

ADR Services, Inc. 5th Annual MCLE Day
January 16, 2025

RESPECT, RESULTS, AND REPUTATION

WHY CIVILITY MATTERS

Hon. Victoria Chaney (Ret.)

Hon. Paul Herbert (Ret.)

Hon. Thomas Willhite, Jr. (Ret.)



Program Overview

Purpose

- Understand the new Civility MCLE requirement in California.
- Examine the reforms proposed by the Civility Task Force.

Goals

- Highlight historical and cultural factors contributing to incivility.
- Offer actionable strategies for fostering civility in legal practice.

Why Now? The New Civility Requirement



California Task Force on Civility

Recommendations adopted by the State Bar Board of Trustees in July 2023.



Current challenges

Hostility, toxicity, and disproportionate impact on marginalized groups.



Proposed Changes

- ➔ Revised attorney oath requiring reaffirmation of civility annually.
- ➔ Introduction of Rule 8.4.2 to address incivility.

Civility MCLE activity must consist of education that addresses civility in the legal profession. This includes education that discusses the link between civility and bias, incivility that is directed at opposing parties or counsel, and incivility aimed at the judiciary.

Consequences of Incivility

Practical
Repercussions



Oops! Appearing in a Published Decision

Masimo Corp. v. The Vanderpool L. Firm, Inc. (2024)101 Cal. App. 5th 902, 910-12 [affirming the imposition of \$10,000 in discovery sanctions against a law firm despite the firm's argument that it could not be sanctioned because it substituted out of the case before the motion to compel was filed. "After dodging letters and emails, Vanderpool finally made its refusal to meet and confer explicit in an email: "Your remedy is elsewhere, and an attorney with your billing rate should know that. We are not here to educate you."]

Impact on Attorney Fees

Snoeck v. ExakTime Innovations, Inc. (2023)96 Cal. App. 5th 908, 911 [affirming reduction of FEHA attorney fees for incivility: “a trial court may consider an attorney's pervasive incivility in determining the reasonableness of the requested fees. A court may apply, in its discretion, a positive or negative multiplier to adjust the lodestar calculation—a reasonable rate times a reasonable number of hours—to account for various factors, including attorney skill. [Citations.] The record before us amply supports the trial court's finding that plaintiff's counsel was repeatedly, and apparently intentionally, uncivil to defense counsel—and to the court—throughout this litigation.”]

Sanctions in Arbitration

If within the scope of the power given to the arbitrator by the arbitration agreement, the arbitrator may impose sanctions just as can the trial court. "Simply put, when parties have agreed in writing to binding arbitration and to confer upon their arbitrator the power to 'grant any remedy or relief to which a party is entitled under California law,' we presume they meant what they said and ... they will be held to those words." (David v. Abergel (1996) 46 CA4th 1281, 1283-1284.)

Professional Impact of Incivility

Adverse effects on career
progression and reputation.

Detrimental client outcomes
and strained relationships.

Future career moves.

Benefits of Civility



Civility in Mediation: The Prisoner's Dilemma

Human nature is to respond in kind.



Mentorship & Legacy



Role of Senior Attorneys

- Modeling civility for junior practitioners.
- Passing down a legacy of professionalism and respect.



Practical Application

- Incorporating civility into everyday practice.
- Sleep on it before you send that email or text.



Conclusion

Recap

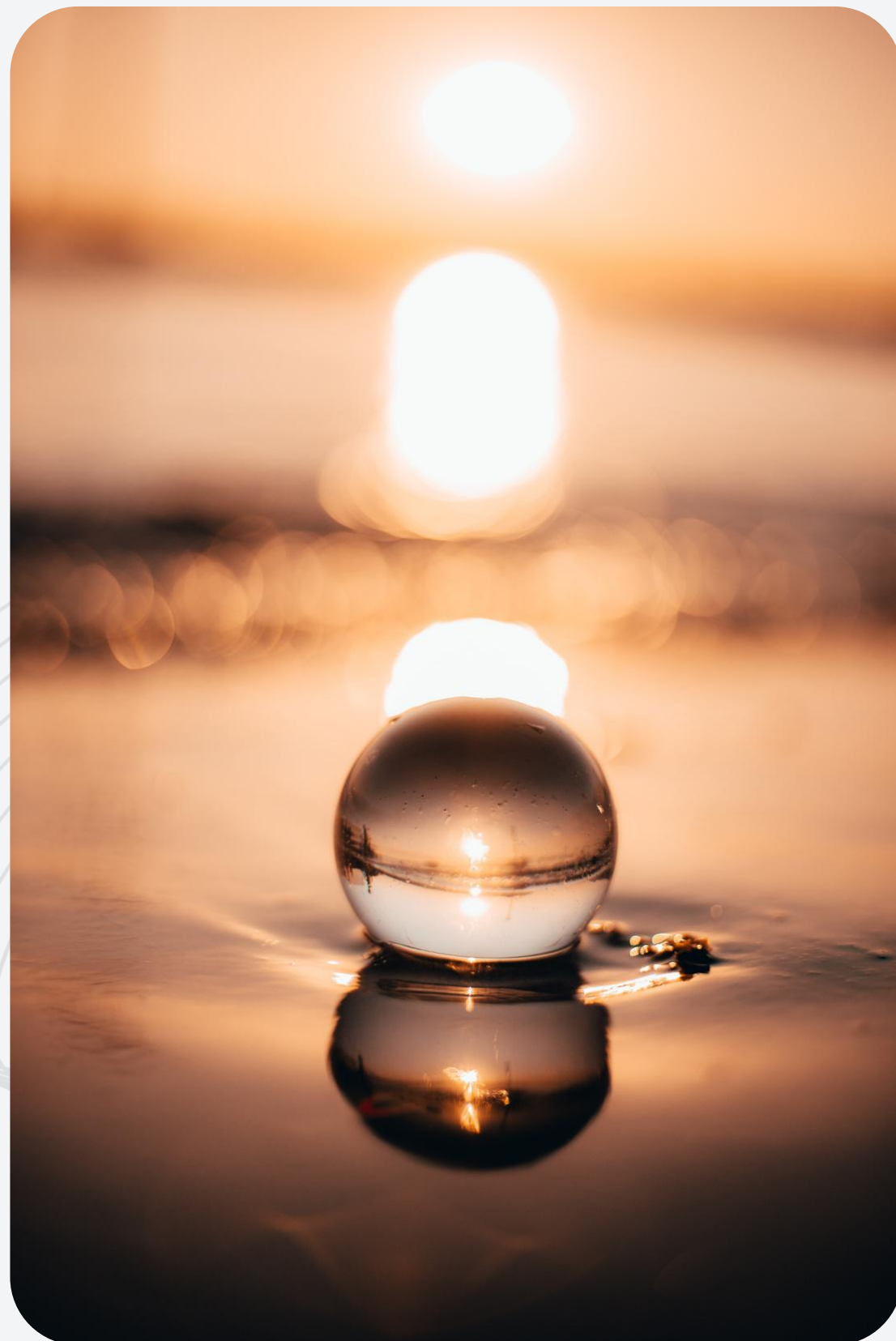
- Civility as a cornerstone of ethical and effective advocacy.
- New rules aligning respect with results and reputation.

Next Steps

- Think about your own actions, were you civil? Uncivil? How could you approach that situation differently?

Resources

- [Review Civility Toolkit and Task Force Report.](#)
- [Upcoming changes to the Rules of Professional Conduct.](#)



Thank You



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