

Civility in Action: Building Professional Relationships for In-House Counsel

January 31, 2025

“The timbre of our time has become unfortunately aggressive and disrespectful. Language addressed to opposing counsel and courts has lurched off the path of discourse and into the ditch of abuse. This isn’t who we are.”
(In re Mahoney (2021) 65 Cal.App.5th 376.)

Agenda



**CIVILITY &
CHALLENGES**



**MODEL RULES
FOR CIVILITY**



**LITIGATION
LANDSCAPE**



**PRACTICAL
GUIDANCE**

Impact of Incivility

Reputation

Mental health

Inefficiency

Financial implications

Motivation

Job performance

Collaboration

Dissatisfaction with work

Adverse psychological effects

Why Is Civility a Challenge?



Incivility and The First Amendment

24.4.2 *In re Olin* (2024) Case No. SBC-23-O-30674

Lawyer disciplined for abusive conduct towards judges and judicial staff despite First Amendment defense.

In a personal, family law matter involving the attorney's wife and child, he accused judicial officers of **dishonesty, bribery, corruption, incompetence, and engaging in judicial misconduct** and included a litany of insults and personal attacks, including an email he sent to a court officer stating that, **if he won the lottery, he would pay someone to kill her minor child.**

The State Bar charged the attorney with 8 counts of misconduct; 7 counts of failing to maintain respect due courts and judicial officers, based on disrespectful and demeaning emails; and one count of violation of section 6106, for a threat of violence.

Bias Driven Incivility



Bias driven incivility stems from implicit and explicit biases



Correlation between bias driven incivility and power dynamics



Aggressions and microaggressions

Model Rules Governing Civility



Rules for Client Interactions



Rules for Opposing Counsel Interactions



Rules for Judicial Interactions

Rules Governing Client Interactions

ABA Rule 1.2

Scope of Representation & Allocation of Authority Between Client & Lawyer

“The duty of a lawyer, both to his client and to the legal system, is to represent his client zealously *within the bounds of the law ...*”

Hawk v. Sup.Ct. (People) (1974) 42 CA3d 108, 126, 116 CR 713, 725

Rules Governing Client Interactions

ABA Rule 8.4

Maintaining The Integrity Of The Profession

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist 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 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 the Rules of Professional Conduct or other law;
- (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or
- (g) engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination....

Rules Governing Opposing Counsel Interactions

ABA Rule 3.4

Fairness to Opposing Party and Counsel

A lawyer shall not:

- (a) unlawfully obstruct another party' s access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;
- (b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law

Rules Governing Third Party Interactions

ABA Rule 4.1

Transactions With Persons Other Than Clients

In the course of representing a client a lawyer shall not knowingly:

- (a) make a false statement of material fact or law to a third person; or
- (b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

Rules Governing Judicial Interactions

ABA Rule 3.3 Duty of Candor

- A lawyer is prohibited from knowingly making false statements, failing to correct material false statements, or failing to disclose directly adverse legal authority in the controlling jurisdiction (CRPC 3.3(a)(1) & (2))
- A lawyer is prohibited from offering evidence a lawyer knows is false and if the lawyer comes to know of the falsity of material evidence he or she has offered, the lawyer must take “reasonable remedial measures” (CRPC 3.3(a)(3))
- If a lawyer knows the client intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding, the lawyer must take “reasonable remedial measures” (CRPC 3.3(b))

Business & Professions Code § 6068

It is the duty of an attorney to do all of the following...

- (b) To maintain the respect due to the courts of justice and judicial officers.
- (e)(1) To maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client.
- (f) To advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he or she is charged.
- (g) Not to encourage either the commencement or the continuance of an action or proceeding from any corrupt motive of passion or interest.
- (m) To respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.
- (o) To report to the State Bar, in writing, within 30 days of the time the attorney has knowledge of any of the following: [1-10]

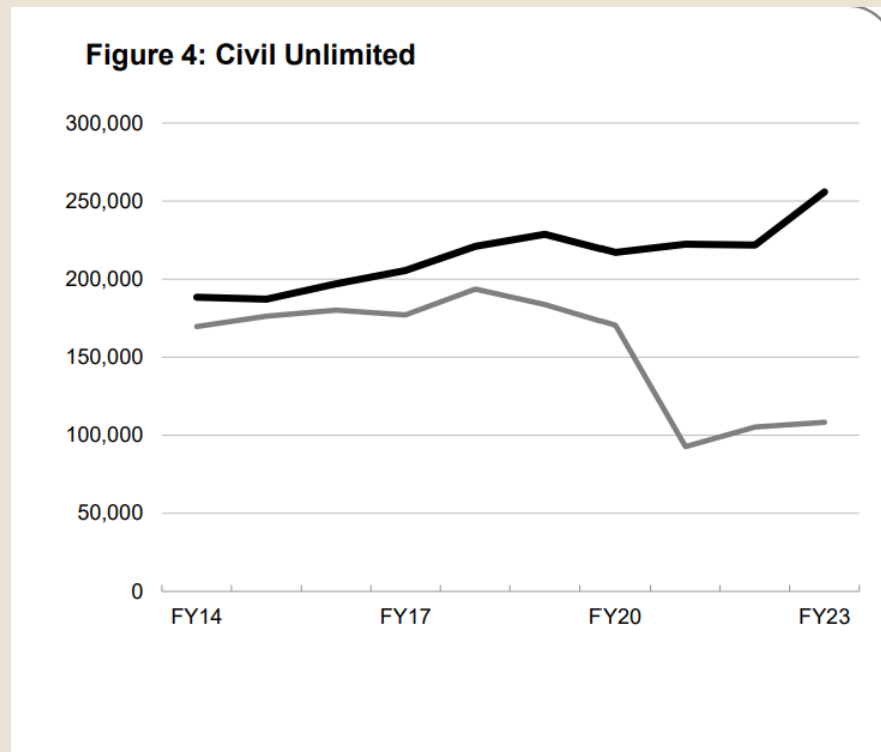
California Rules of Court 9.7

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."

State of Litigation in California

In FY 2022–23, over 4.5 million cases were filed statewide in the superior courts. There were 255,914 unlimited civil cases filed in the civil courts.



State of Litigation in California

Fiscal year	Judicial positions (A)	Filings		Dispositions	
		Total (B)	Per judicial position (C)	Total (E)	Per judicial position (F)
FY23	2,010.6	4,519,099	2,248	2,530,438	1,259
FY22	2,004.1	4,413,860	2,202	2,471,855	1,233
FY21	2,004.1	4,460,626	2,226	2,351,773	1,173
FY20	2,013.1	5,335,628	2,650	4,057,288	2,015
FY19	2,013.1	6,104,423	3,032	4,677,828	2,324
FY18	2,024.0	6,131,168	3,029	4,784,947	2,364
FY17	2,024.0	5,847,070	2,889	4,728,218	2,336
FY16	2,024.0	6,162,641	3,045	5,448,919	2,692
FY15	2,022.2	6,851,985	3,388	6,366,922	3,149
FY14	2,022.2	7,502,829	3,710	6,738,312	3,332

California Employment Litigation: Two Common Species of Employment Litigation

Species One: Single Plaintiff claims for retaliation, harassment, discrimination, wrongful termination wage and hour.

- Average cost of single plaintiff employment litigation across US (2017): **\$160,000**, 318 days of litigation.
- California 46% more likely to be sued than other states.
- California costs increased by 30%, approx. \$210,000 in employment litigation (from 2017—not counting inflation **\$271,689.27**)

<https://data.bls.gov/cgi-bin/cpicalc.pl?cost1=210000&year1=201701&year2=202406>

<https://www.hiscox.com/documents/2017-Hiscox-Guide-to-Employee-Lawsuits.pdf>

California Employment Litigation: Two Common Species of Employment Litigation

Species Two: Representative and Class Action Lawsuits

- Average workweek per employee sought by Plaintiff's counsel is \$40 per workweek. Low range is \$25. High range is \$65.
- Settlement values of Approx. \$25 per work week or less are getting tougher to achieve.
- Who wins in this litigation?

Practical Guidance



Across Departments: Honest, Frequency, Setting Expectations



Opposing Counsel Communications: Direct, Courteous, Grey Rock Method



Court: Always Err on the side of candor instead of overstated advocacy

Beyond the Courtroom

- Be mindful of technology consequences and impact
- Act in a way reflects well on legal profession
- Treat everyone with respect
- Honesty, integrity, and fairness in professional dealings
- Courteous behavior
- Personal Accountability
- Give back to the community

Incivility Online

Cruel Comments

Vice president and senior counsel of strategic transactions for Media Company

Facebook post following Las Vegas shooting in 2017: “actually not even sympathetic” because “country music fans often are Republican gun toters.”

Fired within a day

Bias & Confidentiality

General counsel Nevada PUC

Social media account with pseudonym

Discussed issues appearing before commission

Resigned the next day

Civility Online

- Disciplinary risks for in house counsel
- “Positional” conflicts
- Avoid unpleasant attention from C-suites and disciplinary authorities
- Stop and think before venting about certain topics
- Never discuss pending cases
- Adhere to company social media guidelines

Fostering Civility by Creating Mutually Beneficial Relationships

Assume good intent

Listen

Cooperate

Be respectful

Grace and empathy

Look for small agreements

Understand triggers

Stick to the facts! Avoid generalizations and assumptions

Fostering Civility During Conflict

Maintain
composure

Pause and take
breaks

Set boundaries

Be assertive

Use procedural
formalities

Propose
solutions

Focus on the
task and desired
outcome

Seek support or
mentorship

Manage stress

Lead by example

Thank you!

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