sometimes the mud thrown against the wall will stick, so they enjoy throwing heaping handfuls of it.

The recommended tactic for dealing with an SOB litigator is surprisingly close to the model of Christian charity—do not respond in kind, try to understand what is motivating the conduct, seek effective paths of least resistance. Then, more to the point, document the behavior and go to the judge for relief. You feel like a kid vying for a parent to grant relief from a bullying sibling. Most of the time, judges will help. The operative word is “most,” as judges are harried, they dislike personality feuds, and they look at complainers like the parent who assumes that the child yelling loudest is the one who pinched first. After all, you are showing charity toward “Satan.”

The advice is practical, as Christian charity almost always is. You will be a better, more effective advocate if you do not act like an SOB, as tempting as it is to retaliate. Guerilla attacks often breed intemperate and imprudent responses. Indeed, a non-Catholic friend of mine takes a higher road than I am able to take. As she says, “You have to feel sorry for people who act so miserably to others.” She is so wonderfully right. I’m afraid I’m not there. Oh, how I feel the hate. And so, I sin.

Depositions present fertile opportunities for SOB-like behavior. Opponents sit in a room, and one party’s attorney questions another party’s witness under oath, while a reporter takes down the questions and answers. With no judge present, plenty of mischief occurs. Shouting and yelling are only one form of abuse. Interposing objections to prevent the witness from answering and coaching the witness to answer a certain way are other forms of abuse. At what point do you terminate the deposition and seek relief from the judge (who might sanction *you* instead)? When do you yell back? When do you object? When do you kick your witness under the table to keep from giving a wrong answer to a dangerous question? When may you kick your opposing counsel in the teeth? I don’t know. These are the questions that prick at my conscience, but they prick (or they should prick) at

29. *Catholic Encyclopedia: Devil*, NEW ADVENT, <https://www.newadvent.org/cathen/04764a.htm> (last visited Dec. 5, 2020).

30. *Revelations* 12:10.

anyone's conscience. I do not want to be an SOB litigator, because it is not effective. But I sure am not going to be bullied.

One time I kept getting procedurally outmaneuvered by an SOB, who was at least friendly. He had a way of keeping me from getting critical documents through various delays and misrepresentations. After getting burned twice, I turned the tables on him and did the same thing. I will never forget his reaction when he realized his predicament and said, under his breath, "Well, you're finally learning, David." So, what did I learn? Burn me once, shame on you; burn me twice, shame on me. I also learned to despise litigators I cannot trust and to love litigators I can trust. Despicable litigators take all the fun out of litigating. Worse, they tempt you to be like them. In such cases, one must keep in mind Nietzsche's worthy observation: "He who fights with monsters should be careful lest he thereby become a monster."³¹

Is it wrong for a Catholic to be an SOB litigator? Probably, but that's because it is wrong for anyone to be an SOB litigator. For me, the lesson is that it is *stupid* to be an SOB litigator, which is not exactly a moral or Catholic precept. The particularly cunning advocate knows and exploits this notion. Beware the deposition taken by the utterly charming counsel. She will find a way of handing you your head on a plate and getting you to thank her for your deed.

But the point remains, that being the opposite of an SOB litigator (shall we say, a "wimp"?) reflects moral weakness, too. Cowardice is the moral opposite of brashness or foolhardiness. As Aristotle explains, every vice has its opposite, and virtue is found in the middle.³² Litigation virtue is found in the mean between extremes, which explains not only why virtue is its own reward, but is widely recognized as the better, more effective legal practice, too.

Just because this virtue lies in the mean does not mean the fight need be less intense. A hard, fair fight gives one the same pride and euphoria as one has after a tough athletic contest. Think Stallone's *Rocky*. Watch a rugby match, then go to the party afterwards. It was common, at least at some points in history, for adversaries to meet up at the same bar after a trial, like in *Rumpole of the Bailey*.³³ That has not been my experience, probably because of other factors, but I have formed lasting relationships with fierce litigation opponents.

31. FRIEDRICH NIETZSCHE, *BEYOND GOOD AND EVIL* 87 (Carlton House 1930) (1886).

32. ARISTOTLE, *Nicomachean Ethics*, Book II, ch. 6, in *THE BASIC WORKS OF ARISTOTLE* 959 (Richard McKeon ed., Random House 1941).

33. John Mortimer created and wrote a popular British television series by that name and later presented his stories in book and radio format. They chronicle the life and times of a fictional English barrister who practices in the famed Old Bailey in London.

E. *Limits of Virtue*

My duty to fight might conflict with common virtue. My client has blown the statute of limitations, but my opponent has not noticed. Do I tell my opponent? I have disclosed the existence of a witness who has damaging information against me, but my opponent fails to pursue the witness and find it out. Do I volunteer it? I suspect my opponent's witness is truthful, but I bring out facts that call into question the witness's credibility. Should I bring them out? My expert witness will testify to any opinion I want for a price. Should I care that my expert does not care about the truth? A nonlawyer might have qualms over issues like these, because they seem to transgress duties of honesty and transparency found in common virtue.

The litigator has no such qualms, because the litigator understands the ground rules that allow for distinctions in when, how, and under what conditions honesty and transparency are to be honored and when they are to be suppressed. They are suppressed when I am compelled to act by a different duty—the duty *not* to volunteer adverse information.³⁴ Not only would volunteering this information compromise my ethical duties as an advocate to represent my client “zealously within the bounds of law,”³⁵ but it would get me sued for malpractice. The volunteering of adverse information to my opponent is inconsistent with the ground rules for litigation, and no virtue can be found in exercising honesty and transparency under those circumstances. If an enemy combatant drops his gun in the heat of battle, it is not an act of charity for me to hand it back to him. Sports teams win when they capitalize on their opponents' mistakes.

Litigators communicate with each other, especially on paper, in a strange, limited manner guided by the notion that anything we say can, and will, be used against us. As a Catholic friend says, “Lawyering is the art of choosing one's words *very* carefully.” He bears in mind the moral allowance of “mental reservation”—when someone has no right to know the information you possess, you have no duty to disclose it.³⁶ Mental reservation is the norm; candor is the exception. Indeed, the entire practice of written discovery is predicated on this principle. Answers to the simplest and clear-

34. MODEL RULES OF PRO. CONDUCT r. 1.6(a) (AM. BAR ASS'N 2009) (“A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).”).

35. MODEL RULES OF PRO. CONDUCT, Preamble and Scope (AM. BAR ASS'N 2009).

36. Theologians define “mental reservation” as “[s]peech in which the common and obvious sense of one's words is limited to a particular meaning. The morality of this kind of speech depends on whether the listener can reasonably conclude from the circumstances that a mental reservation is being used.” *Mental Reservation*, *Modern Catholic Dictionary*, <http://www.thealpresence.org/dictionary/mdict.htm> (last visited Dec. 22, 2020). See also CATECHISM OF THE CATHOLIC CHURCH, *supra* note 10, at ¶ 2488 (“The *right to the communication* of the truth is not unconditional. Everyone must conform his life to the Gospel precept of fraternal love. This requires us in concrete situations to judge whether or not it is appropriate to reveal the truth to someone who asks for it.”) (emphasis in original).

est of special interrogatories and other discovery requests are greeted with the same standard response: “The request is vague, ambiguous, overbroad, unduly burdensome, oppressive, and harassing; it is neither relevant nor reasonably calculated to lead to the discovery of relevant evidence; and it seeks information protected by the attorney-client privilege, the work product doctrine, and other applicable privileges.”³⁷ Courts know this game is played and therefore require the parties to “meet and confer” extensively before any discovery motion is brought to their attention.³⁸

One might think that, if my duty to fight precludes me from otherwise virtuous acts, fighting necessarily transgresses virtue. Strangely, I cannot think of any litigation strategies or tactics that transgress my religious beliefs, nor can I think of any application of those strategies that does so, although I wonder at times if my examination of conscience (in and out of confession) should be more finely tuned. *Bless me Father, for I have sinned. I sent out excessive interrogatories to harass my opponent . . . I failed to stipulate to a reasonable request to postpone a hearing and forced my opponent to file a motion . . . I scheduled depositions of multiple witnesses, when I really needed to depose only a few . . . I made a witness cry in her deposition . . . I produced a haystack of documents, knowing my opponent would be less likely to find the needle in it.*

Are these transgressions? They certainly can be, and if they are, I will avoid doing them from self-interest. Whatever line I cross gives my opponent cause to cross it back against me. If I want an extension on some deadline for filing a brief, I better grant extensions to my opponent. If I expect my opponent to faithfully disclose all requested information, I better not hide any such information myself. You can pick lots of fights over lots of things in litigation if you want to, but you do yourself (and your client) a good turn when you pick as few fights as possible. Looking for fewer fights is not a sign of weakness; it is a mark of trust. And trust is not simply worthy in itself, it is also practical. It helps the client.

II. A LITIGATOR’S INTERNAL EXPERIENCE: WHERE SIN ABOUNDS

The Catholic Catechism summarizes centuries of moral teaching this way: “Human acts, that is, acts that are freely chosen in consequence of a judgment of conscience, can be morally evaluated. They are either good or evil.”³⁹ Sin, it says, “is an offense against reason, truth, and right con-

37. See, e.g., Julie Brook, *12 Grounds for Objecting to Interrogatories*, CONTINUING EDUC. OF THE BAR (CEB) (May 23, 2018), <https://blog.ceb.com/2018/05/23/12-grounds-for-objecting-to-interrogatories>.

38. See, e.g., FED. R. CIV. P. 37(a)(1) (A motion to compel disclosure or discovery “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.”).

39. CATECHISM OF THE CATHOLIC CHURCH, *supra* note 10, at ¶ 1749.

science.”⁴⁰ My patroness, St. Catherine of Siena, puts it famously this way: “Sin arises simply from loving what God hates and hating what God loves.”⁴¹ Can we identify what God hates in the life of a litigator? I think so. Can we avoid hating what God loves? I think so, too. Four points come to mind: (1) the sins we typically face, (2) the perils of obsession, (3) the opportunities for grace, and (4) the aim to win.

A. *Legal Sins*

Most sins that occur during the course of litigation have nothing to do with litigation. Litigation is enormously stressful, so you can lose your temper—not just with your opponent, but with your colleague, your secretary, or your support staff. Your opponent insults you, so you insult back. You swear at frustrations. You swear about opponents. You swear about the judge and adverse rulings. Swearing is rooted in anger, and Saint Thomas explains that anger is an emotion triggered by a sense of injustice.⁴² When you battle for justice and lose, you get angry, and you are right to be so.

I once heard a client say, after a colleague apologized for dropping an F-bomb in the initial conference call: “Oh, I like swearing in a litigator!” Swearing signals appreciation that an injustice exists, and it reflects the other aspect of anger that Saint Thomas also describes—the impulse to seek revenge,⁴³ which may be exactly why a client is retaining you and why they like the swearing. The quick-witted (and unrestrained) litigator can substitute a foul word for every grammatical component of the English language, down to its last past participle. You justify it because you are the Marine on the sands of Iwo Jima. But, no. You can’t give in. As Saint Paul reminds us, “Let no unwholesome word come out of your mouth.”⁴⁴ He could have been speaking to lawyers in that same passage when he also says, “All bitterness, wrath, anger, clamor, and slander must be removed from you, along with all malice.”⁴⁵ Yes, litigation breeds opportunities for confession, separate and apart from litigation activity.

I understand why lawyers are the butt of so many jokes, most of which are predicated on the assumption that lawyers are inherent liars. I disagree with this assumption vigorously, both in principle and in practice. Nothing about one’s role as an advocate compels any lying, and I do not think, as a practical matter, most attorneys lie. But I get the jokes. The root cause of lawyer jokes is the controversy between two or more people. People dislike

40. *Id.*, at ¶ 1849.

41. ST. CATHERINE OF SIENA, *Learning to Love* (1373), in WRITINGS OF CATHERINE OF SIENA (Upper Room Books 2017).

42. ST. THOMAS AQUINAS, *SUMMA THEOLOGICA*, pt. II-I, q. 46, art. 7 (Fathers of the English Dominican Province trans., Ave Maria Press 1947) (“Whether anger is only towards those to whom one has an obligation of justice?”).

43. *Id.*

44. *Ephesians* 4:29.

45. *Ephesians* 4:31.

lawyers not because a lawyer is doing another's bidding, but because another is doing the bidding.

At the same time, I realize the agent deserves the opprobrium when the agent goads the client on or invents theories and concocts facts of which the client never dreamed. The agent should know better. True is the proverb that lawyers and painters can soon make what is black, white. I think it was these kinds of lawyers who got the "woe" from Jesus.

Woe to you lawyers as well! For you load people with burdens that are hard to bear, while you yourselves will not even touch the burdens with one of your fingers . . . For you have taken away the key of knowledge; you yourselves did not enter, and you hindered those who were entering.⁴⁶

Brief side note: Jesus did not despise all lawyers or the legal profession. It was a lawyer who posed to him the question of what one must do to inherit eternal life. And it was the lawyer who Jesus said got the answer right: "You have answered correctly. Do this and you will live."⁴⁷ Nicodemus was a Pharisee lawyer, and he may have acted as Jesus's defense counsel at the trial before the Sanhedrin, because he appears to have come to his defense earlier.⁴⁸

"About half the practice of a decent lawyer," said the nineteenth-century jurist Elijah Root, "consists in telling would-be clients that they are damned fools and should stop."⁴⁹ A twenty-first-century jurist, Supreme Court Justice Neil Gorsuch, poses the advice in more genteel words:

[W]e have a duty to avoid taking actions for our clients that involve using means or ends that intentionally do harm to other persons or goods. This rule leaves considerable room for the lawyer to defend the client's interests thoroughly, to interpose alternative defenses, to conduct vigorous cross-examinations. But it does not leave lawyers morally blameless wherever their clients tell them to do something. Saying "the client made me do it" isn't a complete answer to the question of legal ethics. But if knowing this much might be a useful starting point, it's also reasonable for you to ask, Where is the end point? Beyond refraining from intentionally harming others, when should a lawyer decline to follow his or her client off the moral cliff?⁵⁰

Sadly, many lawyers will be quick to jump off the cliff when they are paid to do so. In modern parlance, lawyers call this a "billing opportunity," and they embrace the maxim that fools and blockheads will make lawyers rich. When the client is willing to pay, why question it? The good lawyer

46. *Luke* 11:46–52.

47. *Luke* 10:28.

48. *See John* 7:50–51.

49. 1 PHILLIP C. JESSUP, *ELIHU ROOT* 133 (1938).

50. NEIL GORSUCH, *A REPUBLIC, IF YOU CAN KEEP IT* 299 (2019).

will turn away from this kind of billing opportunity. I think of the glutton at the all-you-can-eat buffet; just because you can does not mean you should.

Turning away bad cases sometimes presents a good lawyer with a conundrum. The profession encourages lawyers to take on unpopular causes or clients. *To Kill A Mockingbird*⁵¹ typically ranks as among lawyers' all-time favorite legal novels, because it champions a small-town lawyer in the segregated South who defends an innocent black man accused of rape. The American Civil Liberties Union is praised for having represented the Nazis in *Skokie*.⁵² But what if the unpopular causes are wrong or the clients are evil? I would not represent the National Abortion Rights Action League no matter how much it paid me. And I do not think any Catholic lawyer should.

When you represent a client, you are trying to advance the client's cause. If the client's cause is evil, then you become the agent of evil. Abortionists, pornographers, and racists may have legal rights; I have no duty to advance them. I can be like Atticus Finch and defend an innocent black man on trial for rape in a racist town. And I might (*might*, with great emphasis) represent Nazis if a government entity wrongly limits free speech on grounds that I may wish to preserve for, say, pro-life groups. Regardless, general representation of such clients for general commercial litigation is simply an employment relationship, and no one should work for an evil employer.

California's ethical rules support me in these respects, although not without giving due consideration to other possibilities. Section 6068(h) of the Business and Professions Code says that I, as an attorney, have a duty "[n]ever to reject, for any consideration personal to [me], the cause of the defenseless or the oppressed."⁵³ I am okay with that. One would be hard pressed to explain how any of the entities that I think are evil could be, in this day and age, "defenseless" or "oppressed." Section 6068(c) also gives me considerable latitude as it defines my duty as one to "counsel or maintain those actions, proceedings, or defenses only as appear to [me] legal or just." For sure, I embrace that duty. The section does note one fascinating exception: "Except the defense of a person charged with a public offense." That means Atticus Finch would have had to defend Tom Robinson, even if he was convinced Robinson was guilty of the rape. But those issues are for the criminal defense world, which is not my world.

51. See generally HARPER LEE, *TO KILL A MOCKINGBIRD* (1960).

52. *ACLU History: Taking a Stand for Free Speech in Skokie*, ACLU (Sept. 1, 2010), <https://www.aclu.org/other/aclu-history-taking-stand-free-speech-skokie>; *Nat'l Socialist Party of Am. v. Vill. of Skokie*, 432 U.S. 43 (1977).

53. Section 6068 of the California Business and Professions Code itemizes fifteen duties required of an attorney admitted to practice law in California. Breach of any one of these duties is reportable to the State Bar of California within 30 days of when one has knowledge of the triggering event. CAL. BUS. & PROF. CODE, §§ 6002.1(a), 6068(o), 6086.8(b) and (c).

B. *Obsession*

Probably the singularly most evil thing I have noticed about litigation is its ability to shut out all life outside it. I am not talking about the evils of neglect—neglect of spouse, children, and loved ones, although much can be said about that. The legal profession breeds workaholism different from that bred by other professions. One becomes a workaholic when one works excessively for work-related goals. However, a litigator becomes a workaholic because of the law itself. “The law is a jealous mistress,” said Justice Story in 1829, “and [it] requires a long and constant courtship. It is not to be won by trifling favors, but by lavish homage.”⁵⁴ While this can be said about other professions, the litigator is particularly seduced, not by the charms of the subject, but by the illusion of certainty.

There are always more facts to uncover, more case law to consider, more distinctions to make, more phrases to turn. It takes discipline to *not* keep thinking about a case in the middle of the night, in the middle of a shower, in the middle of a sermon at church. You cannot stop thinking. You get inspirations. I know of attorneys who keep writing pads next to their beds so they can jot down ideas when they wake in the night. (They really should sleep instead.) I feel like all my best ideas come not when working on a case, but when I am *not* working on a case. Vacations, if you get them, tend to be hell, especially if the vacation is sedentary. Most litigators I know take vacations involving vigorous activity. You need to do something very much other than work, like mountain climbing or jungle trekking, to keep you from obsessing over your cases.

Obsession occurs because almost everything is arguable. As rooted as I am in Catholic truth, I have come to see in litigation, as in life, almost everything is arguable. Even Our Lord noted the same: “For John the Baptist has come neither eating bread nor drinking wine, and you say, ‘He has a demon!’ The Son of Man has come eating and drinking, and you say, ‘Behold, a gluttonous man and a heavy drinker, a friend of tax collectors and sinners!’”⁵⁵ His point is that people—that is, people not disposed to the truth—will argue anything.

Not that the law is open to anything. To the contrary, the law offers a good measure of predictability and it is not, as it were, up for grabs. But when law involves application of some rule to some set of facts, then a good (and honest!) litigator will almost find ways to argue against, over, under, or around an opponent’s position. I unconsciously confirmed this reality when I once complained to a fellow attorney that I felt my best legal work was always on cases I lost. “Of course it is,” she said. “You do your

54. JOSEPH STORY, DISCOURSE PRONOUNCED UPON THE AUTHOR AS DAME PROFESSOR OF LAW AT HARVARD UNIVERSITY, ON AUGUST 25, 1829 (republished by Kessinger Publishing, 2008).

55. *Luke* 7:33–34.

best legal work when you are on the losing side of the law.” She meant that it takes creative genius to overcome the obvious.

Perhaps the warrior spirit in me neglects to consider whether I have any moral business striving to overcome the obvious. Thomas Jefferson spoke only a modest overstatement when he said it is the trade of lawyers to question everything, yield nothing, and talk by the hour.⁵⁶ All I can say is I have never felt moral blame in trying to overcome the obvious; to the contrary, I usually feel a sense of injustice when I do not succeed. I thought I was making a proper distinction on why the law applied to the facts the way I argued it did. The effect of a proper distinction is a result different from the one expected, and when I think a distinction is proper, I expect a different result. I admit my expectations may be based more on emotion than on reason. Rabbinical midrash observes that even God in the Garden of Eden gave Adam and Eve a chance to explain their transgressions before He punished them—the first due process ever recognized.⁵⁷ I doubt God would have faulted them for having a lawyer to help them make their case better. I am certain the lawyer should not have felt bad about losing.

This habit of seeking counterargument, though, is spiritually dangerous and can root evil in one’s soul in at least two ways. First, a good litigator is profoundly agnostic, even paranoid, about the litigator’s own case. The best litigators are those who doubt everything about the merits of their case and frame their opponent’s case in the best possible light. Good tactical decisions depend on knowing all weaknesses. Charles Lamb’s maxim is as true today as it was in 1833—he is no lawyer who cannot take two sides.⁵⁸ This habit of mind, of questioning everything, can extend to one’s faith. Saint Thomas questioned everything too, but he did so to achieve certainty. The litigator who questions everything believes nothing when he forgets that certain questions point to certain truth. I do not know, but I suspect, that the number of litigators who profess religious faith is lower, as a class, than those in other legal practice groups.

Second, a litigator’s vigor is morally neutral but spiritually deadening. A vigorous litigator *does absolutely nothing else* but litigate. Litigators in big law firms are especially so consumed. When you arrive at the office early and return home late, seven days a week, for months at a time, you have no time to sin. You are reading cases, writing memos, digesting transcripts, coursing documents, and consulting colleagues all the livelong day and night. You do not, as a general rule, have time to commit the seven

56. Founders Online, *Thomas Jefferson: Autobiography*, 6 Jan.–29 July, 1821, NAT’L ARCHIVES, <https://founders.archives.gov/documents/Jefferson/98-01-02-1756> (last visited Feb. 15, 2021).

57. See Timothy D. Lytton, *Due Process and Legal Authority in the Garden of Eden: Jurisprudence in Aggadic Midrash*, 16 JEWISH L. ANN. 185 (2006).

58. Charles Lamb, *Letter to Mr. Rogers*, Dec. 1833, THE WORKS OF CHARLES LAMB, Vol. VII, 923, <https://www.lordbyron.org/monograph.php?doc=CHLamb.1905&select=L1833> (last visited Feb. 15, 2021).

deadly sins—pride, greed, lust, envy, gluttony, anger, and sloth—although, a successful law firm is sure to make each of these freely available from time to time by virtue of that success.

The all-consuming obsession to work does not come only from the work itself, but also from a law firm's billing model. These models can be a "structure of sin," in the sense Saint John Paul II used the phrase to describe "powerful cultural, economic and political currents" that cause economic hardship or inequality.⁵⁹ Lawyers bill by the hour. The more hours they bill, the more money they make. Lawyers also promise excellent services for their clients, and excellent services typically require many billable hours. Clients who want excellent services know this and will pay those bills. When bills become predictable, law firms set budgets according to the predictions. They expect attorneys to meet those budgets through billable-hours requirements. Big budgets entail high billable requirements.⁶⁰ High billable requirements mean one inescapable consequence: no life for the biller.⁶¹ When one has no life, one becomes prey to the usual consequences—depression, infidelity, divorce, substance abuse, health problems, early death, suicide.⁶²

59. POPE JOHN PAUL II, *EVANGELIUM VITAE* ¶ 12 (Encyclical Letter, Mar. 25, 1995); JOHN PAUL II, *RECONCILIATIO ET PAENITENTIA* ¶ 16 (Apostolic Exhortation, Dec. 2, 1984).

60. In 1958, the American Bar Association recommended a 1,300 hour-a-year target for attorneys. Ronda Muir, *A Short History of the Billable Hour and the Consequences of Its Tyranny*, LAW PEOPLE (June 18, 2007), <http://www.lawpeopleblog.com/2007/06/articles/profitability/a-short-history-of-the-billable-hour-and-the-consequences-of-its-tyranny>. Today's expectations exceed 2,000 in most large law firms. See *Law Firm Hours—the Real Story*, ABOVE THE LAW (July 24, 2012, 1:30 PM), <https://abovethelaw.com/career-files/law-firm-hours-the-real-story>.

61. To put in perspective a 2,000 hour-a-year target, consider that eight hours a day times five days a week times fifty weeks a year will reach that target, and leave an attorney with a two-week vacation. Consider further, that such a goal will be reached if one is willing to forfeit all nine of the customary holidays (New Year's Day, Martin Luther King Day, President's Day, Memorial Day, Fourth of July, Labor Day, Columbus Day, Thanksgiving, and Christmas). Consider further the day or two required to fulfill continuing legal education courses. Consider days for illness, birthday parties, funerals, and inescapable social obligations. Consider time needed for firm meetings and retreats, department meetings, client development obligations, and non-billable and internal administrative matters. And we are not counting time for chit-chat and coffee breaks. (A friend tells me he "double bills" during bathroom breaks, because he is more productive there). Billing eight hours a day will only be done with early arrival and late departure times and supplemental hours gained on Saturdays and Sundays. For a detailed analysis of real-life impact of billable hours on lifestyle, see YALE L. SCH. CAREER DEV. OFF., *THE TRUTH ABOUT THE BILLABLE HOUR* (July 2018), https://law.yale.edu/sites/default/files/area/department/cdo/document/billable_hour.pdf.

62. Bar associations and mental health professionals have devoted considerable attention to the growing problem of lawyer mental health. Several state bars offer hotlines, public education and lawyer assistance programs; seven state bar associations have added a mandatory mental-health component to their continuing legal education requirements. See Debra Cassens Weiss, *State Bars Battle Lawyer Depression; Legal Profession Ranks Fourth in Suicide Rate*, ABA J. (Jan. 22, 2014, 11:45 AM), https://www.abajournal.com/news/article/state_bars_battle_lawyer_depression_legal_profession_ranks_fourth_in_suicid. A 2016 ABA survey of 13,000 lawyers found that 21 percent qualify as problem drinkers (a rate more than triple the rate for the general population, and nearly double the rate for other highly educated professionals); 28 percent struggle with

Who bears responsibility for this structure of sin? Everybody and nobody. Big budgets may or may not be set by greed. Lawyers may have a sincere desire to serve clients excellently, and billing attorneys may or may not bill high hours for the sake of greed, envy, or power. Associate attorneys, for instance, have no choice; they are given billable minimums, and they will be fired if they fail to meet them. Partners may fare no differently. If a client wants advice about something first thing Monday, the lawyer will work all weekend to provide it. Everyone is responsible, and most are miserable. No Catholic litigator should want to be miserable. In theory, an all-consumed litigator might be able to practice the seven virtues—prudence, justice, temperance, courage, faith, hope, and charity—but those who do so are as rare as hen’s teeth. As a Scottish proverb goes, he who loves the law will soon get his fill of it.⁶³ This is especially true for young attorneys on the track to partnership in big firms. A friend of mine described the experience as trying hard to win a pie-eating contest where the prize for winning is *more* pie.⁶⁴ Not surprisingly, litigators tend to be of two kinds: those who die at their desks and those who decide to leave them.

With or without any structure of sin, lawyers overwhelmed with billable requirements face temptations to meet those requirements unscrupulously. If they catch the client looking the other way, extra time goes on the bill. Lawyers call this “padding the bill,” which is simply a euphemism for theft.⁶⁵ Unnecessary billing and phantom billing are in the province of professional ethics, civil law, natural law, and the Ten Commandments too. There is nothing uniquely Catholic about refraining from such conduct.

C. Opportunities

These sentiments also address conduct apart from the grist of litigation. In my mind, Christian virtue makes one a better Christian, but not a better Christian lawyer. By Christian virtue, I mean that which transcends natural virtue. Natural virtue makes one better, too. Be kind and civil to

depression; and 19 percent have symptoms of anxiety). ABA, PROFILE OF THE LEGAL PROFESSION 59 (2019), <https://www.americanbar.org/content/dam/aba/images/news/2019/08/ProfileOfProfession-total-hi.pdf>; see also Debra Cassens Weiss, *Perfectionism, ‘Psychic Battering’ Among Reasons for Lawyer Depression*, ABA J. (Feb. 18, 2009, 3:40 PM) https://www.abajournal.com/news/article/perfectionism_psychic_battering_among_reasons_for_lawyer_depression (“[T]he likelihood of depression is 3.6 times higher for lawyers than other employed people.”).

63. CORDRY, *supra* note 15, at 151 (No. 10370).

64. This aphorism is now making its way into the public domain. See Sara Randazzo, *Being a Law Firm Partner Was Once a Job for Life. That Culture Is All but Dead*, WALL ST. J. (Aug. 11, 2019), <https://www.wsj.com/articles/being-a-law-firm-partner-was-once-a-job-for-life-that-culture-is-all-but-dead-11565362437>.

65. The problem of bill padding is so widespread that the California Bar appointed a committee to address and make recommendations regarding it. See STATE BAR OF CAL. COMM. ON MANDATORY FEE ARB., ARBITRATION ADVISORY 2016-02: ANALYSIS OF POTENTIAL BILL PADDING AND OTHER BILLING ISSUES (Mar. 25, 2016), https://www.calbar.ca.gov/Portals/0/documents/mfa/2016/2016-02_Bill-Padding_r.pdf.

your opponent, even when your opponent is not civil in return. Treat your support staff fairly and be in good cheer. Be honest in all your dealings—with clients, colleagues, opponents, judges, court personnel, or anyone involved in a case. Virtue, to be sure, is its own reward, and those who practice it, while practicing law, will succeed or fail in the same measure that others succeed or fail in whatever endeavors they do. Contrary to one canard, nice guys do not finish last. And to confirm another, what goes around comes around—even to bad people.

Does Christian virtue augment a litigation practice? I do not know, but I do know that a litigation practice can augment Christian virtue. Opportunities abound for spiritual growth. Turn your cheek (when it harms not your interest). Hold your temper. Hold your tongue. Bear insult. Accept blame. Fret not. Boast not. Covet not. Lust not. Avenge not. Disparage not. Shun vanity. Shun fame. Shun goods. Shun pride. Work hard. Be kind. Be patient. Be compassionate. Befriend the lowly. Pray always. Pray for your client. Pray for your opponent. Suffer hardship. In a word, take up your cross and follow Him.⁶⁶ Supernatural virtue requires supernatural grace, and one must ask for it, not muscle oneself into it, which is ironic, as all such acts require heavy lifting. As such, they also require earnest asking.

D. *Winning*

A separate, but related, issue then arises: Should I pray that I win? If I am merely a participant in a system designed to produce justice through conflict, how can I presume my side is always “right” and ask God to let me win? Put another way, why should God answer my prayer unless I am seeking the most “just” result? Over time, I have resolved to address these matters systematically. First, I take seriously Our Lord’s command, “Pray always.”⁶⁷ So, I try to pray for all sorts of things. Second, I pray I perform well: “Dear Lord, don’t let me screw up.” This is important to me and to every litigator, because someone has hired us to do a job, and we want to make sure we do our job well. I rather liked the grave comment a woman once gave me after a contested hearing: “I would never, *ever*, want to be cross-examined by you.” Cool.

What if I do my job “too well”? What I mean is, what if I outperform my adversary and cause an injustice to occur? I cannot think of that ever happening, but, in theory, if it did, I would say that is God’s problem, not mine. But God is used to this problem. He lets people on opposing sports teams pray for a win and then answers only one side’s prayers, sometimes irrespective of merits. That is the mystery of life and prayer. The farmer prays for rain, the bride prays for a clear day. God, then, answers our prayers “always,” but in ways we may not expect. If I pray to win, and I

66. See Matthew 16:24.

67. Luke 18:1; see also 1 Thessalonians 16–17 (“Rejoice always, pray without ceasing.”).

then lose, I can trust some higher purpose is achieved. Of course, I especially pray to win when I especially think I am “right.” So, what if I am wrong? I entrust the result to God. Prayers always get answered, and whether they are the proximate cause of something good or bad is something we always entrust to God’s care.⁶⁸

Just because God answers the farmer’s prayer for rain does not mean He does not have good things in store for the bride on her rainy wedding. If I pray to win and I do win, I thank God for answering my prayer. If I pray to win and I lose, I trust that some better purpose was served—even if I think (nay, *know*) the result is unjust. I once lost a high-profile, critically important pro-life case in what I still consider a manifestly unjust result. I will have to wait until Judgment Day to see the higher purpose served in that loss. I cried like a bride on a rainy wedding, a sign of my lack of faith, no doubt. A longtime Catholic friend of mine, who has spent a long career defending and litigating—and often losing unjustly—important pro-life interests, takes a much more sanguine approach in her work: “Well,” she quips, “we can’t lose them all.”

My trust in the outcome strikes at something deeper, which is that the adversary system is a deeply flawed system. Problems exist at every level and in every nook and cranny, which explains the popularity of so many novels, movies, television shows, documentaries, exposés, and commentaries. Why would one *not* pray for justice, given all the problems that exist with our system? I will never forget what a retired judge told me after having spent years presiding over criminal and civil trials. If *she* were ever charged with a crime, she would never go before a jury if she were innocent, only if she were guilty.

Yet, I would take umbrage at the suggestion that my role in that system is either blind or indifferent to those problems or that my role perpetuates, and benefits from, those problems. I do, in fact, accept the problems—income disparities between parties, success through technicalities, differences in the relative skill of counsel, the need to rely on professionals, suppression of credible evidence, undue delay, complex rules, and the biases and prejudices of judges, juries, and witnesses. The system, as they say, is the worst form of justice systems, except for all the others. But I am not king; I cannot fix the system, and I’m not sure I would if I could, apart from tinkering.

Chesterton called tradition the “democracy of the dead,”⁶⁹ and the law is built on that democracy. It is the garbageman’s job to take the trash away without looking in it, and it is my job to represent a client through the

68. CATECHISM OF THE CATHOLIC CHURCH, *supra* note 10, at ¶ 2736 (notes omitted) (“Our Father knows what we need before we ask him, but he awaits our petition because the dignity of his children lies in their freedom. We must pray, then, with his Spirit of freedom, to be able truly to know what he wants.”).

69. GILBERT K. CHESTERTON, ORTHODOXY 85 (1908).

system without questioning it. Through time and experience, we learn to “practice” in that system, because no one ever perfects it. We follow rules, employ strategies, accept consequences, and try not to look at the trash. It is a dirty job, and someone has to do it. Well, we don’t *have* to do it; we choose to do it for a thousand and one reasons. My reasons are common to many: I find the law fascinating, and I am lousy at math.

A devout Jewish friend of mine loves practicing law because he believes he is doing good for people, getting them justice. I want to believe I am doing good for people, too. Ironically, my belief is not exclusive to me and my side of the controversy. I think my opponent can be doing good for people, too, even from the opposite side. This is no endorsement of any moral relativity, but recognition that opposing advocates can each be doing good and just work. It has taken me years of experience to steel myself against the notion that one side is always good, and one side is always bad, at least for purposes of litigating for one side against another. I have no problem with those who earn a living representing polluters, sexual harassers, insurance companies, real estate moguls, and fraudsters, although I do not prefer to do so. These litigators may well earn their path to sainthood through the course of their work, indeed, perhaps they are more likely to do so, to the extent they counsel their clients to justice. Nothing about their representation is damning in itself, apart from those clients whose mission is intrinsically evil.

Conversely, nothing is necessarily salvific about representing good causes or good clients. One can still lose one’s soul representing the Catholic Church or a pro-life cause. I think I know some who have. Conversely, I know devout Catholic attorneys who have represented priest-abuse victims against the Church and did so with gusto and relish, because they believed in their client victims and because they believed (as I do) that, if orthodoxy will not clean up the Church, which is populated by flawed human beings, then God-speed the lawsuit that does. My point is not to undermine the nobility of good causes or good clients. To be sure, religious freedom and the defense of life are paramount, such that those who represent those causes and clients do God’s work. My point is merely that one does not become God-like simply by doing God’s legal work.

So, if one could do God’s work full-time, why not do God’s work full-time? The reasons are as many and the same as would apply to a nonlegal position—interest, temperament, availability, location, pay, and calling. In other words, the reasons are personal to the lawyer and not intrinsic to the job, as nice and rewarding as it may be to serve good causes and good clients. The work is good and enriching for some; it is not so for others.

Yet we all have a duty to “do good” in the law. Bar associations and legal aid groups urge attorneys incessantly to provide pro bono assistance to

the poor or at least to provide funding for those attorneys who do.⁷⁰ I am not entirely convinced that a Catholic's "preferential option for the poor" necessarily includes legal services to aid in divorces, evictions, and recovery of welfare benefits. It might. But those who provide such services might find better options for serving the poor.

Here, I would agree with the sardonic remark that justice is open to everyone in the same way as the Ritz Hotel. The class of people who cannot stay at the Ritz is far wider than just the poor, and no amount of funding ever will get them in the door, much less the same room. To be a good Catholic lawyer, one should do pro bono work, but the *bono* takes on wide import when one considers the relative priorities of those *boni*, and I do not think poverty law lays claim to greater priority than does, say, God's more personal causes, such as life issues and religious liberty issues, at least in this day and age. The Devil has plenty of lawyers to draw from. God does not. His friends are few, His enemies are many, His pay is lousy, His success rate is low, His wounds are deep, and He shares them with you freely. But He offers something no other client can. "Rejoice and be glad, for your reward in Heaven is great."⁷¹

CONCLUSION

Back to our Navy Seal, the Catholic one. The one who slits throats, frees hostages, and guns down pursuers. Thank God for Seals. I do not think for a minute that the choices they have to make are anything like the choices we litigators have to make. But I like thinking that the choices they make can still be measured by Catholic moral law. And in that case, I like thinking that the choices I have to make as a litigator can still be measured by Catholic moral law too.

I do not see that there are things I must do in my practice that offend my faith or that anything in the practice of my faith would make me an inferior litigator. I see that my life as a litigator presents the same general challenges and opportunities as any job does to any Catholic. My faith should enhance my work, and my work should enhance my faith. My faith enhances my work by compelling me to live according to the good standards of my own profession. And my work enhances my faith by presenting me with an endless supply of fears, frustrations, and temptations to overcome.

Does being a better Catholic make me a better lawyer? I do not know. I would like to think so, but being a better Catholic is all that counts.

70. The American Bar Association recommends that all lawyers perform at least fifty hours a year of pro bono services "to those unable to pay." MODEL RULES OF PRO. CONDUCT r. 6.1 (AM. BAR ASS'N 2020).

71. *Matthew* 5:12.

Proposed Changes to Lawyer Ethics Rules

Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	Mina Sirkin
City	Woodland Hills
State	California
Email address	minasirkin@gmail.com
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA1_" to the front of your file's name)	This is a useless amendment. Lawyers always have to act not to prejudice the clients, and often let the other side save face. This amendment achieves nothing.
From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA2_" to the front of your file's name)	This is very subjective and will allow all kinds of complaints to the Bar for no reason. Who is to say what is unprofessional or abusive? other lawyers? It is unnecessary and just a way for the Bar to file more complaints subjectively.
From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA3_" to the front of your file's name)	These are unnecessary and will just result in more complaints to the Bar. This is just a way for the Bar to make more money and does not help clients in any way.

Proposed Changes to Lawyer Ethics Rules

Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	Alice Smith
City	Los Angeles
State	California
Email address	asmith@yokasmith.com
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	DISAGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)	DISAGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.)	DISAGREE with the proposed recommendations

Proposed Changes to Lawyer Ethics Rules

Are you an attorney?	Yes
Name	Janet Eileen Sobel
Professional Affiliation	Yes, founder Lawyer Wellness Library, a CA 501c3 nonprofit
City	El Cajon
State	California
Email address	janet@lawyerwellness.org
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA1_" to the front of your file's name)	<p>This rule seems likely to chill the relationship between the lawyer and the client. Lawyers are going to be worried about disciplinary action against their licenses because sometimes getting sanctioned is simply something that comes with the territory of zealousness. If an attorney gets sanctioned for pushing too hard - which is a very subjective determination - then who is to account for lawyers holding back their zealousness because they fear for their own licenses.</p> <p>Now the State Bar of California considers adopting an ethical obligation on the part of lawyers to place their interests in avoiding actions against them for ethical transgressions related to zealousness ahead of their clients' interests - a direct violation of a lawyer's fiduciary duty.</p> <p>In fact. this proposed rule goes so far as to make "incivility" an ethical transgression that can occur even where no judge or the courts are affected</p>

because the transaction involving the clients may be simply between two opposing lawyers. This rule will chill the zealousness of any lawyer who fears their opponent will make a Complaint against them with the State Bar. If a lawyer were to threaten such a thing, it would be an act of extortion, but the threat that someone might later accuse a lawyer uncivil demand letters. for example, then what?

Additionally, this rule, like the Amendment to Rule 8.4 and Proposed Rule 8.4.2, will add to the mental and emotional burden of this profession. As my Comments on Proposed Amendment to Rule 8.4 Rule and Proposed Rule 8.4.2 will expand upon, the Rules of Professional Responsibility are already to blame for the stigma that undeniably leads to lawyers...

... staying silent when they should be seeking help. The greater the fear that they will misstep the ethical boundaries and subject themselves to scrutiny by this State Bar, the more likely lawyers will be to betray their clients, which is an emotional and mental burden on lawyers, adding to the stress and anxiety of this already difficult job.

The public is substantially injured by the addictions, untreated mental illness, and suicides that mark every part of this profession. The American Bar Association was formed soon after the Civil War and its paradigm, which set the standard for all legal organizations, established the nature of how we practice law. It took almost 150 years for lawyers in marginalized groups to find positions of leadership in how this profession is run.

The stigma of this profession falls hardest on people in marginalized groups because they will worry about being misjudged by people with the power to impair their livelihood and who hold different cultural views, or who interpret words to be uncivil when they are not seen that way by the speaker, or who have a different standard of propriety. Monetary sanctions are one thing, but being accused of an ethical breach is an entirely different thing. Making lawyers worried about being subjected to claims of misfeasance for the manner of presenting an argument is certain to chill the very zealousness that is the hallmark of a lawyer's duty to their clients.

This Proposed Rule forces conflicts between lawyer and client and is an inappropriate rule to be imposed upon lawyers because it puts the lawyer's personal interests ahead of their clients. Not to mention the claims of malpractice ...

...that will accompany an attorney's being accused of ethical transgressions related to some adverse person's determination that they crossed some invisible line of incivility. This Proposed Rule, and the other two up for Public Comment on March 1, are a Can of Worms with injurious consequences that will not be fully recognized for a decade.

Respectfully,
Janet Sobel
Bar#109945

From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)

DISAGREE with the proposed recommendations

ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA2_" to the front of your file's

I think it is irresponsible and entirely unfair for the State Bar of California to hold lawyers liable for incivility when the disciplinary arm of the

name)

California State Bar itself has very recently affirmed undeniably uncivil behavior as within the parameters of acceptable attorney conduct in this state. No lawyer should be held by some judge as having behaved unethically under this new Proposed set of rules when the prosecutors of the State Bar of California have declared worse behavior to be ethical enough to protect the public, which is the Mission of the State Bar.

How can it be otherwise? The California State Bar is created and overseen by the California Supreme Court, which presumably understands how to know when conduct is "prejudicial to the administration of justice," and how to fairly enforce the rules that assure the smooth administration of justice. Can the California Supreme Court adopt rules that the California State Bar does not enforce when a Complaint from a member of the public is up for review? Put another way, if the California State Bar prosecutors determine certain conduct to be "civil," can judges determine similar conduct to be unethical? If so, can State Bar prosecutors agree and take action against the licenses of lawyers whose conduct was nowhere near as uncivil as the ones the State Bar prosecutors declared to be fine and dandy? How can that be?

In connection with the comments I submitted regarding the "Civility Oath" expansion, I attached a letter I sent to the Office of the Chief Trial Counsel in January of 2022, regarding precisely that scenario. In that case, my clients, members of the public, complained about undeniably...

... uncivil behavior that this State Bar's

prosecutors thought was within the standard of practicing lawyers in California. That case shows the kind of uncivil conduct that meets with the approval of this State Bar, and no Rules should be imposed upon other lawyers in this state that is stricter than what this State Bar's own Chief Trial Counsel deems ethical. What passed ethical muster in that case should be the standard. How can it be otherwise?

And if it cannot be otherwise, what can the definition of "incivility" be when all we have are examples of the kinds of incivility that meet the standard expected from this State Bar? Hypocrisy in what this State Bar expects of practicing attorneys, and the impossibility of assuring fairness to all lawyers, renders this Rule one that is impossible to execute.

From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.)

DISAGREE with the proposed recommendations

ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA3_" to the front of your file's name)

There is no way this State Bar can adopt a rule that is so obviously in the mind of the beholder and so dangerous to the lawyer's livelihood. When a judge determines behavior to be uncivil, appellate courts are likely to affirm, and what one judge determines to be uncivil will be imposed upon each situation, making lawyers afraid to speak up for their clients, which flies in the face of the primary duty owed by lawyers to their clients, one of zealous representation.

The patent impossibility of constructing a definition that can allow for the application of an objective standard makes this Proposed Rule fertile ground for appeals and unfair outcomes. As noted in my comments to Amendment to 8.4,

this State Bar cannot expose lawyers to judicial action against their licenses for unethical conduct based on incivility when the prosecutors of this State Bar have declared clearly uncivil conduct to meet the ethical standards of this State Bar, as laid out in my attachment to my comments regarding the Oath of Civility, namely a January 2022 letter to the Office of Chief Trial Counsel.

Moreover, this Proposed Rule would empower adverse counsel and parties to accuse a lawyer of engaging in uncivil conduct outside of a judicial proceeding, i.e., in demand letters and negotiations for pre-litigation resolutions, leading to increased numbers of Complaint to this overworked State Bar's prosecutors. This would lead to a financial impact of this Rule on the budget of this State Bar. In short, it would defeat the value of pre-litigation solutions to empower parties to use the threat of using Rule 8.4.2 against them as a negotiating tool. Think of the appellate law that is...

... just waiting to be explored in the violations of all the rules and statutes that are meant to protect every lawyer's right and duty to be zealous on their clients' behalf, including at peril to themselves.

Additionally, this is exactly the kind of Professional Rule of Conduct that makes practicing law so difficult. As of now, close to half of all lawyers are sorry they went to law school. That makes for a lot of unhappy lawyers who are probably not doing their best work. The primary interest of the State Bar should be to do what it can to support lawyers to be happy and healthy. Civility is driven in large part by the cutthroat attitude of attorneys (and sometimes judges) and

cannot be isolated away from the emotional and mental well-being of lawyers, which is often made problematic by the rest of the Rules of Professional Conduct.

This State Bar should not add another rule that puts fear in the hearts of lawyers, because that fear is not in the public's interest, which is promoted by lawyers whose undivided loyalty is to the clients. This is not to say that lawyers should behave contrary to the many rules that already exist to prohibit uncivil behavior, like the rules against abusive or harassing conduct towards members of the public. But, as noted earlier in my comments, even this State Bar's prosecutors have approved of egregious uncivil conduct by lawyers in violation of existing rules of conduct - so one more rule will serve only to hurt some lawyers and not others.

This State Bar has existing rules for taking action against lawyers who engage in uncivil conduct, and the State Bar already exercises its power of investigation and disciplinary authority in ...

...its own arguably inconsistent and whimsical ways – and that is how it should continue to be. Arming judges with a new basis for punishing lawyers they don't like will not further the interests of our system of justice; it will further impair it.

Janet Sobel
Bar #109945

Proposed Changes to Lawyer Ethics Rules

Are you an attorney?	Yes
Name	RICHARD L. SOLOMON
Professional Affiliation	LAW OFFICES OF RICHARD L. SOLOMON
City	LOS ANGELES
State	California
Email address	RLS@SOLOMONLAW.NET
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA1_" to the front of your file's name)	I am adamantly opposed to this proposed rule! Is there no area of our lives as lawyers that the State Bar does not seek to regulate or control in some manner or fashion? Is the exercise of such control not a violation of our fundamental constitutional right of free speech and expression? And just how does the Bar intend to enforce any alleged violation of such uncivil expression? Does the Bar have nothing better to do with our dues than this utter nonsense? The stated mission of the State Bar is to protect the public from the lawyers. What about doing something to protect the lawyers and aid them in their practice?
From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA2_" to the front of your file's name)	I am adamantly opposed to this amendment! Is there no area of our lives as lawyers that the State Bar does not seek to regulate or control in some manner or fashion? Is the exercise of such control not a violation of our fundamental

constitutional right of free speech and expression? And just how does the Bar intend to enforce any alleged violation of such uncivil expression? Does the Bar have nothing better to do with our dues than this utter nonsense? The stated mission of the State Bar is to protect the public from the lawyers. What about doing something to protect the lawyers and aid them in their practice?

From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.)

ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA3_" to the front of your file's name)

I am adamantly opposed to this amendment! Is there no area of our lives as lawyers that the State Bar does not seek to regulate or control in some manner or fashion? Is the exercise of such control not a violation of our fundamental constitutional right of free speech and expression? And just how does the Bar intend to enforce any alleged violation of such uncivil expression? Does the Bar have nothing better to do with our dues than this utter nonsense? The stated mission of the State Bar is to protect the public from the lawyers. What about doing something to protect the lawyers and aid them in their practice?

Proposed Changes to Lawyer Ethics Rules

Are you an attorney?	No
Commenting on behalf of an organization	No
Name	+stephanie
City	'sunset beach
State	California
Email address	stephiorourke@yahoo.com
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA1_" to the front of your file's name)	To me acting civilly is a natural ethic. Sanctions should be imposed if attorney breaches the civility pledge.
From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA2_" to the front of your file's name)	Im happy state bar is proposing civil guidelines for attorneys and it's sad that they need the guidelines.
From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA3_" to the front of your file's name)	Attorneys r allowed to self govern which is a huge mistake and gives attorneys too much authority, therefore guidelines can help some from being uncivil to beneficiaries of trust, opposing party, 3rd party, witnesses, opposing counsel, etc...

Proposed Changes to Lawyer Ethics Rules

Are you an attorney?	Decline to state
Commenting on behalf of an organization	Yes
Name	Justin Beck
Professional Affiliation	StopCorruptLawyers.com
City	Oceanside
State	California
Email address	justintimesd@gmail.com
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA1_" to the front of your file's name)	I disagree with any regulation by The State Bar of California and it's unconstitutional "State Bar Court" because it is selectively used to steal from the public under color of State law.
From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA2_" to the front of your file's name)	I disagree with any regulation by The State Bar of California and it's unconstitutional use of "State Bar Court" - where the Board of Trustees is concealing a writ petition G061896 and the federal case 3:22-CV-01616-BAS-DDL from CSC and Legislature.
From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files	I disagree, since the Board of Trustees has

proceed to the ATTACHMENTS section below.
(Please add "PA3_" to the front of your file's
name)

ratified criminal conduct repeatedly yet continues
to discuss rules as if they weren't leveraged in
favor of themselves to the detriment of public
interest.

Proposed Changes to Lawyer Ethics Rules

Are you an attorney?	No
Commenting on behalf of an organization	Yes
Name	NANCY E Carlson
Professional Affiliation	The Consumer Bar
City	LAGUNA WOODS
State	California
Email address	msncarlson@aol.com
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.)	AGREE with the proposed recommendations

Proposed Changes to Lawyer Ethics Rules

Are you an attorney?	No
Commenting on behalf of an organization	No
Name	Hon. John P. Vander Feer
Professional Affiliation	Judge of the Superior Court
City	Victorville
State	California
Email address	jvanderfeer@sb-court.org
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.)	AGREE with the proposed recommendations

Proposed Changes to Lawyer Ethics Rules

Are you an attorney?	No
Commenting on behalf of an organization	No
Name	Lisa J Wilbur
Professional Affiliation	Self
City	Mountain View
State	California
Email address	lisa.wilbur59@gmail.com

From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)

AGREE ONLY if Modified

ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA1_" to the front of your file's name)

My opinion is based upon my experiences after litigation was filed since 1993. The State Bar has my documentation since July 1993. It is the Client unless the Client's mental or emotional capacity presents as impaired at the onset of representation. For example, a mother in a post partum crisis accused of harm/death to her child/children. Otherwise I believe it should be written into the lawyer-client contract that a lawyer will be not be racist or discriminatory, exploit vulnerable clients like children, domestic violence victims, or non-American born clients in any and all proceedings. This would include all fee arbitration proceedings. For example, a lawyer mocked me in MFA before his local bar association per issues involving an estate lawyer who did everything to me a lawyer is never supposed to do to a client, and protected by the State Bar since 1993.

From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This

AGREE ONLY if Modified

is a required field.)

ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA2_" to the front of your file's name)

The State Bar has my documentation since July 1993. In addition, my opinions are based upon my experiences which reflect the State Bar's failure to protect the public for decades, especially vulnerable people or protected classes. The foundation of conduct for a lawyer should be to uphold loyalty and avoid all conflicts of interests. Further, that lawyers should tell on each other. If an issue of uncivil conduct is towards a member of a reported class, as I have been, the lawyer must be disbarred. Further, it should be written into the lawyer client contract that the lawyer will give up his or her law license if uncivil towards a protected class in Sanctuary State CA. The lawyer client contract should be the foundation of the relationship or presentation and it must include all issues of civility and anti-racist conduct. Until lawyers are held accountable for racism, exploiting domestic violence victims, vulnerable children, and protected classes, have to tell on each other, lawyers must state in their contract to be civil et al. I know it is a rule that the lawyer must give the client a signed copy of the related contract.

From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.)

AGREE ONLY if Modified

ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA3_" to the front of your file's name)

Please refer to my opinions in Proposals 1 and 2. All issues of civility or incivility must be in the lawyer client contract. The burden of proof should not be on the victimized client or having to jump through the State Bar's hoops to prove uncivil conduct. I have read the CA State Bar's RPC before and after 11/2018. They are complicated and presents as job security for the State Bar Court. What needs to be stated is that

white privileged lawyers have gotten away with being uncivil, exploitation, and racist because lawyers in CA don't have to tell on each other. For example, I submitted a detailed complaint April 2013 and the response from the State Bar was that my complaint was rejected. To me, an Eurasian former immigrant from a Muslim country, that represented the State Bar's complicity in White Supremacy.

Again, the CA State Bar has had my documentation since July 1993.

Proposed Changes to Lawyer Ethics Rules

Are you an attorney?	No
Name	Monica Wiley
Professional Affiliation	San Francisco Superior Court
City	San Francisco
State	California
Email address	mwiley@sftc.org
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.)	AGREE with the proposed recommendations

Proposed Changes to Lawyer Ethics Rules

Reference #	24376557
Status	Complete
Are you an attorney?	Yes
Commenting on behalf of an organization	Yes
Name	Noelle M. Natoli
Professional Affiliation	Women Lawyers Association of Los Angeles
City	Los Angeles
State	California
Email address	nnatoli@clarkhill.com
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA3_" to the front of your file's name)	—
ATTACHMENTSYou may upload your comment as an attachment. Only one attachment will be accepted per comment submission. We accept the following file types: text (.txt), Microsoft Word (.doc), WordPerfect (.wpd), Rich Text Format (.rtf) and Adobe Acrobat PDF (.pdf). We do not accept any other file types. Please DO NOT	PA3_WLALA_FORMAL_COMMENT_ON_NEW_RULES_OF_CIVILITY_PROPOSED_BY_THE_CALIFORNIA_CIVILITY_TASK_FORCE_-_sdj-edits_Y6yx.pdf (158 KB)

submit scanned documents. Files must be less than 4 megabytes in size.

Last Update	2023-01-31 14:00:46
Start Time	2023-01-30 14:43:32
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IP	Anonymous
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Device	Other
Referrer	N/A

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WLALA FORMAL COMMENT ON NEW RULES OF CIVILITY PROPOSED BY THE CALIFORNIA CIVILITY TASK FORCE

The practice of law, is not a job, it is a profession. And, with that comes the responsibility to engage with one another professionally, and with civility.

One in every four women face gender-based physical or psychological violence by the age of 19, worldwide. Moreover, there has been a dramatic rise in hate crimes in recent years, and those crimes are disproportionately against women. Adding to this, there has been an increase in incivility within the profession of law, particularly since the inception of the COVID-19 pandemic, and particularly targeted against women and other marginalized groups.

The Women Lawyers Association of Los Angeles, therefore, fully endorses the proposed changes to the rules of civility and stands in solidarity with the California Civility Task Force. WLALA agrees that ***gendered incivility*** should be called out for what it is. See, *Briganti v. Chow* (2019) 42 Cal.App.5th 504.

As such, WLALA requests a friendly amendment to Comment [5] to include Definitions for the term "significantly," as follows:

"Significantly" as used in this rule includes but is not limited to words or conduct demonstrating bias against or targeting a protected class as identified in the California Constitution and/or the Fair Employment and Housing Act. "Significantly" as used in this rule shall also include but is not limited to words or conduct demonstrating bias against or targeting counsel based on physical characteristics, speaking impediments, geographic region, and status of citizenship.

The additional language is necessary because very little guidance exists as to what constitutes "significant" behavior in this context (specifically the issue of bias in the profession) for the Court to consider in addressing these issues, particularly when the issue of sanctions or motions for protective orders are before the court, by way of example.

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(AS PROPOSED) 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.

Comment [1] For guidance on conduct that may be significantly unprofessional, a lawyer should consult the current California Attorney Guidelines of Civility and Professionalism and other applicable civility authorities. [2] A lawyer does not violate this rule by standing firm in the position of the client, protecting the record for subsequent review, or preserving professional integrity. [3] A lawyer's violation of this rule may also constitute a violation of rule 8.4(d). [5] "Incivility" as used in this rule does not apply to conduct protected by the First Amendment to the United States Constitution or by Article I, section 2 of the California Constitution. "Incivility" as used in this rule includes conduct that violates an attorney's duties under Business and Professions Code section 6068, subdivisions (b) and (f). (See California Code of Judicial Ethics, Canon 3B, advisory commentary: Canon 3B(2) regarding/for a judge's responsibility to require lawyers under the judge's direction and control to be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others.) [6] A disciplinary investigation or proceeding for conduct coming within this rule may also be initiated and maintained if such conduct warrants discipline under California Business and Professions Code sections 6106 and 6068, the California Supreme Court's inherent authority to impose discipline, or other disciplinary standard.

Proposed Changes to Lawyer Ethics Rules

Reference #	24043146
Status	Complete
Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	sherri woods
City	los angeles
State	California
Email address	sherri.woods@att.net
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA1_" to the front of your file's name)	Redundant and unnecessary. The obligation to behave already exists.
From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA2_" to the front of your file's name)	Redundant and unnecessary. The obligation to behave already exists.
From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. (Please add "PA3_" to the front of your file's name)	Redundant and unnecessary. The obligation to behave already exists.

Last Update	2023-01-18 04:22:12
Start Time	2023-01-18 04:20:38
Finish Time	2023-01-18 04:22:12
IP	Anonymous
Browser	Other
Device	Other
Referrer	N/A

Proposed Changes to Lawyer Ethics Rules

Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	Kurt W Worley
City	Chico
State	California
Email address	kworley@buttecourt.ca.gov
From the choices below, we ask that you indicate your position on Proposed Amendment 1. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on Proposed Amendment 2. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on Proposed Amendment 3. (This is a required field.)	AGREE with the proposed recommendations