



The State Bar of California

OPEN SESSION AGENDA ITEM 705 JULY 2023

DATE: July 20, 2023

TO: Members, Board of Trustees

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

SUBJECT: Proposed Rule Amendments Based on Recommendations by the California Civility Task Force (Rule 9.7 and Rules of Professional Conduct 1.2, 8.4, and New Rule 8.4.2): Return from Public Comment and Request for Approval

EXECUTIVE SUMMARY

This item requests that the Board of Trustees approve proposed amendments to the California Rules of Court and Rules of Professional Conduct, as well as adopt a new State Bar Rule, to improve the civility of licensees and attorneys who are authorized to practice law in California. These proposed changes are based on recommendations of the California Civility Task Force (CCTF), and include amendments to California Rule of Court 9.7 to require lawyers to annually affirm or reaffirm their civility oath, new State Bar Rule 2.3 to implement the changes to the oath, and amendments to the Rules of Professional Conduct to make incivility a basis for discipline.¹

The proposed amendments to Rule of Court 9.7 and Rules of Professional Conduct 1.2, 8.4, and 8.4.2 were issued for two rounds of public comment, a 90-day initial public comment period and a 30-day second public comment period. State Bar Rule 2.3, which would implement the changes to Rule of Court 9.7, was issued for a 30-day public comment period.

In the most recent public comment period, the State Bar received 33 public comments on the proposed amendments to Rule of Court 9.7 and new State Bar Rule 2.3. The State Bar received 26 comments on the proposed amendments to the Rules of Professional Conduct. Based on the public comments, staff does not recommend any further revisions to the proposed amendments and recommends that the Board approve these rules. The California Supreme

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).

Court must also approve the proposed amendments to the Rule of Court 9.7 and Rules of Professional Conduct.

BACKGROUND

The CCTF, a joint project of the California Lawyers Association and California Judges Association, issued a report and recommendations in September 2021 that has ultimately led to these proposed changes. As relevant to this agenda item, CCTF recommended amendments to the Rules of Court to require a lawyer to annually affirm or reaffirm their commitment to civility and amendments to the Rules of Professional Conduct to address incivility and clarify that civility is not inconsistent with a lawyer's zealous representation of a client.

In furtherance of these recommendations, at the [November 17, 2023, meeting](#), the Board authorized for public comment proposed amendments to the attorney civility oath, Rule of Court 9.7. At the [May 18, 2023, meeting](#), the Board authorized a second, 30-day public comment on revised proposed amendments. The revisions addressed implementation concerns and there were no changes proposed in response to the public comments. As revised, the proposed amendments to Rule of Court 9.7 would (1) require all licensees to submit a declaration affirming their commitment to the civility pledge by February 1, 2024; (2) extend the civility requirement to special admissions attorneys² as part of their initial 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. These requirements also would apply to an inactive licensee prior to their return to active status. Failure to comply with the requirements would result in possible late fees, a licensee's involuntary inactive enrollment, or suspension or termination of a special admissions attorney's registration. At the May 18, 2023, meeting, the Board also authorized for an initial, 30-day public comment period proposed new State Bar Rule 2.3, which would implement the proposed amendments set forth in Rule of Court 9.7, if adopted.

Additionally, at the November 17, 2022, meeting, the Board authorized for public comment proposed amendments to the Rules of Professional Conduct, including amendments to rules 1.2 and 8.4, and a proposed new standalone rule 8.4.2. In response to the initial public comment, State Bar staff requested that the Board issue revised proposed amendments to the rules for a second, 30-day public comment period. As revised, proposed amendments to rule 1.2 Comment [1] would clarify that a lawyer retains the authority to act in a civil manner such as by agreeing to reasonable requests of opposing counsel or a self-represented party so long as the lawyer does not prejudice the rights of their client, even if the client directs the lawyer to act otherwise. Proposed amendments to rule 8.4 Comment [4] would indicate that a lawyer may also be disciplined under rule 8.4.2. Proposed amendments to rule 8.4 Comment [6] would clarify that possible violations of rule 8.4(d) concern conduct that occurs in the practice of law, provide nonexhaustive examples of conduct that would not violate rule 8.4(d), and advise an attorney to consult the California Attorney Guidelines of Civility and Professionalism and other

² 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).

applicable legal authorities, such as the local rules of court and bar associations' codes of civility. Finally, new rule 8.4.2 would create a standalone rule that prohibits incivility in the practice of law, defining incivility as "significantly unprofessional conduct that is abusive or harassing" and determined based on the facts and circumstances surrounding the conduct.

DISCUSSION

Proposed Changes to the Civility Oath Requirements: Amendments to Rule of Court 9.7 and New State Bar Rule 2.3

Rule of Court 9.7

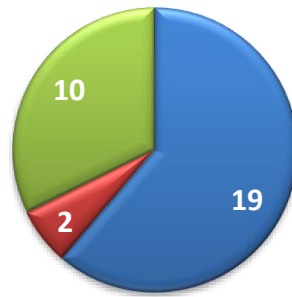
The State Bar received 33 comments regarding the proposed amendments to Rule of Court 9.7 and new State Bar Rule 2.3, all from attorney commenters and with two taking no position on the proposed changes. Of those that took a position, 19 agreed with the proposed amendments (61 percent), with 12 comments from attorney organizations,³ including CCTF, and 7 from individual attorneys.⁴ Two individual attorney commenters agreed with the proposed changes only if modified (6 percent) and 10 individual attorney commenters disagreed with the proposed amendments (32 percent).⁵

³ These commenters include the Asian Pacific American Women Lawyers Alliance; Association of Business Trial Lawyers – Los Angeles Chapter; Association of Business Trial Lawyers – San Diego Chapter; Black Women Lawyers Association of Los Angeles, Inc.; California Access to Justice Commission; California Civility Task Force; Consumer Attorneys Association of Los Angeles and the California Employment Lawyers Association (submitted jointly); Irish American Bar Association of Los Angeles; Japanese American Bar Association; Los Angeles County Bar Association, Litigation Section; Multicultural Bar Alliance of Southern California; and Santa Clara County Bar Association. Additionally, the Women Lawyers Association of Los Angeles provided comment indicating support; however, the substantive comments indicated support for the amendments to the Rules of Professional Conduct and are included with those comments, discussed below.

⁴ Two of the comments that agree with the proposal were submitted by this commenter; the numbers have been adjusted to count their comments as a single comment.

⁵ The two commenters who took no position are excluded from the chart and the percentage breakdowns.

Positions on Proposed Amendments to Rule of Court 9.7



■ Agree (12 attorney organizations, 7 individual attorneys)

■ Agree if Modified (both individual attorneys)

■ Disagree (all individual attorneys)

The 10 comments disagreeing with the proposed amendments were similar to those received during the first public comment period. These commenters stated that incivility is not a problem, civility cannot be “legislated,” and that the oath requirements will not change attorney behavior. A few commenters stated that addressing incivility should be done through education, including at the law school level or through MCLE. One commenter raised free speech concerns regarding disciplinary rules for uncivil conduct, which is addressed in the section on the Rules of Professional Conduct. The two commenters who agreed with the proposed changes only if modified opposed requiring attorneys to retake the oath if they had already completed it with the civility language and opposed an annual requirement.

The 19 comments agreeing with the proposed amendments were also similar to those made in the first public comment period. The commenters stated that the proposed amendments would put all attorneys on equal footing and promote access to justice by promoting respectful treatment of self-represented parties. Commenters also stated that an annual reminder of civility will indicate its importance, and that attempts to improve civility would reflect well on the judicial system, profession, and fair administration of justice.

Based on the public comments received, there are no further revisions to the proposed amendment to Rule of Court 9.7, and staff recommends that the rule be approved for submission to the California Supreme Court for adoption.⁶

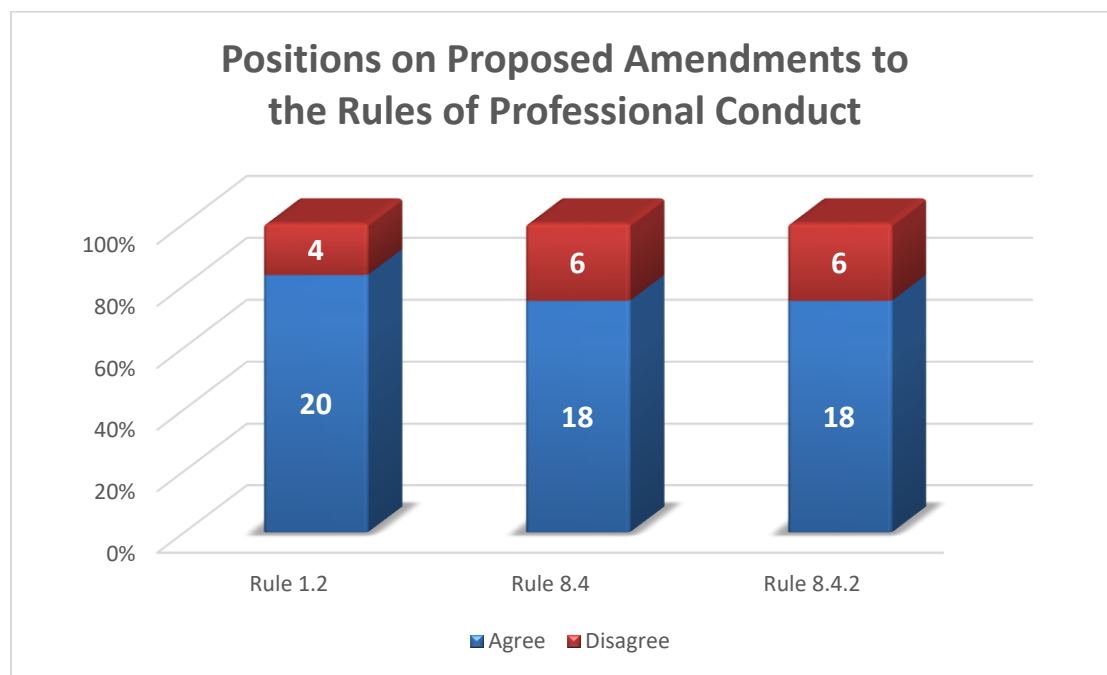
⁶ Clean and redline versions of the proposed amendments to Rule of Court 9.7 are provided in Attachments A and B, respectively. Proposed new State Bar Rule 2.3 is provided as Attachment C. The public comments on Rule of Court 9.7 and State Bar Rule 2.3 are provided as Attachment D.

State Bar Rule 2.3

State Bar Rule 2.3 would implement the changes to the civility oath requirements that would be authorized through Rule of Court 9.7. Likely because proposed new State Bar Rule 2.3 is an implementing rule, the substantive comments received on this new rule were aligned with the comments made on the proposed amendments concerning the civility oath itself, Rule of Court 9.7. Therefore, for the same reasons that staff recommends adoption of Rule of Court 9.7, staff also recommends adoption of new State Bar Rule 2.3. Staff is requesting adoption of this rule now so that the changes to the civility oath can go into effect for the next billing cycle, with the understanding that adoption of the rule is subject to the Supreme Court's action to approve the proposed amendments to Rule of Court 9.7. If the Supreme Court were to adopt amendments to Rule of Court 9.7 with material changes, staff would assess those changes and, if needed, prepare conforming amendments to proposed State Bar Rule 2.3 for the Board's consideration.

Proposed Changes to the California Rules of Professional Conduct to Address Civility: Amendments to Rules 1.2 and 8.4 and New Rule 8.4.2

The State Bar received 26 comments regarding the proposed amendments Rules of Professional Conduct 1.2 and 8.4 and new Rule of Professional Conduct 8.4.2. The majority of commenters are supportive of the proposed amendments.⁷



Based on the public comments received, staff does not propose any further revisions to the proposed amendments to the Rules of Professional Conduct, and recommends that Rules 1.2, 8.4, and 8.4.2 be approved for submission to the California Supreme Court for adoption.⁸ Each

⁷ Two commenters took no position and are excluded from the graph and percentage breakdowns for each rule.

⁸ Clean and redline versions of the proposed amendments to the Rules of Professional Conduct are provided in Attachments E and F, respectively. The public comments are provided as Attachment G.

rule is addressed separately and in more detail based on the comments for each of the proposed changes.

Proposed Amendments to Rule 1.2

Twenty commenters (83 percent) agreed with the proposed amendments to rule 1.2, 4 comments (17 percent) disagreed, and two took no position. Of the 20 comments agreeing with the proposed amendments, 10 were from attorney organizations,⁹ 2 from individual judges, 7 from individual attorneys, and 1 from a nonattorney organization¹⁰. CCTF's comment indicated no position and is reflected as such in the percentage breakdowns; however, the substantive comments indicate support of the proposed amendments to the Rules of Professional Conduct, including rule 1.2. The 4 comments disagreeing were provided by individual attorneys.

There were no comments suggesting further modifications to the proposed amendments to rule 1.2. The commenters disagreeing with the proposed amendments 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. One comment indicated that a rule requiring an attorney to agree to reasonable requests of an opposing party or counsel was better suited to local court rules and enforced through civil sanctions.

The comments in support of the rule agree with clarifying that an attorney may agree to reasonable requests of self-represented parties, as well as such requests from opposing counsel. Commenters stated that the proposed amendment would provide important authority for attorneys to rely on when representing unreasonably difficult clients that would mitigate incivility and benefit the attorney-client relationship. Additionally, a commenter stated that proposed amendment "embodies the important notion that a lawyer can advocate zealously for their client while maintaining civility in their practice."

Based on the public comments received, there are no further revisions to the proposed amendments to rule 1.2 and staff recommends that the rule be approved for submission to the California Supreme Court for adoption.

Proposed Amendments to Rule 8.4

Eighteen commenters (75 percent) agreed with the proposed amendments to rule 8.4, 6 (25 percent) disagreed, and 2 took no position. Of the 18 comments that agreed with the proposed

⁹ These comments came from the Asian Pacific American Women Lawyers Alliance; Association of Business Trial Lawyers – Los Angeles Chapter; Association of Business Trial Lawyers – San Diego Chapter; California Access to Justice Commission; Consumer Attorneys Association of Los Angeles and the California Employment Lawyers Association (submitted jointly); Irish American Bar Association of Los Angeles; Japanese American Bar Association; Los Angeles County Bar Association, Litigation Section; Multicultural Bar Alliance of Southern California; and Women Lawyers Association of Los Angeles.

¹⁰ This came from the nonattorney organization The Consumer Bar.

amendments, 10 were from attorney organizations,¹¹ 2 from individual judges, 5 from individual attorneys, and 1 from a nonattorney organization¹². CCTF's comment indicated no position and is reflected as such in the percentage breakdowns; however, the substantive comments indicate support of the proposed amendments to the Rules of Professional Conduct, including rule 8.4. The 6 comments disagreeing were provided by individual attorneys.

There were no comments suggesting further modifications to the proposed amendments to rule 8.4. The commenters disagreeing with the proposed amendments disagree 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.

The commenters agreeing with the proposed amendments were supportive of the changes following the initial public comment period. These changes include:

- Revisions to Comment [4] to indicate that a lawyer may also be disciplined under rule 8.4.2;
- Revisions to Comment [6]
 - To limit the rule to conduct occurring in the practice of law;
 - To clarify that the Comment provides nonexhaustive examples of conduct that would not violate rule 8.4(d), and
 - To clarify that an attorney should consult the 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.

Commenters were generally supportive of establishing rules to allow for attorney discipline based on uncivil speech or conduct.

Based on the public comments received, staff does not recommend any further revisions to the proposed amendments to rule 8.4 and recommends that the rule be approved for submission to the California Supreme Court for adoption.

Proposed New Rule 8.4.2

The commenter positions on proposed new Rule of Professional Conduct 8.4.2 were the same as those on the proposed amendments to rule 8.4; 18 (75 percent) agreeing with the proposed new rule, 6 (25 percent) disagreeing, and 2 taking no position.

There were no comments suggesting further modifications to the proposed amendments to rule 8.4.2. The commenters disagreeing with the proposed amendments gave similar reasons as

¹¹ These comments came from the Asian Pacific American Women Lawyers Alliance; Association of Business Trial Lawyers – Los Angeles Chapter; Association of Business Trial Lawyers – San Diego Chapter; California Access to Justice Commission; Consumer Attorneys Association of Los Angeles and the California Employment Lawyers Association (submitted jointly); Irish American Bar Association of Los Angeles; Japanese American Bar Association; Los Angeles County Bar Association, Litigation Section; Multicultural Bar Alliance of Southern California; and Women Lawyers Association of Los Angeles.

¹² This came from the nonattorney organization The Consumer Bar.

those provided during the initial public comment period. Generally, the commenters disagree with adding incivility as a basis for discipline in the rules. They comment that the rules will be misused and inconsistently enforced by the State Bar, and that the State Bar should focus on client protection. Commenters also state that the rule will be subject to constitutional challenges as civility is subjective and the proposed definition of incivility is vague and uncertain. The commenters suggest that incivility is better dealt with through training in law school and when it does occur, it should be addressed by a judge in the moment rather than later addressed through potential State Bar discipline.

The commenters agreeing with the revised proposed amendments were supportive of the changes following the initial public comment period. These changes include:

- Revisions to paragraph (a) to limit the rule to incivility that occurs in the practice of law;
- Changes to comment [1] to clarify that a lawyer should consult the 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 for guidance on what would constitute incivility in the practice of law;
- Clarifying that the examples in Comment [2] of conduct that would not violate the rule are nonexhaustive; and
- Revising comment [5] to indicate that incivility as used in the rule includes speech and conduct, but does not apply to speech or conduct that is protected by the First Amendment of the United States Constitution or Article I, section 2 of the California Constitution.

These commenters were generally supportive of making incivility a basis for discipline. As the California Access to Justice Commission commented, overall, the civility rules and the focus on increasing and improving civility in the profession will promote the needs and experiences of self-represented parties who often face significant barriers to court access and incivility by attorneys. They also commented that changes will further the objectives "of increasing civility in the profession and . . . reduce barriers to justice for those that do not have counsel." They commented that the changes "may help reduce bias-based incivility and, therefore, promote racial justice and diversity, equity, and inclusion in the legal profession."

Concerning rule 8.4.2 specifically, the California Access to Justice Commission commented that creating a standalone rule has several benefits, "including highlighting the importance of civility; providing 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." The Asian Pacific American Women Lawyers Alliance was also supportive of a standalone rule, but cautioned that removing the prohibition on incivility in professional activities should not be construed as diminishing each attorney's responsibility to eliminate incivility in the workplace and at professional activities. They also commented that the State Bar must ensure that the rule is applied equitably and cautioned against adverse and disproportionate impact on the same attorneys the rules are intended to protect.

Based on the public comments received, there are no further revisions to the proposed amendments to rule 8.4.2 and staff recommends that the rule be approved for submission to the California Supreme Court for adoption.

FISCAL/PERSONNEL IMPACT

At the May 18, 2023, meeting RAD asked staff to provide more information on whether adoption of the civility-related rule changes will lead to additional fiscal and personnel costs for the State Bar.

As described in the May 18, 2023, agenda materials, the proposed amendments to Rule of Court 9.7 and State Bar Rule 2.3 would result in an increased workload for State Bar staff. These changes would primarily impact the Office of Information Technology (IT), the Division of Regulation, and Office of Admissions. 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. Admissions would need to ensure that special admissions attorneys complete the oath during their initial and annual registration. It is anticipated that the staff and resource needs associated with implementing these civility requirements can be absorbed through the existing budget.

The impact of proposed changes to the Rules of Professional Conduct are harder to quantify. The State Bar tracks complaints filed under rule 8.4(d) and rule 8.4.1(a), existing rules that address conduct surrounding civility. Complaint information on those rules is likely the best indicator for future complaints related to the proposed civility-related amendments. The complaints filed under those rules over the past three years are:

Rule	2020	2021	2022
8.4(d)	154	171	240
8.4.1(a)	93	190	197

As shown, complaint filings fluctuate from year to year. Assuming that the number of complaints filed under the proposed amendments to rule 8.4, which would clarify that incivility is a basis for discipline under rule 8.4(d), or under new rule 8.4.2 are similar to those filed under existing rule 8.4(d) and 8.4.1(a), there could be an increase in complaints. However, if the State Bar received 500 more complaints related to these rules, it would be within the variance of OCTC caseloads from year to year, and within the range of the existing workload that OCTC has had over the past four years and not require any additional OCTC staff to address such complaints.

Finally, there would be additional work for the Office of Professional Competence to education licensees on these changes to the civility oath and the Rules of Professional Conduct. This education and outreach would be performed with existing staff resources.

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 concur in the proposed action on the proposed amendments to Rule of Court 9.7, staff recommends that the Board of Trustees adopt the following resolution:**

RESOLVED, following notice and publication for comment, that the Board of Trustees, adopts proposed amendments to Rule of Court 9.7 as set forth in Attachment A; and it is

FURTHER RESOLVED, that staff is directed to submit the proposed amendments to Rule of Court 9.7 to the California Supreme Court with a request that the proposed amendments be approved.

- II. **Should the Board of Trustees concur in the proposed action on the proposed Title 2, Division 1, proposed new rule 2.3 of the State Bar Rules, staff recommends that the Board of Trustees adopt the following resolutions:**

RESOLVED, that the Board of Trustees, following consideration of public comments received, adopts Title 2, Division 1, proposed new rule 2.3 of the State Bar Rules as set forth Attachment C; and it is

FURTHER RESOLVED, that the approval of Title 2, Division 1, proposed new rule 2.3 of the State Bar Rules is subject to the California Supreme Court's approval of proposed amendments to Rule of Court 9.7 without any material changes; and it is

FURTHER RESOLVED, that the effective date of Title 2, Division 1, proposed new rule 2.3 of the State Bar Rules would be the effective date of proposed amendments to Rule of Court 9.7 if the California Supreme Court approves proposed new Rule of Court 9.7 without any material changes.

III. Should the Board of Trustees concur in the proposed action on the Rules of Professional Conduct, staff recommends that the Board of Trustees adopt the following resolutions:

RESOLVED, that the Board of Trustees, following consideration of public comments received, adopts 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 staff is directed to submit the proposed amendments to Rules of Professional Conduct 1.2 and 8.4 and proposed new Rule of Professional Conduct 8.4.2 to the California Supreme Court with a request that the proposed amendments and new rule be approved.

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 and State Bar Rule 2.3
- 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.

**California Rule of Court 9.7 and New Rule 2.3
Synopsis of Public Comments**

File No.	Commenter/Signatory	Org ¹	Atty/ Nonat ty ²	Pos. Rule 9.7 ³	Comment	Pos. Rule 2.3 ⁴	
24927740	Anaonomous	No	A	D	<p>This is a terrible idea. Each attorney that pledges can be examined if a member of the public, or even another attorney, makes an accusation against an attorney for incivility. How in the world can that be defined. Consider this....</p> <p>Can I hang up the phone on a person that uses foul language with me? If so, what do you consider foul language? Do I have to say, "I am hanging up now" before I hang up? Is that civil?</p> <p>Can I call someone a racist if they use a word that I consider racist? Or is calling someone a racist incivility? Do I have to return everyones phone call even if I do not want to talk with them? Or is that incivility? I know I have to return the call to a client but what about someone that just leaves me a message. Am I now required to be civil and return their call? These rules are meddling in interactions where adults should not</p>	D	<p>This is a terrible idea. Each attorney that pledges can be examined if a member of the public, or even another attorney, makes an accusation against an attorney for incivility. How in the world can that be defined. Consider this....</p> <p>Can I hang up the phone on a person that uses foul language with me? If so, what do you consider foul language? Do I have to say, "I am hanging up now" before I hang up? Is that civil?</p> <p>Can I call someone a racist if they use a word that I consider racist? Or is calling someone a racist incivility? Do I have to return everyones phone call even if I do not want to talk with them? Or is that incivility? I know I have to return the call to a client but what about someone that just leaves me a message. Am I now required to be civil and return their call? These rules are meddling in interactions where adults should not</p>

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 proposed rule 9.7? A = Agree D = Disagree AM = Agree if Modified NP = No Position

⁴ What is your position on new rule 2.3? A = Agree D = Disagree AM = Agree if Modified NP = No Position

RULE 9.7 TOTAL = 32A = 18 AM = 2
D = 10 NP = 2**RULE 2.3 TOTAL = 32**A = 19 AM = 0
D = 9 NP = 4**California Rule of Court 9.7 and New Rule 2.3
Synopsis of Public Comments**

File No.	Commenter/Signatory	Org ¹	Atty/ Nonat ty ²	Pos. Rule 9.7 ³	Comment	Pos. Rule 2.3 ⁴	
					have to be governed. These are bad rules.		have to be governed. These are bad rules.
25065617	Andy Schauer	No	A	D	It is simply not a problem that attorneys are "uncivil" to each other. The root problem is there are way (way, WAY) too many attorneys who are ignorant of the law and/or facts of their cases, and who are willing to dig in based on incorrect "understanding" of either/both. I don't really know how to fix this problem, but the solution is not a committee. "A committee is a group of people who individually can do nothing, but who, as a group, can meet and decide that nothing can be done." -- Fred Allen	NP	Opposed for the previously-stated reasons. It's a problem but doing something worthless is worse than doing nothing.
24927698	Anonymous	No	A	D		D	
24935158	Anonymous	No	A	D	I disagree with the provision in toto. Civility cannot be legislated. Either candidates come to the profession with this ethic in mind and action or they do not. Law schools can better train candidates on civility, proper rules of practice and comportment.	D	

RULE 9.7 TOTAL = 32A = 18 AM = 2
D = 10 NP = 2**RULE 2.3 TOTAL = 32**A = 19 AM = 0
D = 9 NP = 4**California Rule of Court 9.7 and New Rule 2.3
Synopsis of Public Comments**

File No.	Commenter/Signatory	Org ¹	Atty/ Nonat ty ²	Pos. Rule 9.7 ³	Comment	Pos. Rule 2.3 ⁴	
25067092	Anonymous		A	D	This is a meaningless exercise. People who are civil tend to act civilly. Those who aren't don't, and won't, no matter what they sign. Why are we wasting resources on this instead of prosecuting really, really bad people who steal from their clients?	D	This is a meaningless exercise. People who are civil tend to act civilly. Those who aren't don't, and won't, no matter what they sign. Why are we wasting resources on this instead of prosecuting really, really bad people who steal from their clients?
25069176	Anonymous	No	A	A		A	
25079887	Anonymous		A	A		A	
25069579	Asian Pacific American Women Lawyers Alliance (Ro)	Yes	A	A	See attachment.	A	See attachment.
25064897	Association of Business Trial Lawyers - Los Angeles Chapter (Mallow)	Yes	A	A	The ABTL-Los Angeles believes that civility is critical to the professional, efficient and inclusive practice of law. At present, attorneys practicing over nine years have not sworn to engage in the practice of law with civility. Requiring all California practicing attorneys to swear they will "strive to conduct [themselves] with dignity, courtesy, and integrity" rather than just younger attorneys, is fair and equitable, as it imposes the same civility expectation and obligation on all who practice in California. Requiring the oath annually provides an important	A	

RULE 9.7 TOTAL = 32

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RULE 2.3 TOTAL = 32

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**California Rule of Court 9.7 and New Rule 2.3
Synopsis of Public Comments**

File No.	Commenter/Signatory	Org ¹	Atty/ Nonat ty ²	Pos. Rule 9.7 ³	Comment	Pos. Rule 2.3 ⁴	
					reminder that practicing with civility is something that must always be top of mind.		
Email	Association of Business Trial Lawyers (Reynolds)	Yes	A	A	See attachment.	A	See attachment.
24928029	Barbara Beard	No	A	NP	Business and professions code and ethics should cover these issues. Why don't they? It seems to me we will have a problem with enforcement as the words are vague and ambiguous and call for subjective determination like many of our codes. Apparently I missed something. Why are these rules and or changes necessary, why now?	NP	
25080795	Black Women Lawyers Association of Los Angeles, Inc. (Horton)	Yes	A	A	Black Women Lawyers Association of Los Angeles, Inc. endorses and joins in CCTF's June 9, 2023 letter.	A	Black Women Lawyers Association of Los Angeles, Inc., endorses and joins in CCTF's June 9, 2023 letter.
25015673	Cal. Civility Task Force (Currey)	Yes	A	A	Please see uploaded letter. See attachment.	A	Please see uploaded letter. See attachment.
25078967	California Access to Justice Commission (Londen)	Yes	A	A	See attachment.	A	See attachment.
Email	Consumer Attorneys Association of Los Angeles and the California Employment Lawyers Association (Horton)	Yes	A	A	See attachment: Consumer Attorneys Association of Los Angeles (Horton).pdf	A	See attachment: Consumer Attorneys Association of Los Angeles (Horton).pdf

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RULE 2.3 TOTAL = 32

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**California Rule of Court 9.7 and New Rule 2.3
Synopsis of Public Comments**

File No.	Commenter/Signatory	Org ¹	Atty/ Nonat ty ²	Pos. Rule 9.7 ³	Comment	Pos. Rule 2.3 ⁴	
25012353	Darrell Griffin Jr	No	A	A	DA's is throughout CA are corrupt and violate ethics rules daily. cA is one of the worst in nation for DAs without any ethical guidelines. Despite Humphreys adAs have learned courts do not comprehend the scope of Humphreys and hold defendants without bail on theft cases and nearly every type of case. Thousands more d CA residents are held with. I bail and are pleading to crimes they did not commit based on being held endlessly without bail	A	
25068576	Darrell Griffin Jr ⁵	No	A	A	In my county there are a number of das who just do not understand civility and an adversarial system	A	
25077312	Irish American Bar Association of Los Angeles (White)	Yes	A	A	Our organization endorses and joins in Justice Currey's June 9, 2023 letter	A	Our organization endorses and joins in Justice Currey's June 9, 2023 letter
24978101	James I. Ham	No	A	D	I support civility. But civility must be taught in law school, and persons with personality disorders must be screened out BEFORE they become lawyers. An ethics rule purporting to prohibit "uncivility" represents an unacceptable violation of First	D	I support civility. But civility must be taught in law school, and persons with personality disorders must be screened out BEFORE they become lawyers. An ethics rule purporting to prohibit "uncivility" represents an unacceptable violation of First

⁵ Two of the comments that agree with the proposal were submitted this commenter, and the numbers have been adjusted to count their comments as a single comment.

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**California Rule of Court 9.7 and New Rule 2.3
Synopsis of Public Comments**

File No.	Commenter/Signatory	Org ¹	Atty/ Nonat ty ²	Pos. Rule 9.7 ³	Comment	Pos. Rule 2.3 ⁴	
					<p>Amendment Rights.</p> <p>The First Amendment of the United States Constitution protects the fundamental right to free speech, which encompasses not only polite and civil speech but also expression that may be considered offensive or uncivil. While the government can impose reasonable time, place, and manner restrictions on speech, it cannot selectively target certain types of speech based on their content or viewpoint.</p> <p>A legal ethics rule that prohibits "uncivil" conduct within the legal profession imposes a content-based restriction on speech. It seeks to regulate and control the manner in which attorneys express themselves during legal proceedings, negotiations, and other professional interactions. By singling out "uncivil" conduct, the rule inherently involves subjective judgments by authorities, which can lead to arbitrary enforcement and a chilling effect on speech.</p> <p>The Supreme Court has consistently held that content-based restrictions on speech are subject to strict scrutiny, the highest level of judicial</p>		<p>Amendment Rights.</p> <p>The First Amendment of the United States Constitution protects the fundamental right to free speech, which encompasses not only polite and civil speech but also expression that may be considered offensive or uncivil. While the government can impose reasonable time, place, and manner restrictions on speech, it cannot selectively target certain types of speech based on their content or viewpoint.</p> <p>A legal ethics rule that prohibits "uncivil" conduct within the legal profession imposes a content-based restriction on speech. It seeks to regulate and control the manner in which attorneys express themselves during legal proceedings, negotiations, and other professional interactions. By singling out "uncivil" conduct, the rule inherently involves subjective judgments by authorities, which can lead to arbitrary enforcement and a chilling effect on speech.</p> <p>The Supreme Court has consistently held that content-based restrictions on speech are subject to strict scrutiny, the highest level of judicial</p>

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**California Rule of Court 9.7 and New Rule 2.3
Synopsis of Public Comments**

File No.	Commenter/Signatory	Org ¹	Atty/ Nonat ty ²	Pos. Rule 9.7 ³	Comment	Pos. Rule 2.3 ⁴	
					<p>review. To survive strict scrutiny, the government must demonstrate that the restriction serves a compelling state interest and is narrowly tailored to achieve that interest. While maintaining professionalism and decorum within the legal profession may be considered a legitimate interest, the prohibition on "uncivil" conduct does not meet the strict scrutiny standard.</p> <p>The term "uncivil" is vague and lacks a precise definition, leaving room for interpretation and inconsistent application. What may be perceived as uncivil by one person or authority may not be viewed as such by another. This vagueness and subjectivity undermine the requirement that restrictions on speech be narrowly tailored. The rule fails to provide clear guidance to attorneys on what constitutes "uncivil" conduct, resulting in a chilling effect on speech and self-censorship.</p> <p>Moreover, even if the prohibition on "uncivil" conduct is considered a compelling state interest, there are less restrictive alternatives available to achieve that interest. The legal</p>		<p>review. To survive strict scrutiny, the government must demonstrate that the restriction serves a compelling state interest and is narrowly tailored to achieve that interest. While maintaining professionalism and decorum within the legal profession may be considered a legitimate interest, the prohibition on "uncivil" conduct does not meet the strict scrutiny standard.</p> <p>The term "uncivil" is vague and lacks a precise definition, leaving room for interpretation and inconsistent application. What may be perceived as uncivil by one person or authority may not be viewed as such by another. This vagueness and subjectivity undermine the requirement that restrictions on speech be narrowly tailored. The rule fails to provide clear guidance to attorneys on what constitutes "uncivil" conduct, resulting in a chilling effect on speech and self-censorship.</p> <p>Moreover, even if the prohibition on "uncivil" conduct is considered a compelling state interest, there are less restrictive alternatives available to achieve that interest. The legal</p>

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**California Rule of Court 9.7 and New Rule 2.3
Synopsis of Public Comments**

File No.	Commenter/Signatory	Org ¹	Atty/ Nonat ty ²	Pos. Rule 9.7 ³	Comment	Pos. Rule 2.3 ⁴	
					profession already has mechanisms in place to address unprofessional behavior. These mechanisms can adequately address specific instances of disruptive behavior without resorting to a blanket prohibition that suppresses speech.		profession already has mechanisms in place to address unprofessional behavior. These mechanisms can adequately address specific instances of disruptive behavior without resorting to a blanket prohibition that suppresses speech.
25076390	Japanese American Bar Association (JABA) (Hata)	Yes	A	A	My organization, Japanese American Bar Association (JABA), endorses and joins in Justice Brian S. Currey's June 9, 2023 letter, which is attached hereto. See attachment.	A	My organization, Japanese American Bar Association (JABA), endorses and joins in Justice Brian S. Currey's June 9, 2023 letter, which is attached hereto. See attachment.
25074943	Los Angeles County Bar Association, Litigation Section (Bhujwala)	Yes	A	A	The Los Angeles County Bar Association's Litigation Section endorses and joins in the comments of the California Civility Task Force, as submitted in the attached June 9, 2023 letter from Justice Brian S. Currey. See attachment.	A	The Los Angeles County Bar Association's Litigation Section endorses and joins in the comments of the California Civility Task Force, as submitted in the attached June 9, 2023 letter from Justice Brian S. Currey. See attachment.
24935602	Louis Anthes	No	A	D	I feel the current requirements imposing decorum and appropriate behavior on all attorneys are adequate.	D	I feel the current requirements imposing decorum and appropriate behavior on all attorneys are adequate.

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Synopsis of Public Comments**

File No.	Commenter/Signatory	Org ¹	Atty/ Nonat ty ²	Pos. Rule 9.7 ³	Comment	Pos. Rule 2.3 ⁴	
25075666	Marilyn M Smith	No	A	D	this is a waste of time. Signing a pledge will not transform an uncivil attorney into a civil attorney, even assuming one could agree upon a common definition. The State Bar should stay focused on the protection of clients.	D	Signing a pledge will not transform an uncivil attorney into a civil attorney, even assuming one could agree upon a common definition. The State Bar should stay focused on the protection of clients.
25065800	Matthew S Blado	No	A	A		A	
24928493	Michael Bertinetti	No	A	D	Such a pledge would be demeaning and unnecessary. Attorneys have never needed an oath as a condition to being called to account for misbehavior. Courts have never felt unable to impose sanctions in a proper case in the absence of one. The profession does not need virtue legislation and none should be imposed.	D	
25071870	Mike H. Madokoro	No	A	A	I endorse and join in the comments of the California Civility Task Force as submitted in the attached June 9, 2023 letter from Justice Brian S. Currey. See attachment.	A	I endorse and join in the comments of the California Civility Task Force as submitted in the attached June 9, 2023 letter from Justice Brian S. Currey. See attachment.
24927688	Mina Sirkin	No	A	D	There are already local rules regarding civility. There is no need for this.	D	There are already local rules regarding civility. There is no need for this.

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Synopsis of Public Comments

File No.	Commenter/Signatory	Org ¹	Atty/ Nonat ty ²	Pos. Rule 9.7 ³	Comment	Pos. Rule 2.3 ⁴	
25075448	Monisha Coelho		A	A	See attachment.	A	I endorse and join in Justice Brian Currey's June 9, 2023 letter which is attached to this Public Comment Form. See attachment.
25071817	Multicultural Bar Alliance of Southern California (Modokoro)	Yes	A	A	The Multicultural Bar Alliance of Southern California endorses and joins in the comments of the California Civility Task Force as submitted in the attached June 9, 2023 letter from Justice Brian S. Currey. See attachment.	A	The Multicultural Bar Alliance of Southern California endorses and joins in the comments of the California Civility Task Force as submitted in the attached June 9, 2023 letter from Justice Brian S. Currey. See attachment.
Email	Novella Coleman	No	A	NP	See attachment: Novella Coleman-Email.pdf (<i>Professionalism as a Racial Construct</i> (2022) 69 UCLA L. Rev. Disc. (Law Meets World) 38)	NP	See attachment: Novella Coleman-Email.pdf (<i>Professionalism as a Racial Construct</i> (2022) 69 UCLA L. Rev. Disc. (Law Meets World) 38)
25073946	Rachel Hester		A	AM	Attorneys who have already taken the oath should not be required to take it again. Having this provision might alleviate some administrative burden for the Bar, but imposes another burden on every single attorney who has done it. The Bar is supposed to serve us -- not the other way around. I only agree if this provision is removed.	NP	

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Synopsis of Public Comments**

File No.	Commenter/Signatory	Org ¹	Atty/ Nonat ty ²	Pos. Rule 9.7 ³	Comment	Pos. Rule 2.3 ⁴	
25070951	Santa Clara County Bar Association (Diamond)	Yes	A	A	Santa Clara County Bar Association (SCCBA) adopted its own Code of Professionalism in the 1990s, its most recent revision being in the fall of 2022. It has been adopted by both the Santa Clara Superior Court, and the 6th District Court of Appeals. SCCBA fully supports the highest standards of professionalism and civility and holds attorneys accountable to our Code in the practice of law both inside and outside the courtroom. Additionally, we support the State Bar's effort to set forth an Oath required of all attorneys throughout the state.	A	
25069731	Thomas Hutchinson	No	A	AM	Pledge should be a one-time thing, not annual. Add a 1-hour MCLE requirement instead. Violation of civility rules should be sanctionable.	A	
25070598	Tony Tootell	No	A	A		A	

Proposed Amendments to Rule 9.7

Reference #	24927740
Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	Anaonomous
From the choices below, we ask that you indicate your position on the proposed amendments to rule 9.7. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R9.7" to your file name).	<p>This is a terrible idea. Each attorney that pledges can be examined if a member of the public, or even another attorney, makes an accusation against an attorney for incivility. How in the world can that be defined. Consider this....</p> <p>Can I hang up the phone on a person that uses foul language with me? If so, what do you consider foul language? Do I have to say, "I am hanging up now" before I hang up? Is that civil? Can I call someone a racist if they use a word that I consider racist? Or is calling someone a racist incivility? Do I have to return everyones phone call even if I do not want to talk with them? Or is that incivility? I know I have to return the call to a client but what about someone that just leaves me a message. Am I now required to be civil and return their call? These rules are meddling in interactions where adults should not have to be governed. These are bad rules.</p>
From the choices below, we ask that you indicate your position on the proposed new rule 2.3. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R2.3" to your file name).	<p>This is a terrible idea. Each attorney that pledges can be examined if a member of the public, or even another attorney, makes an accusation</p>

against an attorney for incivility. How in the world can that be defined. Consider this....

Can I hang up the phone on a person that uses foul language with me? If so, what do you consider foul language? Do I have to say, "I am hanging up now" before I hang up? Is that civil? Can I call someone a racist if they use a word that I consider racist? Or is calling someone a racist incivility? Do I have to return everyones phone call even if I do not want to talk with them? Or is that incivility? I know I have to return the call to a client but what about someone that just leaves me a message. Am I now required to be civil and return their call? These rules are meddling in interactions where adults should not have to be governed. These are bad rules.

Proposed Amendments to Rule 9.7

Reference #	25065617
Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	Andy Schauer
Professional Affiliation	Schauer Law Group LLP
From the choices below, we ask that you indicate your position on the proposed amendments to rule 9.7. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R9.7" to your file name).	<p>It is simply not a problem that attorneys are "uncivil" to each other. The root problem is there are way (way, WAY) too many attorneys who are ignorant of the law and/or facts of their cases, and who are willing to dig in based on incorrect "understanding" of either/both. I don't really know how to fix this problem, but the solution is not a committee.</p> <p>"A committee is a group of people who individually can do nothing, but who, as a group, can meet and decide that nothing can be done." - - Fred Allen</p>
From the choices below, we ask that you indicate your position on the proposed new rule 2.3. (This is a required field.)	NO POSITION
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R2.3" to your file name).	<p>Opposed for the previously-stated reasons.</p> <p>It's a problem but doing something worthless is worse than doing nothing.</p>

Proposed Amendments to Rule 9.7

Reference #	24927698
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 amendments to rule 9.7. (This is a required field.)	DISAGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on the proposed new rule 2.3. (This is a required field.)	DISAGREE with the proposed recommendations

Proposed Amendments to Rule 9.7

Reference #	24935158
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 amendments to rule 9.7. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R9.7" to your file name).	<p>I disagree with the provision in toto. Civility cannot be legislated. Either candidates come to the profession with this ethic in mind and action or they do not.</p> <p>Law schools can better train candidates on civility, proper rules of practice and comportment.</p>
From the choices below, we ask that you indicate your position on the proposed new rule 2.3. (This is a required field.)	DISAGREE with the proposed recommendations

Proposed Amendments to Rule 9.7

Reference #	25067092
Are you an attorney?	Yes
Name	anonymous
From the choices below, we ask that you indicate your position on the proposed amendments to rule 9.7. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R9.7" to your file name).	This is a meaningless exercise. People who are civil tend to act civilly. Those who aren't don't, and won't, no matter what they sign. Why are we wasting resources on this instead of prosecuting really, really bad people who steal from their clients?
From the choices below, we ask that you indicate your position on the proposed new rule 2.3. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R2.3" to your file name).	This is a meaningless exercise. People who are civil tend to act civilly. Those who aren't don't, and won't, no matter what they sign. Why are we wasting resources on this instead of prosecuting really, really bad people who steal from their clients?

Proposed Amendments to Rule 9.7

Reference #	25069176
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 amendments to rule 9.7. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on the proposed new rule 2.3. (This is a required field.)	AGREE with the proposed recommendations

Proposed Amendments to Rule 9.7

Reference #	25079887
Are you an attorney?	Yes
Name	Anonymous
From the choices below, we ask that you indicate your position on the proposed amendments to rule 9.7. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on the proposed new rule 2.3. (This is a required field.)	AGREE with the proposed recommendations

Proposed Amendments to Rule 9.7

Reference #	25069579
Are you an attorney?	Yes
Commenting on behalf of an organization	Yes
Name	Esther Ro (President-Elect)
Professional Affiliation	Asian Pacific American Women Lawyers Alliance
From the choices below, we ask that you indicate your position on the proposed amendments to rule 9.7. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on the proposed new rule 2.3. (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.	APAWLA_Comments_re_Civility_Rules_June_2023.pdf (501 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 to the revised, proposed amendments to **California Rules of Court, rules 9.7 and 2.3**, and **California Rules of Professional Conduct, rules 1.2, 8.4 and 8.4.2**.

California Rules of Court, Rules 9.7 and 2.3

Regarding amendments to California Rules of Court, rules 9.7 and 2.3, APAWLA supports the amendments requiring that all 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.

California Rules of Professional Conduct, Rule 1.2

Regarding amendments to California Rules of Professional Conduct, rule 1.2, APAWLA supports the amendments allowing a lawyer to retain authority to practice with dignity, courtesy and integrity, including agreeing to reasonable requests of opposing counsel and self-represented parties that do not prejudice the rights of their client. This rule embodies the important notion that a lawyer can advocate zealously for their client while maintaining civility in their practice.

California Rules of Professional Conduct, Rules 8.4 and 8.4.2

Regarding the amendments to California Rules of Professional Conduct, rule 8.4, and new proposed rule 8.4.2, APAWLA supports the inclusion of a rule that allows for a mechanism to discipline attorneys who engage in conduct that is abusive and harassing.

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 the practice of law. 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. We must recognize that 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 “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 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.

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.”

Proposed Amendments to Rule 9.7

Reference #	25064897
Are you an attorney?	Yes
Commenting on behalf of an organization	Yes
Name	Michael Mallow
Professional Affiliation	Association of Business Trial Lawyers - Los Angeles Chapter
From the choices below, we ask that you indicate your position on the proposed amendments to rule 9.7. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R9.7" to your file name).	The ABTL-Los Angeles believes that civility is critical to the professional, efficient and inclusive practice of law. At present, attorneys practicing over nine years have not sworn to engage in the practice of law with civility. Requiring all California practicing attorneys to swear they will "strive to conduct [themselves] with dignity, courtesy, and integrity" rather than just younger attorneys, is fair and equitable, as it imposes the same civility expectation and obligation on all who practice in California. Requiring the oath annually provides an important reminder that practicing with civility is something that must always be top of mind.
From the choices below, we ask that you indicate your position on the proposed new rule 2.3. (This is a required field.)	AGREE with the proposed recommendations

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EXECUTIVE DIRECTOR
 LORI MCELROY
 abtisd@abtl.org

June 22, 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 Revisions 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) supports and agrees with the revisions to new proposed State Bar Rule 2.3 and amendments to Rule of Court 9.7, that all members of our State Bar 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, as well as that all members annually confirm this understanding. Particularly in combination with other proposed Rules additions, amendments and revisions, this should stress to all members the importance our State Bar places on civility and professionalism.

We also support and agree with the proposed revisions to the amendments to Rules of Professional Conduct 1.2 and 8.4 and the new Rule of Professional Conduct 8.4.2 and associated comments. We believe it is necessary and appropriate for there to be repercussions for incivility and that it should be made clear we are not merely pay lip service to these ideas, but that a violation of these provisions can be a disciplinable offense. We also believe it is important to clarify that the comment list of prohibited conduct are only to be considered examples as compared to an exhaustive list, with a corresponding reference for guidance to the existing California Attorney Guidelines for Civility and Professionalism and other applicable civility authorities, such as set forth in the Preface to the Local Rules of the Superior Court for the County of San Diego. These modifications should give added importance to stress that the State Bar civility oath has meaning and importance.

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

Paul Reynolds, President

ABTL SAN DIEGO

Proposed Amendments to Rule 9.7

Reference #	24928029
Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	Barbara Beard
Professional Affiliation	Sole Proprietor Barbara L Beard Law Office
From the choices below, we ask that you indicate your position on the proposed amendments to rule 9.7. (This is a required field.)	NO POSITION
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R9.7" to your file name).	Business and professions code and ethics should cover these issues. Why don't they? It seems to me we will have a problem with enforcement as the words are vague and ambiguous and call for subjective determination like many of our codes. Apparently I missed something. Why are these rules and or changes necessary, why now?
From the choices below, we ask that you indicate your position on the proposed new rule 2.3. (This is a required field.)	NO POSITION

Proposed Amendments to Rule 9.7

Reference #	25080795
Are you an attorney?	Yes
Commenting on behalf of an organization	Yes
Name	Jasmine Horton
Professional Affiliation	Black Women Lawyers Association of Los Angeles, Inc.
From the choices below, we ask that you indicate your position on the proposed amendments to rule 9.7. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R9.7" to your file name).	Black Women Lawyers Association of Los Angeles, Inc. endorses and joins in CCTF's June 9, 2023 letter.
From the choices below, we ask that you indicate your position on the proposed new rule 2.3. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R2.3" to your file name).	Black Women Lawyers Association of Los Angeles, Inc., endorses and joins in CCTF's June 9, 2023 letter.

Proposed Amendments to Rule 9.7

Reference #	25015673
Are you an attorney?	Yes
Commenting on behalf of an organization	Yes
Name	Justice Brian S. Currey
Professional Affiliation	California Civility Task Force
From the choices below, we ask that you indicate your position on the proposed amendments to rule 9.7. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R9.7" to your file name).	Please see uploaded letter.
From the choices below, we ask that you indicate your position on the proposed new rule 2.3. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R2.3" to your file name).	Please see uploaded 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.	CCTF_Letter_and_Comments_to_State_Bar_Civility_Proposals_R.9_and_R2.3_6.9.23.pdf (262 KB)



BRIAN S. CURREY
ASSOCIATE JUSTICE

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

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public comment synopsis table.

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

June 9, 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 convey CCTF's unqualified support for all of the State Bar's current civility proposals, which, as you know, are based on three of CCTF's key recommendations: (1) mandate one hour of civility MCLE per MCLE reporting period, and require civility MCLE programs to address the relationship between bias and incivility; (2) amend Rule of Court 9.7 to require all attorneys to subscribe to the 2014 version of the attorney oath that includes a pledge to strive for civility; and (3) adopt disciplinary rules addressing incivility.

In preparation for the Board's upcoming meeting, the State Bar staff has provided you and the rest of the Board of Trustees with a detailed history of the Board's past actions aimed at implementing CCTF's recommendations. Just to recap, the Board approved an action plan on March 24, 2022, and ultimately directed staff and the Committee on Professional Responsibility and Conduct (COPRAC) to review and make proposals concerning CCTF's recommendations. At its November 17, 2022 meeting, the Board authorized for public comment its initial proposals to implement the CCTF recommendations. By letter dated January 11, 2022, I provided CCTF's comments and suggestions on the State Bar's initial proposals on these three topics. Many organizations and individuals joined in our comments. As you know, at its May 2023 meeting, after considering our input and that of other stakeholders and the public, the Board of Trustees authorized for public comment modified versions of its initial proposals. These modifications accommodated all of CCTF's comments. I address each of the modified proposals below.

(1) Civility MCLE: State Bar Rules 2.72 and 3.601

The civility MCLE proposal is included as part of a broader proposed revision by the State Bar of the MCLE requirements. Although some revisions to the broader proposal were authorized for public comment at the May 2023 Board of Trustees meeting, the portion of the proposal relating to civility remains unchanged from the Board of Trustees' initial November 2022 proposal. Revised Rules 2.72 and 3.601 would require attorneys to complete at least one hour of "education that addresses civility in the legal profession" that includes "education that discusses the link between civility and bias, incivility that is directed at opposing parties or counsel, and incivility aimed at the judiciary." We all recognize that incivility may also be directed at others in the legal profession, including court staff, jurors, and lawyers other than opposing counsel, and that civility MCLE courses likely will address that as well.

CCTF unqualifiedly supports the Board of Trustees' proposal as it relates to civility MCLE. CCTF expresses no view on the balance of the proposed MCLE changes.

(2) Attorney Oath: Rule of Court 9.7

At its November 2022 meeting, the Board of Trustees authorized for public comment an initial proposal to amend Rule of Court 9.7 to require all attorneys to subscribe to the 2014 version of the attorney oath. That version of the oath includes an aspirational civility pledge: "As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy, and integrity." It later became clear, however, that some revisions to the initial proposed method of implementing this change were required. At its May 2023 meeting, the Board of Trustees authorized for public comment a revised implementation procedure. Under this revised proposal, each newly admitted attorney will be required to take the 2014 version of the attorney oath upon admission. In addition, each currently licensed attorney will be required to subscribe to the civility pledge, and subsequently reaffirm the pledge annually, by declaration. Staff expects this will be accomplished in a quick and efficient way, such as by DocuSign, when paying annual dues. These revisions were adopted to make the implementation of the proposal more administratively feasible for the State Bar.

CCTF unqualifiedly supports the State Bar's proposal, as modified, to have all attorneys take the 2014 version of the attorney oath, and annually subscribe to the civility pledge included in that version of the oath.

As you know, the revision of Rule 9.7 requires the approval of the Supreme Court.

(3) Disciplinary Rules Addressing Incivility: Revision of Rules of Professional Conduct 1.2, 8.4 and Adoption of a new Rule 8.4.2

At its November 2022 meeting, the Board of Trustees authorized for public comment proposed amendments to California Rules of Professional Conduct 1.2 and 8.4, and a new proposed Rule of Professional Conduct 8.4.2. The purpose was to clarify that a lawyer may be disciplined for incivility. At its May 2023 meeting, the Board of Trustees adopted for public comment some modifications to the earlier proposal, including revisions requested by CCTF.

As modified, amendments to rule 1.2 Comment [1] would make clear that a lawyer has the authority to act civilly, including agreeing to reasonable requests of opposing counsel or self-represented parties, even if the lawyer's client directs otherwise, so long as the lawyer does not prejudice the rights of the lawyer's client.

As modified, amendments to rule 8.4, Comment [4], clarify the reference to the new standalone rule, rule 8.4.2. As modified, amendments to rule 8.4, Comment [6], clarify that incivility violates rule 8.4 (d) and rule 8.4.2, reference the definition of incivility in proposed rule 8.4.2 (b), and provide examples of conduct that would not, on its own, violate rule 8.4 (d). The revision to Comment [6] directs lawyers to consult the current California Attorney Guidelines of Civility and Professionalism and other applicable civility authorities such as local rules of court and local bar associations' civility codes.

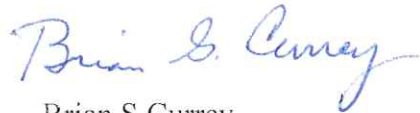
As modified, new rule 8.4.2 prohibits a lawyer from engaging in incivility in the practice of law. The current version of the proposed rule no longer applies to incivility in "related professional activities." Modifications to the proposed changes to Comment [1] direct lawyers to consult the current California Attorney Guidelines of Civility and Professionalism as well as other applicable civility authorities. Modifications to Comment [2] provide

examples of conduct that would not violate the rule. Finally, modifications to Comment [3] clarify that the rule applies to both speech and conduct.

CCTF unqualifiedly supports the proposed revisions to the Rules of Professional Conduct, as modified.

In conclusion, I once again thank you, your colleagues on the State Bar Board of Trustees, and the State Bar staff, for your continued engagement and leadership on this important topic. Please let me know if I, or CCTF, can be of further assistance.

Very truly yours,



Brian S Currey
Acting Presiding Justice

cc: Leah Wilson, Executive Director

Erika Doherty, Program Director, Office of the Professional Competence
Members of the California Civility Task Force

Proposed Amendments to Rule 9.7

Reference #	25078967
Are you an attorney?	Yes
Commenting on behalf of an organization	Yes
Name	Jack Londen
Professional Affiliation	California Access to Justice Commission
From the choices below, we ask that you indicate your position on the proposed amendments to rule 9.7. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on the proposed new rule 2.3. (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.	6.23.23_SB_Comments_R9.7_R2.3_R1.2_R8.4_R8.4.2_MCLE.pdf (185 KB)

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June 23, 2023

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

Submitted online: <https://fs22.formsite.com/sbcta/mmeeyiwhqw/index>
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Re: Support for Proposed Amendments to the Rules of Court (9.7), the State Bar Rules (2.3), the Rules of Professional Conduct (1.2, 8.4, 8.4.2), 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 again 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 revised proposed amendments to California Rule of Court 9.7 requiring all licensees to submit an initial declaration containing the civility language on a one-time basis, all licensees to take an annual civility pledge, and that the State Bar develop a schedule for implementation; proposed new State Bar Rule 2.3 to implement the proposed changes to California Rule of Court 9.7; and revisions to Rules of Professional Conduct 1.2, 8.4, and 8.4.2 addressing civility. Separately, the Access Commission supports requiring one hour of MCLE for training related to civility in the profession. As noted in our February 22, 2023, comment, we believe 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 Revised Proposed Amendments to California Rule of Court 9.7 Requiring All Licensees to Submit an Initial Declaration Containing the Civility Language, All Licensees to Take an Annual Civility Pledge, That the State Bar Develop a Schedule for Implementation, and Proposed State Bar Rule 2.3 to Implement the Proposed Changes.

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 who were admitted to practice after May 2014 have taken an attorney oath that includes a civility pledge, which means the majority of practicing California attorneys have not taken a civility pledge.

The proposed amendments to California Rule of Court 9.7 would address this by requiring all licensees to submit a one-time declaration to the State Bar affirming that they will conduct themselves with civility, and by requiring all licensees to reaffirm their commitment to civility on an annual basis. We agree with the proposed revisions based on concerns with implementation of a requirement that only applies to a portion of licensees and that a universal approach will put all attorneys on equal footing regarding the civility pledge. We also agree that Proposed State Bar Rule 2.3 is necessary to implement the proposed changes.

Attorneys acting with civility promotes access to justice in ways including the respectful treatment of self-represented 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 for 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 already are 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.

We appreciate the State Bar’s consideration of the Access Commissions recommendation to consider modifying the civility oath to be more specific in acknowledging and addressing why 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 individual

attorney has a role. We understand the State Bar's position that this type of education can be included in the new, proposed requirement for one hour of MCLE regarding civility.

We again thank the California Civility Task Force, the CJA, the CLA, and the State Bar for moving forward with focus on the importance of civility in the legal profession. We support the updated proposed amendments to California Rule of Court 9.7 and the proposed State Bar Rule 2.3 to implement the proposed changes.

We Support the Revised Proposed Amendments to California Rules of Professional Conduct 1.2 and 8.4, and Creation of New Rule 8.4.2, Addressing Civility.

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

As explained in our February 22, 2023, comment, 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. We thank the State Bar for accepting the Access Commission's recommendation that the language in comment [1] not unnecessarily be limited to "requests of opposing counsel" but also include requests by self-represented parties. We believe calling attention to the professional responsibility of attorneys 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.

We also thank the State Bar for accepting the Access Commission's recommended edits to Rule of Professional Conduct 8.4, comment [4] clarifying that there is a separate basis for discipline in rules 8.4(d) and 8.4.2 for incivility. We also agree with the changes to comment [6] narrowing the proposed civility disciplinary rules to apply only to attorney speech and conduct when an attorney is practicing law, as well as the other proposed changes. Clarifying that civility is a professional responsibility of attorneys and significantly unprofessional conduct in the practice of law 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, reduce 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.

We further support the proposed revisions to new standalone rule, rule 8.4.2. Separating prohibited incivility in a new separate rule has several benefits including highlighting the importance of civility; providing 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 agree with the proposed revisions and thank the State Bar for considering all comments submitted.

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 in the practice of law that is abusive or harassing. We support the proposed amendments to California Rules of Professional Conduct 1.2 and 8.4, and creation of a new rule 8.4.2.

We Support the Proposed Revisions to MCLE Requirements Adding Civility in the Legal Profession.

We take this opportunity to again voice our support of 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 continues to be 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. 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 is abusive 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 our democracy.

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.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mark Juhas", with a long horizontal flourish extending to the right.

Judge Mark Juhas
Chair



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June 21, 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 further 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 next week on June 28, 2023.

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.

CAALA and CELA previously commented on the initial version of these proposals. In our letter dated March 1, 2023, along with numerous other bar associations and stakeholders, CAALA and CELA made certain recommendations for the proposals. At its May 2023 meeting, the State Bar Board of Trustees authorized for public comment modified versions of the initial proposals. These modifications incorporated all of CAALA's and CELA's comments. We understand these modified versions are consistent with the recommendations of the California Civility Task Force. Based upon the current versions of the proposals out for comment, CAALA and CELA ***fully support*** all of the proposals.

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, including the technical implementation changes in the current version. 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.

2. Revisions to Rules of Professional Conduct

CAALA and CELA ***fully support*** the Board's proposed revisions to the Rules of Professional Conduct. The current version of proposed Rule of Professional Conduct 8.4.2 and various comments to existing Rules now state, "In representing a client, a lawyer shall not engage in incivility in the practice of law." CAALA and CELA previously recommended deletion of, "or related professional activities." That language has now been deleted.

CAALA and CELA also support the clarifying comments to various civility rules:

Rule 1.2 – a lawyer has the authority to act civilly, including agreeing to reasonable requests from the opposing party, even if the lawyer’s client directs otherwise, so long as the client’s rights are not prejudiced;

Rule 8.4 – directs lawyers to consult the California Attorney Guidelines on Civility and Professionalism and other civility authorities such as local rules of court and local bar association civility codes, and other technical amendments for conformity; and

Rule 8.4.2 – directs lawyers to consult the California Attorney Guidelines on Civility and Professionalism and other civility authorities, provides examples of conduct that would not violate the rule, and clarifies that the rule applies to both speech and conduct (CAALA and CELA previously recommended adding “speech” to the comment).

3. New MCLE Civility Course Requirements

CAALA and CELA *fully support* the Board’s proposed amendments to the MCLE rules (which remain unchanged in this version) 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, and that CJA has also adopted the California Civility Task Force’s recommendation 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.”

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" and last name "Horton" clearly legible.

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

cc: CAALA Executive Committee
CELA Board

Proposed Amendments to Rule 9.7

Reference #	25012353
Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	Darrell Griffin Jr
From the choices below, we ask that you indicate your position on the proposed amendments to rule 9.7. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R9.7" to your file name).	DA's is throughout CA are corrupt and violate ethics rules daily. cA is one of the worst in nation for DAs without any ethical guidelines. Despite Humphreys adAs have learned courts do not comprehend the scope of Humphreys and hold defendants without bail on theft cases and nearly every type of case. Thousands more d CA residents are held with. I bail and are pleading to crimes they did not commit based on being held endlessly without bail
From the choices below, we ask that you indicate your position on the proposed new rule 2.3. (This is a required field.)	AGREE with the proposed recommendations

Proposed Amendments to Rule 9.7

Reference #	25068576
Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	Darrell Griffin Jr
From the choices below, we ask that you indicate your position on the proposed amendments to rule 9.7. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R9.7" to your file name).	In my county there are a number of das who just do not understand civility and an adversarial system
From the choices below, we ask that you indicate your position on the proposed new rule 2.3. (This is a required field.)	AGREE with the proposed recommendations

Proposed Amendments to Rule 9.7

Reference #	25077312
Are you an attorney?	Yes
Commenting on behalf of an organization	Yes
Name	Johnny White
Professional Affiliation	Irish American Bar Association of Los Angeles
From the choices below, we ask that you indicate your position on the proposed amendments to rule 9.7. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R9.7" to your file name).	Our organization endorses and joins in Justice Currey's June 9, 2023 letter
From the choices below, we ask that you indicate your position on the proposed new rule 2.3. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R2.3" to your file name).	Our organization endorses and joins in Justice Currey's June 9, 2023 letter

Proposed Amendments to Rule 9.7

Reference #	24978101
Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	James I. Ham
Professional Affiliation	Law Office of James I. Ham
From the choices below, we ask that you indicate your position on the proposed amendments to rule 9.7. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R9.7" to your file name).	<p>I support civility. But civility must be taught in law school, and persons with personality disorders must be screened out BEFORE they become lawyers. An ethics rule purporting to prohibit "uncivility" represents an unacceptable violation of First Amendment Rights.</p> <p>The First Amendment of the United States Constitution protects the fundamental right to free speech, which encompasses not only polite and civil speech but also expression that may be considered offensive or uncivil. While the government can impose reasonable time, place, and manner restrictions on speech, it cannot selectively target certain types of speech based on their content or viewpoint.</p> <p>A legal ethics rule that prohibits "uncivil" conduct within the legal profession imposes a content-based restriction on speech. It seeks to regulate and control the manner in which attorneys express themselves during legal proceedings, negotiations, and other professional interactions. By singling out "uncivil" conduct, the rule</p>

inherently involves subjective judgments by authorities, which can lead to arbitrary enforcement and a chilling effect on speech.

The Supreme Court has consistently held that content-based restrictions on speech are subject to strict scrutiny, the highest level of judicial review. To survive strict scrutiny, the government must demonstrate that the restriction serves a compelling state interest and is narrowly tailored to achieve that interest. While maintaining professionalism and decorum within the legal profession may be considered a legitimate interest, the prohibition on "uncivil" conduct does not meet the strict...

... scrutiny standard.

The term "uncivil" is vague and lacks a precise definition, leaving room for interpretation and inconsistent application. What may be perceived as uncivil by one person or authority may not be viewed as such by another. This vagueness and subjectivity undermine the requirement that restrictions on speech be narrowly tailored. The rule fails to provide clear guidance to attorneys on what constitutes "uncivil" conduct, resulting in a chilling effect on speech and self-censorship.

Moreover, even if the prohibition on "uncivil" conduct is considered a compelling state interest, there are less restrictive alternatives available to achieve that interest. The legal profession already has mechanisms in place to address unprofessional behavior. These mechanisms can adequately address specific instances of disruptive behavior without resorting to a blanket prohibition that suppresses speech.

From the choices below, we ask that you indicate your position on the proposed new rule 2.3. (This is a required field.)

ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R2.3" to your file name).

DISAGREE with the proposed recommendations

I support civility. But civility must be taught in law school, and persons with personality disorders must be screened out BEFORE they become lawyers. An ethics rule purporting to prohibit "uncivility" represents an unacceptable violation of First Amendment Rights.

The First Amendment of the United States Constitution protects the fundamental right to free speech, which encompasses not only polite and civil speech but also expression that may be considered offensive or uncivil. While the government can impose reasonable time, place, and manner restrictions on speech, it cannot selectively target certain types of speech based on their content or viewpoint.

A legal ethics rule that prohibits "uncivil" conduct within the legal profession imposes a content-based restriction on speech. It seeks to regulate and control the manner in which attorneys express themselves during legal proceedings, negotiations, and other professional interactions. By singling out "uncivil" conduct, the rule inherently involves subjective judgments by authorities, which can lead to arbitrary enforcement and a chilling effect on speech.

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Moreover, even if the prohibition on "uncivil" conduct is considered a compelling state interest, there are less restrictive alternatives available to achieve that interest. The legal profession already has mechanisms in place to address unprofessional behavior. These mechanisms can adequately address specific instances of disruptive behavior without resorting to a blanket prohibition that suppresses speech.

Proposed Amendments to Rule 9.7

Reference #	25076390
Are you an attorney?	Yes
Commenting on behalf of an organization	Yes
Name	Harumi Hata
Professional Affiliation	Japanese American Bar Association (JABA)
From the choices below, we ask that you indicate your position on the proposed amendments to rule 9.7. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R9.7" to your file name).	My organization, Japanese American Bar Association (JABA), endorses and joins in Justice Brian S. Currey's June 9, 2023 letter, which is attached hereto.
From the choices below, we ask that you indicate your position on the proposed new rule 2.3. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R2.3" to your file name).	My organization, Japanese American Bar Association (JABA), endorses and joins in Justice Brian S. Currey's June 9, 2023 letter, which is attached hereto.
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_-_CCTF_Letter_and_Comments_to_State_Bar_Civility_Proposals_R.2.3_2.72_3.601_9.7_1.2_8.4_8.4.2.pdf (261 KB)



BRIAN S. CURREY
ASSOCIATE JUSTICE

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

Click [here](#) to return to the
public comment synopsis table.

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

June 9, 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 convey CCTF's unqualified support for all of the State Bar's current civility proposals, which, as you know, are based on three of CCTF's key recommendations: (1) mandate one hour of civility MCLE per MCLE reporting period, and require civility MCLE programs to address the relationship between bias and incivility; (2) amend Rule of Court 9.7 to require all attorneys to subscribe to the 2014 version of the attorney oath that includes a pledge to strive for civility; and (3) adopt disciplinary rules addressing incivility.

In preparation for the Board's upcoming meeting, the State Bar staff has provided you and the rest of the Board of Trustees with a detailed history of the Board's past actions aimed at implementing CCTF's recommendations. Just to recap, the Board approved an action plan on March 24, 2022, and ultimately directed staff and the Committee on Professional Responsibility and Conduct (COPRAC) to review and make proposals concerning CCTF's recommendations. At its November 17, 2022 meeting, the Board authorized for public comment its initial proposals to implement the CCTF recommendations. By letter dated January 11, 2022, I provided CCTF's comments and suggestions on the State Bar's initial proposals on these three topics. Many organizations and individuals joined in our comments. As you know, at its May 2023 meeting, after considering our input and that of other stakeholders and the public, the Board of Trustees authorized for public comment modified versions of its initial proposals. These modifications accommodated all of CCTF's comments. I address each of the modified proposals below.

(1) Civility MCLE: State Bar Rules 2.72 and 3.601

The civility MCLE proposal is included as part of a broader proposed revision by the State Bar of the MCLE requirements. Although some revisions to the broader proposal were authorized for public comment at the May 2023 Board of Trustees meeting, the portion of the proposal relating to civility remains unchanged from the Board of Trustees' initial November 2022 proposal. Revised Rules 2.72 and 3.601 would require attorneys to complete at least one hour of "education that addresses civility in the legal profession" that includes "education that discusses the link between civility and bias, incivility that is directed at opposing parties or counsel, and incivility aimed at the judiciary." We all recognize that incivility may also be directed at others in the legal profession, including court staff, jurors, and lawyers other than opposing counsel, and that civility MCLE courses likely will address that as well.

CCTF unqualifiedly supports the Board of Trustees' proposal as it relates to civility MCLE. CCTF expresses no view on the balance of the proposed MCLE changes.

(2) Attorney Oath: Rule of Court 9.7

At its November 2022 meeting, the Board of Trustees authorized for public comment an initial proposal to amend Rule of Court 9.7 to require all attorneys to subscribe to the 2014 version of the attorney oath. That version of the oath includes an aspirational civility pledge: "As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy, and integrity." It later became clear, however, that some revisions to the initial proposed method of implementing this change were required. At its May 2023 meeting, the Board of Trustees authorized for public comment a revised implementation procedure. Under this revised proposal, each newly admitted attorney will be required to take the 2014 version of the attorney oath upon admission. In addition, each currently licensed attorney will be required to subscribe to the civility pledge, and subsequently reaffirm the pledge annually, by declaration. Staff expects this will be accomplished in a quick and efficient way, such as by DocuSign, when paying annual dues. These revisions were adopted to make the implementation of the proposal more administratively feasible for the State Bar.

CCTF unqualifiedly supports the State Bar's proposal, as modified, to have all attorneys take the 2014 version of the attorney oath, and annually subscribe to the civility pledge included in that version of the oath.

As you know, the revision of Rule 9.7 requires the approval of the Supreme Court.

(3) Disciplinary Rules Addressing Incivility: Revision of Rules of Professional Conduct 1.2, 8.4 and Adoption of a new Rule 8.4.2

At its November 2022 meeting, the Board of Trustees authorized for public comment proposed amendments to California Rules of Professional Conduct 1.2 and 8.4, and a new proposed Rule of Professional Conduct 8.4.2. The purpose was to clarify that a lawyer may be disciplined for incivility. At its May 2023 meeting, the Board of Trustees adopted for public comment some modifications to the earlier proposal, including revisions requested by CCTF.

As modified, amendments to rule 1.2 Comment [1] would make clear that a lawyer has the authority to act civilly, including agreeing to reasonable requests of opposing counsel or self-represented parties, even if the lawyer's client directs otherwise, so long as the lawyer does not prejudice the rights of the lawyer's client.

As modified, amendments to rule 8.4, Comment [4], clarify the reference to the new standalone rule, rule 8.4.2. As modified, amendments to rule 8.4, Comment [6], clarify that incivility violates rule 8.4 (d) and rule 8.4.2, reference the definition of incivility in proposed rule 8.4.2 (b), and provide examples of conduct that would not, on its own, violate rule 8.4 (d). The revision to Comment [6] directs lawyers to consult the current California Attorney Guidelines of Civility and Professionalism and other applicable civility authorities such as local rules of court and local bar associations' civility codes.

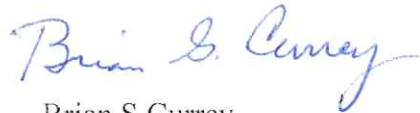
As modified, new rule 8.4.2 prohibits a lawyer from engaging in incivility in the practice of law. The current version of the proposed rule no longer applies to incivility in "related professional activities." Modifications to the proposed changes to Comment [1] direct lawyers to consult the current California Attorney Guidelines of Civility and Professionalism as well as other applicable civility authorities. Modifications to Comment [2] provide

examples of conduct that would not violate the rule. Finally, modifications to Comment [3] clarify that the rule applies to both speech and conduct.

CCTF unqualifiedly supports the proposed revisions to the Rules of Professional Conduct, as modified.

In conclusion, I once again thank you, your colleagues on the State Bar Board of Trustees, and the State Bar staff, for your continued engagement and leadership on this important topic. Please let me know if I, or CCTF, can be of further assistance.

Very truly yours,



Brian S Currey
Acting Presiding Justice

cc: Leah Wilson, Executive Director

Erika Doherty, Program Director, Office of the Professional Competence
Members of the California Civility Task Force

Proposed Amendments to Rule 9.7

Reference #	25074943
Are you an attorney?	Yes
Commenting on behalf of an organization	Yes
Name	Shehnaz M. Bhujwala
Professional Affiliation	Los Angeles County Bar Association, Litigation Section
From the choices below, we ask that you indicate your position on the proposed amendments to rule 9.7. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R9.7" to your file name).	The Los Angeles County Bar Association's Litigation Section endorses and joins in the comments of the California Civility Task Force, as submitted in the attached June 9, 2023 letter from Justice Brian S. Currey.
From the choices below, we ask that you indicate your position on the proposed new rule 2.3. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R2.3" to your file name).	The Los Angeles County Bar Association's Litigation Section endorses and joins in the comments of the California Civility Task Force, as submitted in the attached June 9, 2023 letter from Justice Brian S. Currey.
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.	CCTF_Letter_and_Comments_to_State_Bar_Civility_Proposals_R.2.3_2.72_3.601_9.7_1.2_8.4_8.4.2.pdf (261 KB)



BRIAN S. CURREY
ASSOCIATE JUSTICE

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SECOND APPELLATE DISTRICT
DIVISION FOUR
300 SOUTH SPRING STREET
LOS ANGELES, CALIFORNIA 90013

Click [here](#) to return to the
public comment synopsis table.

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

June 9, 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 convey CCTF's unqualified support for all of the State Bar's current civility proposals, which, as you know, are based on three of CCTF's key recommendations: (1) mandate one hour of civility MCLE per MCLE reporting period, and require civility MCLE programs to address the relationship between bias and incivility; (2) amend Rule of Court 9.7 to require all attorneys to subscribe to the 2014 version of the attorney oath that includes a pledge to strive for civility; and (3) adopt disciplinary rules addressing incivility.

In preparation for the Board's upcoming meeting, the State Bar staff has provided you and the rest of the Board of Trustees with a detailed history of the Board's past actions aimed at implementing CCTF's recommendations. Just to recap, the Board approved an action plan on March 24, 2022, and ultimately directed staff and the Committee on Professional Responsibility and Conduct (COPRAC) to review and make proposals concerning CCTF's recommendations. At its November 17, 2022 meeting, the Board authorized for public comment its initial proposals to implement the CCTF recommendations. By letter dated January 11, 2022, I provided CCTF's comments and suggestions on the State Bar's initial proposals on these three topics. Many organizations and individuals joined in our comments. As you know, at its May 2023 meeting, after considering our input and that of other stakeholders and the public, the Board of Trustees authorized for public comment modified versions of its initial proposals. These modifications accommodated all of CCTF's comments. I address each of the modified proposals below.

(1) Civility MCLE: State Bar Rules 2.72 and 3.601

The civility MCLE proposal is included as part of a broader proposed revision by the State Bar of the MCLE requirements. Although some revisions to the broader proposal were authorized for public comment at the May 2023 Board of Trustees meeting, the portion of the proposal relating to civility remains unchanged from the Board of Trustees' initial November 2022 proposal. Revised Rules 2.72 and 3.601 would require attorneys to complete at least one hour of "education that addresses civility in the legal profession" that includes "education that discusses the link between civility and bias, incivility that is directed at opposing parties or counsel, and incivility aimed at the judiciary." We all recognize that incivility may also be directed at others in the legal profession, including court staff, jurors, and lawyers other than opposing counsel, and that civility MCLE courses likely will address that as well.

CCTF unqualifiedly supports the Board of Trustees' proposal as it relates to civility MCLE. CCTF expresses no view on the balance of the proposed MCLE changes.

(2) Attorney Oath: Rule of Court 9.7

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CCTF unqualifiedly supports the State Bar's proposal, as modified, to have all attorneys take the 2014 version of the attorney oath, and annually subscribe to the civility pledge included in that version of the oath.

As you know, the revision of Rule 9.7 requires the approval of the Supreme Court.

(3) Disciplinary Rules Addressing Incivility: Revision of Rules of Professional Conduct 1.2, 8.4 and Adoption of a new Rule 8.4.2

At its November 2022 meeting, the Board of Trustees authorized for public comment proposed amendments to California Rules of Professional Conduct 1.2 and 8.4, and a new proposed Rule of Professional Conduct 8.4.2. The purpose was to clarify that a lawyer may be disciplined for incivility. At its May 2023 meeting, the Board of Trustees adopted for public comment some modifications to the earlier proposal, including revisions requested by CCTF.

As modified, amendments to rule 1.2 Comment [1] would make clear that a lawyer has the authority to act civilly, including agreeing to reasonable requests of opposing counsel or self-represented parties, even if the lawyer's client directs otherwise, so long as the lawyer does not prejudice the rights of the lawyer's client.

As modified, amendments to rule 8.4, Comment [4], clarify the reference to the new standalone rule, rule 8.4.2. As modified, amendments to rule 8.4, Comment [6], clarify that incivility violates rule 8.4 (d) and rule 8.4.2, reference the definition of incivility in proposed rule 8.4.2 (b), and provide examples of conduct that would not, on its own, violate rule 8.4 (d). The revision to Comment [6] directs lawyers to consult the current California Attorney Guidelines of Civility and Professionalism and other applicable civility authorities such as local rules of court and local bar associations' civility codes.

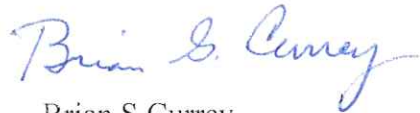
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examples of conduct that would not violate the rule. Finally, modifications to Comment [3] clarify that the rule applies to both speech and conduct.

CCTF unqualifiedly supports the proposed revisions to the Rules of Professional Conduct, as modified.

In conclusion, I once again thank you, your colleagues on the State Bar Board of Trustees, and the State Bar staff, for your continued engagement and leadership on this important topic. Please let me know if I, or CCTF, can be of further assistance.

Very truly yours,



Brian S Currey
Acting Presiding Justice

cc: Leah Wilson, Executive Director

Erika Doherty, Program Director, Office of the Professional Competence
Members of the California Civility Task Force

Proposed Amendments to Rule 9.7

Reference #	24935602
Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	Louis Anthes
From the choices below, we ask that you indicate your position on the proposed amendments to rule 9.7. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R9.7" to your file name).	I feel the current requirements imposing decorum and appropriate behavior on all attorneys are adequate.
From the choices below, we ask that you indicate your position on the proposed new rule 2.3. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R2.3" to your file name).	I feel the current requirements imposing decorum and appropriate behavior on all attorneys are adequate.

Proposed Amendments to Rule 9.7

Reference #	25075666
Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	Marilyn M Smith
From the choices below, we ask that you indicate your position on the proposed amendments to rule 9.7. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R9.7" to your file name).	this is a waste of time. Signing a pledge will not transform an uncivil attorney into a civil attorney, even assuming one could agree upon a common definition. The State Bar should stay focused on the protection of clients.
From the choices below, we ask that you indicate your position on the proposed new rule 2.3. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R2.3" to your file name).	Signing a pledge will not transform an uncivil attorney into a civil attorney, even assuming one could agree upon a common definition. The State Bar should stay focused on the protection of clients.

Proposed Amendments to Rule 9.7

Reference #	25065800
Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	Matthew S Blado
Professional Affiliation	Bickford Blado & Botros, LLP
From the choices below, we ask that you indicate your position on the proposed amendments to rule 9.7. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on the proposed new rule 2.3. (This is a required field.)	AGREE with the proposed recommendations

Proposed Amendments to Rule 9.7

Reference #	24928493
Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	Michael Bertinetti
Professional Affiliation	None
From the choices below, we ask that you indicate your position on the proposed amendments to rule 9.7. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R9.7" to your file name).	Such a pledge would be demeaning and unnecessary. Attorneys have never needed an oath as a condition to being called to account for misbehavior . Courts have never felt unable to impose sanctions in a proper case in the absence of one. The profession does not need virtue legislation and none should be imposed.
From the choices below, we ask that you indicate your position on the proposed new rule 2.3. (This is a required field.)	DISAGREE with the proposed recommendations

Proposed Amendments to Rule 9.7

Reference #	25071870
Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	Mike H. Madokoro
From the choices below, we ask that you indicate your position on the proposed amendments to rule 9.7. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R9.7" to your file name).	I endorse and join in the comments of the California Civility Task Force as submitted in the attached June 9, 2023 letter from Justice Brian S. Currey.
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BRIAN S. CURREY
ASSOCIATE JUSTICE

STATE OF CALIFORNIA
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SECOND APPELLATE DISTRICT
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LOS ANGELES, CALIFORNIA 90013

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public comment synopsis table.

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

June 9, 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

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Dear Ruben:

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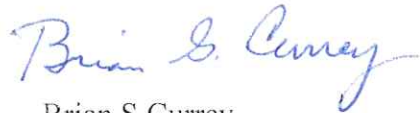
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Very truly yours,



Brian S Currey
Acting Presiding Justice

cc: Leah Wilson, Executive Director

Erika Doherty, Program Director, Office of the Professional Competence
Members of the California Civility Task Force

Proposed Amendments to Rule 9.7

Reference #	24927688
Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	Mina Sirkin
From the choices below, we ask that you indicate your position on the proposed amendments to rule 9.7. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R9.7" to your file name).	There are already local rules regarding civility. There is no need for this.
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ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R2.3" to your file name).	There are already local rules regarding civility. There is no need for this.

Proposed Amendments to Rule 9.7

Reference #	25075448
Are you an attorney?	Yes
Name	Monisha Coelho
From the choices below, we ask that you indicate your position on the proposed amendments to rule 9.7. (This is a required field.)	AGREE with the proposed recommendations
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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.	CCTF_Letter_and_Comments_to_State_Bar_Civility_Proposals_R.9_and_R2.3_6.9.23.pdf (260 KB)



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

June 9, 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

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As modified, amendments to rule 1.2 Comment [1] would make clear that a lawyer has the authority to act civilly, including agreeing to reasonable requests of opposing counsel or self-represented parties, even if the lawyer's client directs otherwise, so long as the lawyer does not prejudice the rights of the lawyer's client.

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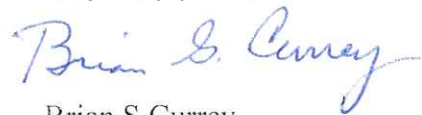
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Acting Presiding Justice

cc: Leah Wilson, Executive Director

Erika Doherty, Program Director, Office of the Professional Competence
Members of the California Civility Task Force

Proposed Amendments to Rule 9.7

Reference #	25071817
Are you an attorney?	Yes
Commenting on behalf of an organization	Yes
Name	Mike H. Madokoro
Professional Affiliation	Multicultural Bar Alliance of Southern California
From the choices below, we ask that you indicate your position on the proposed amendments to rule 9.7. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R9.7" to your file name).	The Multicultural Bar Alliance of Southern California endorses and joins in the comments of the California Civility Task Force as submitted in the attached June 9, 2023 letter from Justice Brian S. Currey.
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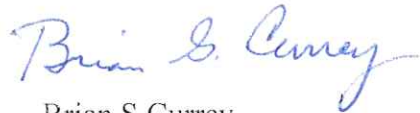
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cc: Leah Wilson, Executive Director

Erika Doherty, Program Director, Office of the Professional Competence
Members of the California Civility Task Force

U.C.L.A. Law Review

Professionalism as a Racial Construct

Leah Goodridge

ABSTRACT

This Essay examines professionalism as a tool to subjugate people of color in the legal field. Professionalism is a standard with a set of beliefs about how one should operate in the workplace. While professionalism seemingly applies to everyone, it is used to widely police and regulate people of color in various ways including hair, tone, and food scents. Thus, it is not merely that there is a double standard in how professionalism applies: It is that the standard itself is based on a set of beliefs grounded in racial subordination and white supremacy. Through this analysis, professionalism is revealed to be a racial construct.

This Essay examines three main aspects of legal professionalism: (1) threshold to withstand bias and discrimination, (2) selective offense, and (3) the reasonable person standard. Each Subpart starts with a day in my life as an attorney to illustrate how these elements play out. The final Part details ways to disrupt professionalism as a racial construct.

AUTHOR

Leah Goodridge is the Managing Attorney for Housing Policy at Mobilization for Justice. This Essay is dedicated to Professors Kimberlé Crenshaw, Devon Carbado and Cheryl Harris who mentored her while she was a law student at UCLA School of Law in the Critical Race Studies Program. She also wishes to thank the *UCLA Law Review* student editors who worked on this Essay.



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INTRODUCTION

On a Friday afternoon, I appeared with a colleague in New York City Housing Court on behalf of a client in an eviction proceeding. Aside from the unfortunate nature of the case, it was supposed to be a routine court appearance. But Housing Court is known to be unpredictable, and that afternoon, it lived up to its reputation. While appearing before the judge, opposing counsel—a white woman—yelled at me, interrupted me, talked over me, sighed and rolled her eyes when I spoke. Before this appearance, we had only seen each other in passing. Dumbfounded, I spent half of the time making legal arguments and the other half wondering whether my presence in court, as a Black woman, was the main factor in the attorney’s scorn. Curiosity inched closer to certainty when I learned that my junior colleague, who is white, appeared by herself on the same case just weeks before. We danced around it—“That was ridiculous!” “Oh man, Housing Court”—until we finally made our way to: “She wasn’t like that with me. She treated me with respect.”

That weekend, still reeling from humiliation, I reimagined the court appearance. Would I have appeared too sensitive if I said that opposing counsel’s conduct is racist? Is it professional to use the court’s time to address racism and misogynoir when the negotiations for my client are still in progress? The answers were unclear, but what was certain was that if I had behaved like opposing counsel, I would have been seen as unprofessional and aggressive, and likely admonished by the judge.¹ Professionalism was a one way street—it applied to me but not my opposing counsel.

I wanted to scream. I wanted to tell both the judge and opposing counsel that they upheld systems of racial hierarchy. I did not. Instead, I shouted words on paper.

These words are my screams.

1. See Amanda Luz Henning Santiago, *How Can New York Change Its Court Culture?*, CITY & STATE N.Y. (Oct. 27, 2020), <https://www.cityandstateny.com/politics/2020/10/how-can-new-york-change-its-court-culture/175516> [<https://perma.cc/W3DP-PH5C>] (“For many working within the court system, it’s understood that in order to maintain a sense of professionalism, employees have to ignore blatant racism. ‘It (racism and sexism) has become so ingrained into the culture (of the court system) that there is an underlying and silent expectation that people just put up with it and it’s part of being professional, having a thicker skin,’ Leah Goodridge, a supervising attorney at Mobilization for Justice, who has spent years working in Housing Court, told City & State. ‘So instead of people challenging the racist behavior, for example, the burden has shifted to the person who bears it—and that is not limited to attorneys; sometimes it’s judges as well.’”).

I am one of the 4.7 percent of Black attorneys in the United States² and have been practicing law for the past decade.³ In this Essay, I question whether professionalism is a tool to subjugate people of color in the legal field. Professionalism encompasses: (1) communication style, (2) interpersonal skills, (3) appearance, (4) how well a person adheres to the standards of their field and employer, and (5) efficacy at the job. Through this analysis, professionalism is revealed to be a racial construct.

The canon of Critical Race Theory shifted the understanding of racism from intentional hatred by individual actors to a set of systems and institutions that produce racial inequality and subordination.⁴ Criminal justice is a system of laws and individuals who enforce them. While everyone is beholden to the laws, the criminal justice system disproportionately ensnares people of color within its grasp, resulting in harsher punishment. Similarly, professionalism is a standard with a set of beliefs about how one should operate in the workplace. While professionalism seemingly applies to everyone, it is used to widely police and regulate people of color in various ways including hair, tone, and food scents.⁵ Thus, it is not merely that there is a double standard in how professionalism applies; it is that the standard itself is based on a set of beliefs grounded in racial subordination and white supremacy.

In Part I, I examine three main aspects of legal professionalism: (1) threshold to withstand bias and discrimination, (2) selective offense, and (3) the reasonable person standard. Each Subpart starts with a day in my life as an attorney to illustrate how these elements play out. Professionalism in the legal industry often carries the silent expectation that people of color, women, people with disabilities and people who identify as LGBTQIA have a high threshold to withstand discrimination.⁶ Professionalism as a racial construct is not limited to attorneys

2. See AM. BAR ASS'N, PROFILE OF THE LEGAL PROFESSION 2021 (2021); see also Karen Sloan, *New Lawyer Demographics Show Modest Growth in Minority Attorneys*, REUTERS (July 29, 2021, 3:12 PM), <https://www.reuters.com/legal/legalindustry/new-lawyer-demographics-show-modest-growth-minority-attorneys-2021-07-29>.

3. Deborah L. Rhode, *Law is the Least Diverse Profession in the Nation. And Lawyers Aren't Doing Enough to Change That.*, WASH. POST (May 27, 2015), <https://www.washingtonpost.com/posteverything/wp/2015/05/27/law-is-the-least-diverse-profession-in-the-nation-and-lawyers-arent-doing-enough-to-change-that> [<https://perma.cc/P6S6-F6YU>].

4. Richard Delgado, *Liberal McCarthyism and the Origins of Critical Race Theory*, 94 IOWA L. REV. 1505, 1511 (2009).

5. See Shannon Cumberbatch, *When Your Identity is Inherently "Unprofessional": Navigating Rules of Professional Appearance Rooted in Cisheteronormative Whiteness as Black Women and Gender Non-Conforming Professionals*, 34 J.C.R. & ECON. DEV. 81 (2021).

6. Dylan Jackson, *George Floyd's Death Ushered in a New Era of Law Firm Activism and There's No Going Back*, AM. LAW. (May 25, 2021, 5:00 AM), <https://www.law.com/American>

and paralegals—it also extends to individuals participating in the legal process. For example, Black people have been excluded from serving on a jury because they “failed to make eye contact, lived in a poor part of town, had served in the military, had a hyphenated last name, displayed bad posture, were sullen, disrespectful or talkative, had long hair, wore a beard”—many of which are under the guise of professionalism.⁷ In addition, I discuss how harmful and racist behavior in the legal profession are normalized to the point that challenges to such conduct are seen as unprofessional. Lastly, I analyze how the law functions in a colorblind fashion, having the effect of making any emphasis or focus on race seem impolite or—unprofessional. In Part II, I explore recommendations of how to deconstruct professionalism as a tool of white supremacy.

I. CONSTRUCTING THE CONCEPT OF PROFESSIONALISM IN THE LEGAL PROFESSION

A. Bias and Discrimination Threshold

In June 2018, a group of legal service organizations sent a letter to the Supervising and Administrative Judges of Housing Court. Typewritten words on paper laid bare the experiences that many tenant attorneys and paralegals endured for years: over eighty examples of alleged bias, microaggressions and incivility which took place in Bronx Housing Court by landlord attorneys, court clerks, officers and judges.⁸ The purpose of the letter was to demand accountability. As a result, the Supervising Judge convened a meeting for tenant and landlord attorneys to discuss bias and incivility.

More than anything, this meeting revealed that there were at least two perceptions of what it meant to be a professional attorney. In one view, an attorney’s inability to laugh and move along from microaggressions indicated that they were too unpolished or hypersensitive for the field. In the other, an attorney was race and equity conscious and when those norms were eschewed, readily

lawyer/2021/05/25/george-floyds-death-ushered-in-a-new-era-of-law-firm-activism-and-theres-no-going-back-405-84104 [https://perma.cc/P7A3-V8CZ].

7. Adam Liptak, *Exclusion of Blacks From Juries Raises Renewed Questions*, N.Y. TIMES (Aug. 16, 2015), <https://www.nytimes.com/2015/08/17/us/politics/exclusion-of-blacks-from-juries-raises-renewed-scrutiny.html> [https://perma.cc/WR97-4T2N].

8. The examples included court staff frequently mistaking attorneys for litigant-respondents or confusing two people of color, opposing counsel yelling or making racist comments. Many of the experiences noted in the letter were later reflected in a wider and first of its kind report on racism in the courts published in 2020. JEH CHARLES JOHNSON, REPORT FROM THE SPECIAL ADVISER ON EQUAL JUSTICE IN THE NEW YORK STATE COURTS 61–66 (2020).

called for accountability to create a workable and inclusive environment. During the meeting, it became clear that the former had been the standard for many years.

Professionalism was based on the notion that one withstood microaggressions and bias with grace and lightheartedness. The higher the threshold one had to tolerate bias, the more polished the attorney or paralegal appeared. This was particularly the case for women,⁹ people of color, LGBTQIA people, and people with disabilities. Professionalism as a racial construct manifests itself in two ways. First, that professionalism is measured by how well a person adapts to a hostile work environment is in of itself a racial construct because that system is built for people of color to fail. Second, that professionalism incorporates the ideology to have a thick skin manifests as a racial construct because even the definition of thick skin aligns with who holds the most power. For example, if attorneys on the receiving end of microaggressions, bias, and racism are considered sensitive for not laughing along, why are the attorneys who engage in harmful behavior not also considered sensitive for their inability to handle criticism about their conduct? Thus, even in defining tolerance, whose feelings are prioritized and validated and whose are minimized within the context of professionalism shapes the narrative that people of color—not their white peers—need to develop thicker skin.

It was not coincidental that this meeting took place almost a year after the passage of the right to counsel law, which provides low-income tenants the right to free legal representation.¹⁰ With the city's investment, there was a new legion of attorneys and paralegals of color in court that stood apart from the mostly white male landlord bar, many of whom had practiced in housing court for a decade of more prior to the demographic shift.¹¹

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9. The roots of the “toughen up, buttercup” mentality for women as lawyers run deep. See, e.g., Maryam Ahranjani, “*Toughen Up, Buttercup*” Versus #TimesUp: Initial Findings of the ABA Women in Criminal Justice Task Force, 25 BERKELEY J. CRIM. L. 99, 108 (2020) (“In the 1920s, the President of the Women’s Bar Association reportedly told recently admitted women to never let anyone refer to them as a ‘woman lawyer’ because that in and of itself is an obstacle to practice. The idea was to mimic men as much as possible in order to fit in.”).
 10. Press Release, New York City Office of the Mayor, New York City’s First-in-Nation Right-to-Counsel Program Expanded Citywide Ahead of Schedule, (Nov. 17, 2021), <https://www1.nyc.gov/office-of-the-mayor/news/769-21/new-york-city-s-first-in-nation-right-to-counsel-program-expanded-citywide-ahead-schedule> [<https://perma.cc/JS3E-E6GL>].
 11. After a white male landlords’ attorney referred to COVID-19 as “Chinese cooties” in a long email chain including judges, landlords, and tenants attorneys, several articles were published describing the incident. See Jane Wester, *Racist Comment by New York Landlords’ Attorney is Symptom of Larger Problem, Bronx Tenants’ Lawyers Say*, N.Y. L.J. (Aug. 31, 2020, 5:57 PM), <https://www.law.com/newyorklawjournal/2020/08/31/racist-comment-by-new-york-landlords-attorney-is-symptom-of-larger-problem-bronx-tenants-lawyers-say> (last visited Mar. 19, 2022) (“Several tenants’ attorneys said Rogers’ comment was an example of pervasive

These views on professionalism were not neatly cut along landlord and tenant attorney lines, or even by race. There were larger issues at play here. In the American capitalist economy, enduring a toxic and abusive work environment can be a rite of passage in some workplaces. Even in the sphere of public interest law, a gripe about the astronomical case dockets could be met with quips that “back in my day, I had two times as many cases.” In both the nonprofit industrial complex and law firms, the measure of a good attorney was not only how much of an impact they had on their clients’ lives, but also the quantity of cases they were able to handle at once.¹² In fact, some would say that a high number of cases *is* the impact. Beyond enduring microaggressions, racism and other discriminatory behavior, there seemed to be a wider expectation to tolerate abusive practices that was woven into the fabric of the American workforce.

In an attempt to navigate Housing Court better, I sought guidance from Black attorneys whom I admired and revered. They all practiced in different areas of law for over a decade. Their advice all started with “Don’t let them make you look unprofessional.” I spoke with at least ten Black attorneys with decades of experience in courtrooms and every single one understood and iterated that despite white opposing counsels or peers acting in the most inappropriate and unprofessional manner, I was the one who would look unprofessional if I came close to or matched their behavior. Professionalism did not apply to them, but it applied to me. Moreover, since racism permeated the profession, consistently complaining or challenging it would not necessarily indicate that it was pervasive; instead it would likely reflect that I was not cut out to be an attorney.

None of these attorneys advised me to file grievances. Racism is a reality and dealing with it meant survival. Survival meant avoiding direct challenges to racism which could lead to negative career consequences. Reflecting on their words, it became clear to me that they began their legal careers at a time when there were even fewer Black attorneys, and in the aftermath of the Civil Rights Act and other laws. There had been so much fight to get their foot in the door that appearing unnerved was not an option. Most advised indirect ways to challenge macro- or microaggressions—speedy, humorous comebacks in response to certain situations to assert dominance and show I was impermeable to anyone’s discomfort of my existence. If I was mistaken for my client or any other Black person, a response

behavior they face in Bronx Housing Court. The number of tenants’ attorneys working in housing court has grown since the city passed its Universal Access to Legal Services law in 2017, and the tenants’ bar tends to be younger and more diverse than the landlords’ bar, which is largely white and male, several lawyers said.”).

12. See generally THE REVOLUTION WILL NOT BE FUNDED: BEYOND THE NON-PROFIT INDUSTRIAL COMPLEX (INCITE! Women of Color Against Violence eds., 2017).

could be, “Well, I can tell you apart from Brad Pitt. Now, where’s the rent breakdown, Charles?”

I followed their approach, but its effectiveness quickly wore off. At the time, I was a new staff attorney making \$50,000 with a docket of nearly forty eviction cases. I was navigating my own emotions of sometimes overhearing in Spanish in court “I’m getting evicted but at least I’m not Black,” and dealing with helping many of those same tenants navigate the bureaucratic maze of government agencies. The job presented a rude awakening that the role of staff attorney also included hidden duties such as social worker, government agency advocate, and case administrative coordinator. Given the breadth of the position, I did not have the energy or bandwidth to engage in witty banter with opposing counsel during routine negotiations—it felt like playing the sassy Black woman and providing a form of entertainment where I was not the one amused.¹³

Moreover, the societal expectation of Black forgiveness seemed to be endemic to having a thick skin in the workplace.¹⁴ Fear of Black rage spurred vagrancy and loitering laws, after all.¹⁵ Black forgiveness soothed anxiety that there

13. One example of a macro-aggression is when a landlords’ attorney filed at least forty eviction cases in Housing Court with termination notices referencing coronavirus as the “Chinese Wuhan Virus.” The Court dismissed almost all of the notices. In an article for a legal publication, the landlords’ attorney declined to comment on the offensive conduct but did say “I’m just waiting for them to pass universal rent control where they completely take away landlords’ rights to do what they want with private property.” See Emma Whitford, NYC Eviction Judge Tosses Cases with “Wuhan Virus” Notice, LAW360 (May 21, 2021, 9:54 PM), <https://www.law360.com/realestate/articles/1387338/nyc-judge-tosses-eviction-cases-with-wuhan-virus-notice> [<https://perma.cc/CZ7U-Y7J2>].

14. A Black woman tenants’ rights attorney filed an attorney grievance against a white male landlords’ attorney, alleging that he called her a “bitch” several times in court. In 2020, the Appellate Division of New York issued a decision suspending the white male attorney for three months. See *Denenberg v. Att’y Grievance Comm. for First Jud. Dep’t*, 192 A.D.3d 76 (N.Y. App. Div. 2020). This is one of the very few and rare instances where an attorney is disciplined for misogynistic and racist conduct. What I found interesting about the decision is that there is much analysis on whether the Respondent apologized. See *id.* at 81. If he had apologized, it is unclear of whether he would have been so disciplined. Perhaps the onus would have been shifted to the grievant and, in turn, her bias threshold would have become the focal point of the grievance, not the white male attorney’s conduct. Thus, an apology—which may not even be sincere—places the burden on the person experiencing bias to forgive.

15. Dorothy E. Roberts, *Foreword: Race, Vagueness, and The Social Meaning of Order-Maintenance Policing*, *Supreme Court Review*, 89 J. CRIM. L. & CRIMINOLOGY 775, 788 (1999). (“In the United States, vagrancy-type laws served the same function in the regime of white domination of Blacks. The colonies sought to prevent slave rebellions by enacting laws that prohibited slaves from traveling without a pass and permitted slave patrols to arrest slaves on mere suspicion of sedition. After Emancipation, white southerners tied freed Blacks to plantations through Black Codes that punished vagrancy. As the Court described them, ‘vagrancy laws were used after the Civil War to keep former slaves in a state of quasi slavery.’ A more contemporary example of the oppressive restriction of movement is the requirement of the apartheid regime in South Africa that Blacks carry passes while traveling in white districts.”).

was not any rage, thus hug your brother's murderer, proclaim a church bomber has been forgiven—be gracious and dignified. The question remained: Why did I have to build my tolerance threshold to acclimate to a hostile environment but the people creating that environment could remain the same?

Perhaps the greatest irony is that the threshold standard is seen in the remedy for discrimination itself. The American Bar Association adopted a rule that incorporated discrimination as misconduct. Under 8.4(g), it is professional misconduct for a lawyer to:

[E]ngage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law.¹⁶

Most states have adopted the ABA's rules on professional conduct, thereby incorporating a measure for disciplinary procedures. The Chair of the Committee on Standards of Attorney Conduct of the New York State Bar Association stated: "Although Rule 8.4(g) does not expressly state that a complainant must exhaust administrative and judicial remedies before filing a discrimination complaint with a grievance committee, that is how the rule operates on a practical level."¹⁷ The expectation to exhaust all remedies before filing a complaint under the rule effectively operates to force individuals to withstand bias and discrimination for a longer period of time than they would if they immediately sought relief. The abusive conduct is deprioritized, and the burden is placed on the complainant to prove that they tolerated a sufficient amount of it.

One of the main mistakes of the legal profession is to approach bias and discrimination complaints as personality conflicts. For example, sexual harassment in a legal office may be seen as two attorneys who do not get along rather than one lawyer harassing the other. Since attorneys, particularly from a marginalized group, are expected to have a high threshold to absorb bias, the imbalance of power in these situations may be ignored. The same happens in the courtroom. In my case when opposing counsel yelled and talked over me, the judge kindly asked her at least eight times to allow me to finish my sentence. There was no admonishment: "If you do not stop, I will hold you accountable, hold you in contempt, or stop the proceeding." Instead, it appeared as two attorneys

16. MODEL RULES OF PRO. CONDUCT r. 8.4 (AM. BAR ASS'N 2016).

17. Brandon Vogel, *Public Comments Requested: Proposal to Adopt ABA Model Rule 8.4(g) in New York's Rules of Professional Conduct*, N.Y. STATE BAR ASS'N (Mar. 25, 2021), <https://nysba.org/public-comments-requested-proposal-to-adopt-aba-model-rule-8-4g-in-new-yorks-rules-of-professional-conduct> [<https://perma.cc/2HZS-FCTG>].

sparring during a case rather than abusive and unprofessional behavior that should be addressed to prevent further disruption. Treating racist, misogynistic, transphobic, or other discriminatory behavior as two people in disagreement equalizes behavior where there is often an imbalance of power. The effect is that it allows the decisionmaker—whether it be a judge or head of a legal office—to avoid taking responsibility for stopping the unprofessional conduct.

B. Selective Offense: Constructing What Is Unprofessional

In a meeting, a white male colleague called me derogatory names. I reacted the way many do during an attack: I froze. This behavior was not new for him and as it wore on, my bias threshold reached its capacity. Later that day, I challenged his behavior openly as misogynistic and racist. He was clearly unprofessional—or so I thought. As I sat in various conversations processing while simultaneously explaining what happened, reality slowly sunk in that his behavior was not offensive to everyone. Lips moved, but I only heard garbled words in twos: “team player,” “get along,” “minor bump,” “take personally,” “right approach.” These words pieced together an ugly truth—one that my elders long warned. Some are more offended by a Black woman challenging racism than by a white person perpetuating it.

Selective offense is the normalization of racist, misogynistic, ableist or otherwise discriminatory behavior while the denunciation of said behavior is seen as disruptive. For example, this is seen when employees sit in meetings for months or years with a known problematic colleague who engages in harmful racist, misogynistic, or transphobic behavior and take no action to meaningfully admonish or halt the behavior; yet the same employees are suddenly—or selectively—offended when someone from a marginalized group challenges the problematic employee’s behavior. This manifests professionalism as a racial construct because the problematic employee who engages in racist, misogynistic, or transphobic behavior is not deemed unprofessional, yet the tone, approach, and timing of the person who challenges said behavior is so scrutinized.¹⁸

There are four stages to selective offense. First, people minimize and fail to admonish the harmful behavior. Second, people impute charm or innocence to the harmful behavior. Even the most clear-cut inappropriate behavior could be likened to humor or quirk. Not deemed harmful, it is instead attributed to the personality of the person perpetuating the harm. The distinction between

18. Erika Stallings, *When Black Women Go From Office Pet to Office Threat*, MEDIUM (Jan. 16, 2020), <https://zora.medium.com/when-black-women-go-from-office-pet-to-office-threat-83bde710332e> [<https://perma.cc/7SCP-5UN3>].

personality and behavior is crucial because many believe a person can correct another's behavior—but not their personality. Third, people accept the harmful behavior. Fourth, any challenges to the harmful behavior are seen as a personal character attack rather than rectifying harm.

During my tenure in the legal field, I have observed how these four stages unfold, particularly when the person engaging in harmful conduct is a white male. Once in conversation with attorneys, one mentioned a white male judge who was known to have a moody disposition. He remarked with a chuckle, “We call him Grumpy Grandpa.” The judge’s disgruntled disposition was transformed into a charming quirk that humanized him. For all intents and purposes, his behavior was unprofessional. A judge’s demeanor is essential to the role, especially when interfacing with litigants who are traumatized or stressed by the eviction process. Yet not only was the harmful effect ignored, it was turned into an attribute of his personality. There is also another layer as to why this harmful behavior is attributed to charm or humor. The act of humiliating, regulating, or rebuking people of color, especially in a public setting, has historically been a form of entertainment. From lynching as an American pastime to interactions with the police to degrading interactions in the workplace, inflicting pain on people of color is a public sport. Thus, when a person perpetuates this harm, they are seen as humorous because their actions are amusing for some to watch.

This begged the question: If a person of color or woman judge came in every day for years with a grouchy disposition, would they also be likened to charming or would they be perceived as unprofessional and temperamental?¹⁹ Conversely, I have also observed some judges of color attempt to implement order in their courtrooms by chiding attorneys who engage in conduct that is racist, misogynistic, or otherwise discriminatory. In response, their judicial temperament and bias

19. A group of judges of color issued a report on institutional racism within the New York court system. See THE JUDICIAL FRIENDS ASSOCIATION, REPORT TO THE NEW YORK STATE COURT’S COMMISSION ON EQUAL JUSTICE IN THE COURTS 45 (2020), <https://www.nycourts.gov/LegacyPDFS/ip/ethnic-fairness/pdfs/Judicial-Friends-Report-on-Systemic-Racism-in-the-NY-Courts.pdf> [<https://perma.cc/9237-XQRT>] (“Housing Court does not reflect the diversity of the community, either ethnically or with respect to race. This diversity is lacking both in the judiciary and among court attorneys. For example, in Kings County, over 80 [percent] of the population which utilizes the court as litigants are people of color. Further, these litigants are typically unrepresented. Of the fifty (50) New York City Housing Court Judges, fifteen (15) judges are assigned to Kings County, yet there are only three (3) judges of color in the borough.”). Similarly, a group of Latinx and Hispanic judges in New York courts issued a report noting that out of fifty Housing Court judges, only four are Latinx. See SALLIE MANZANET-DANIELS, OVERVIEW OF LATINOS/HISPANICS IN THE NEW YORK COURT SYSTEM 2020 (2020), <https://www.nycourts.gov/LegacyPDFS/ip/ethnic-fairness/pdfs/Overview-of-Latino-Judges-2020.pdf> [<https://perma.cc/E63P-LP94>].

threshold are scrutinized as much or more than the attorneys' harmful conduct. It is yet another example of how inappropriate behavior is normalized.

An additional contributing factor to selective offense is the use of public interest work as cover for racism or bias. Why challenge a person's harmful behavior when they are supposedly doing the work of social or racial justice?²⁰ The "my best friend is Black" defense to allegations of racism becomes "my clients are Black," "my staff is Black," or "my courtroom litigants are Black." Proximity to people of color or any marginalized group is weaponized to inoculate the person engaging in harmful conduct. And so it becomes offensive and even unprofessional when a person identifies racism against such a person. The spoken truth: "I'm not like the virulent racists on our TV screen." The unspoken truth: "I could be like them thus I deserve recognition for even moderately attempting to be racially aware."

C. Justice Is Blind and the Reasonable Person Is White

On June 1, 2020, I learned that police officers killed a Black man in Minneapolis. Against my better judgment, I watched the video of the murder circulating on social media. The video depicted hatred, violence, and a visual display of antiblackness.

During the first days after George Floyd's murder, I questioned whether everyone watched the same video. There was unusual silence in the American workplace, including the legal sector. I am part of many different communities in the legal profession such as working groups, boards, and coalitions. Routine business emails continued. Since I spent years internalizing the bias threshold discussed in Subpart I.A, I began to wonder whether I was unprofessional for my inability to complete work due to trauma. I was jarred back to reality in an unexpected way. A former client of mine, a Black woman, emailed me: "Ms. Goodridge, with all that's going on, I just wanted to see if you were okay." I had

20. Anastasia Reesa Tompkin, *How White People Conquered the Nonprofit Industry*, NONPROFIT Q. (May 26, 2020), <https://nonprofitquarterly.org/how-white-people-conquered-the-nonprofit-industry> [https://perma.cc/JG3P-NDSN] ("The philanthropic sector, by its very nature and definition, purports to serve 'disadvantaged communities,' and over the years has presented itself as a more people-centered, equity-driven alternative to the cold corporate world. Due to historical racism and systemic inequalities, the majority of 'disadvantaged communities' are predominantly lower-income [B]lack and brown citizens, who have little social capital and little financial security. The nonprofit industry rakes in billions of dollars annually off the creation of programs and services designed with this demographic in mind. Then, white supremacy in a basic definition, means white people having the most access to and control over money, resources and people. If we sift through the centuries from slavery through segregation and ask whether there has been any distinct transference of wealth and power to [B]lack and brown people, the answer would be a resounding no.").

been operating on the lie that I was justified in ignoring the pangs of anxiety quietly roaring inside of me while I continued working to protect my clients. In five words—“with all that’s going on”—my client forced me to confront the underbelly of American racism. In that moment of vulnerability, I replied that I was not okay. She responded with a lengthy Bible passage and words of encouragement that we will get through this.

I called Black colleagues and friends who also worked in public interest law in various positions to inquire if they were experiencing the same silence. I was not alone. One friend said, “I just saw a Black man get lynched on television and people are sending emails about service and motions. *What is going on?*” In almost all instances that I knew of, legal organizations were mostly silent until a person of color raised that the murder of George Floyd required more than a cursory mention—this was a racial reckoning.

Many people adhere to the axiom that discussion of politics in the workplace must be avoided in order to maintain a harmonious environment. In the legal profession, however, it goes beyond politics. Lawyers have been taught for centuries that thinking like a lawyer means putting all emotions aside.²¹ Divesting of emotion for the sake of legal reasoning in and of itself is an exercise of privilege. For example, law students have been forced to complete exam questions that reenact situations such as Michael Brown’s murder in Ferguson, Missouri.²² Even the way law students are taught to view defendants and their circumstances is through the narrow prism of the reasonable person standard. The reasonable person is supposedly a raceless and genderless blank slate which parallels with the ideology that justice is blind. However, stripping identity from the reasonable person means that whiteness becomes the norm and lens which legal advocates

21. Susan A. Bandes, *Feeling and Thinking Like a Lawyer: Cognition, Emotion, and the Practice and Progress of Law*, 89 FORDHAM L. REV. 2427 (2021).

22. See Conor Friedersdorf, *At Law School, Is Insensitivity Grounds for Objection?*, ATLANTIC (Dec. 19, 2014), <https://www.theatlantic.com/education/archive/2014/12/at-law-school-is-insensitivity-grounds-for-an-objection/383882> [<https://perma.cc/F3FB-RT2U>] (“Law Professor Eugene Volokh recently wrote about a controversial exam question at UCLA, where he teaches. The question noted a protest in Ferguson, Missouri, where the stepfather of Michael Brown, the unarmed man killed by police, reacted to news that Officer Darren Wilson would not be charged in the killing. Overcome with anger, he shouted to a crowd of protestors, ‘Burn this bitch down!’ Students were asked to write a memo analyzing how the First Amendment applies to such speech. Several complained. Said one UCLA student: ‘These kinds of questions create a hostile learning environment for students of color, especially [B]lack students who are already disadvantaged by the institution.’ The professor who gave the test agreed to adjust grades of test-takers who did worse on that question than the rest of their First Amendment exam.”). See also Conor Friedersdorf, *Are Today’s Law Students Tough Enough?*, ATLANTIC (Jan. 12, 2015) <https://www.theatlantic.com/education/archive/2015/01/are-todays-law-students-tough-enough/384376> [<https://perma.cc/HD8C-NHDJ>].

look through. Though fictional and imaginary, the reasonable person in “its present manifestation, applied within the trappings of the past, becomes less reflective of the population that will soon become the majority, becomes less legitimate if law’s purpose is to serve the People.”²³

Even in antiracist, progressive spaces, I observed how the law was envisioned as motion-writing, research, and oral arguments while racial and social justice were ancillary. Activities such as attending a protest related to the attorney’s field or engaging in racial justice learning were seen as additional tasks to the legal work—even though they helped an attorney to have cultural competency to better understand their clients. I also observed that courts often inferred a dichotomy between the fields of housing and fair housing. Housing denotes Housing Court, which typically handles eviction and repair cases. Fair housing applies to cases pertaining to antidiscrimination laws such as the Fair Housing Act. In my experience, housing operates in a more colorblind fashion than fair housing. Some legal organizations have a racial justice best practice to name the client’s race in legal motions. Other than the mention of a client’s race in a motion, race or the role it plays is rarely emphasized in housing cases, even in a practice where people of color comprise the majority of tenants facing eviction, the effects of gentrification and systemic racism.²⁴ In contrast, a client’s disability, income and contours of reasonable accommodation are more readily understood. I noticed that the actual teaching of race discrimination was not common and often referred to as a fair housing issue, even if the legal claims pertaining to race were squarely in legal codes related to eviction. This, of course, is a function of how the law and the reasonable person centers whiteness.

This occurs in other areas as well. After the murder of George Floyd, many legal institutions such as law firms, courts, and legal service organizations provided ongoing antiracism initiatives for their employees. Though there are multiple ways to discuss antiracism, equity, and inclusion, I noticed that in many instances, the framing focused almost entirely on white allyship. This meant that there were only rudimentary discussions of racism, (centering questions like: What does

23. Marvin L. Astrada & Scott B. Astrada, *Law, Continuity and Change: Revisiting the Reasonable Person Within the Demographic, Sociocultural and Political Realities of the Twenty-First Century*, 14 RUTGERS J.L. & PUB. POL’Y 196, 210 (2017).

24. In October 2020, I organized the conference *Good Trouble: A National Conversation on Black Lives Matter and Tenants’ Rights*, sponsored by the UCLA School of Law Critical Race Studies Program and New York Law School. The conference featured all Black attorneys, organizers, and professors who work in anti-eviction. It was one of the first conferences to feature an all-Black panel in legal services speaking on Black lives. One of the many topics discussed was the concept of justice as blind and raceless. Critical Race Studies, *Good Trouble: A National Conversation on Black Lives Matter and Tenants’ Rights*, YOUTUBE (Oct 6, 2020), <https://www.youtube.com/watch?v=DmAezCniQGc> [<https://perma.cc/3EP4-23BF>].

racism look like?) which did not allow for a more nuanced understanding of concepts like colorism, featurism, intraracial violence, and intersectional identities.²⁵ In addition, the tailoring of racial justice education for a white audience often resulted in examining race only through a Black and white binary. This excluded other racial groups such as Asian American and Pacific Islander and Native American. As a result, the only way for people of color in those rooms to participate was to be of service to the learning experience of their white peers rather than to process their own pain or even learn themselves.²⁶ This functions to make the purpose of the presence of marginalized groups to be useful to the education of their white peers.²⁷

In fact, when I later asked non-Black people why there was stifling silence when the news first showed the murder, the responses were: “I did not know what to say,” “I did not feel I had license to speak because I am not Black,” “I thought it might be impolite to raise this topic at work,” and “I did not think it was related to our work of eviction.” Attorneys who represent people of color everyday still felt they did not have license to talk about race. This is a systemic reflection of how legal practice functions in a largely colorblind fashion.

25. In many ways, diversity in law school provided the testing ground for civil rights cases that would impact public schools throughout the nation. Four years before the U.S. Supreme Court decided the landmark decision *Brown v. Board of Education*, 347 U.S. 483 (1954), the Court ruled in another case about racial segregation in schools. In *Sweatt v. Painter*, Herman Sweatt, a Black man, challenged the decision by the University of Texas Law School to deny his admission because of his race. See 339 U.S. 629, 631 (1950). Ruling in Sweatt’s favor, the Court made an interesting observation: “The law school, the proving ground for legal learning and practice, cannot be effective in isolation from the individuals and institutions with which the law interacts.” *Id.* at 634. On its face, this seems to align with the idea that lawyers must reflect the communities they serve. But the key issue in the case was integration, therefore the point indicates that it would be beneficial for an all-white law school to admit Black students as an opportunity for white future lawyers to gain cultural competency. Like in *Grutter v. Bollinger*, the rationale for admitting Black students in the law school was not to recognize historical discrimination and exclusion of those Black students, but for the benefit of their white classmates to gain real world experience. See *Grutter v. Bollinger*, 539 U.S. 306, 308 (2003) (“But the Law School defines its critical mass concept by reference to the substantial, important, and laudable educational benefits that diversity is designed to produce, including cross-racial understanding and the breaking down of racial stereotypes. The Law School’s claim is further bolstered by numerous expert studies and reports showing that such diversity . . . better prepares students for an increasingly diverse work force, for society, and for the legal profession.”).

26. See Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518 (1980); see also Derrick A. Bell, Jr., *Diversity’s Distractions*, 103 COLUM. L. REV. 1622 (2003).

27. Symposium, *On Grutter and Gratz: Examining “Diversity” in Education*, 103 COLUM. L. REV. 1588 (2003).

II. ACCOUNTABILITY: DECONSTRUCTING PROFESSIONALISM AS A RACIAL CONSTRUCT

After laying out my experiences and thoughts on professionalism as a racial construct, it is time for you to take action. The first step is to absorb this Essay in its entirety and identify what your role has been: target, bystander, accomplice, challenger, or perpetrator of professionalism as a racial construct. If it is difficult to identify your role, ask yourself how you are reacting to this Essay. Are you defensive? Ready to share it privately to an individual colleague? Ready to share it publicly to all of your colleagues? Or are you reticent about sharing this Essay with colleagues because you believe it will negatively impact your career? Will you ignore this Essay entirely? How you react to this Essay—the experiences of a Black woman attorney speaking on professionalism as a tool for white supremacy—may correlate with the role you play in challenging it within your own institution.

Next, send the Essay to family or friends to discuss ways that you can (further) challenge professionalism as a racial construct. The basis of professionalism as a racial construct is the belief that the racial hierarchy which produces the phenomenon will remain the same and that practitioners will adapt to it rather than challenge it. Since it has been deeply inculcated into the legal practice and American workforce, these conversations may prove difficult and enlightening because fear of change undergirds much of the perpetuation of professionalism as a racial construct.

The next step is to send this Essay to your colleagues for a discussion at the next staff meeting. You can discuss the Essay generally or discuss the Subparts over multiple meetings. The main question should be: How does professionalism as a racial construct manifest at this institution?

Moving forward, in order to disrupt professionalism as a racial construct, you must name it by using the framework in this Essay to identify the conduct as it happens. For example, you can say:

Why are you so bothered that Jane, a Black woman, called out an attorney for his racist conduct but you do not have this same reaction towards John, a white man, who still cannot correctly pronounce the names of people of color after ten years of working here? This seems like selective offense.

Your Honor, opposing counsel has interrupted me several times and there has been no warning of contempt or forcing them to

leave the courtroom. Are my client and I expected to silently endure this—a high bias threshold—during this proceeding?

Respondent is Chinese American and lives in the Soho section of New York. The area has historically been comprised of 70 percent Asian American and Pacific Islanders; however in the last decade, that population has drastically declined due to gentrification, redlining and displacement. This eviction case is not divorced from that. Respondent would like to remain in her community.

In writing this Essay, I had an internal tug of war in speaking about my experiences and those of many people of color in the legal profession. I struggled with the reality that some will be more offended by reading the truth of professionalism as a racial construct on these pages than the fact that it exists in the halls of courthouses, law firms and legal organizations. I almost quelled my own voice and the fire within. Then I remembered the court appearance in 2020, after George Floyd's murder, where the Black judge and I both had weary eyes which met, for a moment, as opposing counsel rattled on about the eviction moratorium. I remembered brunch with friends when they spoke about being the first generation of Black, Latinx, and Asian immigrant parents and internalizing the bias threshold—sacrifices their parents made to come to this country meant ignoring and tolerating racism at work. I remembered the many times I watched people of color shy away from staunch racially progressive positions under a belief that disassociation would help them appear more professional. I remembered the conversations with relatives, friends, and colleagues of color, venting and processing a racist incident and in determining how to respond, the pendulum swinging between comfort of white peers, self-respect, and rage. And I remembered using chemicals to destroy and straighten my natural hair during job interviews in law school in the hopes of increasing my chances of securing employment. I remembered all of these contours of professionalism as a racial construct. And I remembered my own duty to disrupt the system and get in good trouble.

Proposed Amendments to Rule 9.7

Reference #	25073946
Are you an attorney?	Yes
Name	Rachel Hester
From the choices below, we ask that you indicate your position on the proposed amendments to rule 9.7. (This is a required field.)	AGREE ONLY if Modified
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R9.7" to your file name).	Attorneys who have already taken the oath should not be required to take it again. Having this provision might alleviate some administrative burden for the Bar, but imposes another burden on every single attorney who has done it. The Bar is supposed to serve us -- not the other way around. I only agree if this provision is removed.
From the choices below, we ask that you indicate your position on the proposed new rule 2.3. (This is a required field.)	NO POSITION

Proposed Amendments to Rule 9.7

Reference #	25070951
Are you an attorney?	Yes
Commenting on behalf of an organization	Yes
Name	Sherry Diamond
Professional Affiliation	Santa Clara County Bar Association
From the choices below, we ask that you indicate your position on the proposed amendments to rule 9.7. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R9.7" to your file name).	Santa Clara County Bar Association (SCCBA) adopted its own Code of Professionalism in the 1990s, its most recent revision being in the fall of 2022. It has been adopted by both the Santa Clara Superior Court, and the 6th District Court of Appeals. SCCBA fully supports the highest standards of professionalism and civility and holds attorneys accountable to our Code in the practice of law both inside and outside the courtroom. Additionally, we support the State Bar's effort to set forth an Oath required of all attorneys throughout the state.
From the choices below, we ask that you indicate your position on the proposed new rule 2.3. (This is a required field.)	AGREE with the proposed recommendations

Proposed Amendments to Rule 9.7

Reference #	25069731
Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	thomas hutchinson
Professional Affiliation	Norman Dowler LLP
From the choices below, we ask that you indicate your position on the proposed amendments to rule 9.7. (This is a required field.)	AGREE ONLY if Modified
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R9.7" to your file name).	Pledge should be a one-time thing, not annual. Add a 1-hour MCLE requirement instead. Violation of civility rules should be sanctionable.
From the choices below, we ask that you indicate your position on the proposed new rule 2.3. (This is a required field.)	AGREE with the proposed recommendations

Proposed Amendments to Rule 9.7

Reference #	25070598
Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	Tony Tootell
Professional Affiliation	Foley & Lardner LLP
From the choices below, we ask that you indicate your position on the proposed amendments to rule 9.7. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on the proposed new rule 2.3. (This is a required field.)	AGREE with the proposed recommendations

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.

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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.

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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,

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- (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.

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[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 legal authorities, such as the local rules of court and bar associations' codes of civility.

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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.

RULE 1.2 TOTAL = 26A = 20 AM = 0
D = 4 NP = 2**RULE 8.4 TOTAL = 26**A = 18 AM = 0
D = 6 NP = 2**RULE 8.4.2 TOTAL = 26**A = 18 AM = 0
D = 6 NP = 2**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	
24927686	Adele Schneidereit	No	A	D		D		D	
25067655	Amanda Groves	No	A	A		A		A	
25067072	Anonymous	No	A	A		D	This proposed Rule will be misused by the State Bar as a nuisance charge to be tacked onto weak charges in the hope that the State Bar Court will find something to justify otherwise groundless prosecutions. "Incivility" is largely in the eye of the beholder. Judges have the power to deal with attorneys who do not act civilly. The fact that judges are too timid, disinterested, or well-connected with those who act without civility to exercise their authority to rein in abusive tactics does not create a need for a disciplinary rule.	D	This proposed Rule will be misused by the State Bar as a nuisance charge to be tacked onto weak charges in the hope that the State Bar Court will find something to justify otherwise groundless prosecutions. "Incivility" is largely in the eye of the beholder. Judges have the power to deal with attorneys who do not act civilly. The fact that judges are too timid, disinterested, or well-connected with those who act without civility to exercise their authority to rein in abusive tactics does not create a need for a disciplinary rule.

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

RULE 1.2 TOTAL = 26A = 20 AM = 0
D = 4 NP = 2**RULE 8.4 TOTAL = 26**A = 18 AM = 0
D = 6 NP = 2**RULE 8.4.2 TOTAL = 26**A = 18 AM = 0
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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	
							Judges routinely reward bad behavior when they have the power to stop it, and their unwillingness to take the bad actors to task is the real problem that should be addressed.		Judges routinely reward bad behavior when they have the power to stop it, and their unwillingness to take the bad actors to task is the real problem that should be addressed.
25069587	Asian Pacific American Women Lawyers Alliance (Ro)	Yes	A	A	See attachment.	A	See attachment.	A	See attachment.
25064978	Association of Business Trial Lawyers - Los Angeles Chapter (Mallow)	Yes	A	A	The ABTL-LA fully supports the proposed amendment to 1.2 and believes that this rule provides important authority supporting otherwise civil-oriented attorneys who are representing unreasonably difficult clients to mitigate incivility by agreeing to reasonable requests from adversaries that have no meaningful negative impact on the attorney's client.	A	ABTL-LA believes the proposed amendments to 8.4 and 8.4.2 provide helpful clarity on what will and will not constitute incivility for the purposes of Rule 8.4.	A	
Email	Association of Business Trial Lawyers (Reynolds)	Yes	A	A	See attachment.	A	See attachment.	A	See attachment.
25015673	Cal. Civility Task Force (Currey)	Yes	A	NP	Please see uploaded letter. See attachment.	NP	Please see uploaded letter. See attachment.	NP	Please see uploaded letter. See attachment.

RULE 1.2 TOTAL = 26A = 20 AM = 0
D = 4 NP = 2**RULE 8.4 TOTAL = 26**A = 18 AM = 0
D = 6 NP = 2**RULE 8.4.2 TOTAL = 26**A = 18 AM = 0
D = 6 NP = 2**Proposed New and Amended Rules
Synopsis of Public Comments**

File No.	Commenter/Signatory	Org ¹	Atty/ Nona tty ²	Pos. 1.2 ³	Comment	Pos. 8.4 ³		Pos. 8.4.2 ³	
25079012	California Access to Justice Commission (Londen)	Yes	A	A	See attachment.	A	See attachment.	A	See attachment.
Email	Consumer Attorneys Association of Los Angeles and the California Employment Lawyers Association (Horton)	Yes	A	A	See attachment.	A	See attachment.	A	See attachment.
25068533	Elwood Lui	No	NA	A		A		A	
25010330	Eric Gene Young		A	A	I agree that a lawyer should have the authority to agree to reasonable requests by opposing counsel that do not prejudice the client. Often, this issue arises in the context of getting a continuance or extending time for a responsive pleading or discovery. I personally have had many clients instruct me not to agree to even a 1-week extension on the opposing side's discovery. My remedy has been to counsel the client on the lack of prejudice and the	D	See my detailed comments to 8.4.2	D	As I understand the revised proposed rule 8.4.2, it defines "incivility" as "significantly unprofessional conduct that is abusive or harassing in the practice of law." While the State Bar can provide as many examples as it wants, this definition remains inherently vague and uncertain. What does the word "significantly" mean? Lawyers often use this word, but it is a moving target in terms of meaning. Moreover, in the context of incivility between lawyers (particularly litigators), what

RULE 1.2 TOTAL = 26

A = 20 AM = 0
D = 4 NP = 2

RULE 8.4 TOTAL = 26

A = 18 AM = 0
D = 6 NP = 2

RULE 8.4.2 TOTAL = 26

A = 18 AM = 0
D = 6 NP = 2

**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	
					importance of developing a rapport with one's opponent. That approach is not always satisfactory to the client, and unfortunately, if the client persists along these lines, the attorney-client relationship suffers. If clients know there is a rule such as this proposed rule, I believe it would be helpful for attorneys when they explain to clients why they should agree to reasonable requests. Of course, there will always be clients who are disagreeable, but in reality, they probably should not be clients in the first place, and if they make representation unreasonably difficult, an attorney can, subject to the rules, withdraw.			is "significant" to one person will be "insignificant" to another. Similarly, what does "unprofessional" mean? If one attorney calls another attorney a bad name, is that "unprofessional?" Does it depend on the words that are used? What if one attorney interrupts another while speaking? Is that "unprofessional?" Does it depend on whether a man interrupts a woman, or a woman interrupts a man? Where is the line between "unprofessional" and "rudeness?" I do not think the State Bar should concern itself with disciplining rudeness. Likewise, the phrase "abusive and harassing" defy definition, and the examples one could cite are as numerous and nuanced as the relationship between one human being and another can be. What I	

RULE 1.2 TOTAL = 26

A = 20 AM = 0
D = 4 NP = 2

RULE 8.4 TOTAL = 26

A = 18 AM = 0
D = 6 NP = 2

RULE 8.4.2 TOTAL = 26

A = 18 AM = 0
D = 6 NP = 2

**Proposed New and Amended Rules
Synopsis of Public Comments**

File No.	Commenter/Signatory	Org ¹	Atty/ Nona tty ²	Pos. 1.2 ³	Comment	Pos. 8.4 ³		Pos. 8.4.2 ³	
									<p>consider "abuse" might be "zealous advocacy" to someone else. When we go into this line of work, we ought to be cognizant that it is, in the main, an adversarial system. In my mind, "harassing" implies that the conduct goes on for some period of time, and is not just a one-off occasion, but is this true? In the heat of litigation, if one attorney tells another attorney to "stick it" once, does that justify discipline? What if the attorney apologizes the next day?</p> <p>I would have much preferred a proposed rule similar to the federal approach of "cooperation." The federal courts have managed to come up with an approach based on the concept of cooperation and speedy resolution of cases that works. Why does it work? One reason is because "cooperation" - or the opposite - is easier to</p>

RULE 1.2 TOTAL = 26

A = 20 AM = 0
D = 4 NP = 2

RULE 8.4 TOTAL = 26

A = 18 AM = 0
D = 6 NP = 2

RULE 8.4.2 TOTAL = 26

A = 18 AM = 0
D = 6 NP = 2

**Proposed New and Amended Rules
Synopsis of Public Comments**

File No.	Commenter/Signatory	Org ¹	Atty/ Nona tty ²	Pos. 1.2 ³	Comment	Pos. 8.4 ³		Pos. 8.4.2 ³	
									<p>spot and define than "incivility" is. We know when we are not being cooperative. One does not always know when they are being uncivil because civility is in the ear of the beholder.</p> <p>The second reason, and this dovetails with some of the prior comments the Bar received, is that the federal judges enforce the rules. I am dismayed by prior comments suggesting that the Bar take up this issue to spare judges from having to deal with it. Judges are precisely the officers who should deal with uncivil attorneys, not the Bar who sits with the luxury of hindsight. Frankly, it is astonishing how lenient state court judges are on this issue. I will provide one, concrete example - Rules of Court, rule 3.724 requires attorneys to meet and confer 30 days prior to a CMC on highly specific topics. Clearly, this rule was</p>

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A = 20 AM = 0
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RULE 8.4 TOTAL = 26

A = 18 AM = 0
D = 6 NP = 2

RULE 8.4.2 TOTAL = 26

A = 18 AM = 0
D = 6 NP = 2

**Proposed New and Amended Rules
Synopsis of Public Comments**

File No.	Commenter/Signatory	Org ¹	Atty/ Nona tty ²	Pos. 1.2 ³	Comment	Pos. 8.4 ³		Pos. 8.4.2 ³	
									<p>intended to operate as a state corollary to FRCP Rule 26(f), but it is rarely enforced by the courts the same way Rule 26(f) is. I have tried on numerous occasions to contact opposing counsel to conduct this meet and confer. I had one attorney, snidely, ask, "What are you doing?" I had another one laugh when I explained the purpose of my call. Were those attorneys being uncivil?</p> <p>At the end of the day, it did not matter, but not because there was yet another disciplinary rule we attorneys are required to abide by. It did not matter because the judge did not care whether we met and conferred or not. Attorneys even go so far as to check the box on a Case Management Statement saying the meet and confer happened when it did not. I have yet to encounter a</p>

RULE 1.2 TOTAL = 26

A = 20 AM = 0
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RULE 8.4 TOTAL = 26

A = 18 AM = 0
D = 6 NP = 2

RULE 8.4.2 TOTAL = 26

A = 18 AM = 0
D = 6 NP = 2

**Proposed New and Amended Rules
Synopsis of Public Comments**

File No.	Commenter/Signatory	Org ¹	Atty/ Nona tty ²	Pos. 1.2 ³	Comment	Pos. 8.4 ³		Pos. 8.4.2 ³	
									<p>judge who questions counsel to find out if the meet and confer did, in fact, occur and to confirm the required topics were discussed.</p> <p>If judges enforced this one rule of court, it would do wonders toward improving civility because it would force attorneys to get together early on and work on specific topics related to every litigation case. As it is, the lack of enforcement leads to incredible delays, case management conference after case management conference, and, yes, incivility.</p> <p>I recognize this example may be outside the jurisdiction of the Bar and may be more within the jurisdiction of the Judicial Council or some other body. However, the concept of cooperation between counsel is within the Bar's purview, and that concept is</p>

RULE 1.2 TOTAL = 26A = 20 AM = 0
D = 4 NP = 2**RULE 8.4 TOTAL = 26**A = 18 AM = 0
D = 6 NP = 2**RULE 8.4.2 TOTAL = 26**A = 18 AM = 0
D = 6 NP = 2**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	
									the one the Bar should pursue, not amorphous concepts such as "incivility." In closing, I predict the State Bar will find itself engulfed by complaints by attorneys against their opponents that may be nothing more than temporary hurt feelings, being too thin-skinned, or simply "sour grapes." I also would be willing to wager that the examples provided will require supplementation again and again as new and unanticipated situations arise.
25077311	Irish American Bar Association of Los Angeles (White)	Yes	A	A	Our organization endorses and joins in Justice Currey's June 9, 2023 letter	A	Our organization endorses and joins in Justice Currey's June 9, 2023 letter	A	Our organization endorses and joins in Justice Currey's June 9, 2023 letter
25076398	Japanese American Bar Association (JABA) (Hata)	Yes	A	A	My organization, Japanese American Bar Association (JABA), endorses and joins in Justice Brian S. Currey's June 9, 2023 letter, which is attached hereto. See attachment.	A	My organization, Japanese American Bar Association (JABA), endorses and joins in Justice Brian S. Currey's June 9, 2023 letter, which is attached hereto. See attachment.	A	My organization, Japanese American Bar Association (JABA), endorses and joins in Justice Brian S. Currey's June 9, 2023 letter, which is attached hereto. See attachment.

RULE 1.2 TOTAL = 26A = 20 AM = 0
D = 4 NP = 2**RULE 8.4 TOTAL = 26**A = 18 AM = 0
D = 6 NP = 2**RULE 8.4.2 TOTAL = 26**A = 18 AM = 0
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Synopsis of Public Comments**

File No.	Commenter/Signatory	Org ¹	Atty/ Nona tty ²	Pos. 1.2 ³	Comment	Pos. 8.4 ³		Pos. 8.4.2 ³	
25028533	Judge Kenneth C. Twisselman II	No	NA	A		A		A	
25066574	Kathleen O'Hara	No	A	A		A		A	
25074984	Los Angeles County Bar Association, Litigation Section (Bhujwala)	Yes	A	A	The Los Angeles County Bar Association's Litigation Section endorses and joins in the comments of the California Civility Task Force, as submitted in the attached June 9, 2023 letter from Justice Brian S. Currey. See attachment.	A	The Los Angeles County Bar Association's Litigation Section endorses and joins in the comments of the California Civility Task Force, as submitted in the attached June 9, 2023 letter from Justice Brian S. Currey. See attachment.	A	The Los Angeles County Bar Association's Litigation Section endorses and joins in the comments of the California Civility Task Force, as submitted in the attached June 9, 2023 letter from Justice Brian S. Currey. See attachment.
25075610	Marilyn M Smith	No	A	D	Civility is almost always in the eye of the beholder. The concept of "civility" is necessarily based on culture, background and other factors. Enforcing standards that cannot by definition be codified will by definition be selective, subjective enforcement. The State Bar should stay focused on discipline where clients are harmed (failure to perform competently, mishandling of client funds, etc.). The Bar should	D	There should be no codification of "civility" rules as they are impermissibly vague and subject to abuse and inconsistent enforcement (not to mention it would be impossible to determine in many cases what is "uncivil" conduct). The Bar should stay focused on the protection of clients and their property.	D	There should be no civility rules that are as vague as these. The Bar should stay focused on the protection of clients and their property. However, I do agree that should the Bar nevertheless impose this, such rules should apply only to the actual practice of law.

RULE 1.2 TOTAL = 26A = 20 AM = 0
D = 4 NP = 2**RULE 8.4 TOTAL = 26**A = 18 AM = 0
D = 6 NP = 2**RULE 8.4.2 TOTAL = 26**A = 18 AM = 0
D = 6 NP = 2**Proposed New and Amended Rules
Synopsis of Public Comments**

File No.	Commenter/Signatory	Org ¹	Atty/ Nona tty ²	Pos. 1.2 ³	Comment	Pos. 8.4 ³		Pos. 8.4.2 ³	
					commit itself to the protection of clients and their property. Moreover, if civility (however that is defined) is not learned at an early age, it is doubtful it will be learned when forced to attend MCLE on civility.				
25071872	Mike H. Madokoro	No	A	A	I endorse and join in the comments of the California Civility Task Force as submitted in the attached June 9, 2023 letter from Justice Brian S. Currey. See attachment.	A	I endorse and join in the comments of the California Civility Task Force as submitted in the attached June 9, 2023 letter from Justice Brian S. Currey. See attachment.	A	I endorse and join in the comments of the California Civility Task Force as submitted in the attached June 9, 2023 letter from Justice Brian S. Currey. See attachment.
24927705	Mina Sirkin	No	A	D	This is insane. Now anytime there is any kind of dispute among lawyers, you subject people to discipline? This is disgusting. Find another way to make money for the bar.	D	This is insane. Now anytime there is a discovery dispute, you subject people to discipline? Find another way to make money for the bar.	D	This is insane. Now anytime there is a discovery dispute, you subject people to discipline? Find another way to make money for the bar.

RULE 1.2 TOTAL = 26A = 20 AM = 0
D = 4 NP = 2**RULE 8.4 TOTAL = 26**A = 18 AM = 0
D = 6 NP = 2**RULE 8.4.2 TOTAL = 26**A = 18 AM = 0
D = 6 NP = 2**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	
25071859	Multicultural Bar Alliance of Southern California (Madokoro)	Yes	A	A	The Multicultural Bar Alliance of Southern California endorses and joins in the comments of the California Civility Task Force as submitted in the attached June 9, 2023 letter from Justice Brian S. Currey. See attachment.	A	The Multicultural Bar Alliance of Southern California endorses and joins in the comments of the California Civility Task Force as submitted in the attached June 9, 2023 letter from Justice Brian S. Currey. See attachment.	A	The Multicultural Bar Alliance of Southern California endorses and joins in the comments of the California Civility Task Force as submitted in the attached June 9, 2023 letter from Justice Brian S. Currey. See attachment.
Email	Novella Coleman	No	A	NP	See attachment: Novella Coleman-Email.pdf (<i>Professionalism as a Racial Construct</i> (2022) 69 UCLA L. Rev. Disc. (Law Meets World) 38)	NP	See attachment: Novella Coleman-Email.pdf (<i>Professionalism as a Racial Construct</i> (2022) 69 UCLA L. Rev. Disc. (Law Meets World) 38)	NP	See attachment: Novella Coleman-Email.pdf (<i>Professionalism as a Racial Construct</i> (2022) 69 UCLA L. Rev. Disc. (Law Meets World) 38)
24930210	Susan Margolis	No	A	D	This proposed rule will be subject to the challenge as the old Bus. & Prof. Code section 6068(f) (offensive personality statute) which was struck down as unconstitutionally vague by the Ninth Circuit in <i>United States v. Wunsch</i> (1996) 84 F.3d 1110. A more effective way of dealing with the issue is to mandate training while young adults are still in law	D		D	

RULE 1.2 TOTAL = 26A = 20 AM = 0
D = 4 NP = 2**RULE 8.4 TOTAL = 26**A = 18 AM = 0
D = 6 NP = 2**RULE 8.4.2 TOTAL = 26**A = 18 AM = 0
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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	
					<p>school, before they are admitted to practice, when they are still capable of being trained by their professors to treat the law as a profession and not as a blood sport.</p> <p>In terms of procedural requirements, such as agreeing to continuances, that type of thing can be the subject of local court rules, enforced through civil sanctions.</p>				
24963841	The Consumer Bar (Carlson)	Yes	NA	A		A		A	
25070247	Thomas J. Hutchinson		A	A		A		A	
25070602	Tony Tootell	No	A	A		A		A	
25077765	Women Lawyers Association of Los Angeles (Rietveld)	Yes	A	A	The Women Lawyers Association of Los Angeles supports the letter submitted by the California Civility Task Force on June 9, 2023 in favor of the State Bar's revised Rules of Professional Conduct on civility.	A	The Women Lawyers Association of Los Angeles supports the letter submitted by the California Civility Task Force on June 9, 2023 in favor of the State Bar's revised Rules of Professional Conduct on civility.	A	The Women Lawyers Association of Los Angeles supports the letter submitted by the California Civility Task Force on June 9, 2023 in favor of the State Bar's revised Rules of Professional Conduct on civility.

Proposed Amendments to Rules of Prof Conduct

Reference #	24927686
Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	Adele Schneidereit
From the choices below, we ask that you indicate your position on the proposed amendments to rule 1.2. (This is a required field.)	DISAGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on the proposed amendments to rule 8.4. (This is a required field.)	DISAGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on the proposed new rule 8.4.2. (This is a required field.)	DISAGREE with the proposed recommendations

Proposed Amendments to Rules of Prof Conduct

Reference #	25067655
Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	Amanda Groves
From the choices below, we ask that you indicate your position on the proposed amendments to rule 1.2. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on the proposed amendments to rule 8.4. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on the proposed new rule 8.4.2. (This is a required field.)	AGREE with the proposed recommendations

Proposed Amendments to Rules of Prof Conduct

Reference #	25067072
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 amendments to rule 1.2. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on the proposed amendments to rule 8.4. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R8.4" to the file name).	This proposed Rule will be misused by the State Bar as a nuisance charge to be tacked onto weak charges in the hope that the State Bar Court will find something to justify otherwise groundless prosecutions. "Incivility" is largely in the eye of the beholder. Judges have the power to deal with attorneys who do not act civilly. The fact that judges are too timid, disinterested, or well-connected with those who act without civility to exercise their authority to rein in abusive tactics does not create a need for a disciplinary rule. Judges routinely reward bad behavior when they have the power to stop it, and their unwillingness to take the bad actors to task is the real problem that should be addressed.
From the choices below, we ask that you indicate your position on the proposed new rule 8.4.2. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R8.4.2" to the file name).	This proposed Rule will be misused by the State Bar as a nuisance charge to be tacked onto weak charges in the hope that the State Bar

Court will find something to justify otherwise groundless prosecutions. "Incivility" is largely in the eye of the beholder. Judges have the power to deal with attorneys who do not act civilly. The fact that judges are too timid, disinterested, or well-connected with those who act without civility to exercise their authority to rein in abusive tactics does not create a need for a disciplinary rule. Judges routinely reward bad behavior when they have the power to stop it, and their unwillingness to take the bad actors to task is the real problem that should be addressed.

Proposed Amendments to Rules of Prof Conduct

Reference #	25069587
Are you an attorney?	Yes
Commenting on behalf of an organization	Yes
Name	Esther Ro (President-Elect)
Professional Affiliation	Asian Pacific American Women Lawyers Alliance
From the choices below, we ask that you indicate your position on the proposed amendments to rule 1.2. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on the proposed amendments to rule 8.4. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on the proposed new rule 8.4.2. (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.	APAWLA_Comments_re_Civility_Rules_June_2023.pdf (501 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 to the revised, proposed amendments to **California Rules of Court, rules 9.7 and 2.3**, and **California Rules of Professional Conduct, rules 1.2, 8.4 and 8.4.2**.

California Rules of Court, Rules 9.7 and 2.3

Regarding amendments to California Rules of Court, rules 9.7 and 2.3, APAWLA supports the amendments requiring that all 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.

California Rules of Professional Conduct, Rule 1.2

Regarding amendments to California Rules of Professional Conduct, rule 1.2, APAWLA supports the amendments allowing a lawyer to retain authority to practice with dignity, courtesy and integrity, including agreeing to reasonable requests of opposing counsel and self-represented parties that do not prejudice the rights of their client. This rule embodies the important notion that a lawyer can advocate zealously for their client while maintaining civility in their practice.

California Rules of Professional Conduct, Rules 8.4 and 8.4.2

Regarding the amendments to California Rules of Professional Conduct, rule 8.4, and new proposed rule 8.4.2, APAWLA supports the inclusion of a rule that allows for a mechanism to discipline attorneys who engage in conduct that is abusive and harassing.

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 the practice of law. 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. We must recognize that 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 “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 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.

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.”

Proposed Amendments to Rules of Prof Conduct

Reference #	25064978
Are you an attorney?	Yes
Commenting on behalf of an organization	Yes
Name	Michael Mallow
Professional Affiliation	Association of Business Trial Lawyers - Los Angeles Chapter
From the choices below, we ask that you indicate your position on the proposed amendments to rule 1.2. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R1.2" to the file name).	The ABTL-LA fully supports the proposed amendment to 1.2 and believes that this rule provides important authority supporting otherwise civil-oriented attorneys who are representing unreasonably difficult clients to mitigate incivility by agreeing to reasonable requests from adversaries that have no meaningful negative impact on the attorney's client.
From the choices below, we ask that you indicate your position on the proposed amendments to rule 8.4. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R8.4" to the file name).	ABTL-LA believes the proposed amendments to 8.4 and 8.4.2 provide helpful clarity on what will and will not constitute incivility for the purposes of Rule 8.4.
From the choices below, we ask that you indicate your position on the proposed new rule 8.4.2. (This is a required field.)	AGREE with the proposed recommendations

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 public comment synopsis table.

CONTACT: ELM@MCCLELLAN
 abtlisd@abtl.org

June 22, 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 Revisions 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) supports and agrees with the revisions to new proposed State Bar Rule 2.3 and amendments to Rule of Court 9.7, that all members of our State Bar 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, as well as that all members annually confirm this understanding. Particularly in combination with other proposed Rules additions, amendments and revisions, this should stress to all members the importance our State Bar places on civility and professionalism.

We also support and agree with the proposed revisions to the amendments to Rules of Professional Conduct 1.2 and 8.4 and the new Rule of Professional Conduct 8.4.2 and associated comments. We believe it is necessary and appropriate for there to be repercussions for incivility and that it should be made clear we are not merely pay lip service to these ideas, but that a violation of these provisions can be a disciplinable offense. We also believe it is important to clarify that the comment list of prohibited conduct are only to be considered examples as compared to an exhaustive list, with a corresponding reference for guidance to the existing California Attorney Guidelines for Civility and Professionalism and other applicable civility authorities, such as set forth in the Preface to the Local Rules of the Superior Court for the County of San Diego. These modifications should give added importance to stress that the State Bar civility oath has meaning and importance.

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

Paul Reynolds, President

ABTL SAN DIEGO

Proposed Amendments to Rule 9.7

Reference #	25015673
Are you an attorney?	Yes
Commenting on behalf of an organization	Yes
Name	Justice Brian S. Currey
Professional Affiliation	California Civility Task Force
From the choices below, we ask that you indicate your position on the proposed amendments to rule 9.7. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R9.7" to your file name).	Please see uploaded letter.
From the choices below, we ask that you indicate your position on the proposed new rule 2.3. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R2.3" to your file name).	Please see uploaded 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.	CCTF_Letter_and_Comments_to_State_Bar_Civility_Proposals_R.9_and_R2.3_6.9.23.pdf (262 KB)



BRIAN S. CURREY
ASSOCIATE JUSTICE

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

Click [here](#) to return to the
public comment synopsis table.

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

June 9, 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 convey CCTF's unqualified support for all of the State Bar's current civility proposals, which, as you know, are based on three of CCTF's key recommendations: (1) mandate one hour of civility MCLE per MCLE reporting period, and require civility MCLE programs to address the relationship between bias and incivility; (2) amend Rule of Court 9.7 to require all attorneys to subscribe to the 2014 version of the attorney oath that includes a pledge to strive for civility; and (3) adopt disciplinary rules addressing incivility.

In preparation for the Board's upcoming meeting, the State Bar staff has provided you and the rest of the Board of Trustees with a detailed history of the Board's past actions aimed at implementing CCTF's recommendations. Just to recap, the Board approved an action plan on March 24, 2022, and ultimately directed staff and the Committee on Professional Responsibility and Conduct (COPRAC) to review and make proposals concerning CCTF's recommendations. At its November 17, 2022 meeting, the Board authorized for public comment its initial proposals to implement the CCTF recommendations. By letter dated January 11, 2022, I provided CCTF's comments and suggestions on the State Bar's initial proposals on these three topics. Many organizations and individuals joined in our comments. As you know, at its May 2023 meeting, after considering our input and that of other stakeholders and the public, the Board of Trustees authorized for public comment modified versions of its initial proposals. These modifications accommodated all of CCTF's comments. I address each of the modified proposals below.

(1) Civility MCLE: State Bar Rules 2.72 and 3.601

The civility MCLE proposal is included as part of a broader proposed revision by the State Bar of the MCLE requirements. Although some revisions to the broader proposal were authorized for public comment at the May 2023 Board of Trustees meeting, the portion of the proposal relating to civility remains unchanged from the Board of Trustees' initial November 2022 proposal. Revised Rules 2.72 and 3.601 would require attorneys to complete at least one hour of "education that addresses civility in the legal profession" that includes "education that discusses the link between civility and bias, incivility that is directed at opposing parties or counsel, and incivility aimed at the judiciary." We all recognize that incivility may also be directed at others in the legal profession, including court staff, jurors, and lawyers other than opposing counsel, and that civility MCLE courses likely will address that as well.

CCTF unqualifiedly supports the Board of Trustees' proposal as it relates to civility MCLE. CCTF expresses no view on the balance of the proposed MCLE changes.

(2) Attorney Oath: Rule of Court 9.7

At its November 2022 meeting, the Board of Trustees authorized for public comment an initial proposal to amend Rule of Court 9.7 to require all attorneys to subscribe to the 2014 version of the attorney oath. That version of the oath includes an aspirational civility pledge: "As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy, and integrity." It later became clear, however, that some revisions to the initial proposed method of implementing this change were required. At its May 2023 meeting, the Board of Trustees authorized for public comment a revised implementation procedure. Under this revised proposal, each newly admitted attorney will be required to take the 2014 version of the attorney oath upon admission. In addition, each currently licensed attorney will be required to subscribe to the civility pledge, and subsequently reaffirm the pledge annually, by declaration. Staff expects this will be accomplished in a quick and efficient way, such as by DocuSign, when paying annual dues. These revisions were adopted to make the implementation of the proposal more administratively feasible for the State Bar.

CCTF unqualifiedly supports the State Bar's proposal, as modified, to have all attorneys take the 2014 version of the attorney oath, and annually subscribe to the civility pledge included in that version of the oath.

As you know, the revision of Rule 9.7 requires the approval of the Supreme Court.

(3) Disciplinary Rules Addressing Incivility: Revision of Rules of Professional Conduct 1.2, 8.4 and Adoption of a new Rule 8.4.2

At its November 2022 meeting, the Board of Trustees authorized for public comment proposed amendments to California Rules of Professional Conduct 1.2 and 8.4, and a new proposed Rule of Professional Conduct 8.4.2. The purpose was to clarify that a lawyer may be disciplined for incivility. At its May 2023 meeting, the Board of Trustees adopted for public comment some modifications to the earlier proposal, including revisions requested by CCTF.

As modified, amendments to rule 1.2 Comment [1] would make clear that a lawyer has the authority to act civilly, including agreeing to reasonable requests of opposing counsel or self-represented parties, even if the lawyer's client directs otherwise, so long as the lawyer does not prejudice the rights of the lawyer's client.

As modified, amendments to rule 8.4, Comment [4], clarify the reference to the new standalone rule, rule 8.4.2. As modified, amendments to rule 8.4, Comment [6], clarify that incivility violates rule 8.4 (d) and rule 8.4.2, reference the definition of incivility in proposed rule 8.4.2 (b), and provide examples of conduct that would not, on its own, violate rule 8.4 (d). The revision to Comment [6] directs lawyers to consult the current California Attorney Guidelines of Civility and Professionalism and other applicable civility authorities such as local rules of court and local bar associations' civility codes.

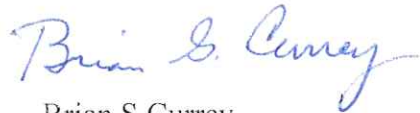
As modified, new rule 8.4.2 prohibits a lawyer from engaging in incivility in the practice of law. The current version of the proposed rule no longer applies to incivility in "related professional activities." Modifications to the proposed changes to Comment [1] direct lawyers to consult the current California Attorney Guidelines of Civility and Professionalism as well as other applicable civility authorities. Modifications to Comment [2] provide

examples of conduct that would not violate the rule. Finally, modifications to Comment [3] clarify that the rule applies to both speech and conduct.

CCTF unqualifiedly supports the proposed revisions to the Rules of Professional Conduct, as modified.

In conclusion, I once again thank you, your colleagues on the State Bar Board of Trustees, and the State Bar staff, for your continued engagement and leadership on this important topic. Please let me know if I, or CCTF, can be of further assistance.

Very truly yours,



Brian S Currey
Acting Presiding Justice

cc: Leah Wilson, Executive Director

Erika Doherty, Program Director, Office of the Professional Competence
Members of the California Civility Task Force

Proposed Amendments to Rules of Prof Conduct

Reference #	25079012
Are you an attorney?	Yes
Commenting on behalf of an organization	Yes
Name	Jack Londen
Professional Affiliation	California Access to Justice Commission
From the choices below, we ask that you indicate your position on the proposed amendments to rule 1.2. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on the proposed amendments to rule 8.4. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on the proposed new rule 8.4.2. (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.	6.23.23_SB_Comments_R9.7_R2.3_R1.2_R8.4_R8.4.2_MCLE.pdf (185 KB)

HON. MARK A. JUHAS, Chair
Los Angeles County Superior Court

CATHERINE J. BLAKEMORE, Vice
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First District Court of Appeal

ELICA VAFIAE
Lawyers' Comm. for Civil Rights

EMILIO VARANINI
California Department of Justice

HON. MONICA WILEY
San Francisco County Superior
Court

HON. ERICA R. YEW
Santa Clara County Superior Court

JACK W. LONDEN
Executive Director

JASMINE KADDOURA
Communications and Program
Manager

KOLEEN BIEGACKI
Director of Administration



June 23, 2023

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

Submitted online: <https://fs22.formsite.com/sbcta/mmeeyiwhqw/index>
<https://fs22.formsite.com/sbcta/vxcr2bdi1r/index>
<https://fs22.formsite.com/sbcta/au3wwc4rvv/index>

Re: Support for Proposed Amendments to the Rules of Court (9.7), the State Bar Rules (2.3), the Rules of Professional Conduct (1.2, 8.4, 8.4.2), 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 again 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 revised proposed amendments to California Rule of Court 9.7 requiring all licensees to submit an initial declaration containing the civility language on a one-time basis, all licensees to take an annual civility pledge, and that the State Bar develop a schedule for implementation; proposed new State Bar Rule 2.3 to implement the proposed changes to California Rule of Court 9.7; and revisions to Rules of Professional Conduct 1.2, 8.4, and 8.4.2 addressing civility. Separately, the Access Commission supports requiring one hour of MCLE for training related to civility in the profession. As noted in our February 22, 2023, comment, we believe 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.

Click [here](#) to return to the public comment synopsis table.

350 Frank H Ogden
Oakland, CA 94612
Mailing: PO Box 645, Carmichael, CA 95609
Phone: 510-893-3000 ext 107
Email: info@CalATJ.org
Website: www.CalATJ.org

We Support the Revised Proposed Amendments to California Rule of Court 9.7 Requiring All Licensees to Submit an Initial Declaration Containing the Civility Language, All Licensees to Take an Annual Civility Pledge, That the State Bar Develop a Schedule for Implementation, and Proposed State Bar Rule 2.3 to Implement the Proposed Changes.

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 who were admitted to practice after May 2014 have taken an attorney oath that includes a civility pledge, which means the majority of practicing California attorneys have not taken a civility pledge.

The proposed amendments to California Rule of Court 9.7 would address this by requiring all licensees to submit a one-time declaration to the State Bar affirming that they will conduct themselves with civility, and by requiring all licensees to reaffirm their commitment to civility on an annual basis. We agree with the proposed revisions based on concerns with implementation of a requirement that only applies to a portion of licensees and that a universal approach will put all attorneys on equal footing regarding the civility pledge. We also agree that Proposed State Bar Rule 2.3 is necessary to implement the proposed changes.

Attorneys acting with civility promotes access to justice in ways including the respectful treatment of self-represented 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 for 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 already are 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.

We appreciate the State Bar’s consideration of the Access Commissions recommendation to consider modifying the civility oath to be more specific in acknowledging and addressing why 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 individual

attorney has a role. We understand the State Bar's position that this type of education can be included in the new, proposed requirement for one hour of MCLE regarding civility.

We again thank the California Civility Task Force, the CJA, the CLA, and the State Bar for moving forward with focus on the importance of civility in the legal profession. We support the updated proposed amendments to California Rule of Court 9.7 and the proposed State Bar Rule 2.3 to implement the proposed changes.

We Support the Revised Proposed Amendments to California Rules of Professional Conduct 1.2 and 8.4, and Creation of New Rule 8.4.2, Addressing Civility.

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

As explained in our February 22, 2023, comment, 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. We thank the State Bar for accepting the Access Commission's recommendation that the language in comment [1] not unnecessarily be limited to "requests of opposing counsel" but also include requests by self-represented parties. We believe calling attention to the professional responsibility of attorneys 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.

We also thank the State Bar for accepting the Access Commission's recommended edits to Rule of Professional Conduct 8.4, comment [4] clarifying that there is a separate basis for discipline in rules 8.4(d) and 8.4.2 for incivility. We also agree with the changes to comment [6] narrowing the proposed civility disciplinary rules to apply only to attorney speech and conduct when an attorney is practicing law, as well as the other proposed changes. Clarifying that civility is a professional responsibility of attorneys and significantly unprofessional conduct in the practice of law 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, reduce 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.

We further support the proposed revisions to new standalone rule, rule 8.4.2. Separating prohibited incivility in a new separate rule has several benefits including highlighting the importance of civility; providing 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 agree with the proposed revisions and thank the State Bar for considering all comments submitted.

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 in the practice of law that is abusive or harassing. We support the proposed amendments to California Rules of Professional Conduct 1.2 and 8.4, and creation of a new rule 8.4.2.

We Support the Proposed Revisions to MCLE Requirements Adding Civility in the Legal Profession.

We take this opportunity to again voice our support of 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 continues to be 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. 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 is abusive 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 our democracy.

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.

Sincerely,

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

Judge Mark Juhas
Chair



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www.cela.org

June 21, 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 further 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 next week on June 28, 2023.

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.

CAALA and CELA previously commented on the initial version of these proposals. In our letter dated March 1, 2023, along with numerous other bar associations and stakeholders, CAALA and CELA made certain recommendations for the proposals. At its May 2023 meeting, the State Bar Board of Trustees authorized for public comment modified versions of the initial proposals. These modifications incorporated all of CAALA's and CELA's comments. We understand these modified versions are consistent with the recommendations of the California Civility Task Force. Based upon the current versions of the proposals out for comment, CAALA and CELA ***fully support*** all of the proposals.

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, including the technical implementation changes in the current version. 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.

2. Revisions to Rules of Professional Conduct

CAALA and CELA ***fully support*** the Board's proposed revisions to the Rules of Professional Conduct. The current version of proposed Rule of Professional Conduct 8.4.2 and various comments to existing Rules now state, "In representing a client, a lawyer shall not engage in incivility in the practice of law." CAALA and CELA previously recommended deletion of, "or related professional activities." That language has now been deleted.

CAALA and CELA also support the clarifying comments to various civility rules:

Rule 1.2 – a lawyer has the authority to act civilly, including agreeing to reasonable requests from the opposing party, even if the lawyer’s client directs otherwise, so long as the client’s rights are not prejudiced;

Rule 8.4 – directs lawyers to consult the California Attorney Guidelines on Civility and Professionalism and other civility authorities such as local rules of court and local bar association civility codes, and other technical amendments for conformity; and

Rule 8.4.2 – directs lawyers to consult the California Attorney Guidelines on Civility and Professionalism and other civility authorities, provides examples of conduct that would not violate the rule, and clarifies that the rule applies to both speech and conduct (CAALA and CELA previously recommended adding “speech” to the comment).

3. New MCLE Civility Course Requirements

CAALA and CELA *fully support* the Board’s proposed amendments to the MCLE rules (which remain unchanged in this version) 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, and that CJA has also adopted the California Civility Task Force’s recommendation 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.”

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 written in a cursive, flowing style.

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

cc: CAALA Executive Committee
CELA Board

Proposed Amendments to Rules of Prof Conduct

Reference #	25068533
Are you an attorney?	No
Commenting on behalf of an organization	No
Name	Elwood Lui
Professional Affiliation	Administrative Presiding Justice Second DCA
From the choices below, we ask that you indicate your position on the proposed amendments to rule 1.2. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on the proposed amendments to rule 8.4. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on the proposed new rule 8.4.2. (This is a required field.)	AGREE with the proposed recommendations

Proposed Amendments to Rules of Prof Conduct

Reference #	25010330
Are you an attorney?	Yes
Name	Eric Gene Young
From the choices below, we ask that you indicate your position on the proposed amendments to rule 1.2. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R1.2" to the file name).	<p>I agree that a lawyer should have the authority to agree to reasonable requests by opposing counsel that do not prejudice the client. Often, this issue arises in the context of getting a continuance or extending time for a responsive pleading or discovery. I personally have had many clients instruct me not to agree to even a 1-week extension on the opposing side's discovery. My remedy has been to counsel the client on the lack of prejudice and the importance of developing a rapport with one's opponent. That approach is not always satisfactory to the client, and unfortunately, if the client persists along these lines, the attorney-client relationship suffers. If clients know there is a rule such as this proposed rule, I believe it would be helpful for attorneys when they explain to clients why they should agree to reasonable requests. Of course, there will always be clients who are disagreeable, but in reality, they probably should not be clients in the first place, and if they make representation unreasonably difficult, an attorney can, subject to the rules, withdraw.</p>
From the choices below, we ask that you indicate your position on the proposed amendments to rule 8.4. (This is a required field.)	DISAGREE with the proposed recommendations

ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R8.4" to the file name).

See my detailed comments to 8.4.2

From the choices below, we ask that you indicate your position on the proposed new rule 8.4.2. (This is a required field.)

DISAGREE with the proposed recommendations

ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R8.4.2" to the file name).

As I understand the revised proposed rule 8.4.2, it defines "incivility" as "significantly unprofessional conduct that is abusive or harassing in the practice of law." While the State Bar can provide as many examples as it wants, this definition remains inherently vague and uncertain. What does the word "significantly" mean? Lawyers often use this word, but it is a moving target in terms of meaning. Moreover, in the context of incivility between lawyers (particularly litigators), what is "significant" to one person will be "insignificant" to another.

Similarly, what does "unprofessional" mean? If one attorney calls another attorney a bad name, is that "unprofessional?" Does it depend on the words that are used? What if one attorney interrupts another while speaking? Is that "unprofessional?" Does it depend on whether a man interrupts a woman, or a woman interrupts a man? Where is the line between "unprofessional" and "rudeness?" I do not think the State Bar should concern itself with disciplining rudeness.

Likewise, the phrase "abusive and harassing" defy definition, and the examples one could cite are as numerous and nuanced as the relationship between one human being and another can be. What I consider "abuse" might be "zealous advocacy" to someone else. When we go into this line of work, we ought to be

cognizant that it is, in the main, an adversarial system. In my mind, "harassing" implies that the conduct goes on for some period of time, and is not just a one-off occasion, but is this true? In the heat of litigation, if one attorney tells another attorney to "stick it" once, does that justify discipline? What if the attorney apologizes the ...

...next day?

I would have much preferred a proposed rule similar to the federal approach of "cooperation." The federal courts have managed to come up with an approach based on the concept of cooperation and speedy resolution of cases that works. Why does it work? One reason is because "cooperation" - or the opposite - is easier to spot and define than "incivility" is. We know when we are not being cooperative. One does not always know when they are being uncivil because civility is in the ear of the beholder.

The second reason, and this dovetails with some of the prior comments the Bar received, is that the federal judges enforce the rules. I am dismayed by prior comments suggesting that the Bar take up this issue to spare judges from having to deal with it. Judges are precisely the officers who should deal with uncivil attorneys, not the Bar who sits with the luxury of hindsight. Frankly, it is astonishing how lenient state court judges are on this issue. I will provide one, concrete example - Rules of Court, rule 3.724 requires attorneys to meet and confer 30 days prior to a CMC on highly specific topics. Clearly, this rule was intended to operate as a state corollary to FRCP Rule 26(f), but it is rarely enforced by the courts the same way Rule 26(f)

is. I have tried on numerous occasions to contact opposing counsel to conduct this meet and confer. I had one attorney, snidely, ask, "What are you doing?" I had another one laugh when I explained the purpose of my call. Were those attorneys being uncivil?

At the end of the day, it did not matter, but not because there was yet another disciplinary rule we attorneys are required to abide by. It...

... did not matter because the judge did not care whether we met and conferred or not. Attorneys even go so far as to check the box on a Case Management Statement saying the meet and confer happened when it did not. I have yet to encounter a judge who questions counsel to find out if the meet and confer did, in fact, occur and to confirm the required topics were discussed.

If judges enforced this one rule of court, it would do wonders toward improving civility because it would force attorneys to get together early on and work on specific topics related to every litigation case. As it is, the lack of enforcement leads to incredible delays, case management conference after case management conference, and, yes, incivility.

I recognize this example may be outside the jurisdiction of the Bar and may be more within the jurisdiction of the Judicial Council or some other body. However, the concept of cooperation between counsel is within the Bar's purview, and that concept is the one the Bar should pursue, not amorphous concepts such as "incivility."

In closing, I predict the State Bar will find itself engulfed by complaints by attorneys against their

opponents that may be nothing more than temporary hurt feelings, being too thin-skinned, or simply "sour grapes." I also would be willing to wager that the examples provided will require supplementation again and again as new and unanticipated situations arise.

Proposed Amendments to Rules of Prof Conduct

Reference #	25077311
Are you an attorney?	Yes
Commenting on behalf of an organization	Yes
Name	Johnny White
Professional Affiliation	Irish American Bar Association of Los Angeles
From the choices below, we ask that you indicate your position on the proposed amendments to rule 1.2. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R1.2" to the file name).	Our organization endorses and joins in Justice Currey's June 9, 2023 letter
From the choices below, we ask that you indicate your position on the proposed amendments to rule 8.4. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R8.4" to the file name).	Our organization endorses and joins in Justice Currey's June 9, 2023 letter
From the choices below, we ask that you indicate your position on the proposed new rule 8.4.2. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R8.4.2" to the file name).	Our organization endorses and joins in Justice Currey's June 9, 2023 letter

Proposed Amendments to Rules of Prof Conduct

Reference #	25076398
Are you an attorney?	Yes
Commenting on behalf of an organization	Yes
Name	Harumi Hata
Professional Affiliation	Japanese American Bar Association (JABA)
From the choices below, we ask that you indicate your position on the proposed amendments to rule 1.2. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R1.2" to the file name).	My organization, Japanese American Bar Association (JABA), endorses and joins in Justice Brian S. Currey's June 9, 2023 letter, which is attached hereto.
From the choices below, we ask that you indicate your position on the proposed amendments to rule 8.4. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R8.4" to the file name).	My organization, Japanese American Bar Association (JABA), endorses and joins in Justice Brian S. Currey's June 9, 2023 letter, which is attached hereto.
From the choices below, we ask that you indicate your position on the proposed new rule 8.4.2. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R8.4.2" to the file name).	My organization, Japanese American Bar Association (JABA), endorses and joins in Justice Brian S. Currey's June 9, 2023 letter, which is attached hereto.
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	JABA_-CCTF_Letter_and_Comments_to_State_Bar_Civility_Proposals_R.2.3_2.72_3.601_9.7_1.2_8.4_8.4.2.pdf (261 KB)

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BRIAN S. CURREY
ASSOCIATE JUSTICE

STATE OF CALIFORNIA
Court of Appeal
SECOND APPELLATE DISTRICT
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LOS ANGELES, CALIFORNIA 90013

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

June 9, 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 convey CCTF's unqualified support for all of the State Bar's current civility proposals, which, as you know, are based on three of CCTF's key recommendations: (1) mandate one hour of civility MCLE per MCLE reporting period, and require civility MCLE programs to address the relationship between bias and incivility; (2) amend Rule of Court 9.7 to require all attorneys to subscribe to the 2014 version of the attorney oath that includes a pledge to strive for civility; and (3) adopt disciplinary rules addressing incivility.

In preparation for the Board's upcoming meeting, the State Bar staff has provided you and the rest of the Board of Trustees with a detailed history of the Board's past actions aimed at implementing CCTF's recommendations. Just to recap, the Board approved an action plan on March 24, 2022, and ultimately directed staff and the Committee on Professional Responsibility and Conduct (COPRAC) to review and make proposals concerning CCTF's recommendations. At its November 17, 2022 meeting, the Board authorized for public comment its initial proposals to implement the CCTF recommendations. By letter dated January 11, 2022, I provided CCTF's comments and suggestions on the State Bar's initial proposals on these three topics. Many organizations and individuals joined in our comments. As you know, at its May 2023 meeting, after considering our input and that of other stakeholders and the public, the Board of Trustees authorized for public comment modified versions of its initial proposals. These modifications accommodated all of CCTF's comments. I address each of the modified proposals below.

(1) Civility MCLE: State Bar Rules 2.72 and 3.601

The civility MCLE proposal is included as part of a broader proposed revision by the State Bar of the MCLE requirements. Although some revisions to the broader proposal were authorized for public comment at the May 2023 Board of Trustees meeting, the portion of the proposal relating to civility remains unchanged from the Board of Trustees' initial November 2022 proposal. Revised Rules 2.72 and 3.601 would require attorneys to complete at least one hour of "education that addresses civility in the legal profession" that includes "education that discusses the link between civility and bias, incivility that is directed at opposing parties or counsel, and incivility aimed at the judiciary." We all recognize that incivility may also be directed at others in the legal profession, including court staff, jurors, and lawyers other than opposing counsel, and that civility MCLE courses likely will address that as well.

CCTF unqualifiedly supports the Board of Trustees' proposal as it relates to civility MCLE. CCTF expresses no view on the balance of the proposed MCLE changes.

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At its November 2022 meeting, the Board of Trustees authorized for public comment an initial proposal to amend Rule of Court 9.7 to require all attorneys to subscribe to the 2014 version of the attorney oath. That version of the oath includes an aspirational civility pledge: "As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy, and integrity." It later became clear, however, that some revisions to the initial proposed method of implementing this change were required. At its May 2023 meeting, the Board of Trustees authorized for public comment a revised implementation procedure. Under this revised proposal, each newly admitted attorney will be required to take the 2014 version of the attorney oath upon admission. In addition, each currently licensed attorney will be required to subscribe to the civility pledge, and subsequently reaffirm the pledge annually, by declaration. Staff expects this will be accomplished in a quick and efficient way, such as by DocuSign, when paying annual dues. These revisions were adopted to make the implementation of the proposal more administratively feasible for the State Bar.

CCTF unqualifiedly supports the State Bar's proposal, as modified, to have all attorneys take the 2014 version of the attorney oath, and annually subscribe to the civility pledge included in that version of the oath.

As you know, the revision of Rule 9.7 requires the approval of the Supreme Court.

(3) Disciplinary Rules Addressing Incivility: Revision of Rules of Professional Conduct 1.2, 8.4 and Adoption of a new Rule 8.4.2

At its November 2022 meeting, the Board of Trustees authorized for public comment proposed amendments to California Rules of Professional Conduct 1.2 and 8.4, and a new proposed Rule of Professional Conduct 8.4.2. The purpose was to clarify that a lawyer may be disciplined for incivility. At its May 2023 meeting, the Board of Trustees adopted for public comment some modifications to the earlier proposal, including revisions requested by CCTF.

As modified, amendments to rule 1.2 Comment [1] would make clear that a lawyer has the authority to act civilly, including agreeing to reasonable requests of opposing counsel or self-represented parties, even if the lawyer's client directs otherwise, so long as the lawyer does not prejudice the rights of the lawyer's client.

As modified, amendments to rule 8.4, Comment [4], clarify the reference to the new standalone rule, rule 8.4.2. As modified, amendments to rule 8.4, Comment [6], clarify that incivility violates rule 8.4 (d) and rule 8.4.2, reference the definition of incivility in proposed rule 8.4.2 (b), and provide examples of conduct that would not, on its own, violate rule 8.4 (d). The revision to Comment [6] directs lawyers to consult the current California Attorney Guidelines of Civility and Professionalism and other applicable civility authorities such as local rules of court and local bar associations' civility codes.

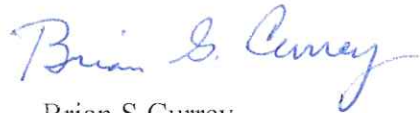
As modified, new rule 8.4.2 prohibits a lawyer from engaging in incivility in the practice of law. The current version of the proposed rule no longer applies to incivility in "related professional activities." Modifications to the proposed changes to Comment [1] direct lawyers to consult the current California Attorney Guidelines of Civility and Professionalism as well as other applicable civility authorities. Modifications to Comment [2] provide

examples of conduct that would not violate the rule. Finally, modifications to Comment [3] clarify that the rule applies to both speech and conduct.

CCTF unqualifiedly supports the proposed revisions to the Rules of Professional Conduct, as modified.

In conclusion, I once again thank you, your colleagues on the State Bar Board of Trustees, and the State Bar staff, for your continued engagement and leadership on this important topic. Please let me know if I, or CCTF, can be of further assistance.

Very truly yours,



Brian S Currey
Acting Presiding Justice

cc: Leah Wilson, Executive Director

Erika Doherty, Program Director, Office of the Professional Competence
Members of the California Civility Task Force

Proposed Amendments to Rules of Prof Conduct

Reference #	25028533
Are you an attorney?	No
Commenting on behalf of an organization	No
Name	Judge Kenneth C. Twisselman II
Professional Affiliation	Kern County Superior Court
From the choices below, we ask that you indicate your position on the proposed amendments to rule 1.2. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on the proposed amendments to rule 8.4. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on the proposed new rule 8.4.2. (This is a required field.)	AGREE with the proposed recommendations

Proposed Amendments to Rules of Prof Conduct

Reference #	25066574
Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	Kathleen O'Hara
From the choices below, we ask that you indicate your position on the proposed amendments to rule 1.2. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on the proposed amendments to rule 8.4. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on the proposed new rule 8.4.2. (This is a required field.)	AGREE with the proposed recommendations

Proposed Amendments to Rules of Prof Conduct

Reference #	25074984
Are you an attorney?	Yes
Commenting on behalf of an organization	Yes
Name	Shehnaz M. Bhujwala
Professional Affiliation	Los Angeles County Bar Association, Litigation Section
From the choices below, we ask that you indicate your position on the proposed amendments to rule 1.2. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R1.2" to the file name).	The Los Angeles County Bar Association's Litigation Section endorses and joins in the comments of the California Civility Task Force, as submitted in the attached June 9, 2023 letter from Justice Brian S. Currey.
From the choices below, we ask that you indicate your position on the proposed amendments to rule 8.4. (This is a required field.)	AGREE with the proposed recommendations
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June 9, 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
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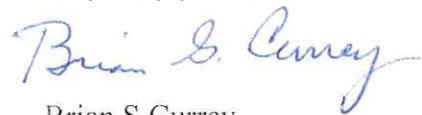
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Brian S Currey
Acting Presiding Justice

cc: Leah Wilson, Executive Director

Erika Doherty, Program Director, Office of the Professional Competence
Members of the California Civility Task Force

Proposed Amendments to Rules of Prof Conduct

Reference #	25075610
Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	Marilyn M Smith
From the choices below, we ask that you indicate your position on the proposed amendments to rule 1.2. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R1.2" to the file name).	Civility is almost always in the eye of the beholder. The concept of "civility" is necessarily based on culture, background and other factors. Enforcing standards that cannot by definition be codified will by definition be selective, subjective enforcement. The State Bar should stay focused on discipline where clients are harmed (failure to perform competently, mishandling of client funds, etc.). The Bar should commit itself to the protection of clients and their property. Moreover, if civility (however that is defined) is not learned at an early age, it is doubtful it will be learned when forced to attend MCLE on civility.
From the choices below, we ask that you indicate your position on the proposed amendments to rule 8.4. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R8.4" to the file name).	There should be no codification of "civility" rules as they are impermissibly vague and subject to abuse and inconsistent enforcement (not to mention it would be impossible to determine in many cases what is "uncivil" conduct). The Bar should stay focused on the protection of clients and their property.
From the choices below, we ask that you indicate	DISAGREE with the proposed recommendations

your position on the proposed new rule 8.4.2.

(This is a required field.)

ENTER COMMENTS HERE. To upload files
proceed to the ATTACHMENTS section below
(add "R8.4.2" to the file name).

There should be no civility rules that are as
vague as these. The Bar should stay focused on
the protection of clients and their property.
However, I do agree that should the Bar
nevertheless impose this, such rules should
apply only to the actual practice of law.

Proposed Amendments to Rules of Prof Conduct

Reference #	25071872
Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	Mike H. Madokoro
From the choices below, we ask that you indicate your position on the proposed amendments to rule 1.2. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R1.2" to the file name).	I endorse and join in the comments of the California Civility Task Force as submitted in the attached June 9, 2023 letter from Justice Brian S. Currey.
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CCTF unqualifiedly supports the State Bar's proposal, as modified, to have all attorneys take the 2014 version of the attorney oath, and annually subscribe to the civility pledge included in that version of the oath.

As you know, the revision of Rule 9.7 requires the approval of the Supreme Court.

(3) Disciplinary Rules Addressing Incivility: Revision of Rules of Professional Conduct 1.2, 8.4 and Adoption of a new Rule 8.4.2

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As modified, amendments to rule 1.2 Comment [1] would make clear that a lawyer has the authority to act civilly, including agreeing to reasonable requests of opposing counsel or self-represented parties, even if the lawyer's client directs otherwise, so long as the lawyer does not prejudice the rights of the lawyer's client.

As modified, amendments to rule 8.4, Comment [4], clarify the reference to the new standalone rule, rule 8.4.2. As modified, amendments to rule 8.4, Comment [6], clarify that incivility violates rule 8.4 (d) and rule 8.4.2, reference the definition of incivility in proposed rule 8.4.2 (b), and provide examples of conduct that would not, on its own, violate rule 8.4 (d). The revision to Comment [6] directs lawyers to consult the current California Attorney Guidelines of Civility and Professionalism and other applicable civility authorities such as local rules of court and local bar associations' civility codes.

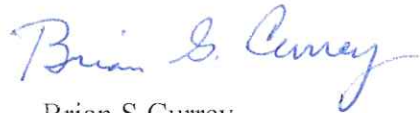
As modified, new rule 8.4.2 prohibits a lawyer from engaging in incivility in the practice of law. The current version of the proposed rule no longer applies to incivility in "related professional activities." Modifications to the proposed changes to Comment [1] direct lawyers to consult the current California Attorney Guidelines of Civility and Professionalism as well as other applicable civility authorities. Modifications to Comment [2] provide

examples of conduct that would not violate the rule. Finally, modifications to Comment [3] clarify that the rule applies to both speech and conduct.

CCTF unqualifiedly supports the proposed revisions to the Rules of Professional Conduct, as modified.

In conclusion, I once again thank you, your colleagues on the State Bar Board of Trustees, and the State Bar staff, for your continued engagement and leadership on this important topic. Please let me know if I, or CCTF, can be of further assistance.

Very truly yours,



Brian S Currey
Acting Presiding Justice

cc: Leah Wilson, Executive Director

Erika Doherty, Program Director, Office of the Professional Competence
Members of the California Civility Task Force

Proposed Amendments to Rules of Prof Conduct

Reference #	24927705
Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	Mina Sirkin
From the choices below, we ask that you indicate your position on the proposed amendments to rule 1.2. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R1.2" to the file name).	<p>This is insane. Now anytime there is any kind of dispute among lawyers, you subject people to discipline? This is disgusting.</p> <p>Find another way to make money for the bar.</p>
From the choices below, we ask that you indicate your position on the proposed amendments to rule 8.4. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R8.4" to the file name).	<p>This is insane. Now anytime there is a discovery dispute, you subject people to discipline?</p> <p>Find another way to make money for the bar.</p>
From the choices below, we ask that you indicate your position on the proposed new rule 8.4.2. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R8.4.2" to the file name).	<p>This is insane. Now anytime there is a discovery dispute, you subject people to discipline?</p> <p>Find another way to make money for the bar.</p>

Proposed Amendments to Rules of Prof Conduct

Reference #	25071859
Are you an attorney?	Yes
Commenting on behalf of an organization	Yes
Name	Mike H. Madokoro
Professional Affiliation	Multicultural Bar Alliance of Southern California
From the choices below, we ask that you indicate your position on the proposed amendments to rule 1.2. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R1.2" to the file name).	The Multicultural Bar Alliance of Southern California endorses and joins in the comments of the California Civility Task Force as submitted in the attached June 9, 2023 letter from Justice Brian S. Currey.
From the choices below, we ask that you indicate your position on the proposed amendments to rule 8.4. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R8.4" to the file name).	The Multicultural Bar Alliance of Southern California endorses and joins in the comments of the California Civility Task Force as submitted in the attached June 9, 2023 letter from Justice Brian S. Currey.
From the choices below, we ask that you indicate your position on the proposed new rule 8.4.2. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R8.4.2" to the file name).	The Multicultural Bar Alliance of Southern California endorses and joins in the comments of the California Civility Task Force as submitted in the attached June 9, 2023 letter from Justice Brian S. Currey.
ATTACHMENTS	You may upload your comment CCTF_Letter_and_Comments_to_State_Bar_

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_Proposals_R.2.3_2.72_3.601_9.7_1.2_8.4_8.4.2.pdf \(263 KB\)](#)



BRIAN S. CURREY
ASSOCIATE JUSTICE

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

Click [here](#) to return to the
public comment synopsis table.

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

June 9, 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 convey CCTF's unqualified support for all of the State Bar's current civility proposals, which, as you know, are based on three of CCTF's key recommendations: (1) mandate one hour of civility MCLE per MCLE reporting period, and require civility MCLE programs to address the relationship between bias and incivility; (2) amend Rule of Court 9.7 to require all attorneys to subscribe to the 2014 version of the attorney oath that includes a pledge to strive for civility; and (3) adopt disciplinary rules addressing incivility.

In preparation for the Board's upcoming meeting, the State Bar staff has provided you and the rest of the Board of Trustees with a detailed history of the Board's past actions aimed at implementing CCTF's recommendations. Just to recap, the Board approved an action plan on March 24, 2022, and ultimately directed staff and the Committee on Professional Responsibility and Conduct (COPRAC) to review and make proposals concerning CCTF's recommendations. At its November 17, 2022 meeting, the Board authorized for public comment its initial proposals to implement the CCTF recommendations. By letter dated January 11, 2022, I provided CCTF's comments and suggestions on the State Bar's initial proposals on these three topics. Many organizations and individuals joined in our comments. As you know, at its May 2023 meeting, after considering our input and that of other stakeholders and the public, the Board of Trustees authorized for public comment modified versions of its initial proposals. These modifications accommodated all of CCTF's comments. I address each of the modified proposals below.

(1) Civility MCLE: State Bar Rules 2.72 and 3.601

The civility MCLE proposal is included as part of a broader proposed revision by the State Bar of the MCLE requirements. Although some revisions to the broader proposal were authorized for public comment at the May 2023 Board of Trustees meeting, the portion of the proposal relating to civility remains unchanged from the Board of Trustees' initial November 2022 proposal. Revised Rules 2.72 and 3.601 would require attorneys to complete at least one hour of "education that addresses civility in the legal profession" that includes "education that discusses the link between civility and bias, incivility that is directed at opposing parties or counsel, and incivility aimed at the judiciary." We all recognize that incivility may also be directed at others in the legal profession, including court staff, jurors, and lawyers other than opposing counsel, and that civility MCLE courses likely will address that as well.

CCTF unqualifiedly supports the Board of Trustees' proposal as it relates to civility MCLE. CCTF expresses no view on the balance of the proposed MCLE changes.

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At its November 2022 meeting, the Board of Trustees authorized for public comment an initial proposal to amend Rule of Court 9.7 to require all attorneys to subscribe to the 2014 version of the attorney oath. That version of the oath includes an aspirational civility pledge: "As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy, and integrity." It later became clear, however, that some revisions to the initial proposed method of implementing this change were required. At its May 2023 meeting, the Board of Trustees authorized for public comment a revised implementation procedure. Under this revised proposal, each newly admitted attorney will be required to take the 2014 version of the attorney oath upon admission. In addition, each currently licensed attorney will be required to subscribe to the civility pledge, and subsequently reaffirm the pledge annually, by declaration. Staff expects this will be accomplished in a quick and efficient way, such as by DocuSign, when paying annual dues. These revisions were adopted to make the implementation of the proposal more administratively feasible for the State Bar.

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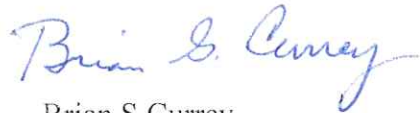
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In conclusion, I once again thank you, your colleagues on the State Bar Board of Trustees, and the State Bar staff, for your continued engagement and leadership on this important topic. Please let me know if I, or CCTF, can be of further assistance.

Very truly yours,



Brian S Currey
Acting Presiding Justice

cc: Leah Wilson, Executive Director

Erika Doherty, Program Director, Office of the Professional Competence
Members of the California Civility Task Force

U.C.L.A. Law Review

Professionalism as a Racial Construct

Leah Goodridge

ABSTRACT

This Essay examines professionalism as a tool to subjugate people of color in the legal field. Professionalism is a standard with a set of beliefs about how one should operate in the workplace. While professionalism seemingly applies to everyone, it is used to widely police and regulate people of color in various ways including hair, tone, and food scents. Thus, it is not merely that there is a double standard in how professionalism applies: It is that the standard itself is based on a set of beliefs grounded in racial subordination and white supremacy. Through this analysis, professionalism is revealed to be a racial construct.

This Essay examines three main aspects of legal professionalism: (1) threshold to withstand bias and discrimination, (2) selective offense, and (3) the reasonable person standard. Each Subpart starts with a day in my life as an attorney to illustrate how these elements play out. The final Part details ways to disrupt professionalism as a racial construct.

AUTHOR

Leah Goodridge is the Managing Attorney for Housing Policy at Mobilization for Justice. This Essay is dedicated to Professors Kimberlé Crenshaw, Devon Carbado and Cheryl Harris who mentored her while she was a law student at UCLA School of Law in the Critical Race Studies Program. She also wishes to thank the *UCLA Law Review* student editors who worked on this Essay.



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INTRODUCTION

On a Friday afternoon, I appeared with a colleague in New York City Housing Court on behalf of a client in an eviction proceeding. Aside from the unfortunate nature of the case, it was supposed to be a routine court appearance. But Housing Court is known to be unpredictable, and that afternoon, it lived up to its reputation. While appearing before the judge, opposing counsel—a white woman—yelled at me, interrupted me, talked over me, sighed and rolled her eyes when I spoke. Before this appearance, we had only seen each other in passing. Dumbfounded, I spent half of the time making legal arguments and the other half wondering whether my presence in court, as a Black woman, was the main factor in the attorney’s scorn. Curiosity inched closer to certainty when I learned that my junior colleague, who is white, appeared by herself on the same case just weeks before. We danced around it—“That was ridiculous!” “Oh man, Housing Court”—until we finally made our way to: “She wasn’t like that with me. She treated me with respect.”

That weekend, still reeling from humiliation, I reimagined the court appearance. Would I have appeared too sensitive if I said that opposing counsel’s conduct is racist? Is it professional to use the court’s time to address racism and misogynoir when the negotiations for my client are still in progress? The answers were unclear, but what was certain was that if I had behaved like opposing counsel, I would have been seen as unprofessional and aggressive, and likely admonished by the judge.¹ Professionalism was a one way street—it applied to me but not my opposing counsel.

I wanted to scream. I wanted to tell both the judge and opposing counsel that they upheld systems of racial hierarchy. I did not. Instead, I shouted words on paper.

These words are my screams.

1. See Amanda Luz Henning Santiago, *How Can New York Change Its Court Culture?*, CITY & STATE N.Y. (Oct. 27, 2020), <https://www.cityandstateny.com/politics/2020/10/how-can-new-york-change-its-court-culture/175516> [<https://perma.cc/W3DP-PH5C>] (“For many working within the court system, it’s understood that in order to maintain a sense of professionalism, employees have to ignore blatant racism. ‘It (racism and sexism) has become so ingrained into the culture (of the court system) that there is an underlying and silent expectation that people just put up with it and it’s part of being professional, having a thicker skin,’ Leah Goodridge, a supervising attorney at Mobilization for Justice, who has spent years working in Housing Court, told City & State. ‘So instead of people challenging the racist behavior, for example, the burden has shifted to the person who bears it—and that is not limited to attorneys; sometimes it’s judges as well.’”).

I am one of the 4.7 percent of Black attorneys in the United States² and have been practicing law for the past decade.³ In this Essay, I question whether professionalism is a tool to subjugate people of color in the legal field. Professionalism encompasses: (1) communication style, (2) interpersonal skills, (3) appearance, (4) how well a person adheres to the standards of their field and employer, and (5) efficacy at the job. Through this analysis, professionalism is revealed to be a racial construct.

The canon of Critical Race Theory shifted the understanding of racism from intentional hatred by individual actors to a set of systems and institutions that produce racial inequality and subordination.⁴ Criminal justice is a system of laws and individuals who enforce them. While everyone is beholden to the laws, the criminal justice system disproportionately ensnares people of color within its grasp, resulting in harsher punishment. Similarly, professionalism is a standard with a set of beliefs about how one should operate in the workplace. While professionalism seemingly applies to everyone, it is used to widely police and regulate people of color in various ways including hair, tone, and food scents.⁵ Thus, it is not merely that there is a double standard in how professionalism applies; it is that the standard itself is based on a set of beliefs grounded in racial subordination and white supremacy.

In Part I, I examine three main aspects of legal professionalism: (1) threshold to withstand bias and discrimination, (2) selective offense, and (3) the reasonable person standard. Each Subpart starts with a day in my life as an attorney to illustrate how these elements play out. Professionalism in the legal industry often carries the silent expectation that people of color, women, people with disabilities and people who identify as LGBTQIA have a high threshold to withstand discrimination.⁶ Professionalism as a racial construct is not limited to attorneys

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2. See AM. BAR ASS'N, PROFILE OF THE LEGAL PROFESSION 2021 (2021); see also Karen Sloan, *New Lawyer Demographics Show Modest Growth in Minority Attorneys*, REUTERS (July 29, 2021, 3:12 PM), <https://www.reuters.com/legal/legalindustry/new-lawyer-demographics-show-modest-growth-minority-attorneys-2021-07-29>.
 3. Deborah L. Rhode, *Law is the Least Diverse Profession in the Nation. And Lawyers Aren't Doing Enough to Change That.*, WASH. POST (May 27, 2015), <https://www.washingtonpost.com/posteverything/wp/2015/05/27/law-is-the-least-diverse-profession-in-the-nation-and-lawyers-arent-doing-enough-to-change-that> [<https://perma.cc/P6S6-F6YU>].
 4. Richard Delgado, *Liberal McCarthyism and the Origins of Critical Race Theory*, 94 IOWA L. REV. 1505, 1511 (2009).
 5. See Shannon Cumberbatch, *When Your Identity is Inherently "Unprofessional": Navigating Rules of Professional Appearance Rooted in Cisheteronormative Whiteness as Black Women and Gender Non-Conforming Professionals*, 34 J.C.R. & ECON. DEV. 81 (2021).
 6. Dylan Jackson, *George Floyd's Death Ushered in a New Era of Law Firm Activism and There's No Going Back*, AM. LAW. (May 25, 2021, 5:00 AM), <https://www.law.com/American>

and paralegals—it also extends to individuals participating in the legal process. For example, Black people have been excluded from serving on a jury because they “failed to make eye contact, lived in a poor part of town, had served in the military, had a hyphenated last name, displayed bad posture, were sullen, disrespectful or talkative, had long hair, wore a beard”—many of which are under the guise of professionalism.⁷ In addition, I discuss how harmful and racist behavior in the legal profession are normalized to the point that challenges to such conduct are seen as unprofessional. Lastly, I analyze how the law functions in a colorblind fashion, having the effect of making any emphasis or focus on race seem impolite or—unprofessional. In Part II, I explore recommendations of how to deconstruct professionalism as a tool of white supremacy.

I. CONSTRUCTING THE CONCEPT OF PROFESSIONALISM IN THE LEGAL PROFESSION

A. Bias and Discrimination Threshold

In June 2018, a group of legal service organizations sent a letter to the Supervising and Administrative Judges of Housing Court. Typewritten words on paper laid bare the experiences that many tenant attorneys and paralegals endured for years: over eighty examples of alleged bias, microaggressions and incivility which took place in Bronx Housing Court by landlord attorneys, court clerks, officers and judges.⁸ The purpose of the letter was to demand accountability. As a result, the Supervising Judge convened a meeting for tenant and landlord attorneys to discuss bias and incivility.

More than anything, this meeting revealed that there were at least two perceptions of what it meant to be a professional attorney. In one view, an attorney’s inability to laugh and move along from microaggressions indicated that they were too unpolished or hypersensitive for the field. In the other, an attorney was race and equity conscious and when those norms were eschewed, readily

lawyer/2021/05/25/george-floyds-death-ushered-in-a-new-era-of-law-firm-activism-and-theres-no-going-back-405-84104 [https://perma.cc/P7A3-V8CZ].

7. Adam Liptak, *Exclusion of Blacks From Juries Raises Renewed Questions*, N.Y. TIMES (Aug. 16, 2015), <https://www.nytimes.com/2015/08/17/us/politics/exclusion-of-blacks-from-juries-raises-renewed-scrutiny.html> [https://perma.cc/WR97-4T2N].

8. The examples included court staff frequently mistaking attorneys for litigant-respondents or confusing two people of color, opposing counsel yelling or making racist comments. Many of the experiences noted in the letter were later reflected in a wider and first of its kind report on racism in the courts published in 2020. JEH CHARLES JOHNSON, REPORT FROM THE SPECIAL ADVISER ON EQUAL JUSTICE IN THE NEW YORK STATE COURTS 61–66 (2020).

called for accountability to create a workable and inclusive environment. During the meeting, it became clear that the former had been the standard for many years.

Professionalism was based on the notion that one withstood microaggressions and bias with grace and lightheartedness. The higher the threshold one had to tolerate bias, the more polished the attorney or paralegal appeared. This was particularly the case for women,⁹ people of color, LGBTQIA people, and people with disabilities. Professionalism as a racial construct manifests itself in two ways. First, that professionalism is measured by how well a person adapts to a hostile work environment is in of itself a racial construct because that system is built for people of color to fail. Second, that professionalism incorporates the ideology to have a thick skin manifests as a racial construct because even the definition of thick skin aligns with who holds the most power. For example, if attorneys on the receiving end of microaggressions, bias, and racism are considered sensitive for not laughing along, why are the attorneys who engage in harmful behavior not also considered sensitive for their inability to handle criticism about their conduct? Thus, even in defining tolerance, whose feelings are prioritized and validated and whose are minimized within the context of professionalism shapes the narrative that people of color—not their white peers—need to develop thicker skin.

It was not coincidental that this meeting took place almost a year after the passage of the right to counsel law, which provides low-income tenants the right to free legal representation.¹⁰ With the city's investment, there was a new legion of attorneys and paralegals of color in court that stood apart from the mostly white male landlord bar, many of whom had practiced in housing court for a decade of more prior to the demographic shift.¹¹

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9. The roots of the “toughen up, buttercup” mentality for women as lawyers run deep. See, e.g., Maryam Ahranjani, “*Toughen Up, Buttercup*” Versus #TimesUp: Initial Findings of the ABA Women in Criminal Justice Task Force, 25 BERKELEY J. CRIM. L. 99, 108 (2020) (“In the 1920s, the President of the Women’s Bar Association reportedly told recently admitted women to never let anyone refer to them as a ‘woman lawyer’ because that in and of itself is an obstacle to practice. The idea was to mimic men as much as possible in order to fit in.”).
 10. Press Release, New York City Office of the Mayor, New York City’s First-in-Nation Right-to-Counsel Program Expanded Citywide Ahead of Schedule, (Nov. 17, 2021), <https://www1.nyc.gov/office-of-the-mayor/news/769-21/new-york-city-s-first-in-nation-right-to-counsel-program-expanded-citywide-ahead-schedule> [<https://perma.cc/JS3E-E6GL>].
 11. After a white male landlords’ attorney referred to COVID-19 as “Chinese cooties” in a long email chain including judges, landlords, and tenants attorneys, several articles were published describing the incident. See Jane Wester, *Racist Comment by New York Landlords’ Attorney is Symptom of Larger Problem, Bronx Tenants’ Lawyers Say*, N.Y. L.J. (Aug. 31, 2020, 5:57 PM), <https://www.law.com/newyorklawjournal/2020/08/31/racist-comment-by-new-york-landlords-attorney-is-symptom-of-larger-problem-bronx-tenants-lawyers-say> (last visited Mar. 19, 2022) (“Several tenants’ attorneys said Rogers’ comment was an example of pervasive

These views on professionalism were not neatly cut along landlord and tenant attorney lines, or even by race. There were larger issues at play here. In the American capitalist economy, enduring a toxic and abusive work environment can be a rite of passage in some workplaces. Even in the sphere of public interest law, a gripe about the astronomical case dockets could be met with quips that “back in my day, I had two times as many cases.” In both the nonprofit industrial complex and law firms, the measure of a good attorney was not only how much of an impact they had on their clients’ lives, but also the quantity of cases they were able to handle at once.¹² In fact, some would say that a high number of cases *is* the impact. Beyond enduring microaggressions, racism and other discriminatory behavior, there seemed to be a wider expectation to tolerate abusive practices that was woven into the fabric of the American workforce.

In an attempt to navigate Housing Court better, I sought guidance from Black attorneys whom I admired and revered. They all practiced in different areas of law for over a decade. Their advice all started with “Don’t let them make you look unprofessional.” I spoke with at least ten Black attorneys with decades of experience in courtrooms and every single one understood and iterated that despite white opposing counsels or peers acting in the most inappropriate and unprofessional manner, I was the one who would look unprofessional if I came close to or matched their behavior. Professionalism did not apply to them, but it applied to me. Moreover, since racism permeated the profession, consistently complaining or challenging it would not necessarily indicate that it was pervasive; instead it would likely reflect that I was not cut out to be an attorney.

None of these attorneys advised me to file grievances. Racism is a reality and dealing with it meant survival. Survival meant avoiding direct challenges to racism which could lead to negative career consequences. Reflecting on their words, it became clear to me that they began their legal careers at a time when there were even fewer Black attorneys, and in the aftermath of the Civil Rights Act and other laws. There had been so much fight to get their foot in the door that appearing unnerved was not an option. Most advised indirect ways to challenge macro- or microaggressions—speedy, humorous comebacks in response to certain situations to assert dominance and show I was impermeable to anyone’s discomfort of my existence. If I was mistaken for my client or any other Black person, a response

behavior they face in Bronx Housing Court. The number of tenants’ attorneys working in housing court has grown since the city passed its Universal Access to Legal Services law in 2017, and the tenants’ bar tends to be younger and more diverse than the landlords’ bar, which is largely white and male, several lawyers said.”).

12. See generally THE REVOLUTION WILL NOT BE FUNDED: BEYOND THE NON-PROFIT INDUSTRIAL COMPLEX (INCITE! Women of Color Against Violence eds., 2017).

could be, “Well, I can tell you apart from Brad Pitt. Now, where’s the rent breakdown, Charles?”

I followed their approach, but its effectiveness quickly wore off. At the time, I was a new staff attorney making \$50,000 with a docket of nearly forty eviction cases. I was navigating my own emotions of sometimes overhearing in Spanish in court “I’m getting evicted but at least I’m not Black,” and dealing with helping many of those same tenants navigate the bureaucratic maze of government agencies. The job presented a rude awakening that the role of staff attorney also included hidden duties such as social worker, government agency advocate, and case administrative coordinator. Given the breadth of the position, I did not have the energy or bandwidth to engage in witty banter with opposing counsel during routine negotiations—it felt like playing the sassy Black woman and providing a form of entertainment where I was not the one amused.¹³

Moreover, the societal expectation of Black forgiveness seemed to be endemic to having a thick skin in the workplace.¹⁴ Fear of Black rage spurred vagrancy and loitering laws, after all.¹⁵ Black forgiveness soothed anxiety that there

13. One example of a macro-aggression is when a landlords’ attorney filed at least forty eviction cases in Housing Court with termination notices referencing coronavirus as the “Chinese Wuhan Virus.” The Court dismissed almost all of the notices. In an article for a legal publication, the landlords’ attorney declined to comment on the offensive conduct but did say “I’m just waiting for them to pass universal rent control where they completely take away landlords’ rights to do what they want with private property.” See Emma Whitford, NYC Eviction Judge Tosses Cases with “Wuhan Virus” Notice, LAW360 (May 21, 2021, 9:54 PM), <https://www.law360.com/realestate/articles/1387338/nyc-judge-tosses-eviction-cases-with-wuhan-virus-notice> [<https://perma.cc/CZ7U-Y7J2>].

14. A Black woman tenants’ rights attorney filed an attorney grievance against a white male landlords’ attorney, alleging that he called her a “bitch” several times in court. In 2020, the Appellate Division of New York issued a decision suspending the white male attorney for three months. See *Denenberg v. Att’y Grievance Comm. for First Jud. Dep’t*, 192 A.D.3d 76 (N.Y. App. Div. 2020). This is one of the very few and rare instances where an attorney is disciplined for misogynistic and racist conduct. What I found interesting about the decision is that there is much analysis on whether the Respondent apologized. See *id.* at 81. If he had apologized, it is unclear of whether he would have been so disciplined. Perhaps the onus would have been shifted to the grievant and, in turn, her bias threshold would have become the focal point of the grievance, not the white male attorney’s conduct. Thus, an apology—which may not even be sincere—places the burden on the person experiencing bias to forgive.

15. Dorothy E. Roberts, *Foreword: Race, Vagueness, and The Social Meaning of Order-Maintenance Policing*, *Supreme Court Review*, 89 J. CRIM. L. & CRIMINOLOGY 775, 788 (1999). (“In the United States, vagrancy-type laws served the same function in the regime of white domination of Blacks. The colonies sought to prevent slave rebellions by enacting laws that prohibited slaves from traveling without a pass and permitted slave patrols to arrest slaves on mere suspicion of sedition. After Emancipation, white southerners tied freed Blacks to plantations through Black Codes that punished vagrancy. As the Court described them, ‘vagrancy laws were used after the Civil War to keep former slaves in a state of quasi slavery.’ A more contemporary example of the oppressive restriction of movement is the requirement of the apartheid regime in South Africa that Blacks carry passes while traveling in white districts.”).

was not any rage, thus hug your brother's murderer, proclaim a church bomber has been forgiven—be gracious and dignified. The question remained: Why did I have to build my tolerance threshold to acclimate to a hostile environment but the people creating that environment could remain the same?

Perhaps the greatest irony is that the threshold standard is seen in the remedy for discrimination itself. The American Bar Association adopted a rule that incorporated discrimination as misconduct. Under 8.4(g), it is professional misconduct for a lawyer to:

[E]ngage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law.¹⁶

Most states have adopted the ABA's rules on professional conduct, thereby incorporating a measure for disciplinary procedures. The Chair of the Committee on Standards of Attorney Conduct of the New York State Bar Association stated: "Although Rule 8.4(g) does not expressly state that a complainant must exhaust administrative and judicial remedies before filing a discrimination complaint with a grievance committee, that is how the rule operates on a practical level."¹⁷ The expectation to exhaust all remedies before filing a complaint under the rule effectively operates to force individuals to withstand bias and discrimination for a longer period of time than they would if they immediately sought relief. The abusive conduct is deprioritized, and the burden is placed on the complainant to prove that they tolerated a sufficient amount of it.

One of the main mistakes of the legal profession is to approach bias and discrimination complaints as personality conflicts. For example, sexual harassment in a legal office may be seen as two attorneys who do not get along rather than one lawyer harassing the other. Since attorneys, particularly from a marginalized group, are expected to have a high threshold to absorb bias, the imbalance of power in these situations may be ignored. The same happens in the courtroom. In my case when opposing counsel yelled and talked over me, the judge kindly asked her at least eight times to allow me to finish my sentence. There was no admonishment: "If you do not stop, I will hold you accountable, hold you in contempt, or stop the proceeding." Instead, it appeared as two attorneys

16. MODEL RULES OF PRO. CONDUCT r. 8.4 (AM. BAR ASS'N 2016).

17. Brandon Vogel, *Public Comments Requested: Proposal to Adopt ABA Model Rule 8.4(g) in New York's Rules of Professional Conduct*, N.Y. STATE BAR ASS'N (Mar. 25, 2021), <https://nysba.org/public-comments-requested-proposal-to-adopt-aba-model-rule-8-4g-in-new-yorks-rules-of-professional-conduct> [<https://perma.cc/2HZS-FCTG>].

sparring during a case rather than abusive and unprofessional behavior that should be addressed to prevent further disruption. Treating racist, misogynistic, transphobic, or other discriminatory behavior as two people in disagreement equalizes behavior where there is often an imbalance of power. The effect is that it allows the decisionmaker—whether it be a judge or head of a legal office—to avoid taking responsibility for stopping the unprofessional conduct.

B. Selective Offense: Constructing What Is Unprofessional

In a meeting, a white male colleague called me derogatory names. I reacted the way many do during an attack: I froze. This behavior was not new for him and as it wore on, my bias threshold reached its capacity. Later that day, I challenged his behavior openly as misogynistic and racist. He was clearly unprofessional—or so I thought. As I sat in various conversations processing while simultaneously explaining what happened, reality slowly sunk in that his behavior was not offensive to everyone. Lips moved, but I only heard garbled words in twos: “team player,” “get along,” “minor bump,” “take personally,” “right approach.” These words pieced together an ugly truth—one that my elders long warned. Some are more offended by a Black woman challenging racism than by a white person perpetuating it.

Selective offense is the normalization of racist, misogynistic, ableist or otherwise discriminatory behavior while the denunciation of said behavior is seen as disruptive. For example, this is seen when employees sit in meetings for months or years with a known problematic colleague who engages in harmful racist, misogynistic, or transphobic behavior and take no action to meaningfully admonish or halt the behavior; yet the same employees are suddenly—or selectively—offended when someone from a marginalized group challenges the problematic employee’s behavior. This manifests professionalism as a racial construct because the problematic employee who engages in racist, misogynistic, or transphobic behavior is not deemed unprofessional, yet the tone, approach, and timing of the person who challenges said behavior is so scrutinized.¹⁸

There are four stages to selective offense. First, people minimize and fail to admonish the harmful behavior. Second, people impute charm or innocence to the harmful behavior. Even the most clear-cut inappropriate behavior could be likened to humor or quirk. Not deemed harmful, it is instead attributed to the personality of the person perpetuating the harm. The distinction between

18. Erika Stallings, *When Black Women Go From Office Pet to Office Threat*, MEDIUM (Jan. 16, 2020), <https://zora.medium.com/when-black-women-go-from-office-pet-to-office-threat-83bde710332e> [<https://perma.cc/7SCP-5UN3>].

personality and behavior is crucial because many believe a person can correct another's behavior—but not their personality. Third, people accept the harmful behavior. Fourth, any challenges to the harmful behavior are seen as a personal character attack rather than rectifying harm.

During my tenure in the legal field, I have observed how these four stages unfold, particularly when the person engaging in harmful conduct is a white male. Once in conversation with attorneys, one mentioned a white male judge who was known to have a moody disposition. He remarked with a chuckle, “We call him Grumpy Grandpa.” The judge’s disgruntled disposition was transformed into a charming quirk that humanized him. For all intents and purposes, his behavior was unprofessional. A judge’s demeanor is essential to the role, especially when interfacing with litigants who are traumatized or stressed by the eviction process. Yet not only was the harmful effect ignored, it was turned into an attribute of his personality. There is also another layer as to why this harmful behavior is attributed to charm or humor. The act of humiliating, regulating, or rebuking people of color, especially in a public setting, has historically been a form of entertainment. From lynching as an American pastime to interactions with the police to degrading interactions in the workplace, inflicting pain on people of color is a public sport. Thus, when a person perpetuates this harm, they are seen as humorous because their actions are amusing for some to watch.

This begged the question: If a person of color or woman judge came in every day for years with a grouchy disposition, would they also be likened to charming or would they be perceived as unprofessional and temperamental?¹⁹ Conversely, I have also observed some judges of color attempt to implement order in their courtrooms by chiding attorneys who engage in conduct that is racist, misogynistic, or otherwise discriminatory. In response, their judicial temperament and bias

19. A group of judges of color issued a report on institutional racism within the New York court system. See THE JUDICIAL FRIENDS ASSOCIATION, REPORT TO THE NEW YORK STATE COURT’S COMMISSION ON EQUAL JUSTICE IN THE COURTS 45 (2020), <https://www.nycourts.gov/LegacyPDFS/ip/ethnic-fairness/pdfs/Judicial-Friends-Report-on-Systemic-Racism-in-the-NY-Courts.pdf> [<https://perma.cc/9237-XQRT>] (“Housing Court does not reflect the diversity of the community, either ethnically or with respect to race. This diversity is lacking both in the judiciary and among court attorneys. For example, in Kings County, over 80 [percent] of the population which utilizes the court as litigants are people of color. Further, these litigants are typically unrepresented. Of the fifty (50) New York City Housing Court Judges, fifteen (15) judges are assigned to Kings County, yet there are only three (3) judges of color in the borough.”). Similarly, a group of Latinx and Hispanic judges in New York courts issued a report noting that out of fifty Housing Court judges, only four are Latinx. See SALLIE MANZANET-DANIELS, OVERVIEW OF LATINOS/HISPANICS IN THE NEW YORK COURT SYSTEM 2020 (2020), <https://www.nycourts.gov/LegacyPDFS/ip/ethnic-fairness/pdfs/Overview-of-Latino-Judges-2020.pdf> [<https://perma.cc/E63P-LP94>].

threshold are scrutinized as much or more than the attorneys' harmful conduct. It is yet another example of how inappropriate behavior is normalized.

An additional contributing factor to selective offense is the use of public interest work as cover for racism or bias. Why challenge a person's harmful behavior when they are supposedly doing the work of social or racial justice?²⁰ The "my best friend is Black" defense to allegations of racism becomes "my clients are Black," "my staff is Black," or "my courtroom litigants are Black." Proximity to people of color or any marginalized group is weaponized to inoculate the person engaging in harmful conduct. And so it becomes offensive and even unprofessional when a person identifies racism against such a person. The spoken truth: "I'm not like the virulent racists on our TV screen." The unspoken truth: "I could be like them thus I deserve recognition for even moderately attempting to be racially aware."

C. Justice Is Blind and the Reasonable Person Is White

On June 1, 2020, I learned that police officers killed a Black man in Minneapolis. Against my better judgment, I watched the video of the murder circulating on social media. The video depicted hatred, violence, and a visual display of antiblackness.

During the first days after George Floyd's murder, I questioned whether everyone watched the same video. There was unusual silence in the American workplace, including the legal sector. I am part of many different communities in the legal profession such as working groups, boards, and coalitions. Routine business emails continued. Since I spent years internalizing the bias threshold discussed in Subpart I.A, I began to wonder whether I was unprofessional for my inability to complete work due to trauma. I was jarred back to reality in an unexpected way. A former client of mine, a Black woman, emailed me: "Ms. Goodridge, with all that's going on, I just wanted to see if you were okay." I had

20. Anastasia Reesa Tompkin, *How White People Conquered the Nonprofit Industry*, NONPROFIT Q. (May 26, 2020), <https://nonprofitquarterly.org/how-white-people-conquered-the-nonprofit-industry> [https://perma.cc/JG3P-NDSN] ("The philanthropic sector, by its very nature and definition, purports to serve 'disadvantaged communities,' and over the years has presented itself as a more people-centered, equity-driven alternative to the cold corporate world. Due to historical racism and systemic inequalities, the majority of 'disadvantaged communities' are predominantly lower-income [B]lack and brown citizens, who have little social capital and little financial security. The nonprofit industry rakes in billions of dollars annually off the creation of programs and services designed with this demographic in mind. Then, white supremacy in a basic definition, means white people having the most access to and control over money, resources and people. If we sift through the centuries from slavery through segregation and ask whether there has been any distinct transference of wealth and power to [B]lack and brown people, the answer would be a resounding no.").

been operating on the lie that I was justified in ignoring the pangs of anxiety quietly roaring inside of me while I continued working to protect my clients. In five words—“with all that’s going on”—my client forced me to confront the underbelly of American racism. In that moment of vulnerability, I replied that I was not okay. She responded with a lengthy Bible passage and words of encouragement that we will get through this.

I called Black colleagues and friends who also worked in public interest law in various positions to inquire if they were experiencing the same silence. I was not alone. One friend said, “I just saw a Black man get lynched on television and people are sending emails about service and motions. *What is going on?*” In almost all instances that I knew of, legal organizations were mostly silent until a person of color raised that the murder of George Floyd required more than a cursory mention—this was a racial reckoning.

Many people adhere to the axiom that discussion of politics in the workplace must be avoided in order to maintain a harmonious environment. In the legal profession, however, it goes beyond politics. Lawyers have been taught for centuries that thinking like a lawyer means putting all emotions aside.²¹ Divesting of emotion for the sake of legal reasoning in and of itself is an exercise of privilege. For example, law students have been forced to complete exam questions that reenact situations such as Michael Brown’s murder in Ferguson, Missouri.²² Even the way law students are taught to view defendants and their circumstances is through the narrow prism of the reasonable person standard. The reasonable person is supposedly a raceless and genderless blank slate which parallels with the ideology that justice is blind. However, stripping identity from the reasonable person means that whiteness becomes the norm and lens which legal advocates

21. Susan A. Bandes, *Feeling and Thinking Like a Lawyer: Cognition, Emotion, and the Practice and Progress of Law*, 89 FORDHAM L. REV. 2427 (2021).

22. See Conor Friedersdorf, *At Law School, Is Insensitivity Grounds for Objection?*, ATLANTIC (Dec. 19, 2014), <https://www.theatlantic.com/education/archive/2014/12/at-law-school-is-insensitivity-grounds-for-an-objection/383882> [<https://perma.cc/F3FB-RT2U>] (“Law Professor Eugene Volokh recently wrote about a controversial exam question at UCLA, where he teaches. The question noted a protest in Ferguson, Missouri, where the stepfather of Michael Brown, the unarmed man killed by police, reacted to news that Officer Darren Wilson would not be charged in the killing. Overcome with anger, he shouted to a crowd of protestors, ‘Burn this bitch down!’ Students were asked to write a memo analyzing how the First Amendment applies to such speech. Several complained. Said one UCLA student: ‘These kinds of questions create a hostile learning environment for students of color, especially [B]lack students who are already disadvantaged by the institution.’ The professor who gave the test agreed to adjust grades of test-takers who did worse on that question than the rest of their First Amendment exam.”). See also Conor Friedersdorf, *Are Today’s Law Students Tough Enough?*, ATLANTIC (Jan. 12, 2015) <https://www.theatlantic.com/education/archive/2015/01/are-todays-law-students-tough-enough/384376> [<https://perma.cc/HD8C-NHDJ>].

look through. Though fictional and imaginary, the reasonable person in “its present manifestation, applied within the trappings of the past, becomes less reflective of the population that will soon become the majority, becomes less legitimate if law’s purpose is to serve the People.”²³

Even in antiracist, progressive spaces, I observed how the law was envisioned as motion-writing, research, and oral arguments while racial and social justice were ancillary. Activities such as attending a protest related to the attorney’s field or engaging in racial justice learning were seen as additional tasks to the legal work—even though they helped an attorney to have cultural competency to better understand their clients. I also observed that courts often inferred a dichotomy between the fields of housing and fair housing. Housing denotes Housing Court, which typically handles eviction and repair cases. Fair housing applies to cases pertaining to antidiscrimination laws such as the Fair Housing Act. In my experience, housing operates in a more colorblind fashion than fair housing. Some legal organizations have a racial justice best practice to name the client’s race in legal motions. Other than the mention of a client’s race in a motion, race or the role it plays is rarely emphasized in housing cases, even in a practice where people of color comprise the majority of tenants facing eviction, the effects of gentrification and systemic racism.²⁴ In contrast, a client’s disability, income and contours of reasonable accommodation are more readily understood. I noticed that the actual teaching of race discrimination was not common and often referred to as a fair housing issue, even if the legal claims pertaining to race were squarely in legal codes related to eviction. This, of course, is a function of how the law and the reasonable person centers whiteness.

This occurs in other areas as well. After the murder of George Floyd, many legal institutions such as law firms, courts, and legal service organizations provided ongoing antiracism initiatives for their employees. Though there are multiple ways to discuss antiracism, equity, and inclusion, I noticed that in many instances, the framing focused almost entirely on white allyship. This meant that there were only rudimentary discussions of racism, (centering questions like: What does

23. Marvin L. Astrada & Scott B. Astrada, *Law, Continuity and Change: Revisiting the Reasonable Person Within the Demographic, Sociocultural and Political Realities of the Twenty-First Century*, 14 RUTGERS J.L. & PUB. POL’Y 196, 210 (2017).

24. In October 2020, I organized the conference *Good Trouble: A National Conversation on Black Lives Matter and Tenants’ Rights*, sponsored by the UCLA School of Law Critical Race Studies Program and New York Law School. The conference featured all Black attorneys, organizers, and professors who work in anti-eviction. It was one of the first conferences to feature an all-Black panel in legal services speaking on Black lives. One of the many topics discussed was the concept of justice as blind and raceless. Critical Race Studies, *Good Trouble: A National Conversation on Black Lives Matter and Tenants’ Rights*, YOUTUBE (Oct 6, 2020), <https://www.youtube.com/watch?v=DmAezCniQGc> [<https://perma.cc/3EP4-23BF>].

racism look like?) which did not allow for a more nuanced understanding of concepts like colorism, featurism, intraracial violence, and intersectional identities.²⁵ In addition, the tailoring of racial justice education for a white audience often resulted in examining race only through a Black and white binary. This excluded other racial groups such as Asian American and Pacific Islander and Native American. As a result, the only way for people of color in those rooms to participate was to be of service to the learning experience of their white peers rather than to process their own pain or even learn themselves.²⁶ This functions to make the purpose of the presence of marginalized groups to be useful to the education of their white peers.²⁷

In fact, when I later asked non-Black people why there was stifling silence when the news first showed the murder, the responses were: “I did not know what to say,” “I did not feel I had license to speak because I am not Black,” “I thought it might be impolite to raise this topic at work,” and “I did not think it was related to our work of eviction.” Attorneys who represent people of color everyday still felt they did not have license to talk about race. This is a systemic reflection of how legal practice functions in a largely colorblind fashion.

25. In many ways, diversity in law school provided the testing ground for civil rights cases that would impact public schools throughout the nation. Four years before the U.S. Supreme Court decided the landmark decision *Brown v. Board of Education*, 347 U.S. 483 (1954), the Court ruled in another case about racial segregation in schools. In *Sweatt v. Painter*, Herman Sweatt, a Black man, challenged the decision by the University of Texas Law School to deny his admission because of his race. See 339 U.S. 629, 631 (1950). Ruling in Sweatt’s favor, the Court made an interesting observation: “The law school, the proving ground for legal learning and practice, cannot be effective in isolation from the individuals and institutions with which the law interacts.” *Id.* at 634. On its face, this seems to align with the idea that lawyers must reflect the communities they serve. But the key issue in the case was integration, therefore the point indicates that it would be beneficial for an all-white law school to admit Black students as an opportunity for white future lawyers to gain cultural competency. Like in *Grutter v. Bollinger*, the rationale for admitting Black students in the law school was not to recognize historical discrimination and exclusion of those Black students, but for the benefit of their white classmates to gain real world experience. See *Grutter v. Bollinger*, 539 U.S. 306, 308 (2003) (“But the Law School defines its critical mass concept by reference to the substantial, important, and laudable educational benefits that diversity is designed to produce, including cross-racial understanding and the breaking down of racial stereotypes. The Law School’s claim is further bolstered by numerous expert studies and reports showing that such diversity . . . better prepares students for an increasingly diverse work force, for society, and for the legal profession.”).

26. See Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518 (1980); see also Derrick A. Bell, Jr., *Diversity’s Distractions*, 103 COLUM. L. REV. 1622 (2003).

27. Symposium, *On Grutter and Gratz: Examining “Diversity” in Education*, 103 COLUM. L. REV. 1588 (2003).

II. ACCOUNTABILITY: DECONSTRUCTING PROFESSIONALISM AS A RACIAL CONSTRUCT

After laying out my experiences and thoughts on professionalism as a racial construct, it is time for you to take action. The first step is to absorb this Essay in its entirety and identify what your role has been: target, bystander, accomplice, challenger, or perpetrator of professionalism as a racial construct. If it is difficult to identify your role, ask yourself how you are reacting to this Essay. Are you defensive? Ready to share it privately to an individual colleague? Ready to share it publicly to all of your colleagues? Or are you reticent about sharing this Essay with colleagues because you believe it will negatively impact your career? Will you ignore this Essay entirely? How you react to this Essay—the experiences of a Black woman attorney speaking on professionalism as a tool for white supremacy—may correlate with the role you play in challenging it within your own institution.

Next, send the Essay to family or friends to discuss ways that you can (further) challenge professionalism as a racial construct. The basis of professionalism as a racial construct is the belief that the racial hierarchy which produces the phenomenon will remain the same and that practitioners will adapt to it rather than challenge it. Since it has been deeply inculcated into the legal practice and American workforce, these conversations may prove difficult and enlightening because fear of change undergirds much of the perpetuation of professionalism as a racial construct.

The next step is to send this Essay to your colleagues for a discussion at the next staff meeting. You can discuss the Essay generally or discuss the Subparts over multiple meetings. The main question should be: How does professionalism as a racial construct manifest at this institution?

Moving forward, in order to disrupt professionalism as a racial construct, you must name it by using the framework in this Essay to identify the conduct as it happens. For example, you can say:

Why are you so bothered that Jane, a Black woman, called out an attorney for his racist conduct but you do not have this same reaction towards John, a white man, who still cannot correctly pronounce the names of people of color after ten years of working here? This seems like selective offense.

Your Honor, opposing counsel has interrupted me several times and there has been no warning of contempt or forcing them to

leave the courtroom. Are my client and I expected to silently endure this—a high bias threshold—during this proceeding?

Respondent is Chinese American and lives in the Soho section of New York. The area has historically been comprised of 70 percent Asian American and Pacific Islanders; however in the last decade, that population has drastically declined due to gentrification, redlining and displacement. This eviction case is not divorced from that. Respondent would like to remain in her community.

In writing this Essay, I had an internal tug of war in speaking about my experiences and those of many people of color in the legal profession. I struggled with the reality that some will be more offended by reading the truth of professionalism as a racial construct on these pages than the fact that it exists in the halls of courthouses, law firms and legal organizations. I almost quelled my own voice and the fire within. Then I remembered the court appearance in 2020, after George Floyd's murder, where the Black judge and I both had weary eyes which met, for a moment, as opposing counsel rattled on about the eviction moratorium. I remembered brunch with friends when they spoke about being the first generation of Black, Latinx, and Asian immigrant parents and internalizing the bias threshold—sacrifices their parents made to come to this country meant ignoring and tolerating racism at work. I remembered the many times I watched people of color shy away from staunch racially progressive positions under a belief that disassociation would help them appear more professional. I remembered the conversations with relatives, friends, and colleagues of color, venting and processing a racist incident and in determining how to respond, the pendulum swinging between comfort of white peers, self-respect, and rage. And I remembered using chemicals to destroy and straighten my natural hair during job interviews in law school in the hopes of increasing my chances of securing employment. I remembered all of these contours of professionalism as a racial construct. And I remembered my own duty to disrupt the system and get in good trouble.

Proposed Amendments to Rules of Prof Conduct

Reference #	24930210
Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	Susan Margolis
From the choices below, we ask that you indicate your position on the proposed amendments to rule 1.2. (This is a required field.)	DISAGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R1.2" to the file name).	<p>This proposed rule will be subject to the challenge as the old Bus. & Prof. Code section 6068(f) (offensive personality statute) which was struck down as unconstitutionally vague by the Ninth Circuit in United States v. Wunsch (1996) 84 F.3d 1110.</p> <p>A more effective way of dealing with the issue is to mandate training while young adults are still in law school, before they are admitted to practice, when they are still capable of being trained by their professors to treat the law as a profession and not as a blood sport.</p> <p>In terms of procedural requirements, such as agreeing to continuances, that type of thing can be the subject of local court rules, enforced through civil sanctions.</p>
From the choices below, we ask that you indicate your position on the proposed amendments to rule 8.4. (This is a required field.)	DISAGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on the proposed new rule 8.4.2. (This is a required field.)	DISAGREE with the proposed recommendations

Proposed Amendments to Rules of Prof Conduct

Reference #	24963841
Are you an attorney?	No
Commenting on behalf of an organization	Yes
Name	NC Carlson
Professional Affiliation	The Consumer Bar
From the choices below, we ask that you indicate your position on the proposed amendments to rule 1.2. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on the proposed amendments to rule 8.4. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on the proposed new rule 8.4.2. (This is a required field.)	AGREE with the proposed recommendations

Proposed Amendments to Rules of Prof Conduct

Reference #	25070247
Are you an attorney?	Yes
Name	Thomas J. Hutchinson
Professional Affiliation	Norman Dowler LLP
From the choices below, we ask that you indicate your position on the proposed amendments to rule 1.2. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on the proposed amendments to rule 8.4. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on the proposed new rule 8.4.2. (This is a required field.)	AGREE with the proposed recommendations

Proposed Amendments to Rules of Prof Conduct

Reference #	25070602
Are you an attorney?	Yes
Commenting on behalf of an organization	No
Name	Tony Tootell
Professional Affiliation	Foley & Lardner LLP
From the choices below, we ask that you indicate your position on the proposed amendments to rule 1.2. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on the proposed amendments to rule 8.4. (This is a required field.)	AGREE with the proposed recommendations
From the choices below, we ask that you indicate your position on the proposed new rule 8.4.2. (This is a required field.)	AGREE with the proposed recommendations

Proposed Amendments to Rule 9.7

Reference #	25077765
Are you an attorney?	Yes
Commenting on behalf of an organization	Yes
Name	Merete Rietveld
Professional Affiliation	Women Lawyers Association of Los Angeles
From the choices below, we ask that you indicate your position on the proposed amendments to rule 9.7. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R9.7" to your file name).	The Women Lawyers Association of Los Angeles supports the letter submitted by the California Civility Task Force on June 9, 2023 in favor of the State Bar's revised Rules of Professional Conduct on civility.
From the choices below, we ask that you indicate your position on the proposed new rule 2.3. (This is a required field.)	AGREE with the proposed recommendations
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below (add "R2.3" to your file name).	The Women Lawyers Association of Los Angeles supports the letter submitted by the California Civility Task Force on June 9, 2023 in favor of the State Bar's revised Rules of Professional Conduct on civility.