

# Daily Journal

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### CALIFORNIA'S NEW CIVILITY GUIDELINES: WILL THEY BE ENOUGH?

*By Erin M. Joyce and David Wall*

The California State Bar's Attorney Guidelines of Civility and Professionalism are a set of principles intended to promote respectful and professional conduct among attorneys practicing law in California. These guidelines serve as a framework for attorneys to maintain the integrity of the legal profession and uphold high standards of professionalism. Key aspects of the Attorney Guidelines of Civility and Professionalism include respectful conduct, courtesy, professionalism, and candor. The Attorney Guidelines of Civility and Professionalism are not formal rules imposed by the State Bar, but rather serve as a voluntary code of conduct for attorneys practicing law in California.

During its meeting in July 2023, the Board of Trustees of the State Bar of California endorsed proposed measures aimed at enhancing civility among attorneys licensed to practice law in California. These measures stem from the recommendations made by the California Civility Task Force, which is comprised of over 40 legal professionals, and sponsored by the California

Lawyers Association and the California Judges Association (The State Bar of California). While the State Bar has accepted these proposals, they must be approved by the California Supreme Court to take effect.

The proposed changes encompass:

- Revisions to California Rule of Court 9.7, mandating lawyers to annually confirm or reconfirm their commitment to a civility oath.
- Introduction of a new State Bar Rule 2.3 to enact the modifications to the oath.
- Amendments to the Rules of Professional Conduct, establishing incivility as a basis for disciplinary action.
- Requiring one hour of civility MCLE training during each three-year compliance period.

In the past, Attorney Guidelines of Civility and Professionalism were elective rather than mandatory rules, and not always considered by disciplinary authorities when assessing an attorney's conduct. If these proposed amendments



are approved by the California Supreme Court, then civil behavior will become mandatory, and incivility will become a disciplinable offense. How severe the sanctions will be for uncivil words and conduct in the profession is yet to be determined but will most likely depend on the gravity of the offenses. It will be interesting to see how strict judges will be when it comes to maintaining civility. And how trying to regulate civility, which will potentially impact attorneys' freedom of speech under the First Amendment, will become a new flashpoint for litigation.

The state of California is a leader in almost every industry, yet in the legal profession incivility seems to have increased dramatically. Adopting basic civility guidelines may be a step to bring the profession back into alignment. As the task force's report states, "Civility matters not simply because lawyers are examples to others on how to engage competing ideas and interests. It matters because our system of justice simply cannot function fairly

and reliably with systemic incivility." "Beyond the Oath: Recommendations for Improving Civility." [California Civility Task Force Report], September 2021. If one cannot expect civility, how can one expect justice?

While almost every lawyer has faced uncivil behavior at least once in their career, unsurprisingly, the task force found that "young lawyers, women lawyers, lawyers of color, and lawyers from other marginalized groups are disproportionately on the receiving end" of incivility. "State Bar of California Board of Trustees Approves Measures to Improve Civility in the Legal Profession," The State Bar of California, July 21, 2023. It is reprehensible and irresponsible for practitioners who are the future of the profession to be subject to this lack of dignity and respect.

There are several factors as to why incivility is such a problem in the California legal profession; the most glaring is that there is little punishment

for uncivil behavior, as well as no required training on civility. The lack of basic civility in the legal profession mirrors the decline of civil discourse in the media, in politics and in general communication. Words that were routinely censored are now used even in written communications by professionals. Moreover, incivility has been exacerbated by the rapid evolution of technology and a pandemic that forced communications, meetings, and hearings to go online. Interpersonal skills dwindled. With the "keyboard warrior" phenomenon, and fewer in-person meetings where non-verbal cues are easier to recognize, attorneys have come to behave in a more hostile, uncivil manner with no consequences. The adoption of civility guidelines with teeth may stop this progression. It remains to be seen if the adoption of the guidelines by the California Supreme Court will foster a more civil legal profession.

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