

Civility in the Legal Profession

Taking the High Road

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Why Are We Here?

Civil discourse is an essential part of being an attorney

Recent increase in incivility among attorneys

Negative impact on our profession

The right way to practice

Agenda

- What is Civility?
- Rules Regarding Civility
- Consequences of Incivility
- Dealing with Incivility

What is Civility?



Incivility

Rudeness and vulgarity

Overly aggressive behavior

Harassment and threats

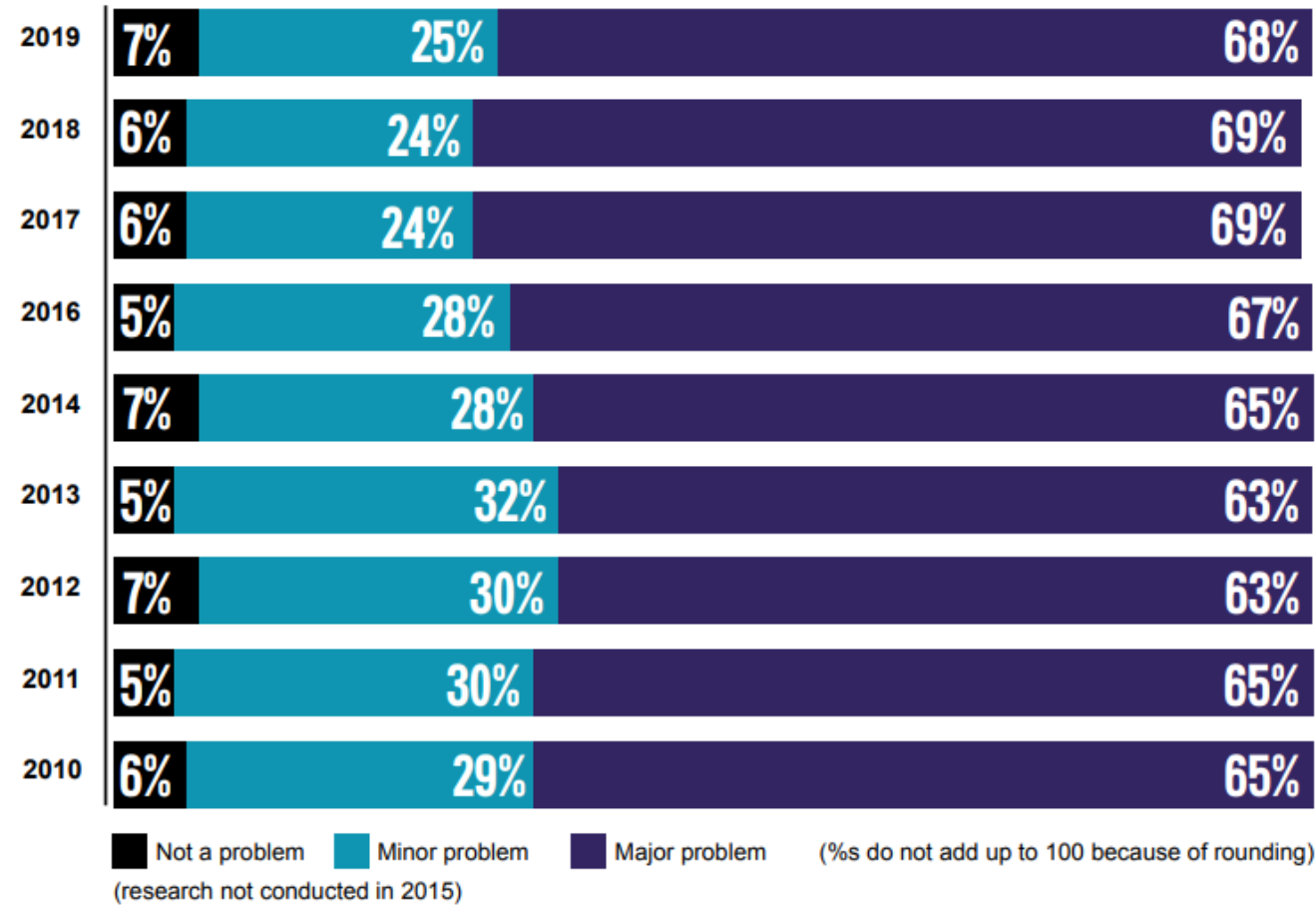
Unsupported accusations of improper motives

Not providing professional courtesies where appropriate



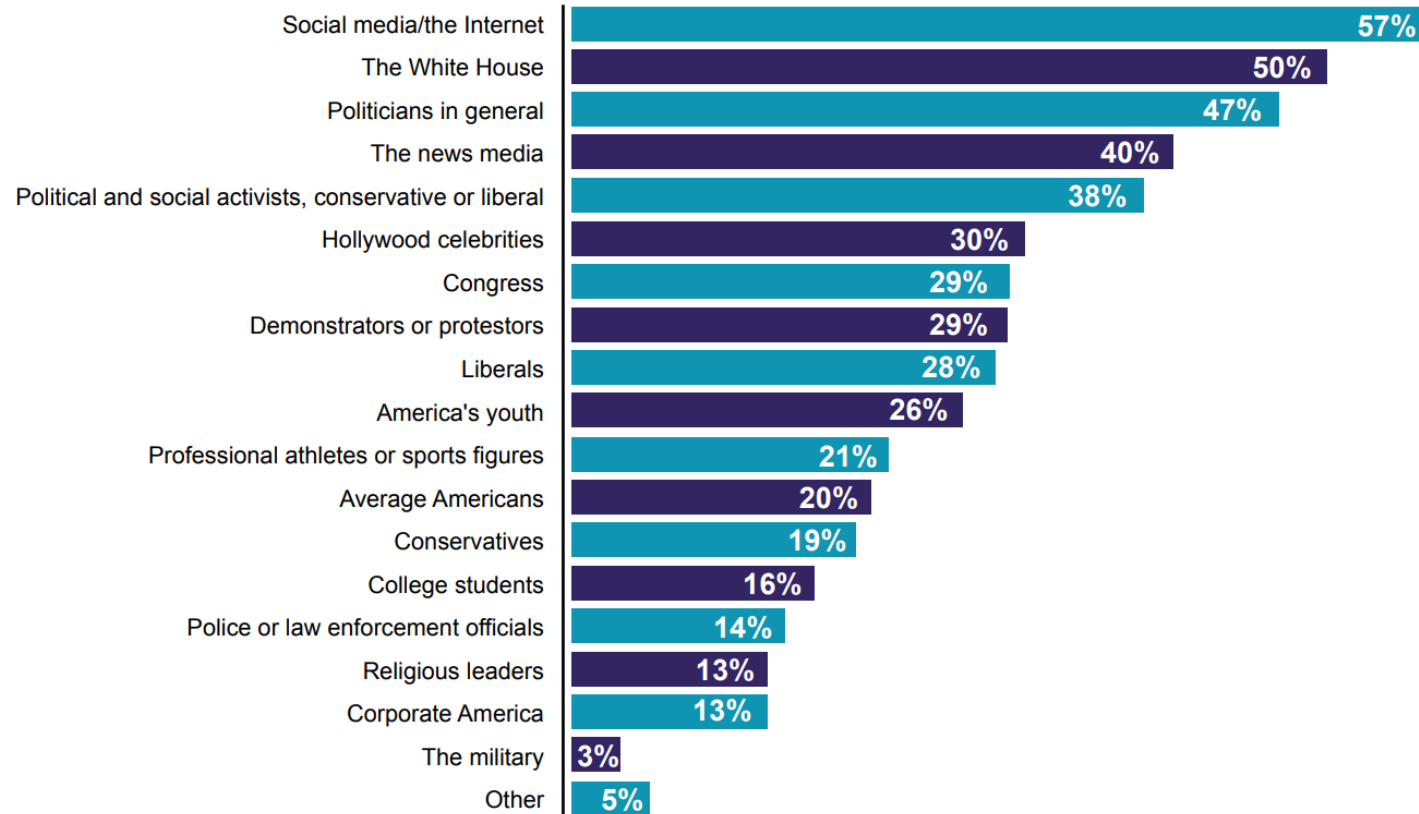
PROBLEM WITH CIVILITY IN AMERICA TODAY

(among total Americans)



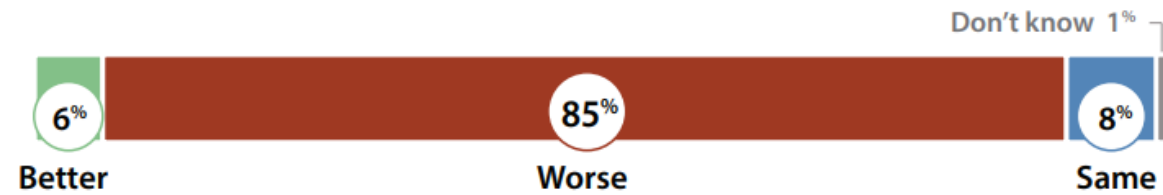
FACTORS CONTRIBUTING TO THE EROSION OF CIVILITY IN AMERICA

(among Americans who expect civility to get worse)



ABA 2023 Survey of Civic Literacy

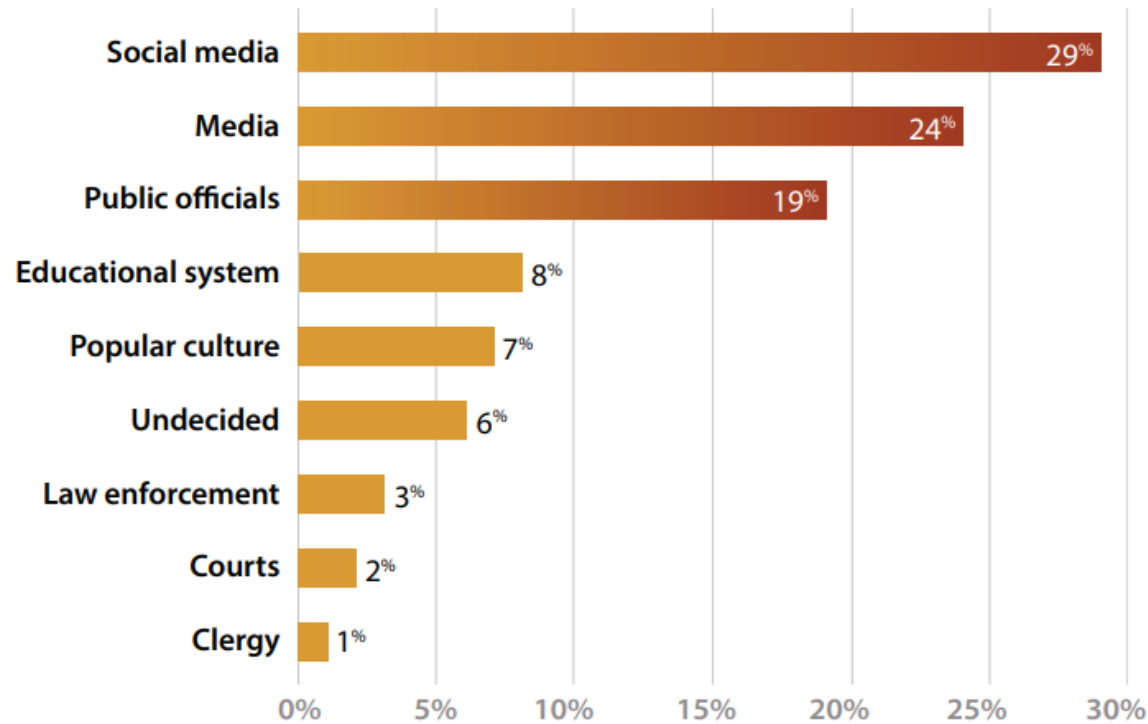
▶ Compared to 10 years ago, would you say civility in today's society is...



ABA 2023 Survey of Civic Literacy



What is primarily responsible for eroding civility in our society?
Would you say...



America's View of Lawyers



21%

**Americans who associate lawyers
with high/very high honesty and
ethics**

Factors Contributing to Incivility

Zealous advocacy

“Win at all costs” mentality

Keyboard warriors

Fast pace of life

Media

Misconceptions About Civility

Civility is not the same as agreement

Civility is not the absence of criticism



Misconceptions About Civility



Civility is not the same as liking someone

Civility is not the same as politeness or manners

Rules Regarding Civility

California Rules of Professional Conduct, 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.

California Rules of Court, Rule 9.7 - Attorney Oath

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

Superior Court of California, County of Los Angeles Local Rules 3.26, Guidelines for Civility in Litigation

CIVILITY INCLUDES:

- Counsel should always deal with parties, counsel, witnesses, jurors or prospective jurors, court personnel and judges with courtesy and civility.
- First requests for extensions of time should be granted as a matter of course even if the requesting attorney previously rejected a request for extension.
- Papers should not be served opportunistically to take advantage of a known absence from the office such as on a Friday afternoon before a secular or religious holiday.
- Written and oral submissions should not disparage the intelligence, ethics, morals, integrity or personal behavior of one's adversaries, unless such things are necessarily in issue.

United States District Court – Central District of California

Civility and Professional Guidelines

PREAMBLE

“The Central District recognizes that . . . in recent years there has been a discernible erosion of civility and professionalism in our courts. This disturbing trend may have severe consequences if we do not act to reverse its course . . . [W]e find that civility and professionalism among advocates, between lawyer and client, and between bench and bar are essential to the administration of justice.”

United States District Court – Central District of California

Civility and Professional Guidelines (cont'd)

GUIDELINES

- We will advise our clients that civility and courtesy are expected and are not a sign of weakness.
- We will treat adverse parties and witnesses with fairness and due consideration. A client has no right to demand that we act in an abusive manner or indulge in any offensive conduct.
- We will advise our clients that we will not pursue conduct that is intended primarily to harass or drain the financial resources of the opposing party.

Consequences of Incivility

Problems with Incivility

Less effective

Hurts the client

Decreased job satisfaction

Increased costs and fees

No favors in the future

Destroys reputation

Unnecessary stress

Discourages diversity

Hurts image of legal community

Doyle v. Vault PK (San Diego County Superior Court),
Hon. Eddie C. Sturgeon

The purpose of this Minute Order is to address a statement made by Plaintiff's counsel, Timothy Scott, made on the record during trial on June 30, 2022. Specifically, while Mr. Scott was addressing the Court, and after this Court orally granted Defendant MTS's motion for nonsuit, Mr. Scott stated as follows:

"...I hope this doesn't sound unctuous, but just to end the weekend on a good note, I want to thank the court staff. I want to say to have a good weekend to Mr. DeMaria. I want to say have a good weekend to Ms. Frerich. And I want to say have a good weekend to both MTS counsel. I'll *See you next Tuesday. See you next Tuesday.*"

(Judge's Ex. 1 at p. 110, emphasis added.)

Completely unaware of the intended meaning of "See you next Tuesday," (see *infra*), the Court responded, "How kind." (Judge's Ex. 1 at p. 110.)

Doyle v. Vault PK (San Diego County Superior Court),
Hon. Eddie C. Sturgeon (cont'd)

Mr. Scott's statement directed to Ms. Lagasse and Ms. Oberrecht is reprehensible and will not be tolerated in this courtroom. As such, for reasons stated above, the Court finds that it has a duty to alert the State Bar of California of Mr. Scott's conduct on June 30, 2022 and will be filing a Discipline Referral with the State Bar.

Eddie C. Sturgeon

Judge Eddie C Sturgeon

Baker v. Allstate Insurance Co. (USDC – Central District),
Hon. Otis D. Wright, II

Haha. Fuck you crooks. Eat a bowl of dicks.

Peter when you are done felating your copy boy tell Allstate the demand is now 305 million.

Hey Klee you Cumstain the demand is now 302 million. Pay up fuckface.

Anytime now faggot.

301.5 million

I want my clients' money gay boys.

Don't make me come down there and beat out of you you fucking thief.

Baker v. Allstate Insurance Co. (USDC – Central District),
Hon. Otis D. Wright, II (cont’d)

Wright said to Hook the legal profession does not need him. *“I am going to do what I can to remove you from this profession.”*

Wright asked Hook to give up his law license. “I will not do that,” Hook replied.

“Shut up,” Wright replied. *“I want you to resign from this profession.”*

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

Plaintiff obtained a partial jury verdict in his favor on FEHA claims and was awarded just over \$130,000.

Plaintiff's attorney filed a motion for attorneys' fees and requested a 1.75 lodestar multiplier (~\$1.3 million in fees).

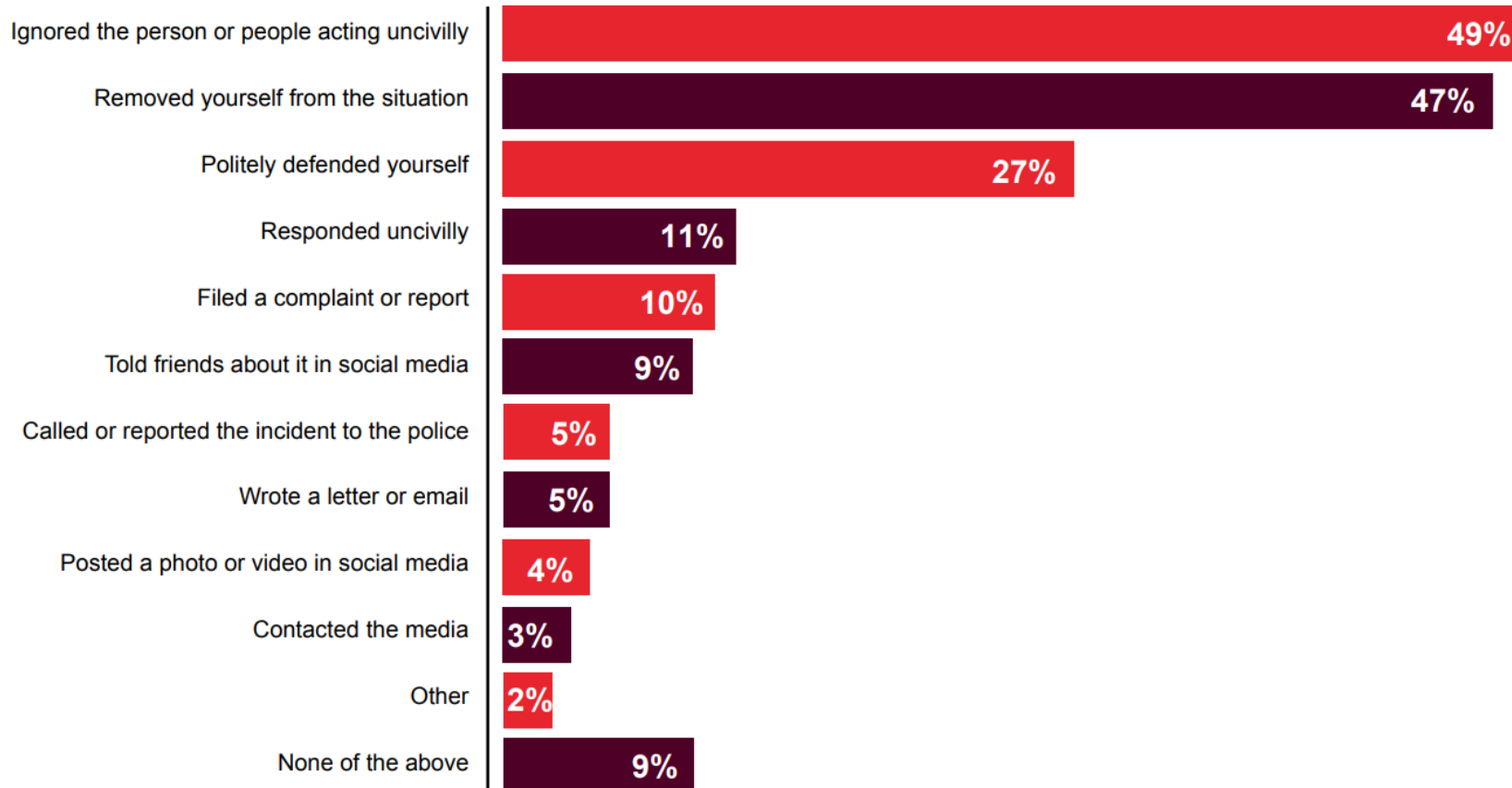
The trial court adjusted the lodestar and applied a 1.2 multiplier, and then applied a 0.4 *negative* multiplier based on Plaintiff's counsel's "repeated and apparently intentional lack of civility throughout the entire course of the litigation." This resulted in a reduction of fees of roughly \$450,000.

The Second District Court of Appeal affirmed the trial court's decision, noting that civility "is an ethical component of professionalism and it is socially advantageous [as] it lowers the costs of dispute resolution."

Dealing with Incivility

ACTIONS TAKEN THE LAST TIME EXPERIENCED INCIVILITY

(among Americans who have experienced incivility)



Strategies

Set the tone

Speak out against attempts to act uncivilly

Remember that civility is more effective

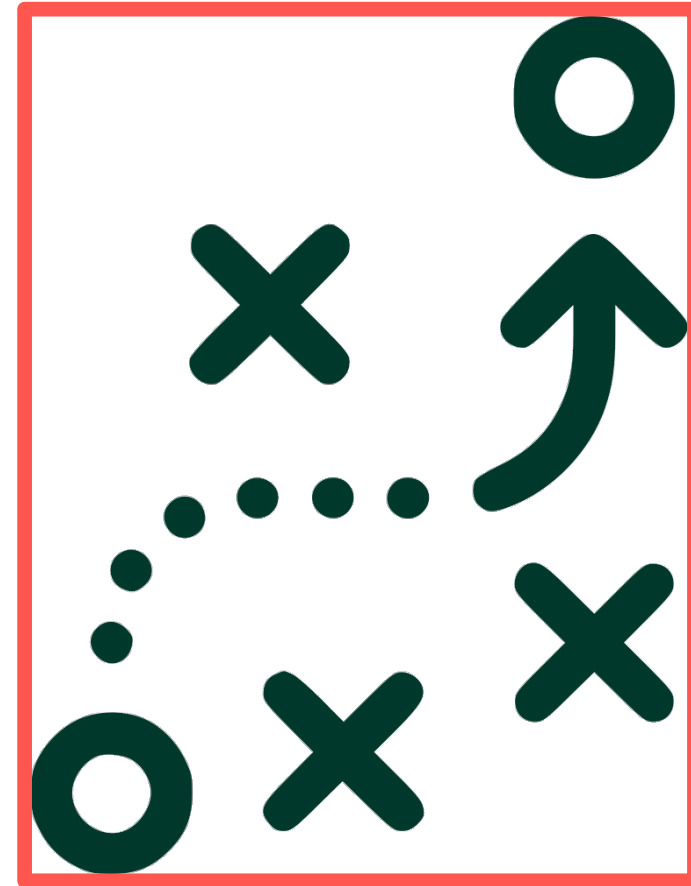
Inform the aggressor to stop

Do not respond in kind

Refocus the conversation

Summarize conversations in writing

Bring it to the court's attention, if necessary



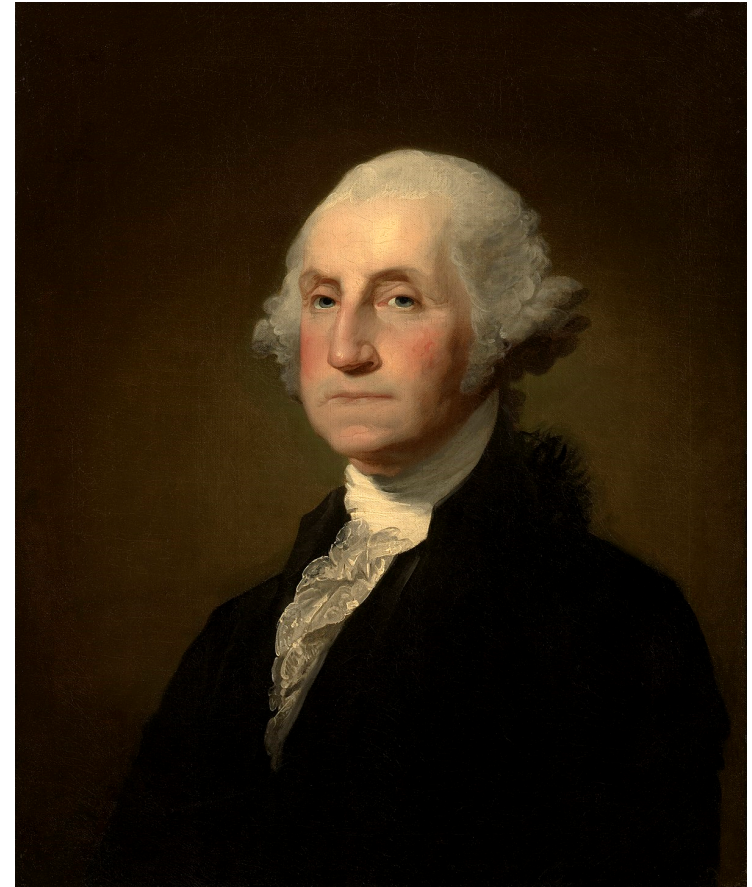
State Efforts to Address Incivility – California Civility Task Force

PROPOSED RULE CHANGES

1. Amendments to California Rule of Court 9.7 to require lawyers to *annually affirm or reaffirm* their civility oath.
2. A new State Bar Rule 2.3 to *implement the changes to the oath*; and
3. Amendments to the Rules of Professional Conduct to *make incivility a basis for discipline*.

George Washington's 110 Rules of Civility & Decent Behavior

No. 1: Every Action done in Company, ought to be with Some Sign of Respect, to those that are Present.



Thank you.

JacksonLewis