



The State Bar of California

RECENT DEVELOPMENTS IN LEGAL ETHICS AND PROFESSIONAL CONDUCT— WHAT YOU NEED TO KNOW SPEAKER BIOGRAPHIES

Daniel J. O’Rielly, Moderator

Los Angeles, CA

Daniel J. O’Rielly is a founder and managing partner of the California law firm O’Rielly & Roche LLP. Based in Los Angeles, he is a business and legal ethics lawyer for California law firms. He counsels and advises firms on strategic business issues, including developing and drafting partnership agreements and other firm organizing documents; developing and documenting compensation systems, attorney promotion systems, and succession planning; and developing and executing law firm start-up planning and growth planning. He also counsels and advises California law firms on legal ethics compliance and professional responsibility, in addition to counseling and advising law-related business structures.

Cassidy E. Chivers

Mill Valley, CA

Cassidy E. Chivers is a shareholder at Barron & Newburger PC. She is the co-leader of the firm’s risk management program, Attorney Risk Management Practice Group, which offers risk management and ethics advice to lawyers and law firms nationwide. She is an advisor to the State Bar of California’s Committee on Professional Responsibility and Conduct. Chivers also serves as outside general counsel for a number of California law firms, ranging from small partnerships to AM Law 50 firms, advising on a wide array of law practice management, ethics, and regulatory issues, including conflicts review protocols, engagement agreements, law firm formation and dissolution, succession planning, and lawyer and staff wellness programs, among other aspects of the business of law that are critical to a law firm’s success and longevity. Chivers also represents lawyers and law firms in legal malpractice and third-party claims, as well as State Bar disciplinary investigations. She is a State Bar certified specialist in the area of legal malpractice law.

Eleanor K. Mercado

Century City, CA

Eleanor Mercado is associate general counsel to Wilson Sonsini Goodrich & Rosati, where she advises the firm and its lawyers on a broad range of matters, including client intake, conflicts, claims, ethics and professional responsibility, insurance, and law firm governance. Prior to joining Wilson Sonsini, Mercado was associate general counsel at a large international law firm, where she advised on an array of risk management issues and oversaw various functions, including information security and third-party risk management. Before that role, she was a member of the securities litigation and enforcement practice, where she focused on representing public companies, officers and directors, and investment advisors in government investigations and civil litigation.

Mercado is the vice-chair of the Committee on Professional Responsibility and Conduct (COPRAC). Her work on COPRAC includes developing and issuing advisory ethics opinions and studying and recommending changes to the Rules of Professional Conduct.

**RECENT DEVELOPMENTS IN LEGAL ETHICS AND PROFESSIONAL CONDUCT—
WHAT YOU NEED TO KNOW
LIST OF TOPICS**

1. Proposed revised changes to solicitation in domestic violence restraining order matters
2. New lawyer advertising and legal referral laws
3. Lawyer civility and the [*Civility Toolkit*](#)
4. [*Succession Planning for California Attorneys: A Law Practice Guide*](#), The State Bar of California
5. Proposed COPRAC opinions
 - Proposed Interim Formal Opinion No. 20-0005 (Legal Fee Conversion Clauses)
 - [*Proposed Interim Formal Opinion No. 21-0003 \(Ethics of In-house Counsel Business Transaction with Clients\)*](#) (circulating for public comment with a deadline of May 7, 2026)

**Rule 7.3 Solicitation of Clients
(Proposed Amended Rule)**

- (a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment when a significant motive for doing so is the lawyer's pecuniary gain, unless the person* contacted:
 - (1) is a lawyer; or
 - (2) has a family, close personal, or prior professional relationship with the lawyer.
- (b) A lawyer shall not solicit professional employment by written,* recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:
 - (1) the person* being solicited has made known* to the lawyer a desire not to be solicited by the lawyer; or
 - (2) the solicitation is transmitted in any manner which involves intrusion, coercion, duress or harassment.
- (c) Every written,* recorded or electronic communication from a lawyer soliciting professional employment from any person* known* to be in need of legal services in a particular matter shall include the word "Advertisement" or words of similar import on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person* specified in paragraphs (a)(1) or (a)(2), or unless it is apparent from the context that the communication is an advertisement.
- (d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person, live telephone or real-time electronic contact to solicit memberships or subscriptions for the plan from persons* who are not known* to need legal services in a particular matter covered by the plan.
- (e) As used in this rule, the terms "solicitation" and "solicit" refer to an oral or written* targeted communication initiated by or on behalf of the lawyer that is directed to a specific person* and that offers to provide, or can reasonably* be understood as offering to provide, legal services.
- (f) Even when not otherwise prohibited by this rule, a lawyer shall not solicit professional employment from a respondent in a domestic violence restraining order proceeding in connection with such proceeding, until after the respondent has been legally served with notice of the proceeding and proof of service appears on the court docket.

Comment

[1] A lawyer's communication does not constitute a solicitation if it is directed to the general public, such as through a billboard, an Internet banner advertisement, a website or a television commercial, or if it is in response to a request for information or is automatically generated in response to Internet searches.

[2] Paragraph (a) does not apply to situations in which the lawyer is motivated by considerations other than the lawyer's pecuniary gain. Therefore, paragraph (a) does not prohibit a lawyer from participating in constitutionally protected activities of bona fide public or charitable legal-service organizations, or bona fide political, social, civic, fraternal, employee or trade organizations whose purposes include providing or recommending legal services to its members or beneficiaries. (See, e.g., *In re Primus* (1978) 436 U.S. 412 [98 S.Ct. 1893].)

[3] This rule does not prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a bona fide group or prepaid legal plan for their members, insureds, beneficiaries or other third parties for the purpose of informing such entities of the availability of and details concerning the plan or arrangement which the lawyer or lawyer's firm* is willing to offer.

[4] Lawyers who participate in a legal service plan as permitted under paragraph (d) must comply with rules 7.1, 7.2, and 7.3(b). (See also rules 5.4 and 8.4(a).)

[5] Paragraph (f) addresses solicitation in domestic violence restraining order proceedings where solicitation of respondents prior to legal service may increase the risk of petitioner facing abuse, violence or even death. This limitation serves the State Bar's mission to protect the public, as recognized in Business and Professions Code section 6001.1.

Rule 7.3 Solicitation of Clients
(Redline Comparison of the Current Rule to the Proposed Amended Rule)

- (a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment when a significant motive for doing so is the lawyer's pecuniary gain, unless the person* contacted:
 - (1) is a lawyer; or
 - (2) has a family, close personal, or prior professional relationship with the lawyer.
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 - (1) the person* being solicited has made known* to the lawyer a desire not to be solicited by the lawyer; or
 - (2) the solicitation is transmitted in any manner which involves intrusion, coercion, duress or harassment.
- (c) Every written,* recorded or electronic communication from a lawyer soliciting professional employment from any person* known* to be in need of legal services in a particular matter shall include the word "Advertisement" or words of similar import on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person* specified in paragraphs (a)(1) or (a)(2), or unless it is apparent from the context that the communication is an advertisement.
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The State Bar of California

Civility in Practice: Navigating Professional Responsibilities

Toolkit Instructions

February 2026

TOOLKIT INSTRUCTIONS

This toolkit provides materials to deliver a one-hour educational program on civility and professional responsibility. It is designed to promote discussion, reflection, and practical judgment rather than scripted lecture delivery. The toolkit supports joint presentations by judges and attorneys, reflecting shared responsibility for promoting civility and professionalism within the legal system. Judicial participation is optional and educational in nature.

The toolkit establishes a baseline statewide civility program that may be adapted for different audiences, practice settings, and levels of subject matter expertise. It is intentionally comprehensive so that faculty with varying experience levels have access to sufficient background, examples, and resources to support effective instruction. Not all materials are intended to be used in a single presentation.

The toolkit includes a lesson plan, a PowerPoint presentation, and supporting handouts for participants. These materials may be used for live or remote delivery and may be adapted consistent with the guidance provided below.

PURPOSE OF THE TOOLKIT

This toolkit is intended to help faculty introduce core concepts, facilitate discussion, and guide participants in applying the material to their professional work. The approach emphasizes professional judgment and practical decision-making, focusing on preventative education rather than rule recitation or evaluation of individual conduct.

This program does not create new standards of conduct, establish disciplinary rules, or assess attorney behavior. It is designed to reinforce existing professional obligations and support a shared culture of civility within the legal profession.

FACULTY TEACHING NOTES

Civility is best learned through reflection, shared experience, and judgment calls, rather than exhaustive review of rules or authorities. Many participants will arrive with substantial experience and strong views. Faculty should use that experience as a teaching asset and focus discussion on how civility expectations intersect with advocacy, client management, and interactions with the court.

Faculty should avoid adjudicating conduct or framing hypotheticals in terms of disciplinary outcomes. The focus should remain on reasoning, professional judgment, and risk awareness. Where questions require individualized guidance, faculty should direct participants to appropriate resources, including the State Bar Ethics Hotline. The Hotline provides research assistance and does not offer legal advice.

This program may be presented by an attorney alone or jointly with a judicial officer. Where judicial officers participate, faculty notes identify opportunities for institutional perspective and

courtroom insight, but judicial participants are not limited to those prompts and may contribute as appropriate. Judicial participation is educational and does not involve discussion of discipline or sanctions.

Encourage participants to think about how the course content applies to their specific work settings, including interactions with opposing counsel, clients, the court, and in non-litigation or advisory roles. Where appropriate, invite participants to share examples or perspectives that reflect differing roles within the legal system.

SLIDE DESIGN AND USE

Core Instructional Model (One-Hour Program)

For a standard one-hour session, faculty are encouraged to use core instructional components rather than comprehensive slide coverage. These components are designed to anchor discussion, polling, and scenario-based learning rather than to deliver all substantive content.

Faculty should not attempt to advance through every slide in the deck during a one-hour program. Pacing should prioritize engagement, discussion, and application over slide coverage. Recommended timing assumes coverage of core instructional components only and does not include optional or expanded slides.

Optional and Expanded Slides

Additional slides are included to support flexibility for longer programs or deeper discussion and are addressed in more detail below.

Graphics and Customization

The PowerPoint uses the State Bar's standard slide template to promote consistency, accessibility, and accuracy across statewide programs. Faculty are encouraged to add visuals, graphics, or interactive elements consistent with their teaching style and audience needs. Because this program has been approved by the State Bar for one hour of civility MCLE credit, any modifications should be limited to presentation style, examples, and discussion format, and should not alter the core instructional content or learning objectives. The Civility Toolkit is designed to support a one-hour core civility program and may also support longer sessions through the inclusion of optional slides, additional hypotheticals, and extended discussion. MCLE credit approval is based on the program as delivered, and providers seeking credit for sessions longer than one hour must ensure the presentation meets applicable MCLE requirements and obtain approval for the full instructional time.

LEARNING OBJECTIVES

By the end of the course, participants should be able to:

- Analyze the purpose and scope of the Civility Oath under California Rules of Court, rule 9.7, and assess how it fits within the broader framework of professional responsibility.
- Apply the California Attorney Guidelines of Civility and Professionalism to common practice scenarios involving opposing counsel, the court, and clients.
- Identify and address bias-linked incivility, including microaggressions, using practical strategies that promote fairness and inclusion.
- Make informed judgment calls that reinforce a culture of civility within legal practice settings, courtrooms, and professional communities.

COURSE COMPONENTS

- Lesson Plan (timing, content flow, and faculty notes)
- PowerPoint Presentation (aligned with lesson plan)
- Handouts (resources, articles, and references)
- Polling questions or discussion prompts (included in the Lesson Plan, PowerPoint, and below)

Scenarios are included both in the PowerPoint and in the instruction materials. Slides are intended to support live facilitation, while handouts provide fuller context, debrief guidance, and materials for reflection and follow-up.

DELIVERY GUIDANCE

- Present the material using the lesson plan as the primary guide, adapting pacing as needed to support discussion.
- Use polling questions or discussion prompts to support engagement and reflection.
- Encourage participants to consider the reasoning process behind decisions, not just outcomes.
- Conclude with key takeaways that reinforce professional judgment and direct participants to additional resources where appropriate.
- This toolkit is designed to be adapted for different practice settings while preserving the educational framing, timing, and core learning objectives.

STATE BAR RESOURCES

Faculty are encouraged to highlight State Bar resources during the program, including:

- Ethics Hotline at 800-238-4427
- Lawyer Assistance Program (LAP) at 877-527-4435

Many attorneys are unaware of these resources. Including them as part of civility education supports early intervention, professionalism, and preventative practice support.

RECOMMENDED CORE SLIDES FOR A ONE-HOUR PROGRAM

For a standard one-hour, discussion-based session, the PowerPoint is organized around a core instructional framework rather than a fixed slide count. The program is designed to support core teaching moments, anchored by framing slides, interactive hypotheticals, and guided debrief.

Core Instructional Components

For a one-hour program, faculty are encouraged to include the following core components:

- Title Slide and course overview (Slides 1-2)
- Civility in California: Key Milestones (Slide 3)
- The Civility Oath and Annual Declaration (Slides 5-6)
- MCLE civility requirement (Slide 7)
- How is “civility” measured or defined (Slides 10)
- Introduction to Civility Guidelines (Slides 11-12)
- Scenario-based discussion of courtroom advocacy (Slides 13-14)
- Bias-linked incivility in practice (Slides 17-18, 21)
- Scenario-based discussion of written communications (Slides 22-23)
- Scenario-based discussion of client pressure (Slides 27-28)
- Practical consequences of incivility (Slides 29-30)
- State Bar resources and support (Slides 33-34)
- Reflection on fostering a culture of civility (Slide 35)
- Instructions to receive MCLE credit (Slide 36)

These components may be supported by multiple slides and should be treated as instructional anchors, not a requirement to advance through a specific number of slides.

Optional and Expanded Slides

The PowerPoint deck includes additional slides that provide expanded doctrinal context, extended examples, constitutional considerations, or reference material. To support pacing for a one-hour program, these slides are hidden in the default slide view and identified as optional in the lesson plan and faculty notes.

Slides are intentionally not labeled as “optional” within the slide content itself. Faculty should rely on the lesson plan and faculty notes to determine which slides are core and which may be unhidden and used for longer sessions, specialized audiences, or deeper discussion.

Hidden slides remain part of the official toolkit and may be unhidden and incorporated without modification based on audience needs, time available, and teaching style.

Final Note for Faculty

The full slide deck and handouts are provided to support flexibility and confidence in teaching. Faculty are encouraged to adapt content, add visuals, and adjust pacing to meet audience needs while preserving the core learning objectives and educational framing of the program.

POLLING AND DISCUSSION QUESTIONS

Polling questions and discussion prompts are included to support engagement, reflection, and application of the material. Faculty may choose to use polls, open discussion, breakout groups, or other interactive methods depending on audience size, delivery format, and time available.

For a one-hour session, faculty are encouraged to select one to three polling questions or scenarios aligned with the core teaching slides. Faculty should not feel obligated to use every poll or hypothetical included in the materials.

Polling questions are designed to surface reasoning and professional judgment rather than to test knowledge. Where a preferred response is identified, it is provided as facilitation guidance rather than a graded or definitive answer.

Polling setup guidance

- Load each poll as a separate question
- Title each poll using the slide number and hypothetical title
- Allow time for discussion before revealing any suggested response
- Use poll results as a starting point for discussion rather than an endpoint

Faculty may adapt, modify, or replace polling questions to better suit their audience and teaching style while preserving the core learning objectives. If you need assistance adding the poll, please visit [Conducting Polls in Zoom Meetings](#) or visit [Conducting Polls in Teams](#).

For a standard one-hour program, polling works best when paired with the following core scenarios:

- Your Role in Courtroom Advocacy
- Your Role with Your Client

Use of suggested responses

Suggested responses are included to support faculty facilitation. Faculty should avoid framing responses as right or wrong and should instead focus discussion on:

- Risks and consequences associated with different choices
- Professional judgment and reasoning
- Impact on clients, courts, and opposing counsel

The following hypotheticals are provided as facilitation tools. Faculty may select, adapt, or omit scenarios based on time, audience, and instructional goals.

1. HYPOTHETICAL: YOUR ROLE IN COURTROOM ADVOCACY

Note: This hypothetical may be used as a poll or facilitated discussion.

Slide 13

A lawyer repeatedly interrupts opposing counsel during a hearing, raises their voice, and makes personal remarks about counsel's experience level.

Polling or Discussion Prompt

Which of the following is the best response under the Civility Guidelines?

- A. Ignore the conduct and return to the argument.
- B. Raise the concern respectfully with the court and request to proceed without interruption.
- C. Match the tone to avoid looking weak in front of the client.
- D. File a motion for sanctions immediately.

Option B reflects the approach most consistent with maintaining credibility with the court, protecting fairness in proceedings, and advancing the client's interests without escalating conflict.

DEBRIEF OF HYPOTHETICAL YOUR ROLE IN COURTROOM ADVOCACY

Slide 14

Before identifying the preferred response, ask audience to consider:

"What risks do you see in each option?"

Your role in courtroom advocacy includes maintaining credibility with the court, ensuring fairness in proceedings, and advancing your client's interests without undermining the tribunal. Point out the relevant sections of the Civility Guidelines, including: 1, 3, 4, and 10.

2. HYPOTHETICAL: YOUR ROLE IN PROTECTING THE TRIBUNAL

Note: This scenario is best used for discussion rather than polling and may be omitted in shorter sessions.

Slide 15

A plaintiff's attorney informed a defense attorney that he planned to arrive at the courthouse one hour prior to the hearing in hopes of addressing preliminary matters and discussing possible settlement, prior to the hearing. The defense attorney responded with eagerness to discuss such matters and stated she would also appear one hour early. However, plaintiff's counsel encounters a problem and realizes that he cannot arrive early and will likely be at least

30 minutes late to court. Despite ample opportunity to do so, he fails to notify either the court or opposing counsel that he expects to be late. *Once plaintiff's counsel realized he would be late, what steps should he have taken to comply with his professional obligations and avoid prejudicing opposing counsel or the court?*

DEBRIEF OF HYPOTHETICAL YOUR ROLE IN PROTECTING THE TRIBUNAL

Slide 16

Seemingly minor process failures, such as failing to notify the court of a delay, can have outsized impacts on credibility, client cost, and court efficiency.

Civility Guidelines, Section 5: Attorneys should be punctual and should timely notify the court and other participants if they will be late.

In this scenario, counsel failed to notify the court and opposing counsel of a delay after proposing to arrive early, depriving the court of the opportunity to manage its docket and undermining trust between counsel. This scenario highlights how basic communication duties support fairness, efficiency, and the orderly administration of justice.

3. HYPOTHETICAL: YOUR ROLE IN WRITTEN COMMUNICATION

Note: This scenario is best used for discussion rather than polling and may be omitted in shorter sessions.

Slide 22

During a heated discovery meet and confer, opposing counsel sends an email accusing your client of “stalling on purpose” and calling your position “ridiculous.” The lawyer copies the judge’s clerk on the email.

Shortly afterward, opposing counsel leaves you an angry voicemail stating that this behavior is “typical” of your client and *references your client’s background or culture* as an explanation for the conduct. Your client wants you to “match the tone,” threaten sanctions, and copy the court in response.

Reflection Questions:

1. What professional obligations are implicated by the tone and content of opposing counsel’s communications?
2. How does the reference to your client’s background or culture change the analysis, if at all?
3. How would you explain your response strategy to your client?
4. What, if any, step should you take regarding the clerk being copied?

DEBRIEF OF HYPOTHETICAL YOUR ROLE IN WRITTEN COMMUNICATION

Slide 23

Your role in written communications is to model professionalism, manage tone under pressure, and protect your client’s interests without escalating conflict or creating avoidable risk. The

Civility Guidelines discourage personal attacks, inflammatory language, and unnecessary copying of the court.

References to a party's background or culture shift a dispute from conduct to identity and can reflect bias-linked incivility, even when framed as frustration. A professional response resets the tone, avoids mirroring incivility, and keeps communications focused on the merits. This includes explaining to the client how escalation can increase cost, risk, and credibility concerns, and why restraint better serves the client's interests.

4. HYPOTHETICAL: YOUR ROLE WITH YOUR CLIENT

Note: This hypothetical may be used as a poll or facilitated discussion.

Slide 27

Your client is frustrated with opposing counsel and insists that you "get aggressive." The client wants you to send a hostile email, threaten sanctions, and copy the court to "send a message." The client argues that this approach will show strength and speed things up. You believe this approach will escalate the dispute, increase costs, and damage credibility with the court.

Polling or Discussion Prompt

Which response best reflects your role as the attorney?

- A. Follow the client's direction to maintain trust and show zealous advocacy
- B. Decline representation unless the client changes course
- C. Explain your professional role, reset expectations, and propose an alternative strategy
- D. Send the communication but soften the tone

Option C reflects the exercise of independent professional judgment and effective client management consistent with the Civility Guidelines.

DEBRIEF OF HYPOTHETICAL YOUR ROLE WITH YOUR CLIENT

Slide 28

Client pressure is a common source of incivility. An attorney's role is to exercise independent professional judgment and set boundaries around how advocacy is carried out. Civility does not mean abandoning the client's goals. It means choosing strategies that advance those goals without creating unnecessary risk, cost, or delay.

Attorneys are responsible for professional conduct and strategy, even when clients push for aggressive or counterproductive behavior.

Discussion Prompts (Choose One or Two)

- How would you explain this boundary to the client without sounding dismissive?
- What risks does the client's proposed approach create for the case?
- How can you reframe civility as protecting the client's interests?

When client pressure escalates, your role is to lead and guide, not mirror. This scenario emphasizes managing client expectations, exercising professional judgment, and reframing civility as a tool for effective advocacy rather than a concession.

Lesson Plan—Civility in Practice: Navigating Professional Responsibilities

Course Designer(s): The State Bar of California, Office of Professional Competence.

Target Audience: California licensed attorneys.

No. of Participants: This program is designed for facilitated discussion and is most effective with approximately 20 to 40 participants. Smaller or larger groups may require additional facilitation strategies or adjustments to discussion format.

Length of Course: This course is designed as a modular program and may be delivered in 60, 90, or 120 minutes, depending on the inclusion of optional content and discussion components.

Course Description: This course covers the California Attorney Guidelines of Civility and Professionalism (the “Civility Guidelines”) and related parts of the California Rules of Professional Conduct and the State Bar Act. The core curriculum satisfies the requirements for 1 hour of Minimum Continuing Legal Education credit in civility training. When optional slides, scenarios, and facilitated discussion are included, the course may be approved for up to 1.5 or 2 hours of MCLE credit.

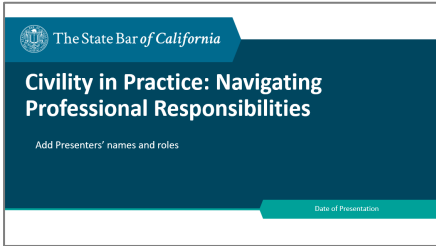
Instructor Note: This lesson plan is organized around core teaching moments rather than comprehensive slide coverage. The recommended timing reflects a one-hour, discussion-based program. Faculty should use this plan as a guide and are encouraged to adapt pacing, select scenarios, and prioritize engagement over advancing through every slide. It is acceptable and expected to prioritize discussion over slide coverage.

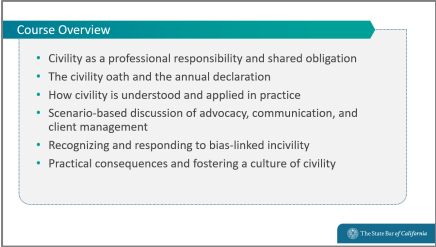
Equipment Needed: Laptop and ability to poll users.
Prerequisites (if any): N/A.
Pre-course assignments (if any): Review the Civility Guidelines.
Fairness/ADA Issues to cover: Discuss the link between incivility and bias.

Learning Objectives (LO)

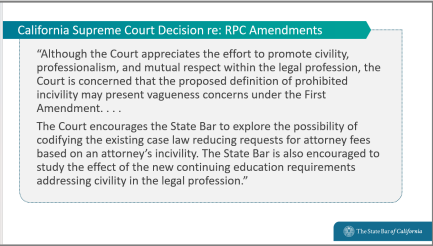
1. Analyze the purpose and scope of the Civility Oath under California Rules of Court, rule 9.7, and assess how it fits within the broader framework of professional responsibility.
2. Apply the California Attorney Guidelines of Civility and Professionalism to common practice scenarios involving opposing counsel, the court, and clients.
3. Identify and address bias-linked incivility, including microaggressions, using practical strategies that promote fairness and inclusion.
4. Make informed judgment calls that reinforce a culture of civility within legal practice settings, courtrooms, and professional communities.

Instructor Guidance on Scope and Pacing: This lesson plan includes more material than can be covered in a one-hour session. The recommended timing reflects coverage of the core instructional components only. Faculty should prioritize the core teaching blocks identified below and select no more than two to three scenarios for discussion. Optional slides are hidden in the default slide view and identified as optional in the lesson plan and faculty notes. Slides are not labeled as optional within the slide content itself. Optional slides are excluded from time estimates.

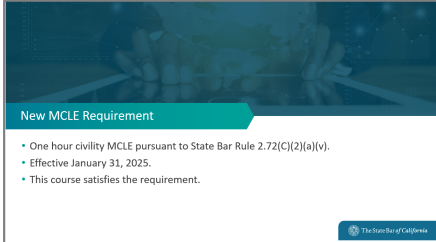
Slides	Content	Teaching Method	Faculty Notes
	BLOCK 1: Welcome, Framing, and Learning Approach (Approximate Time 5 minutes)		
Slide 1 	WELCOME AND INTRODUCTIONS Civility in Practice: Navigating Professional Responsibilities Add Presenters' names and roles Date of Presentation	Lecture	Faculty should introduce themselves and welcome participants. Set the expectation for facilitated discussion. Explain that this course qualifies for one-hour MCLE credit in civility and handle any housekeeping issues. This course is designed to be interactive. Many of the participants bring substantial experience, and the goal today is to reflect on how civility shows in your various roles in the profession. If presenting jointly, briefly acknowledge the value of hearing perspectives across roles. Judicial participation is intended to provide insight into courtroom operations and expectations, not to discuss sanctions or discipline.

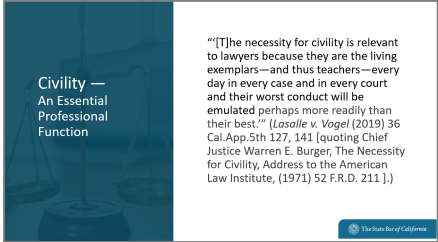
Slides	Content	Teaching Method	Faculty Notes
Slide 2 	OVERVIEW Civility as a professional responsibility and shared obligation The Civility Oath and the annual declaration How civility is understood and applied in practice Scenario-based discussion of advocacy, communication, and client management Recognizing and responding to bias-linked incivility Practical consequences and fostering a culture of civility	Lecture	Briefly walk through the topics to be covered. Emphasize that the course will move from background to application. Throughout this course, we will treat civility as a professional skill that shows up across the full lifecycle of legal practice, including courtroom advocacy, written communications, client management, interactions with opposing counsel, and the long-term reputation attorneys build with courts and colleagues.

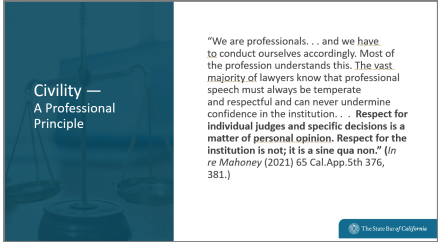
Slides	Content	Teaching Method	Faculty Notes
	BLOCK 2: Civility in California and the Professional Responsibility Framework (Approximate Time 9 minutes)		
Slide 3  The slide shows a timeline titled 'Civility in California: Key Milestones' with five milestones marked by checkmarks in circles: 2007: Civility Guidelines adopted 2014: Civility added to oath 2021: Civility Task Force Report 2025: Civility MCLE requirement 2025: Annual Civility Declaration The slide also includes the logo for 'The Board of Calbar' at the bottom right.	CIVILITY IN CALIFORNIA: KEY MILESTONES 2007 Civility Guidelines adopted 2014 Civility added to oath 2021 Civility Task Force Report 2025 Civility MCLE requirement 2025 Civility Annual Civility Declaration	Lecture	Use this timeline to show how California’s approach to civility has evolved over time, with an increasing emphasis on education, shared professional norms, and culture rather than new disciplinary rules. Key developments include the adoption of the California Guidelines of Civility and Professionalism in 2007, the addition of a civility component to the attorney oath in 2014, and the work of the California Civility Task Force in 2021, which emphasized education-focused solutions. Those recommendations led to the civility MCLE requirement beginning with the compliance period ending January 31, 2025, and the annual civility declaration under California Rules of Court, rule 9.7. This progression reflects a shift from aspirational guidance toward structured education and reinforcement of existing professional obligations, while remaining mindful of constitutional limits. For consistency, this toolkit uses “Civility Oath” to describe the professional

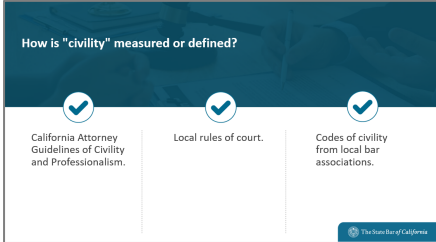
Slides	Content	Teaching Method	Faculty Notes
			commitment and “annual declaration” to describe the reporting requirement. Joint Presentation Note (Optional): A judicial officer may briefly comment on why predictability, professionalism, and respectful advocacy support court operations and public trust.
Slide 4 	CALIFORNIA SUPREME COURT DECISION re: RPC AMENDMENTS “Although the Court appreciates the effort to promote civility, professionalism, and mutual respect within the legal profession, the Court is concerned that the proposed definition of prohibited incivility may present vagueness concerns under the First Amendment The Court encourages the State Bar to explore the possibility of codifying the existing case law reducing requests for attorney fees based on an attorney’s incivility. The State Bar is also encouraged to study the effect of the new continuing education requirements addressing civility in the legal profession.”	Lecture	Optional slide. Hidden by default. Explain that the Court’s decision reflects constitutional limits, not opposition to civility. Explain the Court denied the proposed amendments to the California Rules of Professional Conduct. The Court was careful to protect constitutional boundaries while still affirming civility as a core professional value. Emphasize that the Court explicitly encouraged education and study. Throughout the course, maintain the distinction between aspirational guidelines, enforceable obligations, and constitutional limits. The purpose of this

Slides	Content	Teaching Method	Faculty Notes
			program is preventative education and practical judgment, not rule expansion.
Slide 5	THE CIVILITY OATH California Rules of Court, rule 9.7 Upon admission to practice law in California, attorneys are required to take an oath that includes the following civility commitment: “As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy and integrity.”	Lecture	Explain that since 2014, attorneys admitted to practice in California have taken an oath that expressly includes a commitment to conduct themselves with dignity, courtesy, and integrity. This civility language supplements the oath required by Business and Professions Code section 6067 and applies at the point of entry into the profession. Emphasize continuity rather than change. The oath does not create new standards of conduct but reinforces long-standing expectations of professionalism and the role of attorneys as officers of the court. Civility is presented as a foundational principle of legal practice in California, not a recent or disciplinary development.
Slide 6	THE ANNUAL DECLARATION Recent Amendment to California Rules of Court, rule 9.7 In 2025, the Supreme Court amended rule 9.7 to require attorneys to	Lecture	Each active licensee and each special admissions attorney must, pursuant to the procedure adopted by the State Bar, declare adherence to the oath language provided by (a) of this rule and Professions Code section 6067 on an annual basis. Emphasize that it formalizes an existing commitment. This commitment to civility

Slides	Content	Teaching Method	Faculty Notes
	annually declare adherence to the Civility Oath. The requirement reinforces an existing obligation rather than creating a new standard of conduct.		informs many of the existing Rules of Professional Conduct. Avoid discussion of penalties unless asked. The State Bar does have the authority under the rules to implement penalties for violations of this rule, including inactivating the attorney's license through the administrative process for failure to affirm the annual declaration.
Slide 7 	NEW MCLE REQUIREMENT One hour civility MCLE pursuant to State Bar Rule 2.72(C)(2)(a)(v). Effective January 31, 2025. This course satisfies the requirement.	Lecture	In its 2021 report, the Civility Task Force stated the following goal and rationale for adding the MCLE civility requirement: Explain that the civility MCLE requirement reflects a belief that education can positively influence professional culture. Emphasize that the oath and MCLE requirement reinforce an existing professional commitment rather than impose a new one. The goal is reflection and improvement, not compliance for its own sake.

Slides	Content	Teaching Method	Faculty Notes
Slide 8 	CIVILITY IS AN ESSENTIAL FUNCTION “[T]he necessity for civility is relevant to lawyers because they are the living exemplars—and thus teachers—every day in every case and in every court and their worst conduct will be emulated perhaps more readily than their best.”	Lecture and Reflection	Optional slide. Hidden by default. Encourage participants to consider civility an essential function of their work as attorneys by reading aloud an inspirational quote from the California Court of Appeals: Ask the participants: “What stands out to you in this quote based on your own experience?” Invite one or two brief reflections before moving on. The presenter can also offer their perspective to help jumpstart the conversation. Joint Presentation Note (Optional): A judicial co-presenter may briefly comment on how attorney conduct in court affects courtroom efficiency, juror perception, and the court’s ability to manage its docket, emphasizing that civility supports the court’s core function rather than personal preference.

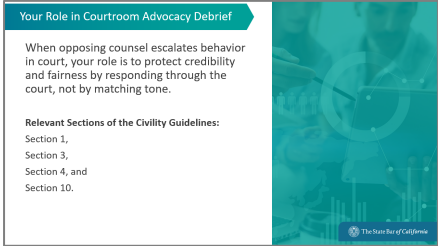
Slides	Content	Teaching Method	Faculty Notes
Slide 9 	CIVILITY IS A PROFESSIONAL PRINCIPLE “We are professionals . . . and we have to conduct ourselves accordingly. Most of the profession understands this. The vast majority of lawyers know that professional speech must always be temperate and respectful and can never undermine confidence in the institution. Respect for individual judges and specific decisions is a matter of personal opinion. Respect for the institution is not; it is a sine qua non.” <i>(In re Mahoney (2021) 65 Cal.App.5th 376, 381.)</i>	Lecture and Reflection	Optional slide. Hidden by default. Highlight that civility is a professional principle, by quoting the California Court of Appeals in another case: <i>Sine qua non</i> is a Latin phrase that means “without which not,” in other words, something that is absolutely necessary. Emphasize that professionalism protects institutions, not just individuals. Ask participants to reflect on how professional speech affects trust in the system. (Ex: undermines trust in the legal system, attorneys, and judges; weakens confidence in judicial neutrality and fairness; reinforces negative public perceptions of the profession.)

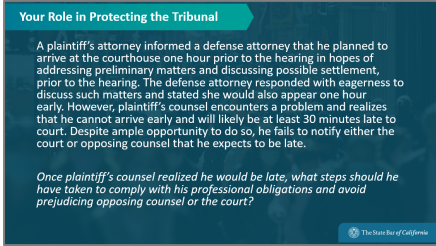
Slides	Content	Teaching Method	Faculty Notes
Slide 10  How is "civility" measured or defined? - California Attorney Guidelines of Civility and Professionalism. - Local rules of court. - Codes of civility from local bar associations.	HOW IS CIVILITY MEASURED OR DEFINED? California Attorney Guidelines of Civility and Professionalism. Local rules of court. Codes of civility from local bar associations.	Lecture	Explain that civility in California is defined through guidance and professional norms rather than a single rule. The California Attorney Guidelines of Civility and Professionalism describe expected conduct across a range of practice settings, and some courts and local bar associations have adopted the Guidelines or related civility codes through local rules or policies. Emphasize that civility shapes how advocacy is exercised, not whether advocacy occurs. Civility expectations focus on tone, conduct, and professional judgment in interactions with clients, opposing counsel, and the court. The ABA defines civility as “acting with formal politeness and courtesy when communicating or working with opposing parties, opposing counsel, clients, and outside parties.”

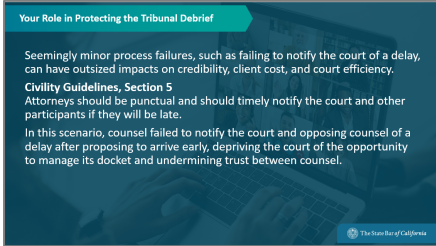
Slides	Content	Teaching Method	Faculty Notes
	BLOCK 3: Civility Guidelines as Reference Framework (Approximate Time 4 minutes)		
Slide 11 	THE CIVILITY GUIDELINES	Lecture	Introduce the Civility Guidelines as a framework for understanding how civility is defined across different contexts in legal practice. Note that the Guidelines organize expectations across 21 sections, grouped by recurring themes in legal practice rather than bright-line rules. Point out that the next slide highlights those categories, which provides a more practical way to understand how civility is commonly defined and discussed. The Civility Guidelines also include a voluntary pledge that predates rule 9.7. It has no legal or disciplinary effect and is distinct from the required Civility Oath, but some organizations still use it as an internal professionalism tool. Share with the group which sections feel most relevant to your daily practice.

Slides	Content	Teaching Method	Faculty Notes
Slide 12 	CATEGORIES Civility towards opposing counsel and opposing parties. Encouraging the development of a culture of civility within the profession. Civility towards the tribunal and respect for the justice system, generally. Guiding attorneys on controlling client expectations to maintain civility.	Lecture	Walk through the categories briefly. The Civility Guidelines can be grouped into 4 different categories: Civility towards opposing counsel and opposing parties. (Sections: 4, 6-10, 15, 18, 19 and 20). Encouraging the development of a culture of civility within the profession. (Sections 2 and 21). Civility towards the tribunal and respect for the justice system, generally. (Sections: 1, 4, 5, 11, 12, 14, 16, 17 and 21). Guiding attorneys on controlling client expectations to maintain civility. (Sections 3 and 13). Emphasize that civility operates across relationships: counsel, clients, courts, and institutions. The California Civility Task Force report contains an appendix addressing bias-based incivility, along with a list of key cases and a corresponding memorandum

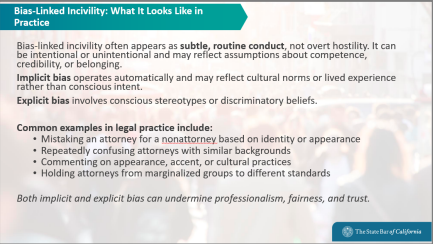
Slides	Content	Teaching Method	Faculty Notes
			that address bias. This will be discussed later in the course.
	BLOCK 4: Scenario-Based Application and Professional Judgment (Approximate Time 23 minutes)		
Slide 13 	HYPOTHETICAL: YOUR ROLE IN COURTROOM ADVOCACY An attorney repeatedly interrupts opposing counsel during a hearing, raises their voice, and makes personal remarks about counsel's experience level. <i>Which of the following is the best response under the Civility Guidelines?</i> A. Ignore the conduct and return to the argument. B. Raise the concern respectfully with the court and request to proceed without interruption. C. Match the tone to avoid looking weak in front of the client. D. Immediately file a motion seeking sanctions.	Polling Question	If time is constrained, prioritize Slides 13–14 and treat remaining hypotheticals as brief reflections or optional discussion. Launch poll or ask participants for a show of hands as you list each option.

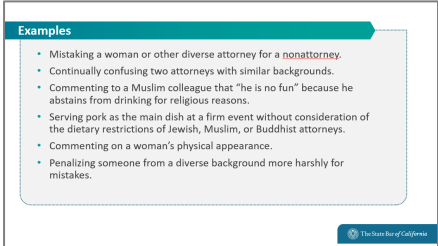
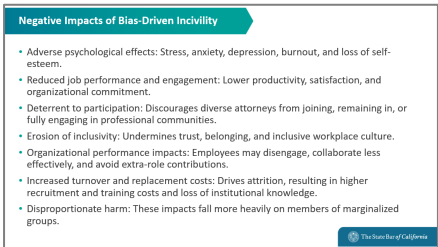
Slides	Content	Teaching Method	Faculty Notes
Slide 14 	YOUR ROLE IN COURTROOM ADVOCACY DEBRIEF OF HYPOTHETICAL When opposing counsel escalates behavior in court, your role is to protect credibility and fairness by responding through the court, not by matching tone. Relevant Sections of the Civility Guidelines: Section 1, Section 3, Section 4, and Section 10.	Debrief of Polling Question	Before identifying the preferred response, ask audience to consider: “What risks do you see in each option?” Facilitation Note Option B reflects the approach most consistent with maintaining credibility with the court, protecting fairness in proceedings, and advancing the client’s interests without escalating conflict. This hypothetical involves the following concepts: Respectful conduct in court, civility promotes fairness, and attorneys must balance client pressure with professional responsibility. Joint Presentation Note (Optional): A judge may briefly comment on how interruptions or personal remarks affect courtroom dynamics and credibility. Time Management Note: If discussion exceeds the allotted time, summarize key points and proceed. The goal is reflection, not consensus. If time is constrained, prioritize this hypothetical for discussion and treat the remaining hypotheticals as brief reflections.

Slides	Content	Teaching Method	Faculty Notes
Slide 15 	HYPOTHETICAL: YOUR ROLE IN PROTECTING THE TRIBUNAL A plaintiff's attorney informed a defense attorney that he planned to arrive at the courthouse one hour prior to the hearing in hopes of addressing preliminary matters and discussing possible settlement, prior to the hearing. The defense attorney responded with eagerness to discuss such matters and stated she would also appear one hour early. However, plaintiff's counsel encounters a problem and realizes that he cannot arrive early and will likely be at least 30 minutes late to court. Despite ample opportunity to do so, he fails to notify either the court or opposing counsel that he expects to be late. <i>Once plaintiff's counsel realized he would be late, what steps should he have taken to comply with his professional obligations and avoid prejudicing opposing counsel or the court?</i>	Reflection Question	Optional slide. Hidden by default. If time permits as for responses, if not ask participants to reflect on what they would do and move to the next slide. This scenario begins with what appears to be a well-meaning attorney, but involves incivility directed at the tribunal, and opposing counsel. Present this as a common, not extreme, scenario.

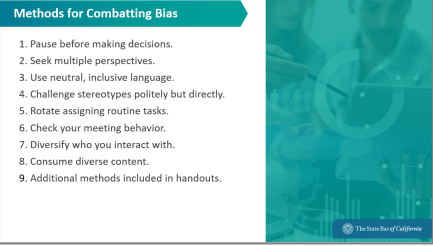
Slides	Content	Teaching Method	Faculty Notes
Slide 16 	YOUR ROLE IN PROTECTING THE TRIBUNAL DEBRIEF OF HYPOTHETICAL Seemingly minor process failures, such as failing to notify the court of a delay, can have outsized impacts on credibility, client cost, and court efficiency. Civility Guidelines, Section 5 Attorneys should be punctual and should timely notify the court and other participants if they will be late. In this scenario, counsel failed to notify the court and opposing counsel of a delay after proposing to arrive early, depriving the court of the opportunity to manage its docket and undermining trust between counsel.	Debrief Polling Question	Optional slide. Hidden by default. Emphasize that the issue is not intent, but process and impact. Protecting the tribunal includes timely communication that allows the court to manage its calendar and ensures fairness to all parties. The relevant Civility Guidelines include Sections 5. Many civility issues arise from preventable process breakdowns such as delayed communication, unmanaged tone, or unclear expectations. These habits are within the attorney's control and closely tied to competence and professionalism. When circumstances change, your role is to promptly notify the court and counsel to protect fairness, efficiency, and credibility. If discussion exceeds the allotted time, summarize key points and proceed. The goal is reflection, not consensus.

Slides	Content	Teaching Method	Faculty Notes
	BLOCK 5: Bias-Linked Incivility in Legal Practice (Approximate Time 5 minutes)		
Slide 17 	BIAS-LINKED INCIVILITY	Lecture	Bias can arise in many forms, including age, gender, race, culture, religion, and disability, and may surface in subtle ways during everyday professional interactions. Explain that the California Civility Task Force emphasized the need for civility education to address the relationship between incivility and bias, particularly how bias-driven conduct can undermine professionalism, fairness, and trust in the legal system. This content is included as part of civility education and professional responsibility, not as standalone diversity or inclusion training. Emphasize that the focus is on professional judgment and workplace conduct rather than personal beliefs, intent, or assigning blame.

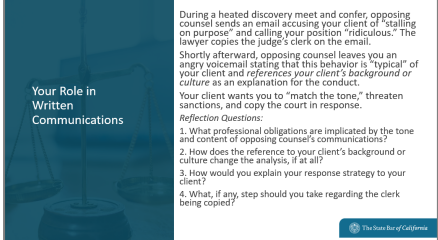
Slides	Content	Teaching Method	Faculty Notes
Slide 18 	BIAS-LINKED INCIVILITY: WHAT IT LOOKS LIKE IN PRACTICE Bias-linked incivility often appears as subtle, routine conduct, not overt hostility. It can be intentional or unintentional and may reflect assumptions about competence, credibility, or belonging. Implicit bias operates automatically and may reflect cultural norms or lived experience rather than conscious intent. Explicit bias involves conscious stereotypes or discriminatory beliefs. Common examples in legal practice include: -Mistaking an attorney for a nonattorney based on identity or appearance -Repeatedly confusing attorneys with similar backgrounds -Commenting on appearance, accent, or cultural practices Holding attorneys from marginalized groups to different standards	Lecture	This slide highlights how bias can appear as subtle, routine incivility in legal practice, often without conscious intent. Distinguishing implicit bias from explicit bias helps participants understand how assumptions, rather than hostility, can affect credibility, fairness, and trust. Use the examples to prompt reflection on everyday interactions rather than extreme misconduct. Encourage participants to focus on impact and professional judgment, including how attorneys can recognize and respond to bias-linked incivility in ways that align with the Civility Guidelines and existing professional obligations.

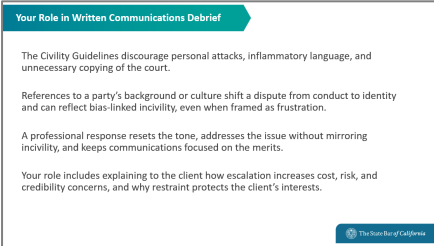
Slides	Content	Teaching Method	Faculty Notes
	<i>Both implicit and explicit bias can undermine professionalism, fairness, and trust.</i>		
Slide 19 	EXAMPLES Examples include: -Mistaking a woman or other diverse attorney for a non-attorney. -Continually confusing two attorneys with similar backgrounds. -Commenting to a Muslim colleague that “he is no fun” because he abstains from drinking for religious reasons. -Serving pork as the main dish at a firm event without consideration of the dietary restrictions of Jewish, Muslim, or Buddhist attorneys. -Commenting on a woman’s physical appearance. -Penalizing someone from a diverse background more harshly for mistakes.	Lecture	Optional slide. Hidden by default. Select one or two examples most relevant to the audience. Avoid covering the full list. Invite quiet reflection rather than open debate if needed.
Slide 20 	NEGATIVE IMPACTS OF BIAS-DRIVEN INCIVILITY Adverse psychological effects: Stress, anxiety, depression, burnout, and loss of self-esteem.	Lecture	Optional slide. Hidden by default. Discuss negative impacts of bias. Stress that we all have biases, that is part of being human, however, bringing awareness to these biases and engaging in

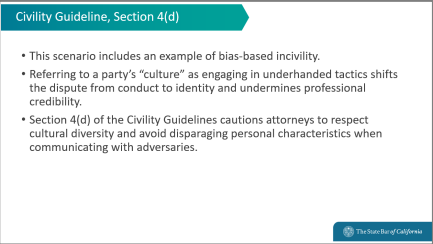
Slides	Content	Teaching Method	Faculty Notes
	Reduced job performance and engagement: Lower productivity, satisfaction, and organizational commitment. Deterrent to participation: Discourages diverse attorneys from joining, remaining in, or fully engaging in professional communities. Erosion of inclusivity: Undermines trust, belonging, and inclusive workplace culture. Organizational performance impacts: Employees may disengage, collaborate less effectively, and avoid extra-role contributions. Increased turnover and replacement costs: Drives attrition, resulting in higher recruitment and training costs and loss of institutional knowledge. Disproportionate harm: These impacts fall more heavily on members of marginalized groups.		self-reflection helps us practice law with greater awareness and professionalism. Emphasize organizational and professional consequences. Avoid turning this into a sociology lecture. For specific data on the disparities, refer participants to Appendix 6 of the Civility Task Force Report for supporting data.

Slides	Content	Teaching Method	Faculty Notes
Slide 21  Methods for Combatting Bias 1. Pause before making decisions. 2. Seek multiple perspectives. 3. Use neutral, inclusive language. 4. Challenge stereotypes politely but directly. 5. Rotate assigning routine tasks. 6. Check your meeting behavior. 7. Diversify who you interact with. 8. Consume diverse content. 9. Additional methods included in handouts.	METHODS FOR COMBATING BIAS 1. Pause before making decisions. 2. Seek multiple perspectives. 3. Use neutral, inclusive language. 4. Challenge stereotypes politely but directly. 5. Rotate assigning routine tasks. 6. Check your meeting behavior. 7. Diversify who you interact with. 8. Consume diverse content. 9. Additional methods included in handouts.	Lecture and self-reflection	Discuss methods for combating bias. 1. Pause before making decisions. Ask if your decision would be the same if the person was from a different group. 2. Seek multiple perspectives. Actively ask for input from colleagues with different backgrounds or roles. 3. Use neutral, inclusive language. -Using “<i>counsel</i>” instead of gendered terms. -“<i>Let’s clarify the issue</i>” instead of “<i>That makes no sense.</i>” -“<i>Can you walk me through your position?</i>” instead of “<i>You’re wrong.</i>” 4. Challenge stereotypes politely but directly. -“<i>I want to be careful about generalizing. What’s the concrete issue we’re trying to resolve?</i>” -“<i>Let’s think about this in another way.</i>” -“<i>I don’t think that characterization is fair or necessary to the point we’re making.</i>” 5. Rotate assigning routine tasks. Volunteer for routine tasks sometimes (taking notes, scheduling, cleanup) and support fair rotation so these tasks don't

Slides	Content	Teaching Method	Faculty Notes
			fall disproportionately on women or junior staff. 6. Check your meeting behavior. -Notice who speaks and who gets interrupted. -Make space: <i>"I'd love to hear ____'s perspective."</i> -Credit ideas accurately. 7. Diversify who you interact with. -Seek input from junior attorneys or staff -Work with attorney from different practice areas of firm sizes -Engage with affinity bar associations 8. Consume diverse content. -Even at work, choose to read articles, newsletters, or follow voices from varied backgrounds; this steadily reduces implicit bias. Emphasize small, repeatable actions. Based on today's discussion, identify one specific practice change you will make to support civility in your daily work. This could relate to client communication, written tone, courtroom conduct, or internal collaboration.

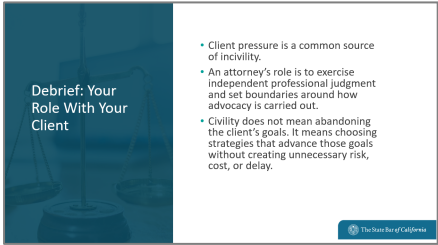
Slides	Content	Teaching Method	Faculty Notes
Slide 22 	HYPOTHETICAL: YOUR ROLE IN WRITTEN COMMUNICATION During a heated discovery meet and confer, opposing counsel sends an email accusing your client of “stalling on purpose” and calling your position “ridiculous.” The lawyer copies the judge’s clerk on the email. Shortly afterward, opposing counsel leaves you an angry voicemail stating that this behavior is “typical” of your client and <i>references your client’s background or culture</i> as an explanation for the conduct. Your client wants you to “match the tone,” threaten sanctions, and copy the court in response. <i>Reflection Questions:</i> 1. What professional obligations are implicated by the tone and content of opposing counsel’s communications? 2. How does the reference to your client’s background or culture change the analysis, if at all? 3. How would you explain your response strategy to your client?	Polling Questions	For each question, call on participants who raise their hands to offer a discussion. Alternatively, you may ask learners to reflect silently on each question before you debrief the polling questions.

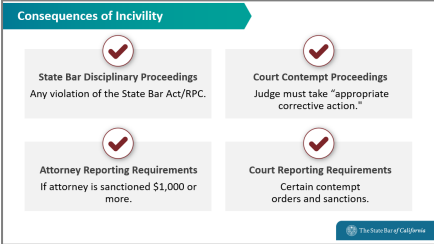
Slides	Content	Teaching Method	Faculty Notes
	4. What, if any, step should you take regarding the clerk being copied?		
Slide 23  Your Role in Written Communications Debrief The Civility Guidelines discourage personal attacks, inflammatory language, and unnecessary copying of the court. References to a party's background or culture shift a dispute from conduct to identity and can reflect bias-linked incivility, even when framed as frustration. A professional response resets the tone, addresses the issue without mirroring incivility, and keeps communications focused on the merits. Your role includes explaining to the client how escalation increases cost, risk, and credibility concerns, and why restraint protects the client's interests. The Honorable Court	YOUR ROLE IN WRITTEN COMMUNICATION DEBRIEF OF HYPOTHETICAL The Civility Guidelines discourage personal attacks, inflammatory language, and unnecessary copying of the court. References to a party's background or culture shift a dispute from conduct to identity and can reflect bias-linked incivility, even when framed as frustration. A professional response resets the tone, addresses the issue without mirroring incivility, and keeps communications focused on the merits. Your role includes explaining to the client how escalation increases cost, risk, and credibility concerns, and why restraint protects the client's interests.	Debrief Polling Questions	Your role in written communications is to model professionalism, manage tone under pressure, and protect your client's interests without escalating conflict or creating avoidable risk. References to a party's background or culture illustrate how disputes can move from conduct to identity and reflect bias-linked incivility, even when framed as frustration rather than hostility. The emphasis should remain on impact and professional judgment, not intent. A professional response resets the tone, avoids mirroring incivility, and keeps communications focused on the merits. This includes explaining to the client how escalation can increase cost, risk, and credibility concerns, and why restraint better serves the client's interests. If discussion becomes circular or overly detailed, summarize key takeaways and move forward. The goal is reflection and practical judgment, not consensus.

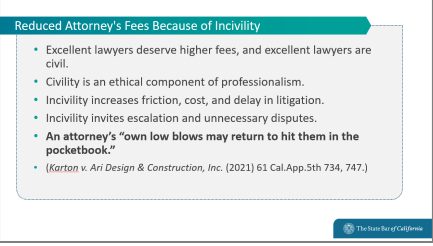
Slides	Content	Teaching Method	Faculty Notes
Slide 24 	CIVILITY GUIDELINE, SECTION 4(d) This scenario includes an example of bias-based incivility. Referring to a party’s “culture” as engaging in underhanded tactics shifts the dispute from conduct to identity and undermines professional credibility. Section 4(d) of the Civility Guidelines cautions attorneys to respect cultural diversity and avoid disparaging personal characteristics when communicating with adversaries.	Lecture	Optional slide. Hidden by default. Continue debriefing the polling question by discussing the bias linked incivility in the previous scenario. Consider: -What assumptions are embedded in the reference to the client’s ‘culture’? -How does this language shift the dispute from conduct to identity? -How might this statement affect credibility with the court? When addressing adversarial conduct, your role is to focus on actions and process, not identity or personal characteristics.
Slide 25 	HOW CIVILITY IS ADDRESSED THROUGH EXISTING PROFESSIONAL FRAMEWORKS		Optional slide. Hidden by default. Introduce existing professional frameworks address incivility in limited circumstances. Civility is not enforced through a single rule. It is reflected across existing professional obligations that govern how attorneys communicate, manage cases, and interact with the court.

Slides	Content	Teaching Method	Faculty Notes
			These frameworks emphasize: -Professional judgment and restraint -Efficient case management -Protection of the integrity of the legal process -Fairness to clients, opposing parties, and the court
Slide 26 	EXISTING PROFESSIONAL FRAMEWORKS State Bar Act Duties requiring honesty, respect for courts, and integrity in practice. Rules of Professional Conduct Rules that regulate how advocacy is exercised to protect fairness, efficiency, and the integrity of the legal process.	Lecture/ Discussion	Optional slide. Hidden by default. Use this slide as a framing moment, not a lecture slide. Discussion Prompt -Ask first, then pause: “If the Civility Guidelines themselves are voluntary, where do civility expectations actually come from?” -Let participants respond briefly. Then transition: “Many of those expectations already exist in the rules and statutes that govern everyday practice.” Reinforce: -Civility is not new. -Civility is not optional. -The Guidelines translate existing obligations into practical behavior.

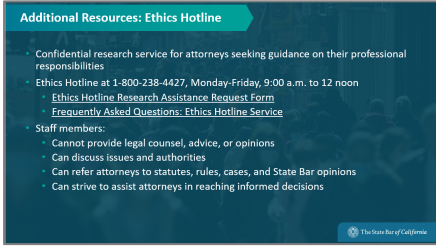
Slides	Content	Teaching Method	Faculty Notes
			A list of the existing framework is included in the course handout, "How Civility Is Reflected in Existing Professional Frameworks."
Slide 27 Your Role with Your Client Your client is frustrated with opposing counsel and insists that you "get aggressive." The client wants you to send a hostile email, threaten sanctions, and copy the court to "send a message." The client argues that this approach will show strength and speed things up. You believe this approach will escalate the dispute, increase costs, and damage credibility with the court. Which response best reflects your role as the attorney? A. Follow the client's direction to maintain trust and show zealous advocacy B. Decline representation unless the client changes course C. Explain your professional role, reset expectations, and propose an alternative strategy D. Send the communication but soften the tone The Ohio Board of Governors	HYPOTHETICAL: YOUR ROLE WITH YOUR CLIENT Your client is frustrated with opposing counsel and insists that you "get aggressive." The client wants you to send a hostile email, threaten sanctions, and copy the court to "send a message." The client argues that this approach will show strength and speed things up. You believe this approach will escalate the dispute, increase costs, and damage credibility with the court. Polling or Discussion Prompt Which response best reflects your role as the attorney? A. Follow the client's direction to maintain trust and show zealous advocacy B. Decline representation unless the client changes course C. Explain your professional role, reset	Lecture	Acknowledge openly that client pressure is one of the most common sources of incivility. Facilitation Note Option C reflects the exercise of independent professional judgment and effective client management consistent with the Civility Guidelines. This answer reflects independent professional judgment, leadership rather than escalation, protection of the client's interests, and alignment with civility as competence, not weakness. Emphasize that Rule 1.2 gives attorneys authority over professional conduct and strategy, even when clients push for aggressive behavior. Civility is often tested not by opposing counsel, but by our own clients' expectations.

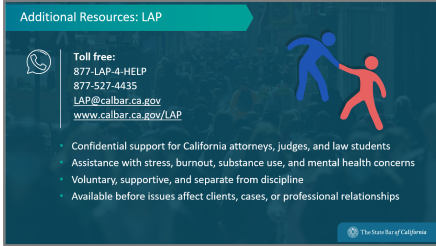
Slides	Content	Teaching Method	Faculty Notes
	expectations, and propose an alternative strategy D. Send the communication but soften the tone		
Slide 28  Debrief: Your Role With Your Client • Client pressure is a common source of incivility. • An attorney's role is to exercise independent professional judgment and set boundaries around how advocacy is carried out. • Civility does not mean abandoning the client's goals. It means choosing strategies that advance those goals without creating unnecessary risk, cost, or delay. The Open Bar of California	YOUR ROLE WITH YOUR CLIENT DEBRIEF OF HYPOTHETICAL Client pressure is a common source of incivility. An attorney's role is to exercise independent professional judgment and set boundaries around how advocacy is carried out. Civility does not mean abandoning the client's goals. It means choosing strategies that advance those goals without creating unnecessary risk, cost, or delay.	Lecture/ Polling	Attorneys are responsible for professional conduct and strategy, even when clients push for aggressive or counterproductive behavior. Discussion Prompts (Choose One or Two) -How would you explain this boundary to the client without sounding dismissive? -What risks does the client's proposed approach create for the case? -How can you reframe civility as protecting the client's interests? When client pressure escalates, your role is to lead and guide, not mirror.

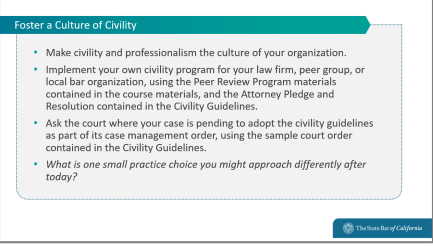
Slides	Content	Teaching Method	Faculty Notes
	BLOCK 6: Consequences of Incivility and Professional Risk (Approximate Time 4 minutes)		
Slide 29 	CONSEQUENCES OF INCIVILITY 1. State Bar Disciplinary Proceedings Any violation of the State Bar Act or the California Rules of Professional Conduct. 2. Court Contempt Proceedings Judge must take “appropriate corrective action” for attorney misconduct. 3. Attorney Reporting Requirements If attorney is sanctioned \$1,000 or more. 4. Court Reporting Requirements Certain contempt orders and sanctions.	Lecture	Present this slide factually and briefly. Avoid speculating about future rulemaking or disciplinary changes. The focus of this program is education within existing professional frameworks. Emphasize that consequences arise from violations of existing laws and rules, not from the Civility Guidelines themselves. Judicial authority derives from the California Code of Judicial Ethics, Canon 3D(2), which requires judges to take appropriate corrective action in response to attorney misconduct. Attorney reporting obligations arise under Business and Professions Code section 6068(o)(3), which requires attorneys to report judicial sanctions exceeding \$1,000, unless the sanction is discovery related. These are not new consequences. They are existing mechanisms that reflect how seriously professional conduct is taken.

Slides	Content	Teaching Method	Faculty Notes
Slide 30 	REDUCED ATTORNEY'S FEES BECAUSE OF INCIVILITY Excellent lawyers deserve higher fees, and excellent lawyers are civil. Civility is an ethical component of professionalism. Incivility increases friction, cost, and delay in litigation. Incivility invites escalation and unnecessary disputes. An attorney's "own low blows may return to hit them in the pocketbook." <i>(Karton v. Ari Design & Construction, Inc. (2021) 61 Cal.App.5th 734, 747.)</i>	Lecture	Another possible consequence of incivility is a reduction in attorney's fees. In <i>Karton v. Ari Design & Construction, Inc. (2021)</i>, the Court of Appeal held that incivility may justify a reduction in attorney's fees in fee shifting cases. The court treated civility as an aspect of professional skill and explained that incivility increases cost, friction, and inefficiency in litigation. As a result, an attorney's conduct can directly affect the reasonableness of a fee request. (<i>Karton v. Ari Design & Construction, Inc. (2021) 61 Cal.App.5th 734, 747.</i>)
Slide 31 	CONSTITUTIONAL LIMITS ON CIVILITY Civility expectations operate within constitutional limits. Professional standards governing attorney conduct do not prohibit speech or activity protected by the First Amendment or the California Constitution.	Lecture	Optional slide. Hidden by default. Recognize that civility expectations operate within constitutional boundaries, particularly where speech is concerned. Emphasize that the California Supreme Court declined certain rule amendments in late 2025 due to vagueness and First

Slides	Content	Teaching Method	Faculty Notes
	Civility guidance focuses on professional judgment, process, and conduct within the legal system, not on restricting protected expression.		Amendment concerns, not opposition to civility. Reinforce the distinction between protected speech and conduct. Rule 8.4(d), comment [6], clarifies that professional conduct rules do not prohibit constitutionally protected speech. This reinforces that civility education is not about suppressing advocacy or expression, but about professional judgment within the legal profession.
	BLOCK 7: Fostering a Culture of Civility and Professional Support (Approximate Time 4 minutes)		
Slide 32  • California Attorney Guidelines of Civility and Professionalism. • Local Rules of Court. • Local Bar Associations' Codes of Civility. • Key California Civility Cases and Memorandum by California Civility Task Force Members re Civility Research.	RESOURCES California Attorney Guidelines of Civility and Professionalism. Local Rules of Court. Local Bar Associations' Codes of Civility. Key California Civility Cases and Memorandum by California Civility	Lecture	Optional slide. Hidden by default. Briefly highlight the resources available. Emphasize that these tools are designed to support judgment and professionalism, not serve as compliance checklists. Encourage participants to use them proactively. The handouts include materials that can help attorneys, law firms and local bar

Slides	Content	Teaching Method	Faculty Notes
	Task Force Members re Civility Research.		associations implement peer review programs.
Slide 33 	ADDITIONAL RESOURCES—ETHICS HOTLINE Confidential research service for attorneys seeking guidance on their professional responsibilities Ethics Hotline at 1-800-238-4427, Monday-Friday, 9:00 a.m. to 12 noon Ethics Hotline Research Assistance Request Form Frequently Asked Questions: Ethics Hotline Service Staff members: -Cannot provide legal counsel, advice, or opinions -Can discuss issues and authorities -Can refer attorneys to statutes, rules, cases, and State Bar opinions -Can strive to assist attorneys in reaching informed decisions	Lecture	The ethics hotline is a confidential research service for California attorneys seeking guidance on their professional responsibilities. The purpose of the Ethics Hotline is educational. It does not initiate discipline and does not provide legal advice or binding opinions. Instead, it helps attorneys think through ethical issues and identify relevant rules so they can make informed decisions. From a civility perspective, many situations that escalate into uncivil conduct start with uncertainty about how to respond appropriately, particularly when client pressure, deadlines, or emotionally charged disputes are involved. Reaching out to the Ethics Hotline can help attorneys pause, reflect, and choose a response that aligns with their professional obligations.

Slides	Content	Teaching Method	Faculty Notes
Slide 34 	ADDITIONAL RESOURCES-LAP Toll free: 877-LAP-4-HELP 877-527-4435 LAP@calbar.ca.gov www.calbar.ca.gov/LAP -Confidential support for California attorneys, judges, and law students -Assistance with stress, burnout, substance use, and mental health concerns -Voluntary, supportive, and separate from discipline -Available before issues affect clients, cases, or professional relationships	Lecture	The State Bar’s Lawyer Assistance Program, or LAP, provides confidential support to attorneys who may be experiencing stress, burnout, substance use concerns, or mental health challenges. LAP services are voluntary and confidential, and they are separate from the disciplinary system. The goal is early support, not punishment. LAP offers resources such as confidential consultations, peer support, referrals, and educational materials. Knowing about and using resources like LAP is one way attorneys can proactively support their ability to practice law with competence, professionalism, and civility. From a civility perspective, many breakdowns in professional interactions occur when attorneys are overwhelmed, exhausted, or under sustained pressure. Accessing support early can help attorneys maintain judgment, professionalism, and respectful interactions with clients, opposing counsel, and the court.

Slides	Content	Teaching Method	Faculty Notes
Slide 35 	FOSTER A CULTURE OF CIVILITY Make civility and professionalism the culture of your organization. Implement your own civility program for your law firm, peer group, or local bar organization, using the Peer Review Program materials contained in the course materials, and the Attorney Pledge and Resolution contained in the Civility Guidelines. Ask the court where your case is pending to adopt the civility guidelines as part of its case management order, using the sample court order contained in the Civility Guidelines. <i>What is one small practice choice you might approach differently after today?</i>	Lecture/ Reflection	Close by reinforcing that civility is a collective, professional culture rather than an individual burden. Encourage participants to think about how they can model civility and influence peers. The more attorneys who participate, the more the profession can strengthen and grow a culture of civility—which will improve the quality of life of all hard-working attorneys, who already face more stress than almost any other profession. Suggested closing prompt and commitment to civility: “What is one small practice choice you might approach differently after today?” Thank participants for their engagement and offer to answer any outstanding questions.

Slides	Content	Teaching Method	Faculty Notes
Slide 36 	INSTRUCTIONS TO RECEIVE MCLE CREDIT [Include how you will verify attendance] [Additional Instructions for Receiving MCLE Credit] [You must sign in to receive MCLE credit.] [After we have verified your attendance, we will send you an email containing links to the MCLE certificate, written materials, PDF of the PowerPoint presentation, and the MCLE program evaluation form. This may take up to 3 business days.]		Provide instructions to receive MCLE credit certificate and ask participants to complete the survey about the program.



The State Bar of California

CIVILITY AND PROFESSIONALISM COURSE HANDOUTS

The following handouts hyperlinked below include:

1. [Full set of the Civility Guidelines with examples, sample pledge, sample resolution and sample court order](#)
2. [Key California Civility Cases and Memorandum by California Civility Task Force Members re: Civility Caselaw Research](#)
3. [Sample instructions and forms for implementing a Voluntary Peer Review Counseling Program on civility](#)
4. [Initial Report of the California Civility Task Force \(September 2021\)](#)
5. [How Civility Is Reflected in Existing Professional Frameworks](#)
6. [Combatting implicit bias and stereotypes, U.S. Department of Health and Human Services](#)

SUMMARY OF CONCEPTS

- Civility has become part of the attorney oath, and is an obligation, which every licensee shall declare annually. The oath reinforces existing professional responsibilities rather than creating new disciplinary standards.
- The Civility Guidelines serve as a guide for what that means. They provide a shared framework for professional judgment rather than rigid rules.
- Relevant case law, the State Bar Act and certain Rules of Professional Conduct provide additional standards.
- Attorneys can assist each other by making civility part of the culture of the profession.
- One useful tool is to implement a voluntary peer review counseling program. Another method is to request that courts use the sample court order as part of their case management order.

BIAS-LINKED INCIVILITY: PRACTICAL REFERENCE

Bias-linked incivility often arises in subtle, routine interactions rather than overt hostility. It may reflect implicit assumptions about competence, credibility, or belonging, even when no harm is intended. Examples in legal practice may include:

- Mistaking an attorney for a nonlawyer based on identity or appearance
- Repeatedly confusing attorneys with similar backgrounds
- Comments about appearance, accent, or cultural practices
- Applying different expectations or standards to attorneys based on identity

Key distinction:

- *Implicit bias* operates automatically and may reflect cultural norms or lived experience rather than conscious intent.
- *Explicit bias* involves conscious stereotypes or discriminatory beliefs.

The focus for attorneys is not determining intent but recognizing impact and responding in ways that preserve professionalism, fairness, and trust.

RESPONDING TO BIAS-LINKED INCIVILITY

When bias-linked incivility arises, attorneys may consider the following professional responses:

- Pause and assess whether the issue involves conduct, tone, or assumptions rather than merits
- Address the behavior directly and professionally without escalating conflict
- Recenter communications on the legal issue or procedural step at hand
- Explain to clients how escalation can increase cost, risk, or credibility concerns
- Seek guidance or support when patterns persist or impact professional functioning

These strategies are intended to support professional judgment, not to mandate specific responses.

PRACTICAL GUIDANCE AND NEXT STEPS

For individual attorneys

- Use the Civility Guidelines as a reference point when navigating difficult interactions with clients, opposing counsel, or the court.
- Reflect on how routine practices and communication styles may affect professionalism and trust.

For firms, courts, and organizations

- Consider implementing a voluntary peer review counseling program using the provided sample materials.
- Courts may incorporate civility expectations into case management orders using the sample court order.

CLOSING REFLECTION

Civility is sustained through daily professional choices rather than isolated moments. The materials in this toolkit are intended to support reflection, shared expectations, and constructive responses to conflict. Attorneys are encouraged to use these resources as ongoing reference points in their practice.



The State Bar *of California*

Civility in Practice: Navigating Professional Responsibilities

Add Presenters' names and roles

Date of Presentation

Course Overview

- Civility as a professional responsibility and shared obligation
- The Civility Oath and the annual declaration
- How civility is understood and applied in practice
- Scenario-based discussion of advocacy, communication, and client management
- Recognizing and responding to bias-linked incivility
- Practical consequences and fostering a culture of civility



Civility in California: Key Milestones



2007

**Civility
Guidelines
adopted**



2014

**Civility added
to oath**



2021

**Civility Task
Force Report**



2025

**Civility MCLE
requirement**



2025

**Annual
Civility
Declaration**



California Supreme Court Decision re: RPC Amendments

“Although the Court appreciates the effort to promote civility, professionalism, and mutual respect within the legal profession, the Court is concerned that the proposed definition of prohibited incivility may present vagueness concerns under the First Amendment. . . .

The Court encourages the State Bar to explore the possibility of codifying the existing case law reducing requests for attorney fees based on an attorney’s incivility. The State Bar is also encouraged to study the effect of the new continuing education requirements addressing civility in the legal profession.”



The Civility Oath

California Rules of Court, rule 9.7

Upon admission to practice law in California, attorneys are required to take an oath that includes the following civility commitment:

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



Recent Amendment to California Rules of Court, rule 9.7

In 2025, the Supreme Court amended rule 9.7 to require attorneys to **annually declare adherence to the civility oath**.

The requirement reinforces an existing obligation rather than creating a new standard of conduct.





New MCLE Requirement

- One hour civility MCLE pursuant to State Bar Rule 2.72(C)(2)(a)(v).
- Effective January 31, 2025.
- This course satisfies the requirement.





Civility — An Essential Professional Function

“‘[T]he necessity for civility is relevant to lawyers because they are the living exemplars—and thus teachers—every day in every case and in every court and their worst conduct will be emulated perhaps more readily than their best.’” (*Lasalle v. Vogel* (2019) 36 Cal.App.5th 127, 141 [quoting Chief Justice Warren E. Burger, *The Necessity for Civility*, Address to the American Law Institute, (1971) 52 F.R.D. 211].)





Civility — A Professional Principle

“We are professionals. . . and we have to conduct ourselves accordingly. Most of the profession understands this. The vast majority of lawyers know that professional speech must always be temperate and respectful and can never undermine confidence in the institution. . . **Respect for individual judges and specific decisions is a matter of personal opinion. Respect for the institution is not; it is a sine qua non.**” (*In re Mahoney* (2021) 65 Cal.App.5th 376, 381.)



How is "civility" measured or defined?



California Attorney
Guidelines of Civility
and Professionalism.



Local rules of court.



Codes of civility
from local bar
associations.



The Civility Guidelines



Categories



Civility towards opposing counsel and parties.



Fostering a culture of civility.



Civility towards tribunal and justice system.



Guiding attorneys on controlling client expectations.



Your Role in Courtroom Advocacy

An attorney repeatedly interrupts opposing counsel during a hearing, raises their voice, and makes personal remarks about counsel's experience level.

Which of the following is the best response under the Civility Guidelines?

- A.** Ignore the conduct and return to the argument.
- B.** Raise the concern respectfully with the court and request to proceed without interruption.
- C.** Match the tone to avoid looking weak in front of the client.
- D.** Immediately file a motion seeking sanctions.



Your Role in Courtroom Advocacy Debrief

When opposing counsel escalates behavior in court, your role is to protect credibility and fairness by responding through the court, not by matching tone.

Relevant Sections of the Civility Guidelines:

Section 1,

Section 3,

Section 4, and

Section 10.



Your Role in Protecting the Tribunal

A plaintiff's attorney informed a defense attorney that he planned to arrive at the courthouse one hour prior to the hearing in hopes of addressing preliminary matters and discussing possible settlement, prior to the hearing. The defense attorney responded with eagerness to discuss such matters and stated she would also appear one hour early. However, plaintiff's counsel encounters a problem and realizes that he cannot arrive early and will likely be at least 30 minutes late to court. Despite ample opportunity to do so, he fails to notify either the court or opposing counsel that he expects to be late.

Once plaintiff's counsel realized he would be late, what steps should he have taken to comply with his professional obligations and avoid prejudicing opposing counsel or the court?



Your Role in Protecting the Tribunal Debrief

Seemingly minor process failures, such as failing to notify the court of a delay, can have outsized impacts on credibility, client cost, and court efficiency.

Civility Guidelines, Section 5

Attorneys should be punctual and should timely notify the court and other participants if they will be late.

In this scenario, counsel failed to notify the court and opposing counsel of a delay after proposing to arrive early, depriving the court of the opportunity to manage its docket and undermining trust between counsel.



Bias-linked Incivility



Bias-Linked Incivility: What It Looks Like in Practice

Bias-linked incivility often appears as **subtle, routine conduct**, not overt hostility. It can be intentional or unintentional and may reflect assumptions about competence, credibility, or belonging.

Implicit bias operates automatically and may reflect cultural norms or lived experience rather than conscious intent.

Explicit bias involves conscious stereotypes or discriminatory beliefs.

Common examples in legal practice include:

- Mistaking an attorney for a nonattorney based on identity or appearance
- Repeatedly confusing attorneys with similar backgrounds
- Commenting on appearance, accent, or cultural practices
- Holding attorneys from marginalized groups to different standards

Both implicit and explicit bias can undermine professionalism, fairness, and trust.



Examples

- Mistaking a woman or other diverse attorney for a nonattorney.
- Continually confusing two attorneys with similar backgrounds.
- Commenting to a Muslim colleague that “he is no fun” because he abstains from drinking for religious reasons.
- Serving pork as the main dish at a firm event without consideration of the dietary restrictions of Jewish, Muslim, or Buddhist attorneys.
- Commenting on a woman’s physical appearance.
- Penalizing someone from a diverse background more harshly for mistakes.



Negative Impacts of Bias-Driven Incivility

- Adverse psychological effects: Stress, anxiety, depression, burnout, and loss of self-esteem.
- Reduced job performance and engagement: Lower productivity, satisfaction, and organizational commitment.
- Deterrent to participation: Discourages diverse attorneys from joining, remaining in, or fully engaging in professional communities.
- Erosion of inclusivity: Undermines trust, belonging, and inclusive workplace culture.
- Organizational performance impacts: Employees may disengage, collaborate less effectively, and avoid extra-role contributions.
- Increased turnover and replacement costs: Drives attrition, resulting in higher recruitment and training costs and loss of institutional knowledge.
- Disproportionate harm: These impacts fall more heavily on members of marginalized groups.



Methods for Combatting Bias

1. Pause before making decisions.
2. Seek multiple perspectives.
3. Use neutral, inclusive language.
4. Challenge stereotypes politely but directly.
5. Rotate assigning routine tasks.
6. Check your meeting behavior.
7. Diversify who you interact with.
8. Consume diverse content.
9. Additional methods included in handouts.





Your Role in Written Communications

During a heated discovery meet and confer, opposing counsel sends an email accusing your client of “stalling on purpose” and calling your position “ridiculous.” The lawyer copies the judge’s clerk on the email.

Shortly afterward, opposing counsel leaves you an angry voicemail stating that this behavior is “typical” of your client and *references your client’s background or culture* as an explanation for the conduct.

Your client wants you to “match the tone,” threaten sanctions, and copy the court in response.

Reflection Questions:

1. What professional obligations are implicated by the tone and content of opposing counsel’s communications?
2. How does the reference to your client’s background or culture change the analysis, if at all?
3. How would you explain your response strategy to your client?
4. What, if any, step should you take regarding the clerk being copied?



Your Role in Written Communications Debrief

The Civility Guidelines discourage personal attacks, inflammatory language, and unnecessary copying of the court.

References to a party's background or culture shift a dispute from conduct to identity and can reflect bias-linked incivility, even when framed as frustration.

A professional response resets the tone, addresses the issue without mirroring incivility, and keeps communications focused on the merits.

Your role includes explaining to the client how escalation increases cost, risk, and credibility concerns, and why restraint protects the client's interests.



Civility Guideline, Section 4(d)

- This scenario includes an example of bias-based incivility.
- Referring to a party's "culture" as engaging in underhanded tactics shifts the dispute from conduct to identity and undermines professional credibility.
- Section 4(d) of the Civility Guidelines cautions attorneys to respect cultural diversity and avoid disparaging personal characteristics when communicating with adversaries.



How Civility is Addressed Through Existing Professional Frameworks





Existing Professional Frameworks

- **State Bar Act**

Duties requiring honesty, respect for courts, and integrity in practice.

- **Rules of Professional Conduct**

Rules that regulate how advocacy is exercised to protect fairness, efficiency, and the integrity of the legal process.





Your Role with Your Client

Your client is frustrated with opposing counsel and insists that you “get aggressive.” The client wants you to send a hostile email, threaten sanctions, and copy the court to “send a message.” The client argues that this approach will show strength and speed things up.

You believe this approach will escalate the dispute, increase costs, and damage credibility with the court.

Which response best reflects your role as the attorney?

- A. Follow the client’s direction to maintain trust and show zealous advocacy
- B. Decline representation unless the client changes course
- C. Explain your professional role, reset expectations, and propose an alternative strategy
- D. Send the communication but soften the tone





Debrief: Your Role with Your Client

- Client pressure is a common source of incivility.
- An attorney's role is to exercise independent professional judgment and set boundaries around how advocacy is carried out.
- Civility does not mean abandoning the client's goals. It means choosing strategies that advance those goals without creating unnecessary risk, cost, or delay.



Consequences of Incivility



State Bar Disciplinary Proceedings

Any violation of the State Bar Act/RPC.



Court Contempt Proceedings

Judge must take “appropriate corrective action.”



Attorney Reporting Requirements

If attorney is sanctioned \$1,000 or more.



Court Reporting Requirements

Certain contempt orders and sanctions.



Reduced Attorney's Fees Because of Incivility

- Excellent lawyers deserve higher fees, and excellent lawyers are civil.
- Civility is an ethical component of professionalism.
- Incivility increases friction, cost, and delay in litigation.
- Incivility invites escalation and unnecessary disputes.
- **An attorney's "own low blows may return to hit them in the pocketbook."**
- (*Karton v. Ari Design & Construction, Inc.* (2021) 61 Cal.App.5th 734, 747.)



Constitutional Limits on Civility

Civility expectations operate within constitutional limits.

Professional standards governing attorney conduct do not prohibit speech or activity protected by the First Amendment or the California Constitution.

Civility guidance focuses on professional judgment, process, and conduct within the legal system, not on restricting protected expression.



Resources

- California Attorney Guidelines of Civility and Professionalism.
- Local Rules of Court.
- Local Bar Associations' Codes of Civility.
- Key California Civility Cases and Memorandum by California Civility Task Force Members re Civility Research.



Additional Resources: Ethics Hotline

- Confidential research service for attorneys seeking guidance on their professional responsibilities
- Ethics Hotline at 1-800-238-4427, Monday-Friday, 9:00 a.m. to 12 noon
 - [Ethics Hotline Research Assistance Request Form](#)
 - [Frequently Asked Questions: Ethics Hotline Service](#)
- Staff members:
 - Cannot provide legal counsel, advice, or opinions
 - Can discuss issues and authorities
 - Can refer attorneys to statutes, rules, cases, and State Bar opinions
 - Can strive to assist attorneys in reaching informed decisions



Additional Resources: LAP



Toll free:

877-LAP-4-HELP

877-527-4435

LAP@calbar.ca.gov

www.calbar.ca.gov/LAP



- Confidential support for California attorneys, judges, and law students
- Assistance with stress, burnout, substance use, and mental health concerns
- Voluntary, supportive, and separate from discipline
- Available before issues affect clients, cases, or professional relationships



Foster a Culture of Civility

- Make civility and professionalism the culture of your organization.
- Implement your own civility program for your law firm, peer group, or local bar organization, using the Peer Review Program materials contained in the course materials, and the Attorney Pledge and Resolution contained in the Civility Guidelines.
- Ask the court where your case is pending to adopt the civility guidelines as part of its case management order, using the sample court order contained in the Civility Guidelines.
- *What is one small practice choice you might approach differently after today?*





Instructions to Receive MCLE credit

- **[Include how you will verify attendance]**
 - [Additional Instructions for Receiving MCLE Credit]
 - [You must sign in to receive MCLE credit.]
 - [After we have verified your attendance, we will send you an email containing links to the MCLE certificate, written materials, PDF of the PowerPoint presentation, and the MCLE program evaluation form. This may take up to 3 business days.]





Succession Planning for California Attorneys: A Law Practice Guide

EXECUTIVE SUMMARY

No one enters the legal profession expecting to step away suddenly. But life happens—accidents, medical emergencies, or even unexpected opportunities can interrupt your ability to practice. Without a plan in place, your clients, colleagues, and reputation could be left in limbo. Succession planning isn't just about retirement; it's about responsibility, continuity, and protecting the people who rely on you most.

[Cal. State Bar Formal Opn. No. 2024-209](#) makes clear that succession planning is an extension of an attorney's duties of competence, diligence, and client communication under the [California Rules of Professional Conduct](#). Whether you're a solo practitioner or part of a firm, having a written plan in place helps ensure that client files, trust funds, court deadlines, and open cases are handled promptly and responsibly. This guide provides practical tools, checklists, and templates for creating or improving a succession plan tailored to your practice. Proactive planning protects your clients, your reputation, and your legacy.

CHAPTER 1: KEY TERMS, ETHICAL DUTIES & THE BUSINESS CONTINUITY MINDSET

I. Purpose of Succession Planning

Succession planning is more than an ethical safeguard; it is a practical business continuity strategy that ensures an attorney's clients, practice, and professional obligations are protected in the event of death, incapacity, disability, or other unexpected events. [Cal. State Bar Formal Opn. No. 2024-209](#) affirms that attorneys—particularly solo practitioners—have a duty to implement systems to protect clients if they can no longer practice. Effective succession planning honors both legal and ethical obligations while minimizing disruption to client matters, staff, and trust accounts.

II. Key Definitions

To effectively plan, it is essential to understand the key players and terms involved:

- **Planning Attorney:** The attorney who creates and implements the succession plan. This is typically a solo practitioner or firm owner but may also be an attorney who wants to ensure the continuity of client service in the event of a temporary or

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permanent inability to continue practicing due to incapacity, disability, death, or other circumstances.¹

- **Assisting Attorney:** A California-licensed attorney identified by the Planning Attorney to step in and manage client matters, protect client property, and transition the practice or wind it down if necessary. The Assisting Attorney may take over the practice, transition clients, and/or close the firm. The Assisting Attorney may be given limited authority (e.g., reviewing client files) or broad authority (e.g., contacting clients, transferring matters, disbursing trust funds), depending on the written plan. The Assisting Attorney is often a trusted colleague in the Planning Attorney's practice area or an attorney within the same firm.
- **Authorized Signer:** A person authorized to sign on the Planning Attorney's client trust account.
- **Emergency Practice Coordinator:** A designated person (attorney or trusted staff) who holds emergency access credentials and notifies the Assisting Attorney when the Planning Attorney is unable to act. This is an administrative role and does not require licensure.

III. The Ethical Framework: Relevant Rules of Professional Conduct

Succession planning supports compliance with multiple rules of professional conduct. Below is an overview of each relevant rule and how it connects to the process:

- [Rule 1.1—Competence](#): Attorneys must perform legal services with competence. Failing to plan for foreseeable incapacity or death can result in abandonment of client matters and missed deadlines. A succession plan is a proactive way to maintain competence during periods when the Planning Attorney is unable to act.
 - See: Rule 1.1(a); [Cal. State Bar Formal Opn. No. 2024-209](#) on p. 2.
- [Rule 1.3—Diligence](#): Attorneys must act with reasonable diligence. An unplanned absence or incapacity without a backup plan creates a foreseeable risk of delay or prejudice to clients. Naming an Assisting Attorney helps maintain progress in pending cases.
 - See: Rule 1.3(a); [Cal. State Bar Formal Opn. No. 2024-209](#) on p. 2–3.
- [Rule 1.4—Communication](#): Attorneys have a duty to keep clients informed. A succession plan should address how clients will be notified—either in advance or through the Assisting Attorney—and about who will handle their matters if the Planning Attorney becomes unavailable.
 - See: Rule 1.4(a)(3), (b); [Cal. State Bar Formal Opn. No. 2024-209](#) on p. 3.

¹ An attorney who intends to include reference to their law practice in their estate plan should consult the Probate Code regarding the appointment of a practice administrator. (See Prob. Code, §§ 2468, 9764, & 17200, subd. (b)(22) & (23); Bus. & Prof. Code, § 6185.) For further discussion of the role of an assisting attorney, see, e.g., Phila. Bar Assoc. Prof. Guidance Committee Opn. No. 2014-100, § III.

- [Rule 1.7—Conflicts of Interest: Current Clients](#): The Assisting Attorney must evaluate whether assisting the Planning Attorney’s clients would create a conflict. Effective succession plans include advance conflict checks or mechanisms for transferring cases when necessary.
 - See: Rule 1.7(a); [Cal. State Bar Formal Opn. No. 2024-209](#) on p. 4.
- [Rule 1.9—Duties to Former Clients](#): If the Assisting Attorney previously represented a party adverse to a Planning Attorney’s client, they may be precluded from stepping in. Succession plans should account for conflict checks and alternative arrangements.
 - See: Rule 1.9(a); [Cal. State Bar Formal Opn. No. 2024-209](#) on p. 4.
- [Rule 1.10—Imputation of Conflicts](#): If the Assisting Attorney practices in a firm, conflicts may be imputed to the entire firm. The plan must ensure that both the Assisting Attorney and their firm are ethically eligible to assist.
 - See: Rule 1.10(a); [Cal. State Bar Formal Opn. No. 2024-209](#) on p. 4.
- [Rule 1.15—Safekeeping Funds and Property](#): Attorneys must properly manage client trust accounts and property. A succession plan should specify how the Assisting Attorney can access, disburse, and account for funds or property held in trust.
 - See: Rule 1.15(d)–(f); [Cal. State Bar Formal Opn. No. 2024-209](#) on p. 3–4.
- [Rule 1.16—Declining or Terminating Representation](#): If the Planning Attorney can no longer represent clients, they must take “reasonable steps” to protect client interests. A succession plan is the primary way to satisfy this obligation when representation ends unexpectedly.
 - See: Rule 1.16(d); [Cal. State Bar Formal Opn. No. 2024-209](#) on p. 3.
- [Rule 5.1—Responsibilities of Managerial and Supervisory Lawyers](#): Attorneys with management authority in a firm must ensure compliance systems are in place. Larger firms should formalize succession protocols and ensure readiness across the firm.
 - See: Rule 5.1(a)–(b); [Cal. State Bar Formal Opn. No. 2024-209](#) on p. 5.

IV. Recordkeeping as Risk Management

Thorough and up-to-date recordkeeping is one of the most effective ways to manage the risks associated with an unexpected interruption to your legal practice. By clearly documenting your succession plan, you demonstrate compliance with ethical obligations and provide a clear roadmap for the Assisting Attorney, who may need to step in. Good recordkeeping helps prevent client abandonment, reduces the risk of malpractice claims, and shows your commitment to continuity and professional responsibility—principles valued by clients, malpractice insurers, and regulatory bodies alike.

Essential documents such as a signed *Succession Planning Agreement*, secure protocols for digital access, trust account procedures, and conflict check logs serve as safeguards for you and your clients. Client communication templates and file/calendaring system instructions can help the Assisting Attorney act quickly and ethically during a transition. To ensure these tools are

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useful when needed, store them in a secure but accessible location and update them at least annually. In short, diligent recordkeeping isn't just administrative; it's a cornerstone of ethical lawyering and smart risk management.

V. Framing Succession Planning as Business Continuity

As emphasized in [Cal. State Bar Formal Opn. No. 2024-209](#), this process should be seen not only as an ethical requirement but also as a form of business continuity planning. Much like insurance or data backups, a succession plan protects your clients and your livelihood from disruption, malpractice risk, and loss of goodwill. It ensures that your practice can continue to function or wind down responsibly, even if you are unexpectedly unable to manage it yourself. By planning ahead, you preserve client trust, safeguard your reputation, and create operational resilience. In a solo or small firm setting, where the attorney is often the central pillar of the practice, having a documented, accessible succession plan is not just smart—it's essential.

CHAPTER 2: IMPLEMENTING THE PLAN

I. The Importance of Having a Succession Plan

Firms that lack a concrete plan to ensure continuity in the face of an attorney's unexpected incapacity or sudden departure risk causing irreparable harm to clients and the firm itself. Without a clear plan, firms may struggle to meet urgent deadlines, protect confidential information, or manage client funds. This can lead to missed court dates, malpractice exposure, and lasting reputational harm. Succession planning is not just for attorneys approaching retirement. It is a critical strategy for ensuring continuity, protecting clients, and preserving the integrity of your practice at any stage of your career.

Effective succession planning requires identifying who will step in, establishing clear procedures and triggers, and ensuring compliance with professional duties such as competence, diligence, and communication. While larger firms may rely on coordinated efforts, solo and small firm attorneys must often take personal initiative, frequently with the help of a designated Assisting Attorney. Regardless of firm size, the goal remains the same: Minimize disruption, uphold ethical standards, and ensure that client matters are responsibly managed if you are unavailable.

II. Designate an Assisting Attorney, Authorized Signer, and Emergency Practice Coordinator

A key part of preparing your law practice for transition or closure is selecting a qualified attorney who can step in if you're unable to manage your practice due to unexpected incapacity or death. In some cases, an Assisting Attorney may begin as a temporary designee and later become a full successor, depending on the arrangement and your long-term goals. In limited cases, the Assisting Attorney may even be your personal attorney. This Assisting

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Attorney must be a California-licensed attorney in good standing. Their responsibilities should be defined clearly in the *Succession Planning Agreement* and limited to what is necessary to protect client interests and ensure compliance with legal and ethical duties. This may include notifying clients, organizing files, addressing active deadlines, and overseeing the return of client property. Ethical constraints such as maintaining confidentiality ([rule 1.6](#)), avoiding conflicts of interest ([rule 1.7](#) and [rule 1.9](#)), and properly handling trust funds ([rule 1.15](#)) apply throughout this process. To document this step, you can utilize the *Notice of Designated Assisting Attorney* sample.

The next critical step is to designate an Authorized Signer to access the client trust account(s) and operating account(s). To promote checks and balances and reduce potential conflicts of interest, consider appointing someone other than your Assisting Attorney. Without an Authorized Signer, clients' funds may remain inaccessible until a court intervenes, causing delays, added costs, and stress for your clients. On the other hand, granting access to the wrong person could result in misappropriation of funds, client harm, and professional liability. You remain ultimately responsible for the funds contained in your trust account, so it is important to select an Authorized Signer with care. Carefully evaluate your options, understand the implications, and make an informed, ethical decision. To document this step, you can utilize the *Notice of Designated Authorized Signer* sample.

The last step is to designate an Emergency Practice Coordinator. If applicable, the Planning Attorney should choose an individual (attorney or trusted staff) who holds emergency access credentials (e.g., *Law Office List of Contacts*) and notifies the Assisting Attorney when the Planning Attorney is incapacitated. This is an administrative role and does not require licensure. To document this step, you can utilize the *Notice of Designated Emergency Practice Coordinator* sample.

III. Decide What Circumstances Activate the Succession Plan and Determine the Designated Assisting Attorney's Level of Accessibility to Files and Client Trust Accounts

To activate your succession plan effectively, your *Succession Planning Agreement* must clearly define the circumstances that will trigger its implementation. You may designate this authority to a law firm partner, trusted attorney colleague, or the Emergency Practice Coordinator. The key is to ensure the standard is clear enough to trigger timely action, while also flexible enough to reflect real-world complexities. Once activated, the plan must allow your Assisting Attorney to access vital practice information, such as case calendars, emails, client files, financial records, and client trust account information.

This level of access comes with significant responsibility and must be structured to comply with [rule 1.6](#) (Confidentiality) and [rule 1.15](#) (Safekeeping Funds and Property). Accordingly, it's important to decide how much access the Assisting Attorney (or Emergency Practice Coordinator) will have to your files and accounts. Please consider the following approaches:

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Contingent access: This approach allows your Assisting Attorney to access your files and accounts during a particular period or after a specific event. You can have your Assisting Attorney, or another designated individual, determine whether the contingency has occurred.

Noncontingent access: This approach gives the Assisting Attorney complete access to your records and accounts at all times. No contingency must occur for that person to gain access. Please note: There may be confidentiality and other privacy concerns when using this approach.

If the succession plan is triggered due to death, family members, executors, or the Assisting Attorney may need to locate wills or trust instruments. In limited situations, the State Bar may provide guidance.² The Assisting Attorney should notify the State Bar by submitting a *Licensee Records and Compliance Inquiry form*. Clients may be directed to local courts or county recorders, depending on the type of legal instrument involved. The more organized and accessible your records are, the easier it will be for your Assisting Attorney or Emergency Practice Coordinator to respond effectively.

IV. Prepare Succession Plan Agreement and Necessary Authorization Paperwork with the Assisting Attorney, Authorized Signer, and Emergency Practice Coordinator

As part of developing a succession plan, you will need to prepare a written agreement and the necessary authorization paperwork for your Assisting Attorney. These documents will ensure the clarity and effectiveness of the arrangements you’ve made in the previous steps. First, document all relevant individuals assisting with your succession plan through the following samples: 1) *Notice of Designated Assisting Attorney*; 2) *Notice of Designated Authorized Signer*; and 3) *Notice of Designated Emergency Practice Coordinator*. Second, using the *Succession Planning Agreement* sample, prepare a written agreement with your Assisting Attorney that clarifies their role and authority, the scope of their anticipated assistance, their duties and responsibilities, and the terms of compensation. In that same written agreement, clarify the role and authority of your Authorized Signer and Emergency Practice Coordinator (if applicable) if they’re different from the Assisting Attorney.

In addition, generate the necessary documentation that will authorize the Assisting Attorney and/or Authorized Signer to access your bank accounts, including your trust account. The types of documents required will depend on whether the authorization is conditional or unconditional. Conditional authorization limits access until a specific event occurs, such as your death, disability, or hospitalization. This may require institution-specific forms or a Limited Power of Attorney. Confirm in writing that your bank will accept it. Unconditional authorization, by contrast, grants immediate and full access, typically by adding the person as a co-signer on

² For further information, please access the page: [Successor Lawyer Duties When a Lawyer Dies](#).

the account. This allows them to manage funds at any time, regardless of your health status, and removes your control over their access.

Because of the significant risks involved, particularly with unconditional authorization, it is essential to carefully select a trusted individual and understand the legal and ethical implications of your decision.

V. Discuss Your Arrangements with Appropriate Parties

A succession plan is only effective if the people responsible for carrying it out are aware of it and prepared to act. Key parties to inform include firm partners and shareholders, staff, your malpractice carrier, your accountant, your financial institutions, and anyone else involved in the operation of your practice. [Rule 5.1](#) imposes a duty on supervising attorneys to make reasonable efforts to ensure the firm is operating in compliance with professional obligations. This includes succession preparedness.

The succession plan should also be discussed with your spouse or partner, adult children, and anyone else who may be involved if you become incapacitated or pass away. Subject to [rule 1.6](#) and [Business and Professions Code section 6068\(e\)\(1\)](#), these conversations can help reduce stress and ensure your loved ones aren't left navigating unfamiliar legal or financial situations.

In addition, assembling a team of trusted advisors can help guide transitions under a succession plan. This may include financial planners, tax advisors, attorneys familiar with succession planning, and others who understand both the business and emotional dimensions of retirement. This group can provide guidance and accountability as you prepare your practice and your life for the next chapter.

VI. Notify Your Clients

Clients should be notified, ideally in writing at the outset of representation, that you have arranged for another attorney to step in if you become unable to continue practicing. Under [rule 1.4](#), attorneys are required to keep clients informed of significant developments that may affect their legal matters, including changes in who might temporarily manage their case. Clear, proactive communication preserves trust, sets expectations, and allows clients to make informed decisions regarding representation.

If clients learn of your incapacity or death from a third party, confusion, delays, and harm may result. They may turn to the State Bar to confirm your status or seek access to their files and unearned fees. Without a succession plan, clients could be forced to navigate probate, court intervention, or even your office landlord to recover their records. Notifying clients in advance helps prevent these complications and ensures ethical continuity in the event of an emergency.

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VII. Prepare Pertinent Information for the Assisting Attorney

Your Assisting Attorney can only act effectively if they have access to accurate, comprehensive, and well-organized practice information. This includes a list of open cases, calendared deadlines, pending tasks, client contact details, trust account balances, passwords, and digital credentials. A separate list of personal and business contacts, including family members, your office landlord, and your bookkeeper, will aid in this process. Ideally, this information should be stored securely in both physical and digital formats and reviewed regularly for accuracy.

Depending on your practice area, it may also be wise to specify the location of important documents (e.g., wills, trusts, and deeds). While the State Bar may be able to assist in retrieving client files, its ability to do so is limited. Maintaining clear internal records ensures that your clients can receive their documents without delay.

The *Law Office List of Contacts* sample provides a template to compile much of this data to aid your Assisting Attorney.

VIII. Perform Regular Maintenance of Your Office Systems

Creating a succession plan is only the first step. To keep it effective, you must regularly maintain your office systems so that someone stepping into your role can operate the practice with minimal confusion. This means keeping your client files up to date, ensuring that calendars and deadlines are current, and maintaining accurate financial and trust accounting records. Under [rule 1.3](#) (Diligence), [rule 1.15](#) (Safekeeping Funds and Property) and [rule 5.1](#) (Responsibilities of Managerial and Supervisory Lawyers), attorneys are expected to have procedures in place that support consistent and competent representation.

If you anticipate selling or transitioning your practice, regular maintenance becomes even more important. Keeping systems organized improves the value of your practice for buyers or successors. This means investing in efficient systems, retaining trained staff, and keeping your revenue and case pipeline steady in the years leading up to your retirement or departure.

IX. Review Annually

Succession planning is not static. It must be reviewed annually to ensure it still reflects your circumstances, your practice, and your goals. Check that your Assisting Attorney is still available and willing to serve, that your contact and financial information are still accurate, and that your client files and software access credentials are up to date.

You should also monitor for any changes in law or ethics rules that may affect your plan, including updates to the [California Rules of Professional Conduct](#). Life events (e.g., health changes, relocations, or staffing shifts) can also affect your timeline and contingency plans. Having both a primary and backup plan helps you remain flexible while staying on solid ethical ground.

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X. Additional Considerations

Succession planning is not only about risk management; it's also about envisioning your future and defining what you want your final professional chapter to look like.

From a practical standpoint, you should be aware of the role that the State Bar sometimes plays in a practice closure. In certain cases, the State Bar may provide limited guidance, resources to assist with file recovery and client notification, or compensation through the Client Security Fund. Clients may be entitled to refunds or copies of their records. Additionally, family members or executors may be expected to coordinate with the State Bar to notify clients and ensure the practice is shut down appropriately. Please see [When a Lawyer Dies](#) and [Closing a Law Practice](#) on the State Bar website.

Having a succession plan in place not only protects those you serve but also ensures your career ends with the professionalism and integrity it began with.

CHAPTER 3: FAQs & ADDITIONAL RESOURCES

This chapter addresses common questions that California attorneys may have when developing a succession plan and provides links to tools, references, and support services. Whether you're a solo practitioner, small firm attorney, or managing partner, these FAQs and resources are designed to help you build a compliant, practical plan that protects clients and supports business continuity.

I. Planning Attorney: Frequently Asked Questions

1. Am I required to have a succession plan under California law?

While no rule explicitly states a requirement, [Cal. State Bar Formal Opn. No. 2024-209](#) makes it clear that the duties of competence ([rule 1.1](#)), diligence ([rule 1.3](#)), communication ([rule 1.4](#)), and protection of client property ([rule 1.15](#)) require attorneys to take reasonable steps to avoid harm to clients. For most solo practitioners, this means implementing a written succession plan.

2. What are the consequences if I don't have a succession plan?

Failing to develop a succession plan can have serious professional and practical implications. If you experience an unexpected illness, incapacity, or death without a plan, your clients may face missed court deadlines, lost opportunities, and lack of communication—all of which may constitute ethical violations under [rule 1.1](#) (competence), [rule 1.3](#) (diligence), [rule 1.4](#) (communication), [rule 1.15](#) (safeguarding funds), and [rule 1.16](#) (termination of representation). In such cases, you could face professional discipline upon returning to practice.

In addition, under [Business and Professions Code section 6185](#), the California Superior Court is authorized to appoint an attorney as a practice administrator “to take control of the practice of

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a deceased or disabled licensee of the State Bar” and wind it up. This statutory process often creates considerable burdens for clients, courts, and the attorney’s personal estate, which may be required to pay for the administrator’s appointment and the costs of court intervention. (See [Business and Professions Code section 6180](#) et seq., [6190](#) et seq.)

3. I work in a small firm. Do I still need a succession plan?

Yes. Even in small firms, attorneys should assess whether firm policies are sufficient. If the firm does not have a formal business continuity protocol, each attorney—especially those with sole responsibility for certain clients—should create their own plan. [Rule 5.1](#) requires managerial attorneys to ensure systems are in place to comply with ethical duties.

4. Can I appoint a nonattorney, such as a spouse or office manager, to handle my practice in an emergency?

No. Only a licensed California attorney may review confidential client files, manage legal matters, or disburse funds held in a trust. Nonattorneys may assist with administrative duties but cannot act as an Assisting Attorney unless specially authorized by the court in limited circumstances, such as in an estate or court-supervised practice termination.

5. How do I choose an Assisting Attorney?

Look for someone:

- Who has competence in your primary practice area(s)
- Who is conflict-free under [rule 1.7](#) and [rule 1.9](#)
- Willing to sign a formal *Succession Planning Agreement*
- With malpractice coverage and the infrastructure to step in quickly

If you are a solo practitioner or work in a small firm, consider reciprocal arrangements with other solo or small-firm attorneys.

6. Should I inform my clients that I’ve designated an Assisting Attorney?

Yes, ideally. While not strictly required, doing so improves transparency and helps fulfill [rule 1.4](#) (communication). A simple clause in your engagement letter or an addendum to existing clients can state that you have appointed a trusted attorney to handle matters in an emergency.

7. Do I need to compensate the Assisting Attorney?

Compensation is not ethically required, but it’s strongly recommended to encourage participation. Options include:

- Hourly fees (paid by your estate or law office)

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- Flat fees for winding down
- Percentage of collected receivables
- Reciprocal no-fee arrangements between colleagues

Details should be documented in a signed agreement.

8. What happens to my trust account if I become incapacitated?

Under [rule 1.15](#), only a licensed attorney can manage client trust funds. Your plan must grant the Assisting Attorney access and authority to handle the account in accordance with trust accounting requirements. This may require preplanning with your bank or bookkeeper.

9. What if no one is willing to act as my Assisting Attorney?

If you cannot identify a willing Assisting Attorney, you must still develop protocols for:

- Alerting clients
- Returning client files
- Communicating deadlines
- Providing contact information for the State Bar or a potential court-appointed trustee

The State Bar's Office of Chief Trial Counsel may intervene if client harm is imminent. Avoid this outcome by taking proactive steps now.

10. What about digital access? How do I securely share passwords and case files?

Use secure password management software and store credentials in a location accessible to your designated Emergency Practice Coordinator or Assisting Attorney. Your succession plan should specify how and when this information may be accessed, including two-factor authentication, cloud storage, and case management systems.

11. How often should I review or update my succession plan?

At least once per year, or when there is a significant change in your:

- Practice structure or staff
- Health condition
- Trust account arrangements
- Case management software or file storage systems

Annual updates also ensure your Assisting Attorney remains available and capable.

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II. Assisting Attorney: Frequently Asked Questions

1. What are my obligations as the Assisting Attorney?

It is important to carefully review the document designating you as the Assisting Attorney and the *Succession Planning Agreement* so you are aware of your obligations, which may vary depending on the circumstances and may include notifying clients of the death or incapacitation of their attorney, reviewing files to determine any pressing deadlines or statutes of limitations, or taking over administration of the Planning Attorney's client trust account(s).

2. I know sensitive information about the Planning Attorney. The Planning Attorney's former client is asking questions. What information can I give the Planning Attorney's former client?

This answer depends on your relationship with the Planning Attorney and their clients. If you are the Planning Attorney's attorney, you are limited to disclosing only information that the Planning Attorney consented to disclose. You should make clear to the Planning Attorney's clients that you do not represent them and that they should seek independent counsel. If the Planning Attorney did not consent to the disclosure of information about their condition to the client, you may not do so. This is often a delicate situation to navigate, so plan your conversations with the Planning Attorney's former clients carefully.

3. In addition to transferring files and helping to close the Planning Attorney's practice, I want to represent the Planning Attorney's former clients. Am I allowed to do this?

Whether you are permitted to represent the former clients of the Planning Attorney depends on (1) whether the clients want you to represent them and (2) who else you represent.

If you are representing the Planning Attorney, you cannot also represent their clients on a malpractice claim, ethics complaint, or fee claim against the Planning Attorney. Regardless of whether you represent the Planning Attorney, your ability to represent their clients is limited by potential conflicts arising from your other cases and clients. You must check your client list for possible client conflicts before undertaking representation or reviewing confidential information of a Planning Attorney's former client.

Even if a conflict check reveals no conflicts, you can always refer the case to another attorney.

4. What do I need to consider if I do not want to create an attorney-client relationship with the Planning Attorney's clients and only want to assist in transitioning their matters?

This ultimately depends on the circumstances, as the attorney-client relationship can be implied from the conduct of the parties. Factors may include (1) the arrangements made between the Planning Attorney and yourself, detailed in the *Succession Planning Agreement*; (2) advance consent from the Planning Attorney's clients on this topic; (3) each client's understanding of

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your role; and (4) other factors discussed in [Cal. State Bar Formal Opn. No. 2024-209](#). It is important to keep these factors in mind while interacting with the Planning Attorney's clients, so you do not unintentionally create an attorney-client relationship.

5. If I discover an ethical violation, do I have to tell the Planning Attorney's former clients or report the Planning Attorney to the State Bar of California?

The answer depends on the arrangement you have agreed upon with the Planning Attorney. The answer is:

- No, if you are the Planning Attorney's attorney
 - Maybe, if you are not representing the Planning Attorney or their former clients
 - Yes, if you are the attorney for the Planning Attorney's former clients
6. If the Planning Attorney stole client funds, do I have exposure to an ethics complaint against me?

You do not have exposure to an ethics complaint for the Planning Attorney's theft of client funds, unless you aided or abetted the unethical conduct. Whether you have an obligation to inform the Planning Attorney's former clients of the misappropriation depends on your relationship with the Planning Attorney and their former clients. Whether you must report the Planning Attorney to the State Bar of California depends on your relationship with the Planning Attorney and their former clients. (See questions 6 and 8 in the Planning Attorney FAQs above.) If you are the new attorney for a former client of the Planning Attorney and you fail to advise the client of the Planning Attorney's ethical violation, you could be exposed to the allegation that you have violated your ethical responsibilities to your new client.

ADDITIONAL RESOURCES

Below is a list of recommended resources to support your planning efforts:

- [Cal. State Bar Formal Opn. No. 2024-209: Succession Planning](#)
- [California Rules of Professional Conduct](#)
- [State Bar of California – Guidance for Clients and Family Members of a Deceased Lawyer](#)
- [State Bar of California – Guidelines for Closing or Selling a Law Practice](#)
- [State Bar of California – Transfer of Estate Planning Documents](#)
- [State Bar of California Ethics Hotline](#)—In CA: 800-238-4427; outside of CA: 415-538-2150
- [State Bar of California Certified Lawyer Referral Services](#)
- [Free Legal Help](#)
- [California Lawyers Association: Practitioner's Checklist](#)
- [ABA Formal Opinion 92-369: Disposition of Deceased Sole Practitioners' Client Files and Property](#)
- [ABA Disaster Resources for Lawyers and Law Firms](#)

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- [ABA: Surviving a Disaster: A Lawyer’s Guide to Disaster Planning](#)
- [Ready.gov: Business Continuity Planning](#)

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**THE STATE BAR OF CALIFORNIA
STANDING COMMITTEE ON
PROFESSIONAL RESPONSIBILITY AND CONDUCT
FORMAL OPINION INTERIM NO. 21-0003**

ISSUE: What conflicts of interest are presented by a stock option agreement between the in-house lawyer and the company?

DIGEST: In-house lawyers are often offered employee stock options or grants as part of their compensation package. In a typical attorney-client relationship—which is inherently imbalanced in favor of the attorney—taking stock of a client requires compliance with Rule of Professional Conduct 1.8.1: the transaction must be fair and reasonable; the lawyer’s role in the transaction must be fully and plainly disclosed to the client in writing; and the client is advised in writing to consult with independent counsel about the transaction. The client must then provide written consent to the transaction. This rule applies in the in-house context, even if the lawyer is offered the same general compensation terms as those offered to other employees and indicia of inequality do not exist.

Stock ownership may likewise trigger a material limitation conflict under rule 1.7(b) if there is a significant risk that the in-house lawyer’s representation will be materially limited by their financial interest in connection with their stock ownership. Such a conflict could arise if the lawyer is asked to advise the company concerning a transaction that affects the character or price of the stock, such as a merger or acquisition. If so, the lawyer must obtain informed written consent from an authorized constituent of the company. If the lawyer does not reasonably believe they can competently represent the company due to the conflict, or if the company refuses to consent to the conflict, the lawyer must refer the matter to nonconflicted in-house counsel or outside counsel.

AUTHORITIES

INTERPRETED: Rules 1.0.1, 1.7, 1.8.1, and 1.13 of the Rules of Professional Conduct of the State Bar of California.

STATEMENT OF FACTS

After practicing law for 5 years as in-house legal counsel for a software company (Old Company), Lawyer has decided to take a position as General Counsel for a closely held software company (Company), formed by three founders (Founders). The Founders make up the Board

of Directors (Board). Lawyer is expected to head a small team of three lawyers (Legal Department). There are approximately 75 salaried employees who own stock and/or stock options.

As part of Lawyer's offer of employment, Company's CFO sends Lawyer a secure email containing a proposed stock option agreement that is offered to Company's salaried employees. The agreement was prepared by Company's previous General Counsel, who is no longer with Company. The agreement states that Lawyer has an option to purchase a certain number of shares of Company's common stock at an exercise price equal to the fair market value of such shares on the date of the grant, based on Company's Stock Incentive Plan. The agreement states that the securities will vest at increasing percentages over the course of five years. The agreement also states that in the event of a merger with or acquisition by another company, the vesting of Lawyer's option will immediately accelerate and become fully vested.

Lawyer responds to CFO's email acknowledging receipt of the stock option agreement and advising CFO to consult with independent counsel concerning the stock option terms offered to Lawyer as part of Lawyer's compensation as Company's General Counsel. CFO responds, "Ok, no problem." The following day, Lawyer executes the stock option agreement. CFO then executes the agreement on behalf of Company.

ISSUE PRESENTED

Does the stock option agreement present Lawyer with any conflicts of interest and if so, how and when should such conflicts of interest be addressed with Company?

DISCUSSION AND ANALYSIS

I. Overview

"[C]ounsel working for a corporation in-house and private counsel engaged with respect to a specific matter or on retainer" are "bound by the same fiduciary and ethical duties to their clients." (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1094 [95 Cal.Rptr.2d 198].) In-house lawyers have attorney-client relationships with the organizations that employ them. (See *Gutierrez v. G & M Oil Co., Inc.* (2010) 184 Cal.App.4th 551, 559 [108 Cal.Rptr.3d 864].) Specifically, an organization's legal department is encompassed within the definition of "law firm." (Rule 1.0.1(c) ["'Firm' or 'law firm' means . . . lawyers employed in a legal services organization or in the legal department, division or office of a corporation, of a government organization, or of another organization."].) A lawyer's duties to an organizational client are the same whether they are "employed or retained" by the organization. (Rule 1.13(a).) In short, the underlying purposes of a lawyer's fiduciary duties—protecting the public and the integrity of the legal system and promoting the administration of justice and confidence in the legal profession—are not diminished because the lawyer is employed rather than retained by an organizational client.

These principles apply to the in-house lawyer's compensation for legal services. Thus, when an in-house lawyer is presented with a stock option agreement or stock as part of their compensation, that lawyer must analyze whether the proposed arrangement triggers any conflicts of interest. This obligation may be easy to overlook if the lawyer serves a dual role of employee (where the balance of power typically favors the employer-client) and attorney (where the balance of power between attorney and client typically favors the attorney). "For example, in-house lawyers may be seen to owe different duties than independent lawyers, perhaps because they are viewed as employees of the client directly rather than indirectly." (Klein, *No Fool for a Client: The Finance and Incentives behind Stock-Based Compensation for Corporate Attorneys* (1999) 1999 Colum. Bus. L.Rev. 329.) Accordingly, "[t]he dual status of in-house counsel—acting as both employee and attorney—and the dual status of the company—acting as both employer and client—can pose some challenging questions about when one role takes precedence over another." (*Missakian v. Amusement Industry, Inc.* (2021) 69 Cal.App.5th 630, 651 [285 Cal.Rptr.3d 23]; see also *General Dynamics Corp. v. Superior Court (Rose)* (1994) 7 Cal.4th 1164 [32 Cal.Rptr.2d 1] [recognizing this dynamic in the employment law context].)

II. Application of Rule 1.8.1

In the traditional attorney-client relationship, a lawyer's acceptance of stock or stock options from a client in lieu of, or in addition to, fees for legal services is subject to rule 1.8.1, which governs when a lawyer knowingly acquires an ownership or other pecuniary interest adverse to a client. (See rule 1.8.1, Cmt. [5] ["This rule does not apply to the agreement by which the lawyer is retained by the client, unless the agreement confers on the lawyer an ownership, possessory, security, or other pecuniary interest adverse to the client."]; ABA Com. on Prof. Ethics Opn. No. 00-418 (2000) ["[A] lawyer who acquires stock in her client corporation in lieu of or in addition to a cash fee for her services enters into a business transaction with a client, such that the requirements of Model Rule 1.8(a) must be satisfied."].) If rule 1.8.1 applies, the lawyer must ensure that the following requirements are met:

- (1) The transaction or acquisition and its terms are fair and reasonable to the client and the terms and the lawyer's role in the transaction or acquisition are fully disclosed and transmitted in writing to the client in a manner that should reasonably have been understood by the client;
- (2) The client either is represented in the transaction or acquisition by an independent lawyer of the client's choice or the client is advised in writing to seek the advice of an independent lawyer of the client's choice and is given a reasonable opportunity to seek that advice; and
- (3) The client thereafter provides informed written consent to the terms of the transaction or acquisition, and to the lawyer's role in it.

The purpose of the rule is to address the inherently imbalanced relationship between attorney and client. (*Beery v. State Bar* (1987) 43 Cal.3d 802, 812-813 [239 Cal.Rptr. 121].) "The law accordingly takes a jaundiced view of business transactions between attorneys and their

clients.” (*Ferguson v. Yaspan* (2014) 233 Cal.App.4th 676, 684 [183 Cal.Rptr.3d 83] citing *Mayhew v. Benninghoff* (1997) 53 Cal.App.4th 1365, 1369 [62 Cal.Rptr.2d 27].) Indeed, “the law presumes” attorneys engaging in such transactions “wear” a “black” hat. (*Mayhew v. Benninghoff, supra*, 53 Cal.App.4th at 1369.)¹

Some of these concerns may be less pronounced in the in-house context, where the lawyer is offered the same general compensation terms, including stock and stock options, as those offered to other employees. Indeed, the power dynamic may be reversed. “[F]rom an economic standpoint, the dependence of in-house counsel is indistinguishable from that of other corporate managers or senior executives who also owe their livelihoods and career goals and satisfaction to a single organizational employer.” (*General Dynamics Corp. v. Superior Court (Rose)*, *supra*, 7 Cal.4th at 1172.) In addition, the in-house lawyer’s employment agreement may be prepared and/or presented by the general counsel, employment counsel, or other company counsel.

However, no California court has recognized an exception to, or relaxation of, rule 1.8.1 in the in-house context notwithstanding that policies underlying the rule may not be present in the typical in-house context.² The situations in which California courts have considered application of the rule involve the attorney’s status as a business founder, who then provides legal services to the newly-formed entity.³ (See *Fair v. Bakhtiari* (2011) 195 Cal.App.4th 1135, 1169 [125 Cal.Rptr.3d 765]; see also *Passante v. McWilliam* (1997) 53 Cal.App.4th 1240 [62 Cal.Rptr.2d 298].) However, the rule is prophylactic, requiring compliance whenever the lawyer acquires an ownership interest in a client, which, by definition, includes a stock grant or option agreement. “[Former rule] 3-300 absolutely prohibits a member from entering into a business

¹ The civil legal consequences of violating rule 1.8.1 are beyond the scope of this opinion. (See Cal. Prob. Code Section 16004.)

² Washington State and the ABA have addressed this issue. The Washington Supreme Court has recognized that compensation agreements for the in-house lawyer/employee, which may include nonmonetary compensation such as computers, cell phones, and health benefits, are more akin to standard employment contracts and should not be governed by Washington’s version of rule 1.8.1, because, typically, “the lawyer has no advantage in dealing with the client.” (*Chism v. Tri-State Constr., Inc.* (2016) 193 Wash.App. 818, 852 [374 P.3d 193]; quoting Wa. Rule 1.8(a), Cmt. [1]; see also Wash. State Bar Assoc. Advisory Opn. No. 1045 (1986) [concluding that in-house lawyer’s arms-length negotiation concerning compensation in the form of shares in the employer, a publicly traded corporation, did not violate Washington’s version of rule 1.8].) The ABA Task Force on the Independent Lawyer reached a similar conclusion: “In the usual case, the receipt of equity-based compensation by in-house counsel would not appear to be the type of ‘business transaction with a client’ contemplated by Rule 1.8. Option or restricted stock grants (the usual forms of equity compensation paid to in-house attorneys) are merely a form of compensation and, like cash, are a facet of the general employment relationship rather than part of or related to any particular transaction or undertaking.” (Litigation Section of the American Bar Association, *Lawyers Doing Business with Their Clients: Identifying and Avoiding Legal and Ethical Dangers, A Report of the Task Force on the Independent Lawyer* (2001) (Independent Lawyer Report).)

³ It is irrelevant that the lawyer is not formally designated as “general counsel” or “in-house counsel” for the business entity, or whether the lawyer provides both legal and nonlegal services. “When a member performs both legal and non-legal professional services for a client, the member is subject to the California Rules of Professional Conduct with respect to all of those services.” (Cal. Form. Opn. No. 1999-154.)

transaction with a client or knowingly acquiring a pecuniary interest adverse to a client, unless the transaction is fair *and* the full written disclosure and consent requirements of the rule are met.” (*Fair v. Bakhtiari*, *supra*, 195 Cal.App.4th 1135, 1162 (emphasis in original).) Accordingly, the committee cannot opine that rule 1.8.1 does not apply, even if the policy concerns underlying the rule are absent and the in-house lawyer’s “employee” role dominates over the “lawyer” role when the lawyer’s compensation package is offered.

Here, the requirements that the “transaction” and “its terms” are “fair and reasonable,” in writing, and reasonably understood by the client, are met. The stock option agreement is offered to Company’s employees as part of Company’s Stock Incentive Plan. The securities vest incrementally over time. Thus, stock options are offered as a standard form of compensation in the proposed employment agreement and not in connection with a particular transaction or undertaking. (See *In the Matter of Gillis* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 387, 396 [the “fair and reasonable” question is not determined “in the abstract” but rather based on “the entire transaction” with the client].) Lawyer did not prepare the stock option agreement; it was prepared on behalf of Company by its former General Counsel. The agreement was presented to Lawyer by Company’s CFO. Thus, the terms of the transaction and Lawyer’s role in it was reasonably understood by the client.

The requirement that the client be represented by independent counsel⁴ or advised in writing to seek the advice of independent counsel is satisfied by Lawyer’s email to CFO advising Company to consult with independent counsel concerning the stock option terms offered to Lawyer as part of Lawyer’s compensation as Company’s General Counsel. Company had a reasonable opportunity to do so because it controlled the hiring process and the timing of execution of the stock option agreement. (See, Tuft et al., Cal. Practice Guide: Professional Responsibility & Liability (The Rutter Group 2024) paragraph 4:292 (“What constitutes a reasonable amount of time under CPRC 1.8.1(c) . . . depends on the facts and circumstances of the case – e.g., the nature of the transaction and the client’s sophistication, etc.”).)

Finally, the requirement that the client must consent to the transaction and the lawyer’s role in it was satisfied by CFO’s execution of the stock option agreement on behalf of Company.

III. Application of Rule 1.7

Lawyer must separately consider whether the stock option provisions in the employment agreement present a material limitation conflict of interest under rule 1.7(b). Specifically, rule 1.7(b) prohibits representation of a client if there is a significant risk that the representation “will be materially limited . . . by the lawyer’s own interests,” without the informed written consent of the client. Further, the lawyer cannot represent the client even with the requisite consent from the client if the lawyer does not “reasonably believe that the lawyer will be able

⁴ Often, especially in large public corporations, a company already will be represented by in-house or outside counsel in connection with the hiring of a new lawyer for the company’s legal department. Such representation would satisfy this element. But where, as here, Company is closely-held, looking to *replace* its departed General Counsel, or it is otherwise unclear whether independent counsel is involved, the lawyer must take steps to ensure compliance with this requirement, as Lawyer did here.

to provide competent and diligent representation to each affected client.” (Rule 1.7(d)(1).) Thus, where the lawyer has a personal interest in the subject matter of the representation, the lawyer must assess whether their independent judgment will be materially impacted to the detriment of the client. (See ABA Model Rule 1.7, Cmt. [10] [“For example, if the probity of a lawyer’s own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice See Rule 1.8 for specific Rules pertaining to a number of personal interest conflicts, including business transactions with clients.”].)

In ABA Committee on Professional Ethics Opinion No. 00-418 (2000), the committee opined that although the issuance of stock to outside counsel in lieu of or in addition to fees mandated compliance with Model Rule 1.8(a) (the equivalent to rule 1.8.1), it “creates no inherent conflict of interest” under the “material limitation” conflict provisions of Model Rule 1.7(b). The committee explained: “Indeed, management’s role primarily is to enhance the business’s value for the stockholders. Thus, the lawyer’s legal services in assisting management usually will be consistent with the lawyer’s stock ownership. In some circumstances, such as the merger of one corporation in which the lawyer owns stock into a larger entity, the lawyer’s economic incentive to complete the transaction may even be enhanced.” (*Id.* at p. 9.)

However, this does not render rule 1.7(b) wholly inapplicable to an in-house lawyer who owns stock or stock options. (Independent Lawyer Report, *supra*, p. 56 [“To the extent . . . that the receipt of such compensation or the ownership of equity in the employer company might raise a question as to a potential conflict of interest or impairment of the representation, Rule 1.7 would govern.”].) Indeed, the committee envisions a number of scenarios where a material limitation conflict could arise, such as advising corporate management on the duty to disclose materially adverse financial information. “[T]he lawyer must evaluate her ability to maintain the requisite professional independence as a lawyer in the corporate client’s best interest by subordinating any economic incentive arising from her stock ownership.” (ABA Com. on Prof. Ethics, Opn. No. 00-418 (2000), *supra*, p. 10.) If the lawyer reasonably believes that the representation may be materially limited by stock ownership, the lawyer must consult with the client and obtain consent before continuing the representation. (*Ibid.*) This rule applies with equal force to in-house lawyers regardless of whether the stock option agreement was an arms-length negotiation falling outside the ambit of rule 1.8.1. (ABA Com. on Prof. Ethics Opn. No. 00-418 (2000).)

Here, Company offers Lawyer participation in Company’s Stock Incentive Plan, which includes stock options that vest incrementally over time. These are terms offered to other employees. At the outset of the employment relationship, these provisions, by themselves, do not present a significant risk that Lawyer’s independent judgment will be materially limited to the detriment of Company. “Given the relatively limited equity stake of corporate counsel in most cases, the lawyer’s ownership interest usually would not materially limit the representation. Indeed, equity-based compensation grants generally are made in small increments over time and, at the time made, are restricted in ways that give them only contingent, future value.” (Independent Lawyer Report, *supra*, p. 56.)

However, the stock option agreement also provides that, in the event of a merger with or acquisition by another company, the vesting of Lawyer's option will immediately accelerate so as to become fully vested. Given that such a merger is a mere potentiality and lacks specificity as to any terms and timing, it is unlikely that it presents a significant risk at the outset of Lawyer's employment that the acceleration provision will materially limit Lawyer's representation. Lawyer may consider an advance conflict waiver if a reasonably comprehensive explanation of foreseeable scenarios in which Company may be adversely affected by the merger and acceleration of Lawyer's stock vesting can be provided. (See generally rule 1.7, Cmt. [9]; *Sheppard, Mullin, Richter & Hampton LLP v. J-M Manufacturing Co., Inc.* (2018) 6 Cal.5th 59 [237 Cal.Rptr.3d 424].) Even if an advance waiver is obtained, in the event of a merger, Lawyer should reassess whether a second confirming waiver is required depending on the specificity of the advance waiver and whether it reasonably predicted the materialized conflict. (*Visa U.S.A., Inc. v. First Data Corp.* (N.D.Cal. 2003) 241 F.Supp.2d 1100; *Western Sugar Coop. v. Archer-Daniels-Midland Co.* (C.D.Cal. 2015) 98 F.Supp.3d 1074 [material change may trigger the need for new disclosure and informed written consent]; Independent Lawyer Report, *supra*, p. 43.)

CONCLUSION

The employer-employee relationship inherent in the role of a corporate in-house lawyer presents unique challenges with respect to the application of the conflict rules that govern the legal profession as a whole. Nevertheless, in-house lawyers are not exempt from compliance with those rules. If their compensation involves the issuance of stock or stock options, they must comply with rule 1.8.1. Further, the lawyer has an ongoing obligation to assess whether their stock ownership presents a significant risk that their representation will be materially limited by their financial interests in connection with a particular matter on which the lawyer is asked or expected to provide advice and counsel.