

Improving Civility

CALIFORNIA LEAGUE OF CITIES
2024 ANNUAL CONFERENCE
OCTOBER 17, 2024

HON. WENDY CHANG, LOS ANGELES SUPERIOR COURT
HON. MARY STROBEL, (RET.), SIGNATURE RESOLUTION

Civility Oath

"As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy and integrity."

Rule 9.7. Oath required when admitted to practice law
(Attorney Oath of Office (eff. May 23, 2014))



Applies only to
those taking the
attorney oath
after its
adoption in
2014*

Loyola Law School Swearing In Ceremony, 12/2/2019
<https://www.lls.edu/thellsdifference/facesoflls/swearinginfall2019/swearinginfall2019.html>

Why talk about civility?

Effect on administration of justice

Personal effect on lawyers

Public perception of lawyers

Link between incivility and bias

New requirements for lawyers

Effect on Administration of Justice

“Incivility in open court infects the process of justice in many ways. It compromises the necessary public trust that the system will produce fair and just results; it negates the perception of professionalism in the legal community, and it erodes respect for all people involved in the process.”

Lasalle v. Vogel (2019) 36 Cal. App. 5th 127, 134, quoting *In re Hillis* (Del. 2004) 858 A.2d 317, 324.



Personal
effect on
lawyers

“Chronic stress and distress are natural responses to living in the crucible of high stakes, “take no prisoners” litigation and legal practice, where sarcasm, rudeness, hostility, belittlement, and even downright bullying are characteristic.”

Bree Buchanan, “Breaking the Cycle of Incivility through Well-Being,” ABTL Report, Los Angeles Chapter, Summer 2019.

Public Perception of Lawyers and Justice System

In a 2020 Gallup Poll, a meager 21% of respondents rated lawyers as having very high/high honesty and ethical standards.

*CA CIVILITY TASK FORCE
REPORT

“The legal profession has already suffered a loss of stature and of public respect. This is more easily understood when the public perspective of the profession is shaped by cases such as this where lawyers await the slightest provocation to turn upon each other.”

Lossing v. Superior Court (1989) 207 Cal.App.3d 635, 641.

Link Between Incivility and Bias

CA CODE OF JUDICIAL ETHICS

CANON 3

A judge shall perform judicial duties without bias or prejudice. Canon 3B(5)

A judge shall require lawyers in proceedings before the judge to refrain from (a) manifesting by words or conduct, **bias, prejudice or harassment**. Canon 3B(6)

CA RULES OF PROF. CONDUCT

RULE 8.4.1(A)

In representing a client...a lawyer shall not (1) **unlawfully harass** or **unlawfully discriminate** against persons on the basis of any **protected characteristic**; or (2) **unlawfully retaliate** against persons.

New (and Some Pending) Requirements for Lawyers

California Civility Task Force

BEYOND THE OATH:

Recommendations for
Improving Civility

Initial Report of the
California Civility Task
Force

A joint project of the California
Lawyers Association and the
California Judges Association

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New 1 hour MCLE Civility Requirement

STATUS: APPROVED
AND IMPLEMENTED

COMPLIANCE PERIOD
ENDING ON OR
AFTER JANUARY 31,
2025

(STATE BAR RULE
2.72)

Judicial Training

STATUS: APPROVED
AND IMPLEMENTED

PROVIDE TRAINING
TO JUDGES ON THE
NEED TO CURTAIN
INCIVILITY, AND
MODEL CIVILITY,
INSIDE AND OUTSIDE
THE COURTROOM,
AND EDUCATE THEM
REGARDING
AVAILABLE TOOLS TO
DO SO

Annual oath requirement

STATUS:

PENDING

APPROVAL

BEFORE SCOCA

ANNUALLY

AFFIRM OR

REAFFIRM

CIVILITY OATH

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Proposed Changes to the California Rules of Professional Conduct

STATUS:
PENDING
APPROVAL
BEFORE SCOCA

Proposed Comment to Rule 1.2

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].)

Proposed Comment to Rule 8.4

[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.

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.

Hypo 1

Opp. counsel requests extension of time to answer discovery.

Extension could result in slight delay of trial.

Opp. counsel has previously denied your request for extensions on discovery.

Time not particularly of the essence for your client.

Hypo 1. response

1. Deny request because it could delay trial.
2. Deny request because professional courtesy not extended to you previously.
3. Deny request because it puts you in a weaker position vis a vis your opponent.
4. Ask client whether extension should be granted.
5. Ask client and advise that extension requests should normally be granted.
6. Grant request.

Hypo 2

Opp. counsel uses a phrase you find culturally offensive in a letter. Phrase is not directed to you personally.

Hypo 2 – response

1. Assume good faith on the part of opp. counsel and do nothing.
2. Write a letter to opp. counsel pointing out phrase but suggesting it was unintentionally offensive on counsel's part.
3. Write a letter to opp. counsel pointing out the offensive nature of the communication.
4. Alert the judge to opp. counsel's improper behavior.
5. Other?

Hypo 3

During a hearing, opp. counsel ascribes to you a position you have not taken.

Hypo 3 –response

1. Object and tell judge counsel is lying.
2. Object and ask to be heard immediately to correct the record.
3. Wait until your turn to speak and tell judge counsel is lying.
4. Wait until your turn to speak then give your version of events.
5. Other?

Hypo 4

Opp. counsel does not timely respond to your discovery requests, and for 4 mths does not respond to your emails asking for status.

You file appropriate motions.

After motions served, opp. counsel tells you his wife is in the hospital after having suffered a heart attack, he has been out of the office trying to attend to his family. He asks you to continue your motions 60 days.

Opp. counsel practices at a firm of 20 lawyers.

Trial is set 18 months in the future.

Hypo 4 - response

1. Tell him no. He ignored your emails and forced you to file the motions.
2. Agree, on the condition that he waives all objections, including the attorney client privilege and work product doctrine.
3. Tell the judge that your motions should be granted because opposing counsel's firm has 20 lawyers in it and others could have handled everything even if he could not.
4. Agree and continue the hearings without conditions

Hypo 5

Your new client is a recently appointed senior officer in your client's agency, and comes from a private practice background. She and the agency have been sued for sexual harassment and various forms of discrimination.

Your client instructs you to be aggressive, to “have no mercy” to the other side, to “bury them in paper” and to grant no courtesies or extensions.

Hypo 5 –response

1. Follow her instructions completely. She is a new client and you need to keep her happy.
2. Tell her you will follow her instructions, then do as you always do with opposing counsel, granting reasonable extensions.
3. Explain to your client your ethical obligations regarding civility and that you are required to grant reasonable extensions of time, even if she does not agree.
4. Other?

Hypo 6

You are defending a municipality in a civil jury trial.

You have brought a litigation tech expert to help you.

Opp. counsel has no tech support.

You question your witness about Exh. C, which was projected on the screen. You turn off the screen when finished.

Opp. counsel tries to follow up, but cannot find her copy of Exh. C. She asks if your tech can project it back onto the screen.

Hypo 6 - response

1. No. Exhibit C is bad for your client and you're not going to help the other side with it.
2. No, because your client softly whispered "no" to you after counsel asked.
3. No. Opp. counsel should have hired her own tech expert, or offered to share in the cost of yours.
4. Agree. It was just on the screen and it is not hard to project it back up.
5. Agree. Explain to your client on the next break why it was in their interest to cooperate.

Hypo 7

You are representing a public agency.
Plaintiff is self-represented.

Plaintiff is having difficulty serving the agency. You have specially appeared to inform court your client has not been served.

After several CMCs, judge asks you to accept service on behalf of your client.

Hypo 7 – response

1. Deny request because public lawyers have no greater obligation to accept service than private lawyers.
2. Deny request because your agency has not specifically given you authority to accept service of process.
3. Inform judge you will check with your client on whether you can accept service, and will inform plaintiff before next CMC.
4. Inform judge you will check with your client on whether you can accept service. Inform client of civility and professionalism obligation, and suggest future authorization when Plaintiff is self-represented.
5. Other?

Hypo 8

You are arguing your client's summary judgment motion.

45 seconds into your prepared remarks, the judge interrupts you to ask a question just as you are about to make the most important point.

What do you do?

Hypo 8 – response

1. Talk over the judge because this is the key point in your argument.
2. Stop and listen to the judge's question, then return to making your point as if she hadn't asked her question – the point you are making is going to win the day and her question is irrelevant.
3. Stop, listen to the question, answer the question, then return to your argument.
4. Stop, listen to the question, tell the judge you will address that point later, then return to your argument.

Hypo 8 modified

You answer the question and try to return to your argument, but the judge interrupts you again with another question before you can reach the key point in your argument. The judge is clearly leaning against your position.

What do you do?

Hypo 8 modified – response

1. Raise your voice and talk over the judge because this is the key point in your argument.
2. Stop and listen to the judge's question, then return to making your point.
3. Answer the question, then return to your argument.
4. Other?

Hypo 8 second modification

You try again to return to your argument, and the judge asks another question. The judge cautions you about interrupting her questioning.

By now, you are certain the judge is against your position and you are certain the judge is wrong, but she has so many questions and she won't let you get to the point you want to make.

What do you do?

Hypo 8 second modification – response

1. Raise your voice and say “will you just let me finish?! I have the right to make my record” and launch immediately into your argument
2. When the judge warns you about interrupting her, answer “but you keep interrupting me – you are biased against me because I am a [member of a protected category]”
3. When the judge warns you about interrupting her, answer “with all due respect your honor, in all of my [x] years of practice, I’ve never seen a judge act this way”
4. When the judge warns you about interrupting her, answer “but all the other judges rule [like I am arguing for]”
5. When the judge warns you about interrupting her, answer “my apologies Your Honor, I did not mean to” and wait until the Judge is finished talking. Then, after you have answered all questions, return to your argument.
6. Other?

Hypo 9.

You and your co-counsel are defending a municipality in a jury trial.

Throughout the two-week jury trial, the judge refers to male opp. counsel by name, but refers to you and co-counsel as “the ladies from [your city].”

What do you do?

Hypo 9 - response

1. Do nothing – you think your case is strong.
2. Outside the presence of the jury, raise the issue to the judge and ask to be addressed in the same manner as opposing counsel.
3. Outside the presence of the jury, object and accuse judge of bias.
4. When jury is present, after judge refers again to you as “ladies of [your city], stand and state your and co-counsel’s name.
5. Other?

Sources of Guidance on Civility

California Civility Task Force Report

State Bar Guidelines of Civility and Professionalism

Bar Associations

- [Bar Association of San Francisco Guidelines on Civility and Professionalism](#)
- [Contra Costa County Bar Association Standards of Professional Courtesy](#)
- [Los Angeles County Bar Association Code of Civility Guidelines](#)
- [Marin County Bar Association Code of Civility](#)
- [Orange County Bar Association Civility Guidelines](#)
- [Riverside County Bar Association Guidelines of Professional Courtesy and Civility](#)
- [Sacramento County Bar Association Standard of Professional Conduct](#)

[San Bernardino County Bar Association Civility Code](#)

[San Diego County Bar Association Attorney Code of Conduct](#)

[Association of Business Trial Lawyers of San Diego Ethics, Professionalism and Civility Guidelines](#)

[Santa Clara County Bar Association: Code of Professionalism](#)

[Ventura County Bar Association Guidelines on Professional Conduct and Civility](#)

[American Board of Trial Advocates Code of Professionalism](#)

[American Board of Trial Advocates Principles of Civility, Integrity and Professionalism](#)

Superior Court and District Court Guidelines

Superior Court, County of	
Del Norte	Sacramento
Glenn	San Diego
Kern	San Francisco
Los Angeles	Santa Clara
Marin	Sierra
Mendocino	Siskiyou
Mono	U.S. Dist. Court, Central District,
Placer	Northern District, Southern District
Plumas	