



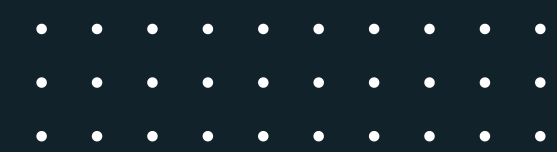
CIVILITY IN ACTION: FOSTERING PROFESSIONALISM IN THE LEGAL PRACTICE

MCLE Day 1, January 15th 2025

Mark Kramer, Esq.

Hon. David Rosen (Ret.)

Hon. Winifred Smith (Ret.)



WHY ARE WE TALKING ABOUT CIVILITY?

● **New MCLE requirement for civility education.**

- At least one hour of education addressing civility in the legal profession.
- 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.

● **Importance of civility in upholding the integrity of the legal profession.**

● **The impact of incivility on negotiations, trials, and professional relationships/career development.**

- California Rules of Court, rule 9.07 was recently amended to require all attorneys licensed or authorized to practice in California to annually reaffirm the lawyer's oath, which has included since 2014 the following pledge: "I will strive to conduct myself at all times with dignity, courtesy and integrity." Failing to annually reaffirm the civility pledge could lead to being placed on inactive status and suspension or termination of the bar license.

WHAT IS THIS THING WE CALL “CIVILITY”? WHAT DOES IT REALLY MEAN?

- 01** Civility ≠ 'woke.'
- 02** Civility = Conciliatory, collegial, professional, and aware.
- 03** Not necessarily friendly but always respectful.
- 04** CA Rules of Professional Conduct, Rule 8.3 ('Snitch Rule'): Ethical obligations intersecting with civility.

See [Report of the California Civility Task Force comments](#)



UNDERSTANDING INCIVILITY

- Incivility: Conscious vs. unconscious behaviors.
- Cultural and generational divides.
- Bias leading to incivility (e.g., microaggressions).
- Example cases:
 - Briganti, (2019) 42 Cal. App. 5th 504
 - Merrick, 2024 DJDAR 283455.

CIVILITY AS A CAREER MOVE

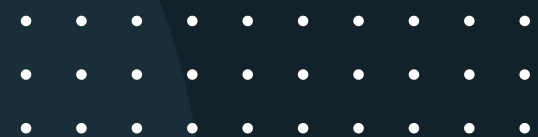
- Courteous behavior as a 'secret weapon' during trials.
- Credibility with peers, judges, and clients.
- Reputation's impact on professional success.
- Workplace culture/courtroom culture

Zealous Advocacy and Civility- Examples

Appendix 3: Key California Civility Cases

THREADING THE NEEDLE BETWEEN ZEALOUS REPRESENTATION AND PROFESSIONAL CIVILITY

- Prior to the current changes in the California rules, the ABA Model Rules of Professional Conduct, as well as the California Rules of Court, along with the California Code of Civil Procedure, sanctioned or recognized inappropriate, frivolous, or unprofessional conduct by lawyers. A common thread references zealous and aggressive representation within “the bounds of the law.” SEE, TUFT, “RECONCILING THE DUTY OF ZEALOUS ADVOCACY AND CIVILITY,” JOURNAL OF THE LITIGATION SECTION OF THE CALIFORNIA LAWYERS ASSOCIATION, VOL. 37, ISSUE 3, PP.50-52.
- This standard may shift depending upon the type of matter in which the lawyer is involved; noting the difference between defending someone accused of a capital crime, on the one hand, and defending someone accused of breach of contract on the other. California Rules of Professional Conduct, rule 3.1, at sec.
- Thus, zealous advocacy and professional civility are not contradictory concepts. Lawyers need not depart from one standard to honor the other. Simply, zealous advocacy does not mean unhinged representation or rudeness. Insults, demeaning and harassing conduct or comments have no place in legitimate zealous advocacy. Yet, our obligation to practice with civility should not be regarded as chilling to zealous and aggressive representation within the bounds of the law.



TACTICS-MCCULLERS V. KOCH FOODS OF ALABAMA, ETC., ET AL. 1:24-CV- 01496-RDP, USDC-(N.D. AL 11/26/24)

Chief Judge R. David Proctor rued the plaintiff's lawyer's refusal to extend the time by which Defendant had to file a responsive pleading by stipulation. Defendant then filed a motion to extend said deadline, which Plaintiff counsel conditionally opposed unless Defendant agreed not to file a Motion to Dismiss. Judge Proctor criticized this tactic, calling it "wholly inappropriate" and an example of "fiddle-faddle" that wastes the parties' and the Court's time and resources, damages professional and personal relationships, and takes the Court's focus away from resolving the merits of cases. Judge Proctor emphasized that lawyers should "pick their battles wisely" and that granting these kinds of extensions is typically a matter of professional courtesy.

**RUDENESS- LA JOLLA SPA MD, INC. V.
AVIDAS PHARMS, ETC., 17-CV-1124-
MMA(WVG), 2019 WL 4141237 (S.D. CAL.
8/30/19); IN RE MARRIAGE OF DAVENPORT
(2011) 194 CAL. APP. 4TH 1507.**



**HATED ATTORNEY
(IRRESISTIBLE IMPULSE-CHU V.
WCAB (1996) 49 CAL. APP. 4TH
1176)**



“A judge shall uphold the integrity and independence of the judiciary”. The rules of conduct applicable to Judges, and the interpretations of those rules, are instructive and illuminating with respect to attorney civility

COURT CIVILITY TOWARD LAWYERS, LITIGANTS

- Judge's "Civility" sign
- "responder always caught";
- Microaggressions.
- CA Code of Judicial Ethics, Canon One; Rothman's 8 pillars
- The often less physically interpersonal world; far less frequent physical presence at the courthouse or in courtrooms. Digital communications style.

BUILDING RELATIONSHIPS, WHICH RELIES ON CIVILITY, IN OUR POST-COVID-19 WORLD

WHAT IS THIS THING WE CALL “CIVILITY”? WHAT DOES IT REALLY MEAN?

- Over time, Civility promotes career success (credibility with bar, bench). Earned Reputation pays dividends over time (like the arc of the universe gradually bending towards justice). Lawyers talk about lawyers, and Judges talk about lawyers, clerks talk to the judges. Client expectations.
- Extending courtesies
- A good lawyer knows the law, a great lawyer knows the judge

**STRIVE TO REMEMBER THAT YOU'RE
ENGAGED IN A PROFESSION WITH
BUSINESS ASPECTS, NOT A BUSINESS
WITH PROFESSIONAL ASPECTS.**

THANK YOU



Mark Kramer, Esq.
mkramer@adrservices.com



Hon. David Rosen (Ret.)
judgerosen@adrservices.com



Hon. Winifred Smith (Ret.)
judgesmith@adrservices.com