

JacksonLewis

Taking the High Road

Civility in the Legal Profession

**Diana Cohen, General Counsel, Dr. Bronner's and President of ACC – San Diego
Michelle K. Meek and Stephanie A. Kierig, Jackson Lewis P.C.**

April 19, 2024

Jackson Lewis P.C. • San Diego

(619) 573-4900 | Michelle.Meek@jacksonlewis.com | Stephanie.Kierig@jacksonlewis.com

© 2022 Jackson Lewis P.C.



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**



Today's Agenda

What is Civility?

Rules Regarding Civility

Consequences of Incivility

Dealing with Incivility

What is Civility?



Civility: In the Law and in Life, United States Court, <https://www.youtube.com/watch?v=tum5Y1XU2cA>

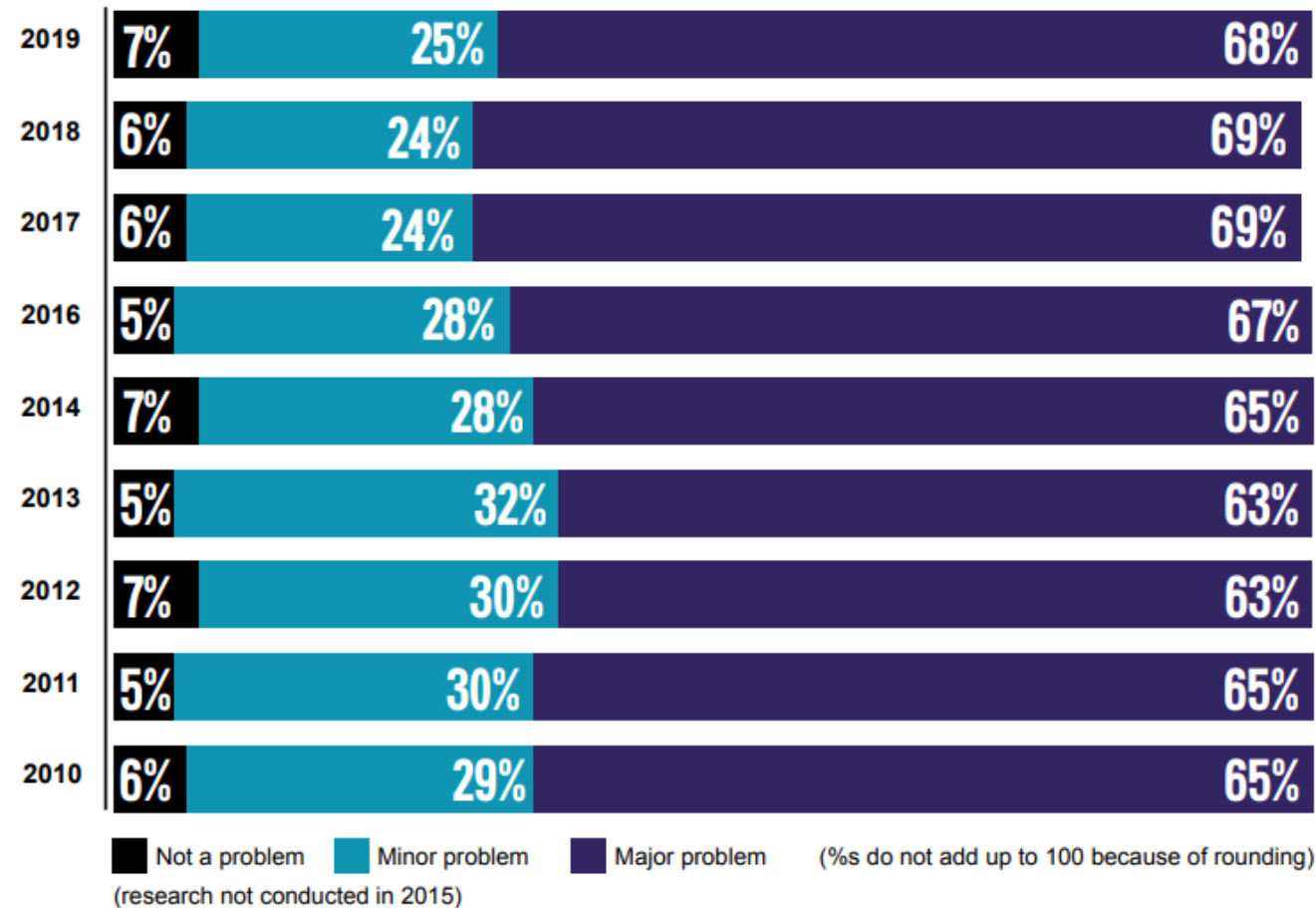
Incivility

- Rudeness and vulgarity
- Overly aggressive behavior
- Harassment and threats
- Unsupported accusations of improper motives
- Not providing professional courtesies where appropriate



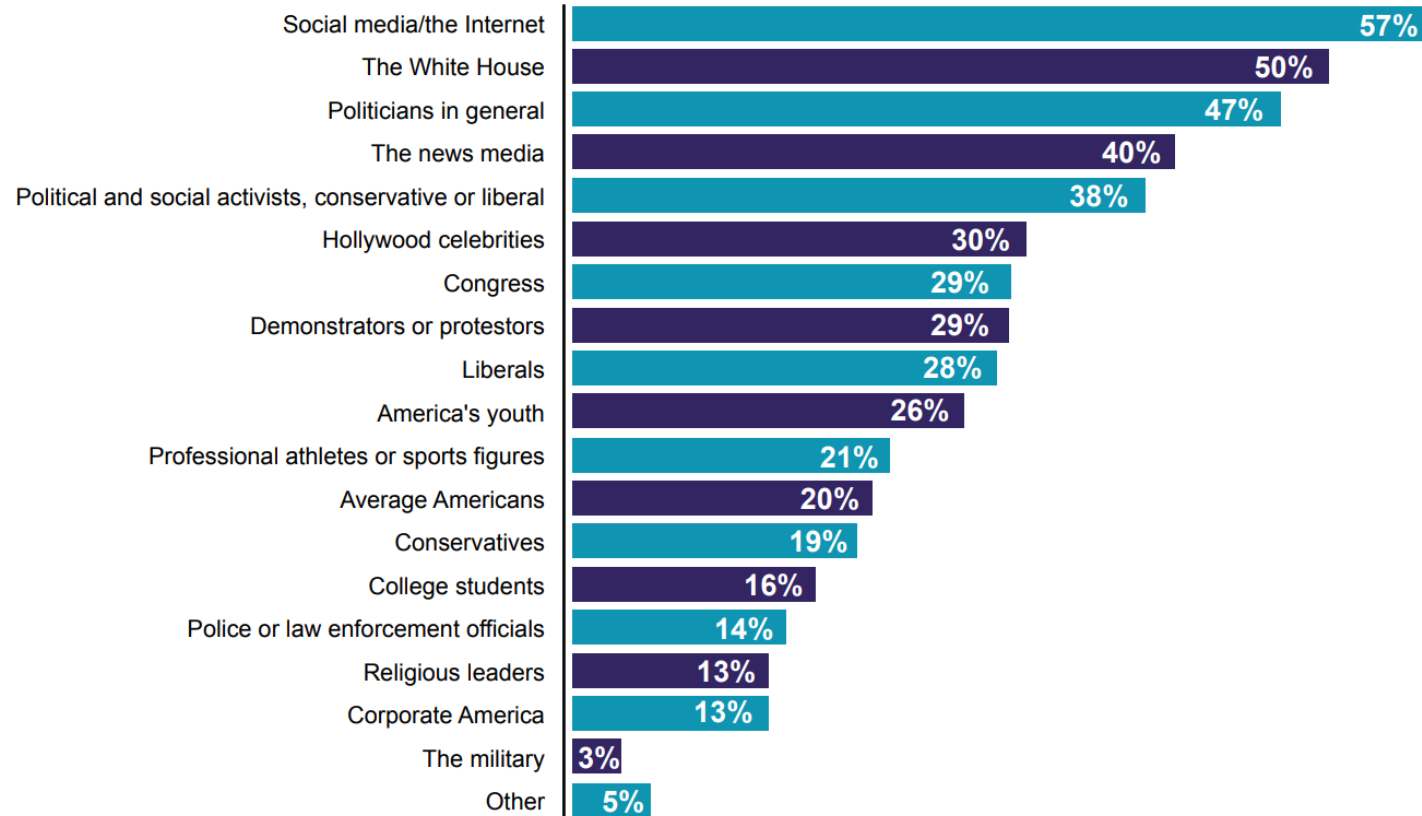
PROBLEM WITH CIVILITY IN AMERICA TODAY

(among total Americans)



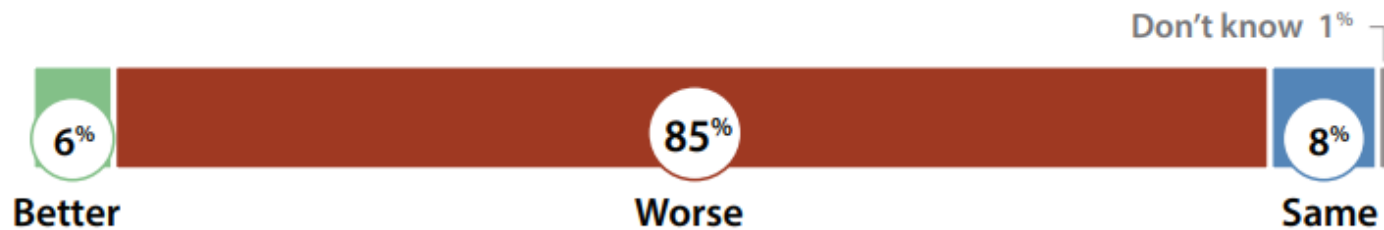
FACTORS CONTRIBUTING TO THE EROSION OF CIVILITY IN AMERICA

(among Americans who expect civility to get worse)



ABA 2023 Survey of Civic Literacy

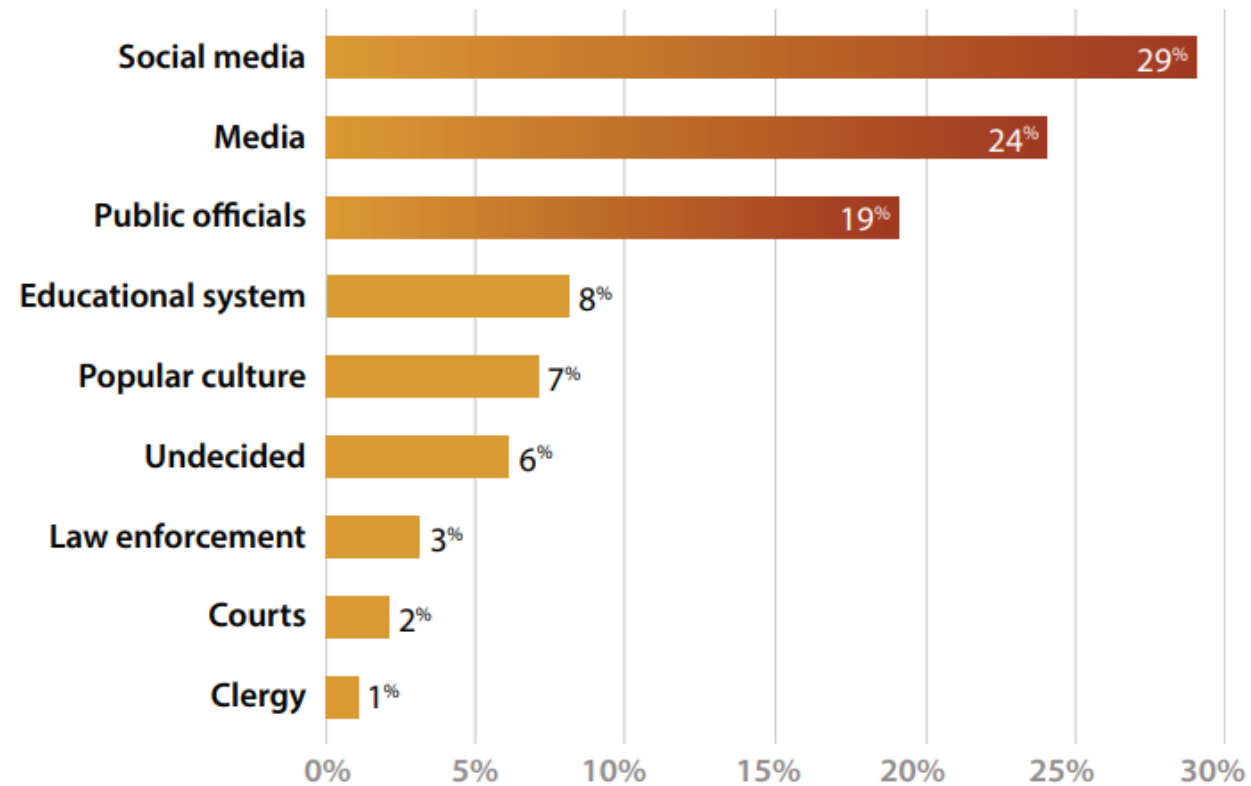
▶ Compared to 10 years ago, would you say civility in today's society is...



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 San Diego

Local Rules – Preface

DUTIES OWED TO OTHER LAWYERS, PARTIES, AND WITNESSES

- We expect lawyers to address legal arguments with other lawyers professionally, and not personally.
- We expect lawyers to treat adverse witnesses, litigants, and opposing counsel with courtesy, fairness, and respect.
- We expect lawyers to conduct themselves so that they may conclude each case amicably with the opposing lawyer or party.

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.

United States District Court – Northern District of California

Guidelines for Professional Conduct

INTRODUCTION

“Lawyers owe a duty of professionalism to their clients, opposing parties and their counsel, the courts, and the public as a whole. Those duties include, among others: civility, professional integrity, personal dignity, candor, diligence, respect, courtesy, cooperation and competence.”

COMMUNICATIONS WITH OPPONENTS OR ADVERSARIES

“A lawyer should at all times be civil, courteous, and accurate in communicating with opponents or adversaries, whether in writing or orally.”

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.”***

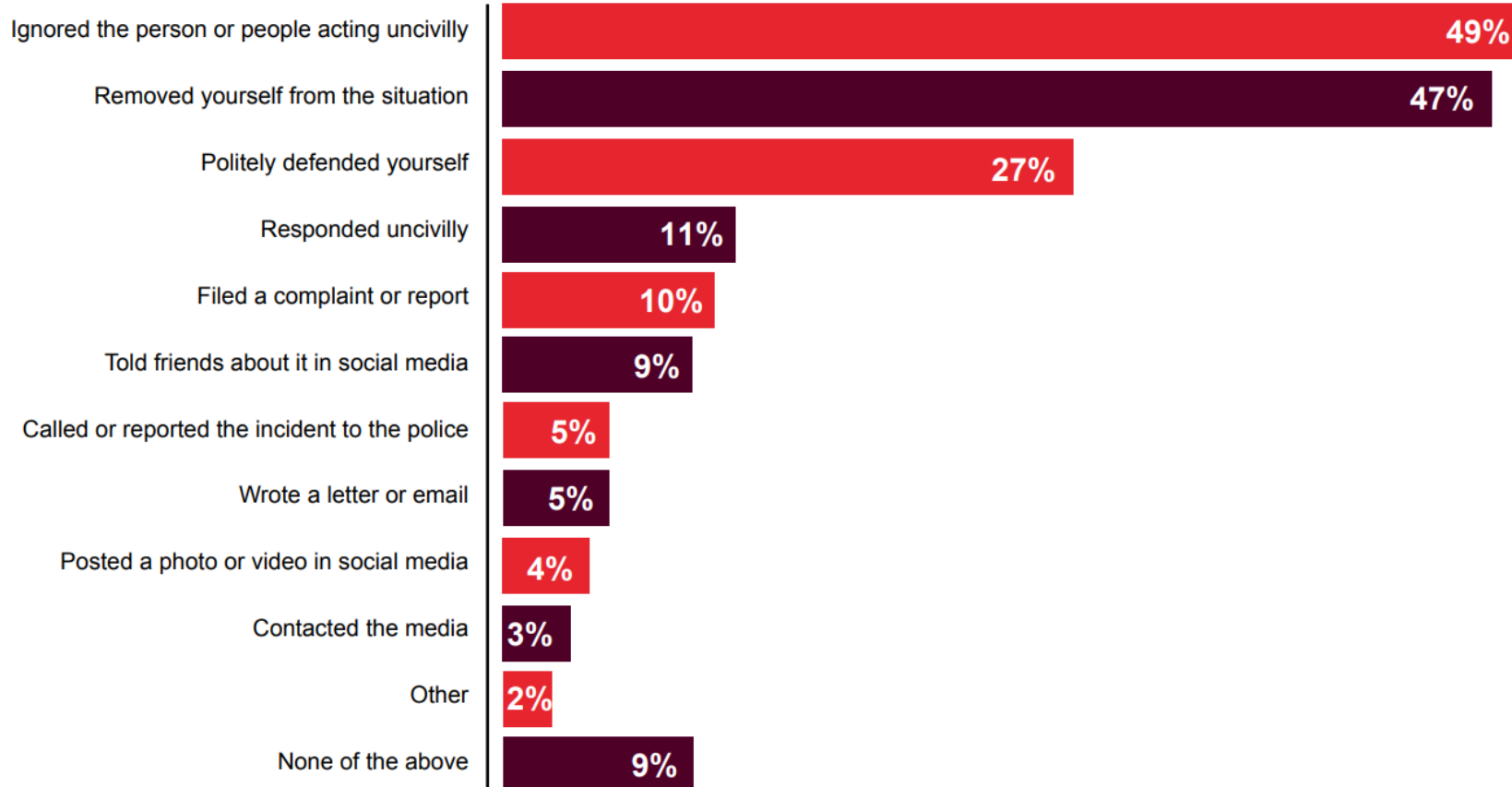
Snoeck v. ExakTime Innovations, Inc. (2023) 96 Cal.App.5th 908

- 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

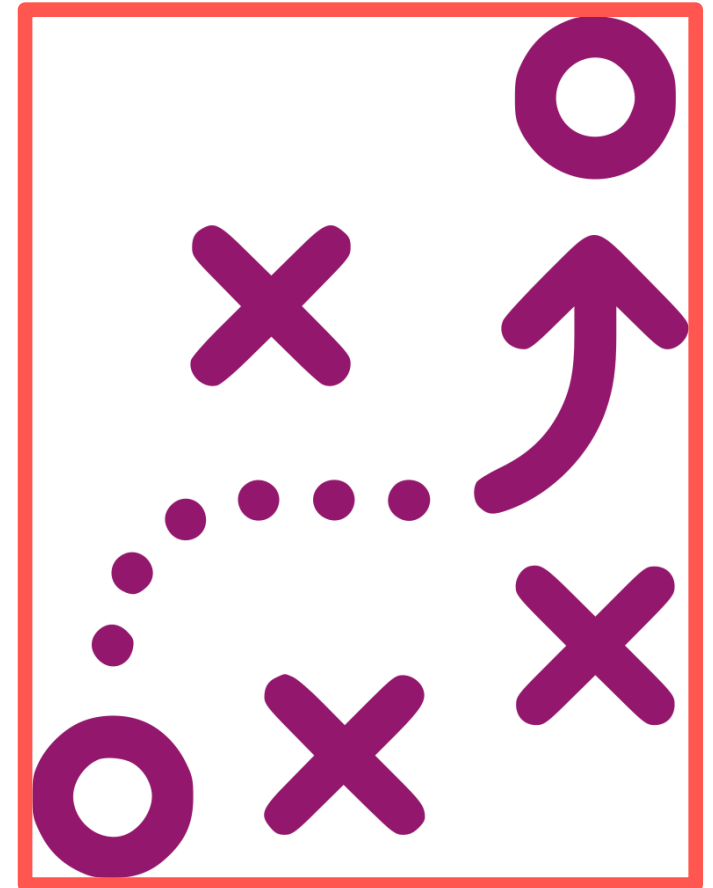
ACTIONS TAKEN THE LAST TIME EXPERIENCED INCIVILITY

(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**



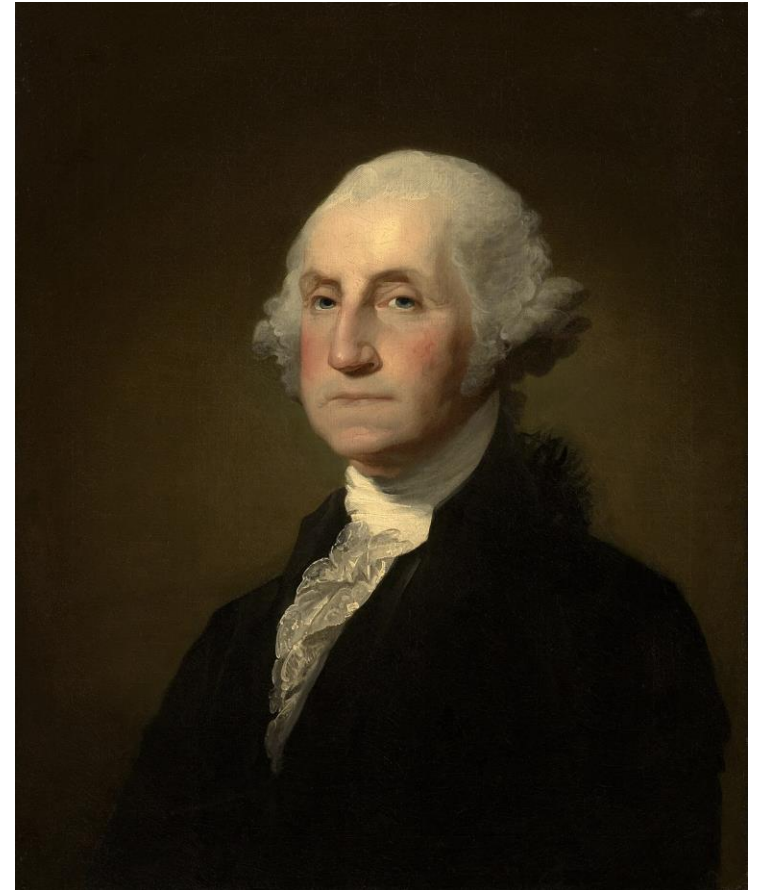
State Efforts to Address Incivility – California Civility Task Force

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.**



JacksonLewis

Thank **you.**