

CIVILITY IN THE LEGAL PROFESSION

- **What is considered Uncivil behavior in the legal profession? Is it just a lack of good manners?**

Just like the Supreme Court's view of "Porn," you'll know it when you see it.

Does it depend on Context, Tone, or Relationship between the parties?

There are also certain guidelines developed through court rules, statutes, and State Bar guidelines:

C.C.P. 583.130

State Bar Civility Guidelines

Local Rules of Court, e.g., LASC's Civility Guidelines

- **What is the point of Civility in the legal profession, and why is it highlighted so much these days?**

The oath to the Constitution, and overall honesty and Integrity.

Attorneys who work for the government and their duty to the Constitution.

The new Rule of Court 9.7 adds the following to the required Oath for a California attorney: "As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy, and integrity."

The State Bar has added an hour of MCLE requirement for Civility, starting with the March 2025 reporting group.

- **How do you distinguish between Incivility and zealous advocacy?**
- **What is the purpose of Civility if Clients want their attorney to be an attack dog and make life hell for the other side?**

Importance of case selection and managing client expectations

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. ...

Proposed amendment to Rule 1.2: Rule 1.2 Comment [1], as modified, clarifies that a lawyer has the authority to conduct themselves with civility, even if their client directs otherwise, so long as the lawyer does not prejudice the rights of their client. (Source: State Bar of California).

A new standalone Rule 8.4.2 is being proposed: Subparagraph (a) of the proposed rule states that a lawyer shall not engage in incivility in the practice of law or related professional activities. Subparagraph (b) defines incivility as significantly unprofessional conduct that is abusive or harassing and determined on the basis of the facts and circumstances surrounding the conduct. (Source: State Bar of California).

- **Does being Civil in the context of legal representation indicate weakness?**
- **Doesn't Civility begin in the attorney's office?**

Rule 8.4.1(b):

In relation to a law firm's operations, a lawyer shall not:

- (1) on the basis of any protected characteristic,
 - (i) unlawfully discriminate or knowingly permit unlawful discrimination;
 - (ii) unlawfully harass or knowingly permit the unlawful harassment of an employee, an applicant, an unpaid intern or volunteer, or a person providing services pursuant to a contract; or
 - (iii) unlawfully refuse to hire or employ a person, or refuse to select a person* for a training program leading to employment, or bar or discharge a person from employment or from a training program leading to employment, or discriminate against a person in compensation or in terms, conditions, or privileges of employment; or
- (2) unlawfully retaliate against persons.

- **What about enforcement against an Uncivil attorney? Is there a real price to pay by a lawyer who engages in Uncivil behavior?**

Sample cases where fee awards were reduced:

Karton v. Ari Design & Construction, Inc. (2021) 61 Cal.App.5th 734

“Excellent lawyers deserve higher fees, and excellent lawyers are civil. Sound logic and bitter experience support these points. Civility is an ethical component of professionalism. Civility is desirable in litigation, not only because it is ethically required for its own sake, but also because it is socially advantageous: it lowers the costs of dispute resolution. The American legal profession exists to help people resolve disputes cheaply, swiftly, fairly, and justly. Incivility between counsel is sand in the gears. Incivility can rankle relations and thereby increase the friction, extent, and cost of litigation. Calling opposing counsel a liar, for instance, can invite destructive reciprocity and generate needless controversies. Seasoning a disagreement with avoidable irritants can turn a minor conflict into a costly and protracted war. All those human hours, which could have been put to socially productive uses, instead are devoted to the unnecessary war and are lost forever. All sides lose, as does the justice system, which must supervise the hostilities.” (Karton v. Ari Design & Construction, Inc. (2021) 61 Cal.App.5th 734, 747.)

Snoeck v. ExakTime Innovations, Inc. (2023) 96 Cal.App.5th 908, 911

"We agree a trial court may consider an attorney's pervasive incivility in determining the reasonableness of the requested fees. A court may apply, in its discretion, a positive or negative multiplier to adjust the lodestar calculation—a reasonable rate times a reasonable number of hours—to account for various factors, including attorney skill. (Ketchum, supra, 24 Cal.4th at pp. 1131–1134, 104 Cal.Rptr.2d 377, 17 P.3d 735; Karton, supra, 61 Cal.App.5th at pp. 744–745,

747, 276 Cal.Rptr.3d 46.) The record before us amply supports the trial court's finding that plaintiff's counsel was repeatedly, and apparently intentionally, uncivil to defense counsel—and to the court—throughout this litigation."

Masimo Corp. v. The Vanderpool Law Firm, Inc. (2024) 101 Cal.App.5th 902, 910–911

“[E]xcellent lawyers are civil.” (Karton, supra, 61 Cal.App.5th at p. 747.)

Civility is not about etiquette. This is not a matter of bad manners. Incivility slows things down, it costs people money – money they were counting on their lawyers to help them save. And it contravenes the Legislature's directive that “all parties shall cooperate in bringing the action to trial[.]” (Code Civ. Proc., § 583.130.)

Incivility is the adult equivalent of schoolyard bullying and we will not keep looking the other way when attorneys practice like this. They will be called out and immortalized in the California Appellate Reports.

Here, the lack of civility, throwing even more sand into the gears, coupled with the blatant and pervasive substantive discovery misuse could only have confirmed to the referee and to the court that monetary sanctions against Vanderpool were warranted in this case. We find nothing to quarrel with in that conclusion.

If the new State Bar rules go into effect, an uncivil lawyer will face disciplinary action.

- **What about the adage that “you can catch more flies with honey than with vinegar?”**
- **What’s been your experience with Civility or lack of it when you are in a mediation?**

In the context of mediation, there are 3 areas to look at:

- (1) Parties who do not get along nicely will have a tough time agreeing to mediation even if settling the case will be beneficial in the long run;
- (2) Their tone in the Mediation Briefs will affect their own credibility; and
- (3) Their behavior during the mediation can easily set the tone for failure or success.

- **Can a Mediator be too civil?**

What if one party wants the mediator to tell the other party “the facts of life?”

- **What is your recommendation to newer attorneys about Civility, especially when they come into the profession believing they need to be zealous advocates (and sometimes overzealous advocates)?**
- **Do you have a prediction for the future of the legal profession and its tone, and if so, how do you see it?**

Resources and Links:

Cal Rules of Ct Rule 9.7: https://courts.ca.gov/cms/rules/index/nine/rule9_7

State Bar's "Civility Toolbox":

https://www.calbar.ca.gov/Portals/0/documents/ethics/Civility/Atty-Civility-Guide-Revised_Sept-2014.pdf

Links to Bar Association Civility Opinions:

- [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](#)

Local Court Rules:

- [Superior Court of California County of Del Norte Local Rule of Court 9.10](#)
- [Superior Court of California County of Glenn Court Ethics](#)
- [Superior Court of California County of Kern Local Rule of Court 1.16](#)
- [Superior Court of California County of Los Angeles Guidelines for Civility in Litigation](#)

- [Superior Court of California County of Marin Local Rule of Court 1.2](#)
- [Superior Court of California County of Mendocino Local Rule of Court 1.4](#)
- [Superior Court of California County of Mono Local Rule of Court 2.7](#)
- [Superior Court of California County of Plumas Local Rule of Court 1.5](#)
- [Superior Court of California County of Sacramento Guidelines of Civility and Professionalism](#)
- [Superior Court of California County of San Francisco Guidelines on Civility and Professionalism](#)
- [Superior Court of California County of Santa Clara Local Court Rules Code of Professionalism](#)
- [Superior Court of California County of Sierra Local Rule of Court 1.3](#)
- [Superior Court of California County of Siskiyou Local Rule of Court Appendix 1, Section 3](#)
- [U.S. District Court Central District of California Civility and Professionalism Guidelines](#)
- [U.S. District Court Northern District of California Guidelines for Professional Conduct](#)
- [U.S. District Court Southern District of California Civil Rule 2.1 Professionalism](#)

Articles:

- [Appellate Division Approves Updated Standards of Civility Developed by State Bar Association](#), New York State Bar Association, February 2020, Brendan Kennedy
- [Maintain Civility in Depositions](#), The Recorder, March 2018, Shari Klevens and Alanna Clair
- [Attorney Civility: When zealous advocacy crosses the line](#), California Bar Journal, May 2016, Scott Garner
- [Litigation, Civility, and How Nice Guys Can Finish First](#), Los Angeles Lawyer, April 2016, Jason D. Russell
- [Civility Among Lawyers: Nice Guys Don't Have to Finish Last](#), Orange County Bar Association, March 2016, Scott Garner
- [Overview of the Guidelines of Civility and Professionalism](#), Los Angeles Lawyer, April 2015, David B. Jonelis
- [Courtroom Conduct](#), ADR Services, October 2009, Judge Michael D. Marcus