

**ALSTON & BIRD**

# Is it Me? How to Encourage Civility and Dignity in the Modern Workplace

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## Meet the Panelists



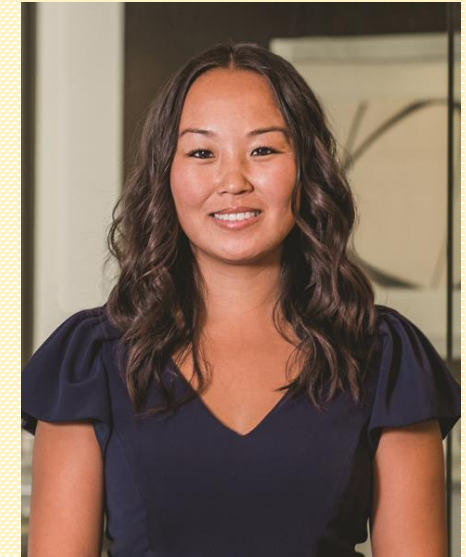
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**MODERATOR**

# Civility Training is now a California Bar MCLE Requirement

*-As of 1/1/2025, Compliance requires at least one hour of education within the three-year compliance period.*

*-Approved civility MCLE programs should highlight the connection between bias and incivility, and urge lawyers to eliminate bias driven incivility.*



# Civility Training is now a California Bar MCLE Requirement

Why?

“In an era marked by coarseness and political division, the legal profession suffers from a scourge of incivility. Discourtesy, hostility, intemperance, and other unprofessional conduct prolong litigation, making it more expensive for the litigants and the court system. Moreover, incivility among lawyers extends beyond litigation, interfering with, if not derailing, transactions of every kind. It can create toxic workplaces. And unfortunately, young lawyers, women lawyers, lawyers of color, and lawyers from other marginalized groups are disproportionately on the receiving end. The time has come for remedial action beyond the oath.” - Civility Task Force Report.

## Updated California Bar Oath

I, (licensee name) solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of California, and that I will faithfully discharge the duties of an attorney and counselor at law to the best of my knowledge and ability. As an officer of the court, **I will strive to conduct myself at all times with dignity, courtesy and integrity.**

-Rule 9.7, California Rules of Court



The State Bar *of California*

# The Constant Human Dimension to our Profession

“Personal relationships lie at the heart of the work that lawyers do. **Even in the face of the vast technological advances of the information age, the human dimension remains constant, and these professional obligations will endure.**” [Sandra Day O’Connor, Professionalism, 76 WASH. U. L.R. 5, 8 \(1998\).](#)



## Bias-Driven Incivility: Being Uncivil to a Person Because of Implicit or Explicit Bias

“Bias-driven incivility is uncivil conduct resulting from expressions of implicit and explicit biases, including the unconscious expression of an internal bias or a covert manifestation of a discriminatory preference.”

– Civility Task Force Report

## Bias-Driven Incivility: Microaggressions

- The Civility Task Force Report defines Microaggressions as “the everyday verbal, nonverbal, and environmental slights, snubs, or insults, whether intentional or unintentional.”
- **E.g., Being mistaken for a nonlawyer;** it’s often based on biases about what an attorney should look like.
- **E.g., Professional exclusion** from advancement or social events can also be bias-driven incivility.
- **E.g., Othering** or otherwise relying on stereotypes associated with that attorney’s identity.
- **E.g., Personal comments** on an opposing attorney’s hair or wardrobe.



Are Microaggressions in Legal Practice a **Real Issue**?

Yes. One American Bar Association study found that **Women of Color are mistaken for law firm, court, or janitorial staff** instead of a lawyer at a rate 50 percentage points higher than White men

In contrast, White women reported rates 44 percentage points higher, and Black men reported rates 23 percentage points higher.



## Incivility That Is Directed At Opposing Parties Or Counsel

*La Jolla Spa MD, Inc. v. Avidas Pharms., LLC, No. 17-CV1124-MMA(WVG), 2019 WL 4141237 (S.D. Cal. Aug. 30, 2019)*

The district court granted sanctions against defendant's counsel in the amount of \$28,502.03 for atrocious acts of incivility and unprofessional conduct primarily relating to a deposition. At the deposition, defendant's counsel "continuously interrupted, lodged frivolous objections, improperly instructed [her client] to not answer questions, and extensively argued with [opposing counsel]."



## Incivility That Is Directed At Opposing Parties Or Counsel

*In re Marriage of Lewis, No. B255900, 2015 WL 6692239  
(Cal. Ct. App. Nov. 3, 2015), as modified on denial of reh'g  
(Dec. 1, 2015)*

In affirming the lower court's settling of a marital estate, the appellate court noted to both parties "attacks on the character of opposing counsel are not well-received in this court, and pejorative adjectives, including those directed towards the parties and the trial court, do not persuade."

## Incivility That Is Directed At Opposing Parties Or Counsel

*In re S.C.*, 138 Cal. App. 4th 396 (2006).

The court noted that appellant's 202-page opening brief was "a textbook example of what an appellate brief should not be." The court further described appellant's brief as "failing to provide meaningful legal analysis and record citations for complaints raised," and "an unprofessional and, in many respects, virulent brief." The court commented that appellant's brief "attack[ed] the character and motives of a social worker in this case" by gross exaggeration of the facts.





# Incivility Towards Judiciary



“We are professionals. We are officers of the court. We are governed by Rules of Professional Conduct... The judicial system is not a collection of buildings, it’s a collection of people and principles. And we have been entrusted with its safekeeping... 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.”

- California Civility Task Force Report (emphasis added).

## Examples of Incivility Towards Judiciary

“Respondent became so engrossed in litigation that he lost all perspectives of common courtesy and civility in the courtroom and respect for the court.” e.g.,

- unrelenting frivolous objections/speaking objections
- countless refusal to answer questions/evasive and abusive answers
- personal attacks on the witnesses, the court, and counsel
- disruptive conduct during the trial
- frivolous motions

-State Bar Decision, available at <https://members.calbar.ca.gov/courtDocs/01-O-01930-2.pdf>

# Consequences for Incivility Towards Judiciary

- Discovery and other litigation sanctions
- Consideration in Motions for Attorneys' Fees [i.e. lodestar adjustments]
- Contempt (Cal. Penal Code section 166)
  - Misdemeanor: Typically punishable by up to six months in county jail and fines of up to \$1,000.
  - Felony charges: Repeated violations, especially those involving violence or threats, may be charged as wobblers (misdemeanor or felony), with potential state prison sentences of up to three years for felony convictions
- State Bar Discipline





## Civility Has Its Advantages

It Can:

- Preserve Judicial Resources
- Reduce Costs For Clients
- Help Lawyers Focus On The Merits Of Cases
- Improve Trust in the Legal System and Lawyers
- Increase wellness, health issues, and accountability; improve workplaces
- Foster associate training and retention
- Avoid skewed perception of client's motivations

# Duty to Report Lawyer Crimes and Certain Misconduct

- State Bar Reporting Requirements
- Rule 8.3, effective 8/1/2023
- Per the Bar: “A lawyer must report another lawyer if the lawyer knows of credible evidence that the lawyer committed a criminal act or engaged in conduct involving dishonesty, fraud, deceit, or reckless or intentional misrepresentation or misappropriation of funds or property that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects.”
- When does incivility lead to reportable conduct?



## Additional resources

- <https://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Ethics/Attorney-Civility-and-Professionalism>
- <https://www.adrservices.com/wp-content/uploads/2022/01/Civility-Matters.pdf>
- <https://lacba.org/?pg=code-of-civility-guidelines#:~:text=The%20freedom%20to%20express%20one's,boards%20and%20other%20working%20groups>
- <https://www.lacourt.ca.gov/courtrules/CurrentRulesAppendixPDF/Chap3Appendix3A.PDF>
- <https://caljudges.org/docs/PDF/California%20Civility%20Task%20Force%20Report%209.10.21.pdf>
- <https://www.law.georgetown.edu/legal-ethics-journal/wp-content/uploads/sites/24/2019/08/GT-GJLE190012.pdf>