



*The State Bar of California*

# **Attorney Civility: Proposed Amendments to Rule of Court 9.7 and the Rules of Professional Conduct**

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Board of Trustees, May 18–19, 2023

## Three Recommendations Affecting Attorneys

1. Require one hour of MCLE for civility training;
2. Require all lawyers to take the civility pledge by amending California Rules of Court, rule 9.7; and
3. Revise the Rules of Professional Conduct to address incivility.



# Proposed Amendments to Rule of Court 9.7





# Current Attorney Oath

## California Rules of Court, rule 9.7

- Since June 2014, all licensees, upon admission, take the attorney oath with civility language:  
I, (licensee name) solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of California, and that I will faithfully discharge the duties of any attorney and counselor at law to the best of my knowledge and ability. **As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy and integrity.**



### Proposed Amendments to Rule 9.7

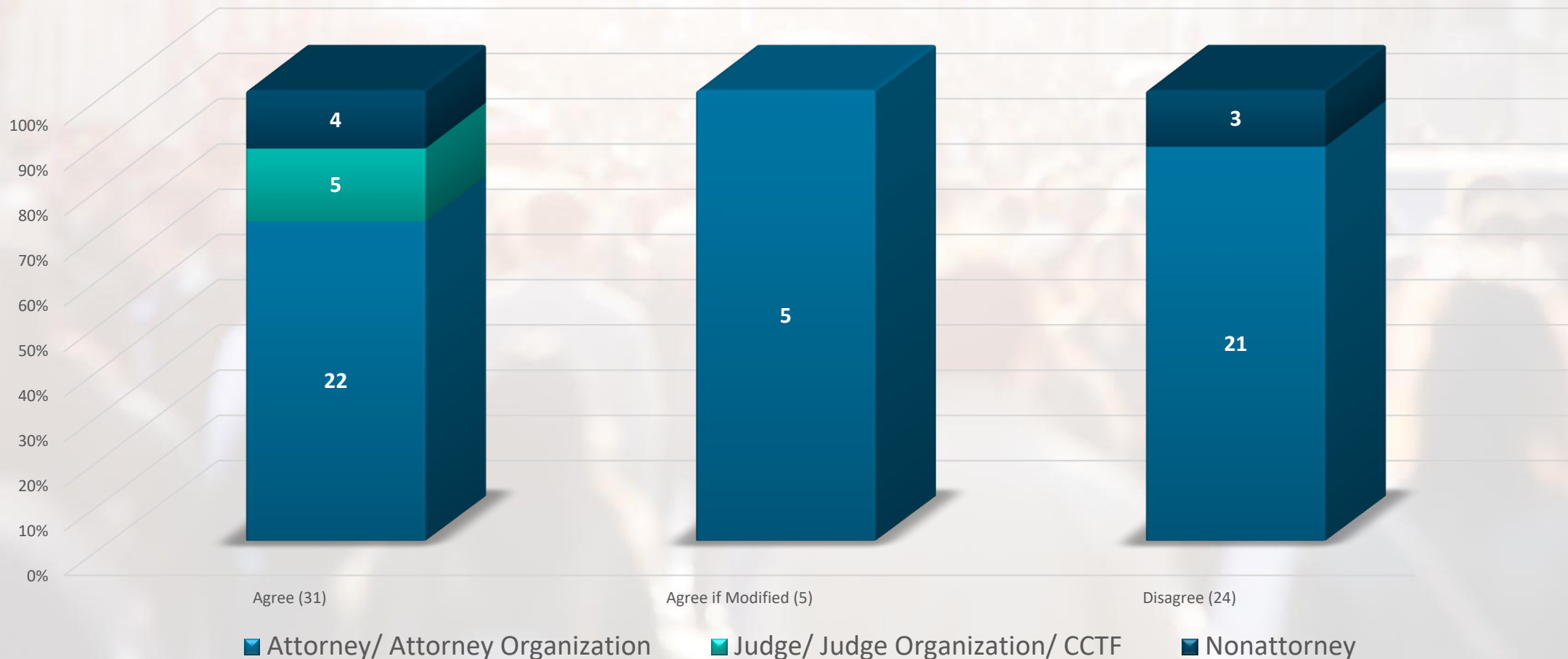
- By February 1, 2024, only licensees who had not already completed the civility oath and specially admitted attorneys would be required to submit a one-time declaration with the civility pledge.
- Annual requirement to take the civility pledge when paying licensing fees or registration as special admissions attorney.



# Public Comment on Proposed Amendments to Rule 9.7

285 Comments Received

Positions on Proposed Amendments to Rule of Court 9.7



# Public Comment Themes

## Opponent Comment Themes:

- Proposed changes will not positively impact civility
- Changes will be burdensome on attorneys
- State Bar should focus on attorney discipline

## Proponent Comment Themes:

- Proposed changes will positively impact civility
- Will reduce need for judges to intervene to correct poor attorney behavior
- All attorneys practicing in California should be required to equally commit to civility



## Changes after initial public comment

### Revised Proposed Amendments to Rule 9.7 and new State Bar Rule 2.3

- By February 1, 2024, **all licensees** and specially admitted attorneys must submit a declaration with the civility pledge language.
- Annual requirement to take the civility pledge when paying licensing fees or registration as special admissions attorney.
- Proposed new State Bar rule 2.3 to implement the changes to the oath requirements. A State Bar rule is necessary to actually impose the requirements of proposed rule 9.7 amendments.

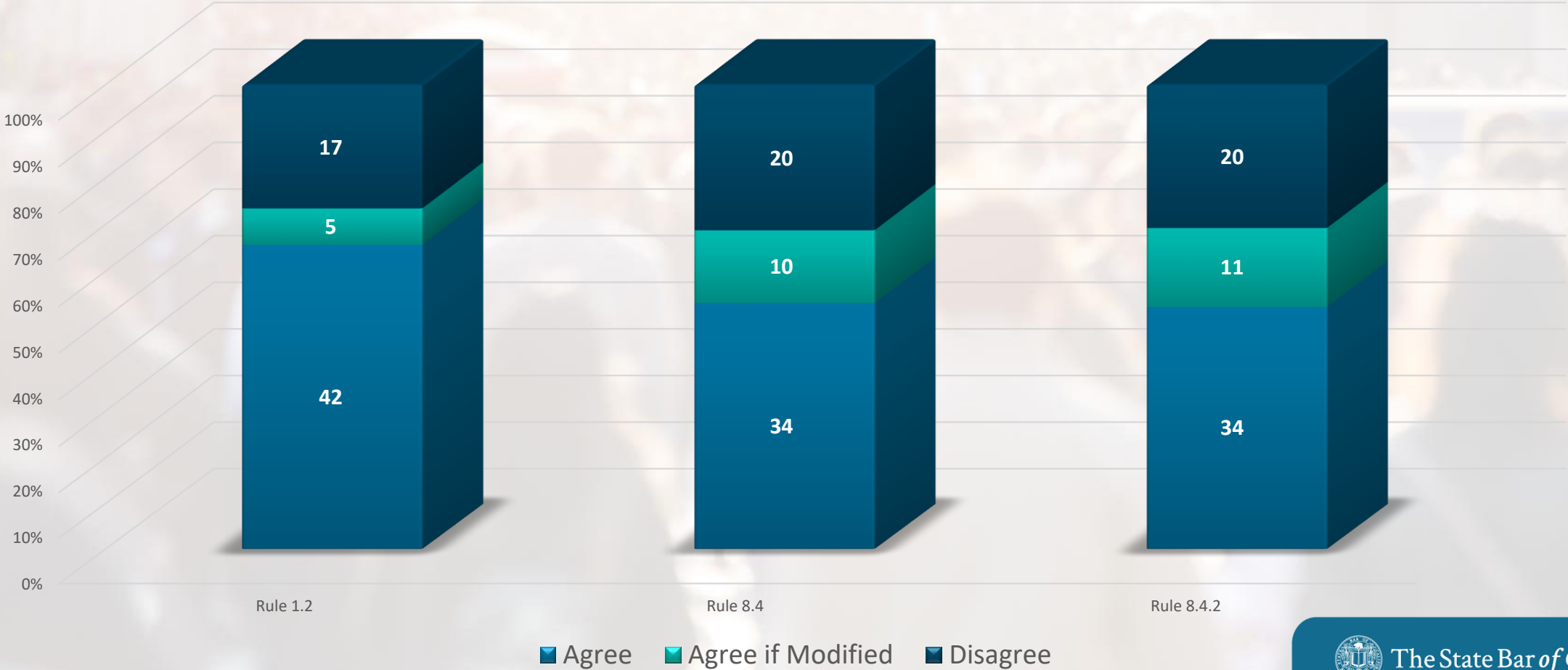


# Proposed Amendments to the Rules of Professional Conduct



65 Comments Received

Positions on Proposed Amendments to the Rules of Professional Conduct



# Public Comment Themes

## Proponent Comment Themes:

- Rules are needed because incivility negatively affects access to justice
- It is appropriate for there to be discipline for incivility

## Opponent Comment Themes:

- Rules, particularly 8.4.2, are too broad
- The definition of incivility is too vague or subjective, and has a chilling effect
- The rules will be weaponized



## Proposed Amendments to Rule 1.2 Comment [1]

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

“ . . . Notwithstanding a client’s direction, a lawyer retains the authority to agree to reasonable requests of opposing counsel **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. . . .”



### Rule 8.4: Misconduct

- Amendments to Comment [4] provide a cross-reference to proposed new standalone rule addressing incivility, rule 8.4.2.
- Revisions following public comment clarify that rule 8.4(d) includes a separate basis for discipline for incivility.



## Proposed Amendments to Rule 8.4 Comment [6]

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

“[6] A violation of paragraph (d) includes engaging in significantly unprofessional conduct that is abusive or harassing in the practice of law ~~or related professional activities~~. A lawyer does not violate paragraph (d) **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~~-legal authorities, **such as the local rules of court and bar associations’ codes of civility.”**



## Proposed New Rule of Professional Conduct 8.4.2

### Rule 8.4.2 Prohibited Incivility

- (a) In representing a client, a lawyer shall not engage in incivility in the practice of law ~~or related professional activities~~.
- (b) For purposes of this rule, “incivility” means significantly unprofessional conduct that is abusive or harassing and shall be determined on the basis of all the facts and circumstances surrounding the conduct.



## Proposed New Rule of Professional Conduct 8.4.2

### Comment

- Directs lawyers to consult the current California Attorney Guidelines of Civility and Professionalism and other applicable **legal** authorities, **such as the local rules of court and bar associations' codes of civility**;
- Provides **examples** of conduct that, **on their own**, would not violate the rule;
- Indicates that a violation of rule 8.4.2 may also violate rule 8.4(d) (Misconduct) and/or the State Bar Act; and
- Clarifies that the rule does not apply to **speech** or conduct protected by the First Amendment.



## Next Steps

Staff requests second, 30-day public comment on:

- Rule of Court 9.7 (civility oath) to expand proposed amendments to require all licensees to complete one-time declaration with civility oath
- Rules of Professional Conduct:
  - Rule 1.2 Comment [1]
  - Rule 8.4 Comments [4] and [6]
  - Rule 8.4.2

After additional public comment period, rules will be brought back to the Board to request approval and then be submitted to the Supreme Court, seeking final adoption

