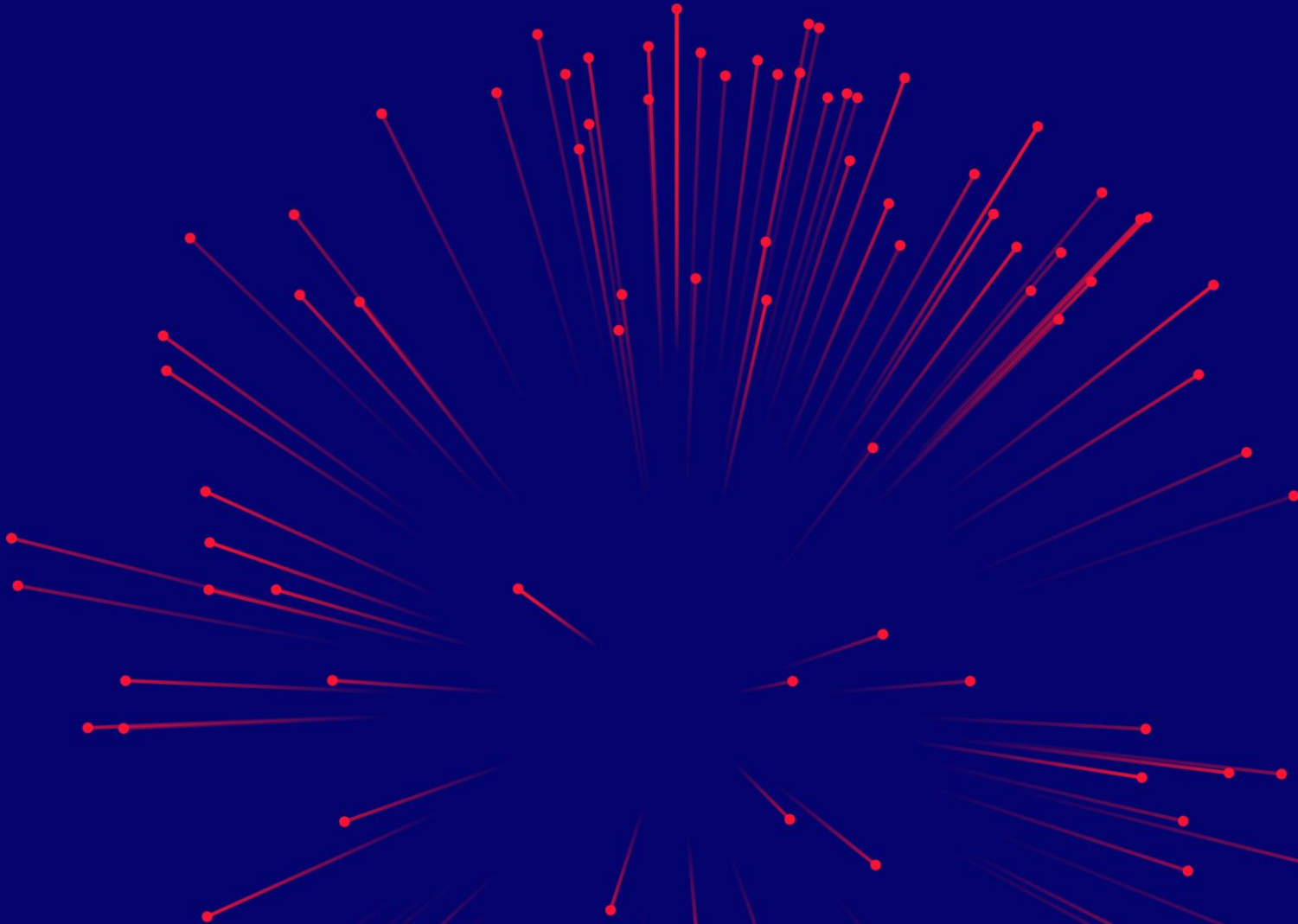


Legal Insights

A CLE webinar series



attorney advertisement
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Michelle Galloway

**Bully Be Gone – Impacts
of Bullying in the Legal
Profession, and How Can
We Combat It?**

Your Presenter



Of Counsel in the IP Litigation Practice Group of
Cooley LLP

Lecturer in Law at Stanford University and Santa
Clara University School of Law

Certificate in DEI from Cornell

Executive Committee, Litigation Section of California
Lawyers Association (2014.-2021)

Past Chair, ABA Intellectual Property Section,
Professional Ethics and Responsibility Committee

Contact Michelle at mgalloway@cooley.com or 650-
843-5161 or michelleseminars@gmail.com

Agenda

Rules and Guidelines regarding civility

Bullying: Data from the legal profession

Recent cases and opinions about incivility

What can we do to manage conflict and maintain civility

Views

The views and opinions expressed are my own and not those of people, institutions, or organizations with which I may be affiliated.

Why focus on civility
in law practice?

CA State Bar Annual Bar Renewal

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

CA Civility Task Force Introduction

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

“[Beyond the Oath: Recommendations for Improving Civility](#),” California Civility Task Force (Sept. 2021)

ABA Resolution

ABA passed Resolution 523 urging legal organizations to study and address bullying

“The time has come for the profession to move beyond the acceptance of bullying as the norm and take concrete steps toward fostering a professional environment for everyone and promoting a culture of respect and civility.”

Amanda Robert, *ABA House takes aim at bullying in the legal profession*, abajournal.com (Aug. 12, 2025) (quoting Brandon Wolff)

General Consensus: America is Less Civil

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



ABA Survey of Civic Literacy 2023, available at <https://www.americanbar.org/content/dam/aba/administrative/news/2023/2023-civic-literacy-survey.pdf>

Civility In Workplace Generally

SHRM (Society for Human Resource Management)

Civility Index for Q4 2025 (incivility they personally experienced or witnessed

society level: **48.6%**

workplace level: **39.9%**

<https://www.shrm.org/topics-tools/topics/civility/civility-index>

Incivility At Supreme Court

During Supreme Court arguments, a lawyer (Williams & Connolly) accused opposing counsel (Latham & Watkins) of lying re alleged position of defendant

Justice Gorsuch:

- “You can accuse people of being incorrect, but lying—lying is another matter.” – Justice Neil Gorsuch

A.J.T. v. Osseo Area Schools, Case No. 24-249 (S. Ct. 2025) reported in <https://www.law360.com/articles/2331234/print?section=appellate>

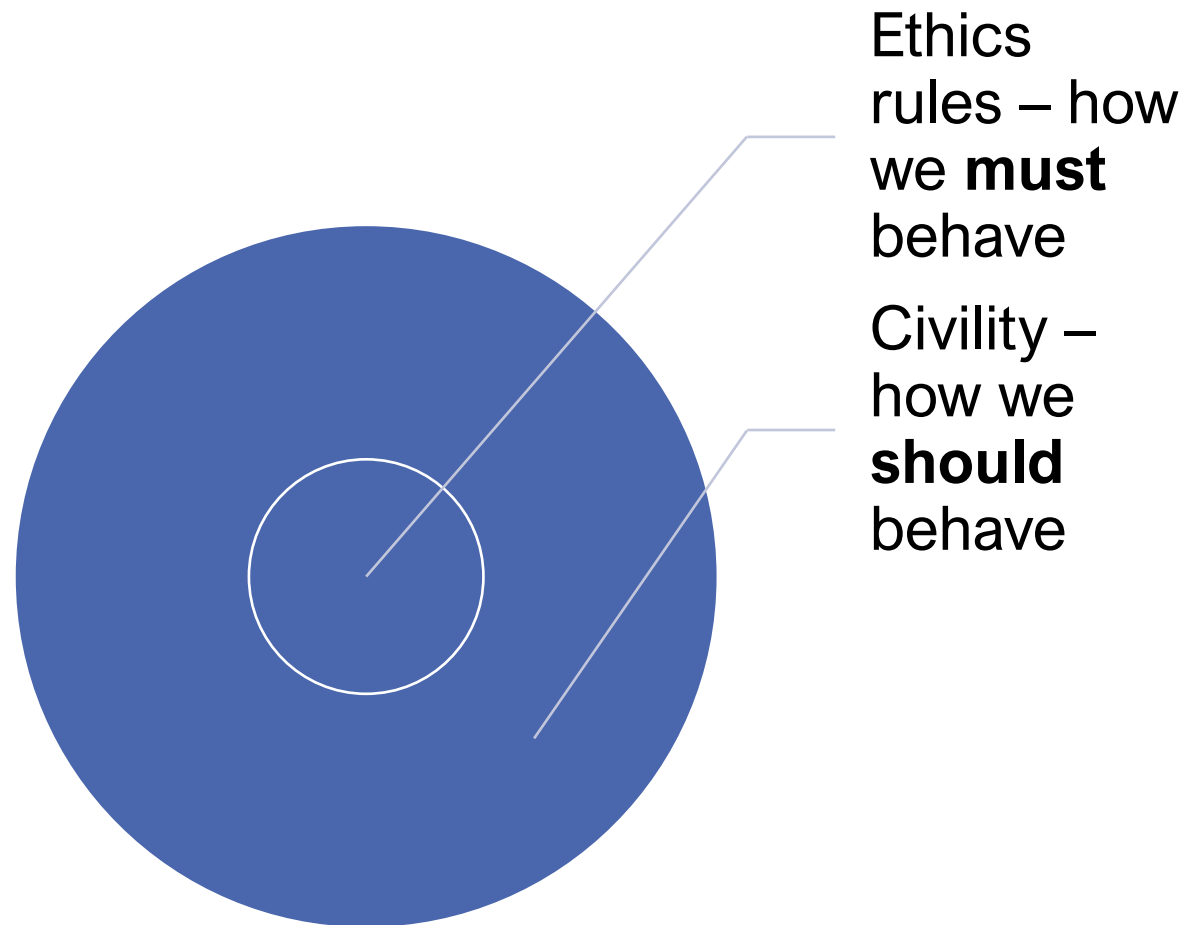
Court Notes Civility of Counsel

“In all proceedings, the Court places great weight on the parties’ cooperation with each other. Here, the Court appreciates the parties’ ability to agree to a briefing schedule as well as the civility counsel demonstrated towards each other throughout trial. Such cooperation embodies the civility all counsel should strive for when practicing in the Eastern District of Texas and it enables the Court to more efficiently and effectively administer justice.”

- *Gibson v. Armadillo Distribution Enterprises*, Case No. 4:19-cv-358 (E.D. Tex. Sept. 22, 2025) (trademark infringement case)

Disciplinary Rules & Civility

Discipline vs. Civility



ABA Model Rule 1.1: Competence

Rule unchanged:

- “A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”

Comment amended:

- “Maintaining Competence: To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, **including the benefits and risks associated with relevant technology**” (emphasis added).

Competence – California Rule 1.1

“(a) A lawyer shall not intentionally, recklessly, with gross negligence, or repeatedly fail to perform legal services with competence.

(b) For purposes of this rule, ‘competence’ in any legal service shall mean to apply the (i) learning and skill, and (ii) mental, emotional, and physical ability reasonably* necessary for the performance of such service.”

Civility is a Competency

Civility means:

Clarity over comfort

Curiosity over control

Consistency over charism

See Diane Ratigan-Schmidt, *Stop Sugarcoating: Civility is a Leadership Competency*, LinkedIn (Jan. 21, 2026) available at https://www.shrm.org/topics-tools/news/stop-sugarcoating-civility-is-leadership-competency?utm_placement=article&utm_initiative=flagship&utm_audi%E2%80%A6

CA Appellate Court

“Having resolved the merits of the appeal, we cannot allow the tone of the briefing to pass without comment. . . .

Ad hominem attacks and other invective detract from counsel’s legal arguments, signal inappropriate personal embroilment in the dispute, and *indicate an inability to engage in the reasoned analysis the courts need and counsel’s clients deserve*. When counsel resort to name-calling and to unsupported claims of misconduct, they risk obscuring any meritorious arguments they may have. Appellant’s counsel would be well advised to refrain from incivility in the future.”

Wastexperts v. Arakelian Enterprises, Case No. B325299 (2nd App. Dist. CA July 11, 2024)

“Zealous Advocacy” Doesn’t Require Incivility

Origin in ABA Model Rule Preamble:

“[2] As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client’s legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client’s position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others. As an evaluator, a lawyer acts by examining a client’s legal affairs and reporting about them to the client or to others.”

ABA Model Rule 1.3 Requires Diligence, Not Zeal

Rule 1.3 was changed to require:

- “A lawyer shall act with reasonable diligence and promptness in representing a client.”

Comment to Rule 1.3:

- “A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client’s behalf. A lawyer is not bound, however, to press for every advantage that might be realized for a client.”

States

13 states have amended oath to require pledges of civility

- See Lauren E. Bartlett, “*Human Rights and Lawyer’s Oaths*,” 36 Geo. J. Legal Ethics 411* 429-30.

CA Civility Guidelines and Proposed Rule Changes

California 2007 Guidelines

In 2007, the California State Bar Board of Trustees adopted California Attorney Guidelines of Civility and Professionalism.

California Guidelines for Transactional Attorneys

Section 18: Negotiation of Written Agreements

“An attorney should negotiate and conclude written agreements in a cooperative manner and with informed authority of the client. For example:

- a) An attorney should use boilerplate provisions only if they apply to the subject of the agreement.
- b) If an attorney modifies a document, the attorney should clearly identify the change and bring it to the attention of other counsel.
- c) An attorney should avoid negotiating tactics that are abusive; that are not made in good faith; that threaten inappropriate legal action; that are not true; that set arbitrary deadlines; that are intended solely to gain an unfair advantage or take unfair advantage of a superior bargaining position; or that do not accurately reflect the client’s wishes or previous oral agreements.
- d) An attorney should not participate in an action or the preparation of a document that is intended to circumvent or violate applicable laws or rules.”

Section 18 continued

“In addition to other applicable Sections of these Guidelines, attorneys engaged in a transactional practice have unique responsibilities because much of the practice is conducted without judicial supervision. For example:

- a) Attorneys should be mindful that their primary goals are to negotiate in a manner that accurately represents their client and the purpose for which they were retained.
- b) Attorneys should successfully and timely conclude a transaction in a manner that accurately represents the parties’ intentions and has the least likely potential for litigation.
- c) With client approval, attorneys should consider giving each party permission to contact the employees of the other party for the purpose of promptly and efficiently obtaining necessary information and documents.”

Guidelines' Attorney Pledge

“I commit to these Guidelines of Civility and Professionalism and will be guided by a sense of integrity, cooperation and fair play.

I will abstain from rude, disruptive, disrespectful, and abusive behavior, and will act with dignity, decency, courtesy, and candor with opposing counsel, the courts and the public.

As part of my responsibility for the fair administration of justice, I will inform my clients of this commitment and, in an effort to help promote the responsible practice of law, I will encourage other attorneys to observe these Guidelines.”

2021 California Civility Task Force Report

A report, “[Beyond the Oath: Recommendations for Improving Civility](#),” was issued by the California Civility Task Force in September 2021.

Zealous Advocacy: Civility Even If Client Directs Otherwise (Proposed Rule 1.2 Comments)

CA Bar proposed in 2023 that Rule 1.2 Comment [1] be modified

- “Would clarify that a lawyer has the authority to conduct themselves with civility, including agreeing to reasonable requests of opposing counsel or self-represented parties, even if their client directs otherwise, so long as the lawyer does not prejudice the rights of their client.”
- See <https://www.calbar.ca.gov/About-Us/Our-Mission/Protecting-the-Public/Public-Comment/Public-Comment-Archives/2023-Public-Comment/Revised-Proposed-Amendments-to-the-Rules-of-Professional-Conduct-Addressing-Incivility>

Proposed New Rule 8.4.2 to Prohibit Incivility

“Rule 8.4.2 Prohibited Incivility

(a) In representing a client, a lawyer shall not engage in incivility in the practice of law.

(b) For purposes of this rule, “incivility” means significantly unprofessional conduct that is abusive or harassing and shall be determined on the basis of all the facts and circumstances surrounding the conduct.”

Comment [1]: “For guidance on conduct that may be significantly unprofessional that is abusive or harassing, a lawyer should consult the current California Attorney Guidelines of Civility and Professionalism . . .”

Proposed Amended Rule 8.2, Comment 1

Defend Courts From Unjust Criticism

“(a) A lawyer shall not make a statement of fact that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge or judicial officer, or of a candidate for election or appointment to judicial office”

- Proposed amended Comment [1] statement asserted an opinion may be basis for discipline
- Comment [2]: “To maintain the fair and independent administration of justice, lawyers should defend judges and courts unjustly criticized. Lawyers also are obligated to maintain the respect due to the courts of justice and judicial officers.”
- See <https://www.calbar.ca.gov/About-Us/Our-Mission/Protecting-the-Public/Public-Comment/Public-Comment-Archives/2025-Public-Comment/Proposed-Amended-Rules-of-Professional-Conduct-82-and-84>

Proposed Amendments re Lawyer Statements re Judges

New comment [7] would specify that unprotected activities include speech

- Made with the “specific intent of producing imminent lawless action against a judge or judicial officer”
- “a true threat of violence” that is, a statement that a reasonable observer would understand to be a “serious expression”
- “a false statement of fact (or a statement asserted as “opinion”) that implies actual facts that are capable of objective verification”: that are false, regarding a judge or judicial officer made with “knowledge or reckless disregard of the truth or falsity of the facts”
 - Available at <https://www.calbar.ca.gov/About-Us/Our-Mission/Protecting-the-Public/Public-Comment/Public-Comment-Archives/2025-Public-Comment/Proposed-Amended-Rules-of-Professional-Conduct-82-and-84>

CA Supreme Court: No amendment to Rules of Professional Conduct

CA Supreme Court denied proposed changes to Rules of Professional Conduct:

“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.”

CA Rule of Court 9.7 amended (Oct. 1, 2025)

Annual requirement for attorneys to affirm civility oath

“Each active licensee and each special admissions attorney (permitted to practice law in the State of California under rules 9.41.1, 9.44, 9.45, or 9.46) 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.

- “As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy and integrity.”
- Proposed New Rule 2.3 CA so rules consistent with required Oath

Additional Resources

[The State Bar of California's Attorney Civility and Professionalism page](#) includes links to courts and bar associations with civility or professionalism guidelines.

[The State Bar of California also offers a civility toolkit on its website.](#)

What is Incivility?

Civility is Largely Undefined

ABA Preamble to Model Rules calls for lawyers to have a “civil attitude.”

2011 ABA Resolution 108 to the House of Delegates:

- “RESOLVED, That the American Bar Association affirms the principle of civility as a foundation for democracy and the rule of law and urges lawyers to set a high standard for civil **discourse** as an example for others in resolving differences constructively and **without disparagement of others**” (emphasis added).

Characteristics of Civility

Be respectful and act in a courteous, cordial, and civil manner.

Be prompt and prepared.

Show honesty and integrity; keep commitments.

Act with dignity.

Cooperate.

Accommodate others re: scheduling and extensions.

Display proper conduct before the court.

Be a role model to new attorneys and public.

Use tribunals in fair and efficient way.

- Donald E. Campbell, “*Raise Your Right Hand and Swear to Be Civil: Defining Civility as an Obligation of Professional Responsibility*,” 47 GONZ. L. REV. 99, 109 (2011) (based on reviewing 140+ civility codes).

What Civility is Not

Civility is:

- Not the same as agreement.
- Not the same as liking someone.
- Not the absence of criticism.
- Not equal to politeness or manners alone.
- Paul A. Haskins, ed., *“Essential Qualities of the Professional Lawyer,” “Chapter 3, Civility as the Core of Professionalism”* by Jayne R. Reardon (executive director of Illinois Supreme Court Commission on Professionalism)

A Range of Behaviors



Spotting a Bully

Criticizes

Blames others

Makes unreasonable demands

Takes credit for others' work

Makes threats

Excludes others from social groups

Reminder: This can include cyberbullying.

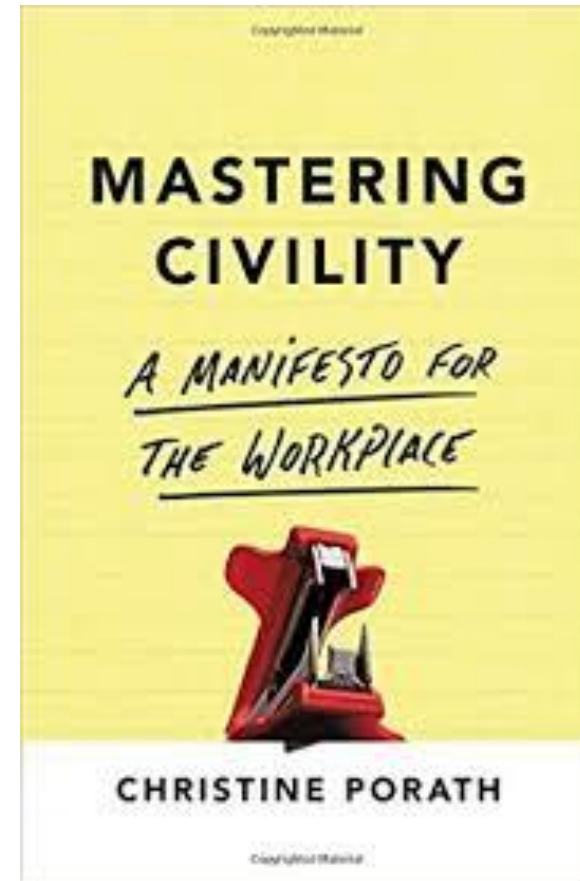


First Step is Civility

Quiz and discussion questions
for team

Take the quiz at

www.christineporath.com/assess-yourself.



Bullying by and of lawyers

Causes

Zealous advocacy

Technology – use of email and virtual proceedings – creating distance between us

Disconnection from legal community

Lack of accountability

Illinois Report on Bullying in Legal Profession

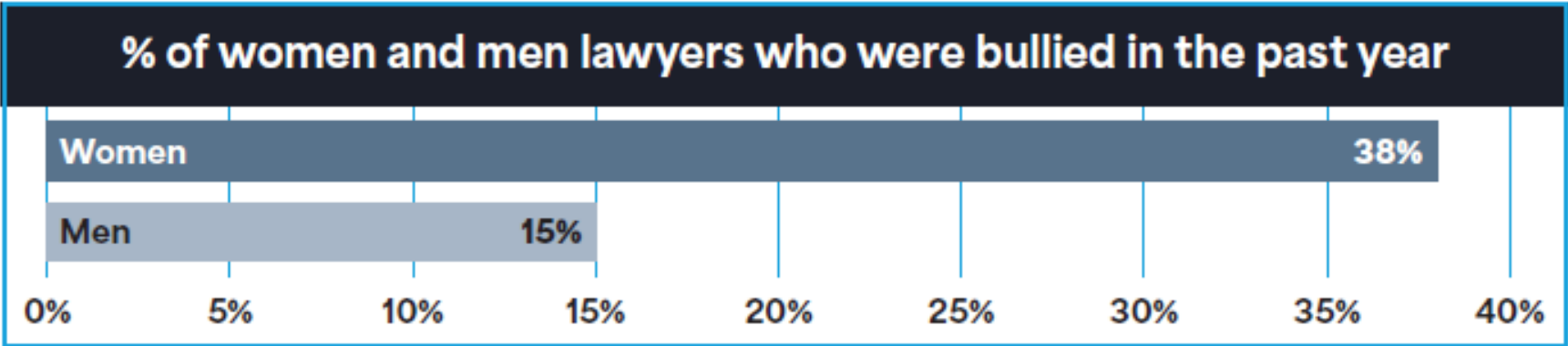
“Bullying” is defined as “inappropriate behavior intended to intimidate, humiliate, or control the actions of another person, including verbal, nonverbal, or physical acts.”

Focused on 12 months in 2022 to 2023

6,000+ respondents

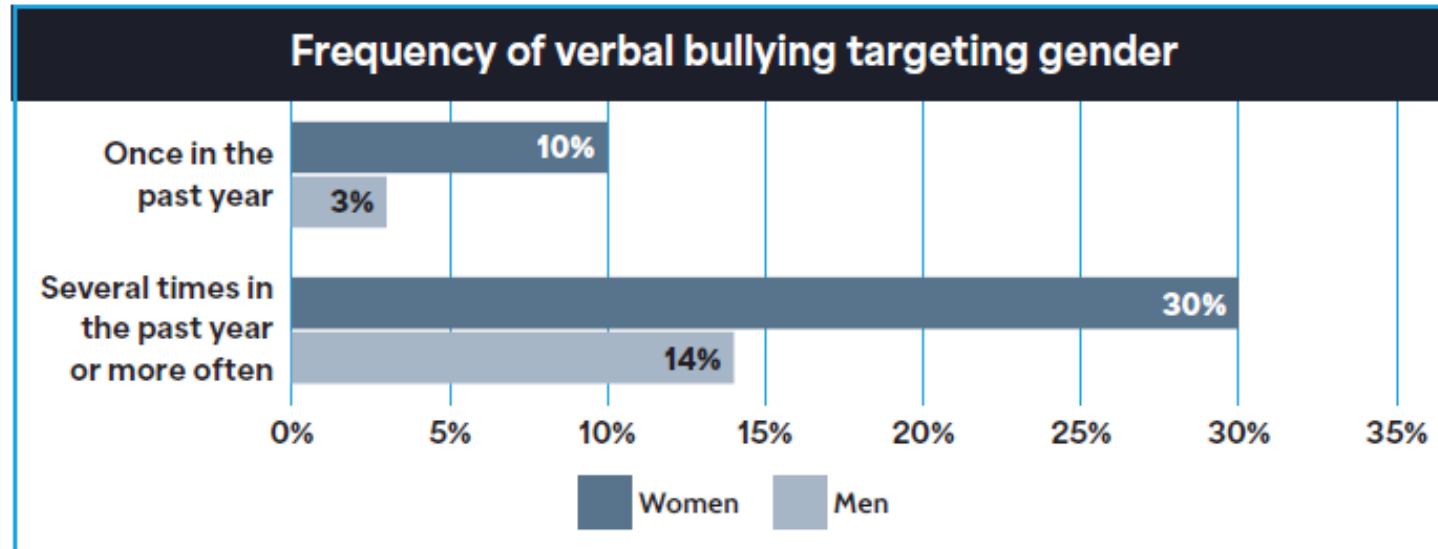
- Stephanie A. Scharf and Roberta D. Liebenberg, “*Bullying in the Legal Profession: A Study of Illinois Lawyers’ Experiences and Recommendations for Change*,” Illinois Supreme Court Commission on Professionalism (October 2024)

Gender



Stephanie A. Scharf and Roberta D. Liebenberg, "Bullying in the Legal Profession: A Study of Illinois Lawyers' Experiences and Recommendations for Change," Illinois Supreme Court Commission on Professionalism (Oct. 2024)

Frequency of Targeting Based on Gender



Stephanie A. Scharf and Roberta D. Liebenberg,
“*Bullying in the Legal Profession: A Study of Illinois
Lawyers’ Experiences and Recommendations for
Change*,” Illinois Supreme Court Commission on
Professionalism (Oct. 2024)

Race and Ethnicity

Compared to 23% of white lawyers

- 36% of Middle Eastern/North African lawyers were bullied one or more times
- 35% of Black lawyers were bullied one or more times
- 34% of Hispanic lawyers were bullied one or more times
- 32% of multiracial lawyers were bullied one or more times
- 28% of Asian American lawyers were bullied one or more times

Stephanie A. Scharf and Roberta D. Liebenberg,
*“Bullying in the Legal Profession: A Study of Illinois
Lawyers’ Experiences and Recommendations for
Change,”* Illinois Supreme Court Commission on
Professionalism (Oct. 2024)

Disability

Disability

- 38% of lawyers with an impairment that substantially limits a major life activity were bullied in the past year, compared to 23% of lawyers without that level of disability

Stephanie A. Scharf and Roberta D. Liebenberg,
“*Bullying in the Legal Profession: A Study of Illinois
Lawyers’ Experiences and Recommendations for
Change,*” Illinois Supreme Court Commission on
Professionalism (Oct. 2024)

Age

% of practicing lawyers who were bullied in the past year						
Age	25-35	36-45	46-55	56-65	66-75	76-85
%	39%	33%	29%	19%	12%	5%

Stephanie A. Scharf and Roberta D. Liebenberg,
*“Bullying in the Legal Profession: A Study of Illinois
Lawyers’ Experiences and Recommendations for
Change,”* Illinois Supreme Court Commission on
Professionalism (Oct. 2024)

Sexual Orientation

Sexual orientation

- 29% of **gay or lesbian** lawyers were bullied in the past year as compared to **25%** of **heterosexual** lawyers
- 29% of lawyers who are **gay, lesbian, or bisexual** were the target of verbal bullying related to their sexual orientation, while **3%** of **heterosexual** lawyers were verbally bullied related to their sexual orientation

Stephanie A. Scharf and Roberta D. Liebenberg,
“*Bullying in the Legal Profession: A Study of Illinois
Lawyers’ Experiences and Recommendations for
Change,*” Illinois Supreme Court Commission on
Professionalism (Oct. 2024)

Most Reported Types of Bullying

The seven most reported types of bullying behavior were:

1. **Verbal intimidation**, such as insults, name-calling, or shouting
2. **Harsh, belittling, or excessive criticism** of work
3. **Demeaning nonverbal** behaviors
4. Imposing **unrealistic work demands**
5. Behind-the-back **malicious rumors**
6. **Improperly taking credit** for work
7. **Not receiving** important work information

Lawyers also reported being subjected to **cyberbullying**, **physical intimidation** (throwing objects, invading space, and stalking), and **physical contact** (inappropriate touching, pushing, or shoving).

Stephanie A. Scharf and Roberta D. Liebenberg,
*"Bullying in the Legal Profession: A Study of Illinois
Lawyers' Experiences and Recommendations for
Change,"* Illinois Supreme Court Commission on
Professionalism (Oct. 2024)

Harm of Bullying

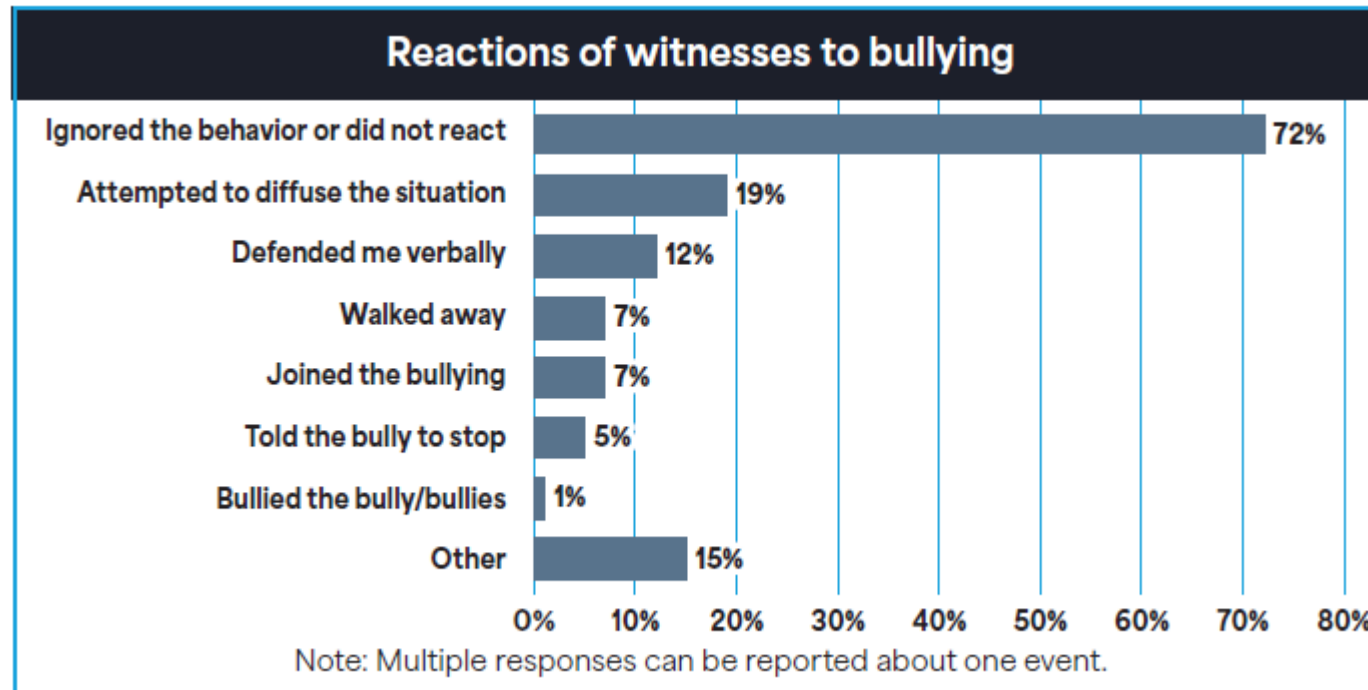
The harm

Lawyers suffered negative professional, emotional, and physical effects from being bullied.

- 54% of those bullied experienced a negative change in emotional well-being (such as anxiety, loss of self-confidence, and other negative feelings and reactions)
- 39% of those bullied felt less productive at work
- 20% of those bullied experienced a decline in physical health
- 18% of lawyers said they had left a job practicing law because of bullying

Stephanie A. Scharf and Roberta D. Liebenberg,
*“Bullying in the Legal Profession: A Study of Illinois
Lawyers’ Experiences and Recommendations for
Change,”* Illinois Supreme Court Commission on
Professionalism (Oct. 2024)

And when lawyers witnessed bullying ...



Stephanie A. Scharf and Roberta D. Liebenberg, "Bullying in the Legal Profession: Study of Illinois Lawyers' Experiences and Recommendations for Change," Illinois Supreme Court Commission on Professionalism (Oct. 2024)

The Cost: Talent Walks

Who has previously left a legal job due to bullying?					
Women	Men	LGBTQ+	Heterosexual	Substantial impairment	No substantial impairment
28%	10%	25%	17%	28%	17%

Who has previously left a legal job due to bullying?				
Black	Hispanic	Multiracial	Asian American	White
24%	24%	24%	21%	17%

Note: The number of lawyers from other races and ethnicities who answered this question was close to zero.

Stephanie A. Scharf and Roberta D. Liebenberg, "Bullying in the Legal Profession: A Study of Illinois Lawyers' Experiences and Recommendations for Change," Illinois Supreme Court Commission on Professionalism (Oct. 2024)

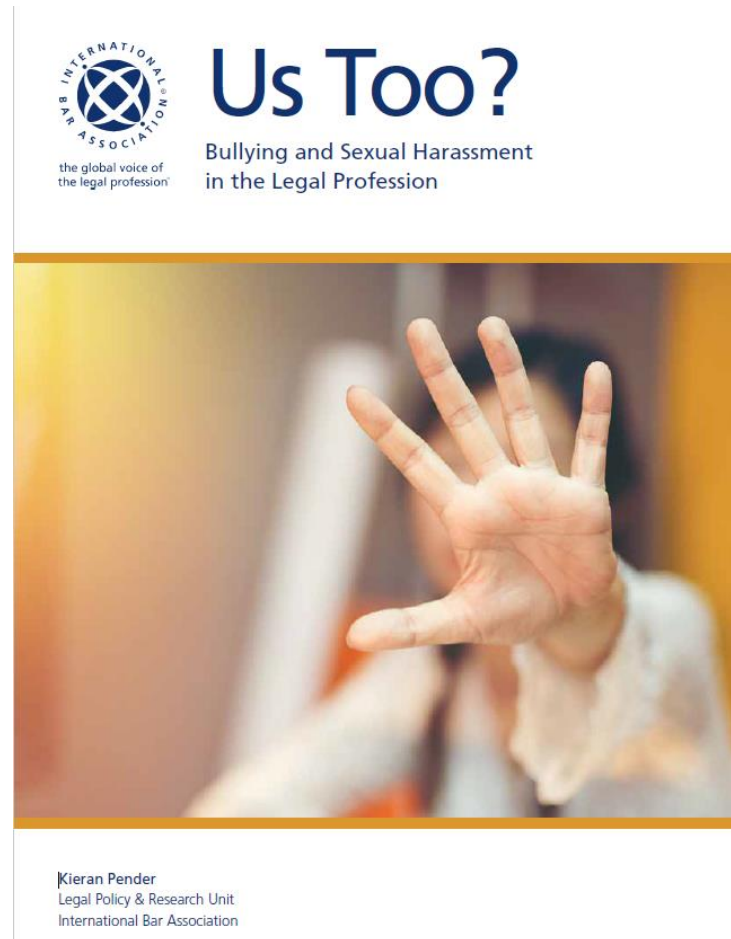
Reporting Bullying

Only 20% of lawyers who were bullied reported it.

- Only 22% said their employer committed to taking appropriate action.
- Only 18% said their employer committed to promptly investigating the complaint.

Stephanie A. Scharf and Roberta D. Liebenberg,
*“Bullying in the Legal Profession: A Study of Illinois
Lawyers’ Experiences and Recommendations for
Change,”* Illinois Supreme Court Commission on
Professionalism (Oct. 2024)

Bullying in Law: International Stats (2019 report)



Additional Resources

Andrea Keckley, *Workplace Bullying Can't Be A Rite of Passage For Attys*, www.law360.com (May 30, 2025)

Anna Stolley Persky, *Bullying Is A Problem In The Legal Profession: How Can The Cycle Broken?*, ABA Journal (June 1, 2025)

Leah Teague, *Civility Matters: Why Law Schools Must Teach Students to Disagree without Being Disagreeable*, 76 Baylor L. Rev. 1 (2024)

Timothy W. Floyd, *Lawyers and Civil Discourse: Respect and Civility as a Matter of Professional Identity*, 76 Baylor L. Rev. 90 (2024)

Melissa Mortazavi, *Incivility as Identity*, 2020 Mich. St. L. Rev. 939 (2020)

Incivility costs are
high

ABA National Task Force on Lawyer Well-Being

[The Path to Lawyer Well-Being: Practical Recommendations for Positive Change](#)
(August 2017):

- “To be a good lawyer, one has to be a healthy lawyer. Sadly, our profession is falling short when it comes to well-being. The two studies referenced above reveal that too many lawyers and law students experience chronic stress and high rates of depression and substance use. These findings are incompatible with a sustainable legal profession, and they raise troubling implications for many lawyers’ basic competence. This research suggests that the current state of lawyers’ health cannot support a profession dedicated to client service and dependent on the public trust.”

Meta-Analysis of Civility Studies: Many Harms

Passive leadership, lack of civility norms, and incivility climate all had “a significant positive relationship with experienced incivility.”

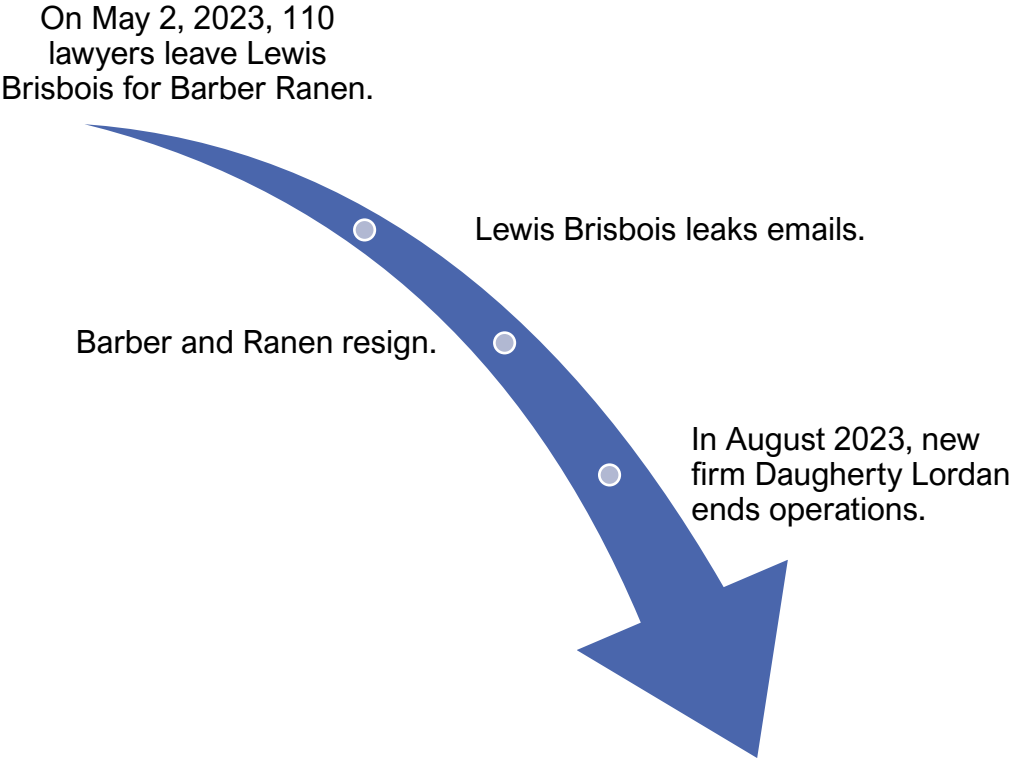
Incivility increased burnout, emotional exhaustion, stress, depression, anxiety, rumination and decreased mental health, physical health and job satisfaction

Generally, impact did not vary with the source of incivility

Soojung Han, Crystal M. Harold, In-Sue Oh, Joseph K. Kim, Anastasiia Agolli, *A Meta-Analysis Integrating 20 Years of Workplace Incivility Research: Antecedents, Consequences, and Boundary Conditions*, J. Organ. Behav. (2022)

Recent examples in the legal profession

Lewis Brisbois Break Off



Lewis Brisbois Departures

Leaders of Lewis Brisbois rebellion sent emails with 'unacceptable, prejudiced language,' law firm says

BY DEBRA CASSENS WEISS ([HTTPS://WWW.ABAJOURNAL.COM/AUTHORS/4/](https://www.abajournal.com/authors/4/))

JUNE 5, 2023, 11:43 AM CDT

Handling Request for Extension

Attorney Seppinni requested a three-week adjournment for filing opposition to partial motion to dismiss because baby arrived early.

Proskauer Rose demanded two concessions in current case and concessions in three other cases against Everyrealm that were in arbitration.

Johnson v. Everyrealm, Case No. 22-cv-6669 (S.D.N.Y. Apr. 26, 2023).

Court's Order Granting Extension

“The Court congratulates Mr. Seppinni and his family on the birth of their child and wishes Mr. Seppinni’s wife a speedy and full recovery. The Court reminds defense counsel of the expectation of the judges in this District that counsel will comport themselves with decency. Counsel’s attempt to exploit a moment of obvious personal exigency to extract concessions from Mr. Seppinni, in other litigations no less, was unprofessional. The Court expects better.” *Johnson v. Everyrealm*, Case No. 22-cv-6669 (S.D.N.Y. Apr. 26, 2023).

Holding Baby for Ransom

Counsel learned his wife having emergency childbirth and requested extension on reply brief

Opposing counsel (Quinn Emanuel, Kirkland, and Young Conaway) conditioned scheduling extension on omnibus hearing on outstanding motions

- One take: “This is just asshole behavior. This is why no one likes lawyers.” — Joe Patrice, *Above the Law* (https://abovethelaw.com/2025/08/lawyers-hold-newborn-for-ransom-in-scheduling-dispute/?utm_campaign=Above)

California Court of Appeals on Incivility

Court's introduction ends: "We conclude Vanderpool was also woefully uncivil."

Court concludes:

- "Incivility is the adult equivalent of schoolyard bullying and we will not keep looking the other way when attorneys practice like this. They will be called out and immortalized in the California Appellate Reports."

Masimo Corp. v. The Vanderpool Law Firm, G061829 (Cal. Ct. App., 4th App. Dist. May 2, 2024) (Superior Ct. No. 30-2019-01081908) (affirming ordered discovery sanction)

One of the Emails at Issue in *Masimo*

“After being served with the moving papers for the motion to compel, Douglas Vanderpool began an email to Ellison with the subject line ‘You are joking right?’ The body of the email continued in the same vein: ‘In 30 years of practice this may be the stupidest thing I’ve ever seen. Robert is this really why you went to law school? Quit sending us paper. You know we are out of the case so just knock it off and get a life. Otherwise, we’re going to be requesting sanctions against your firm for even bothering us with this nonsense.’”

Vanderpool made good on his threat to ask for sanctions against Masimo and its counsel – a request the trial court denied. Although he went into great detail about his 31-year career as an advocate and arbitrator, he badly missed the mark of excellence articulated in *Karton*: “[E]xcellent lawyers are civil.” (*Karton, supra*, 61 Cal.App.5th at p. 747.)”

Vulgar and Threatening Emails to Opposing Counsel

District court awarded \$17,808 in costs and attorneys' fees against plaintiff's former counsel.

- *Baker v. Allstate Insurance*, Case No. 2:19-cv-08024 (C.D. Cal. Feb. 28, 2020)

From: Christopher Hook <chris@cghlaw.com>
Sent: Thursday, November 21, 2019 8:17 PM
To: Marc Feldman; Peter Klee; Jack Burns; Judy Johns
Subject: Re: Baker v. Allstate: New Demand

Haha. Fuck you crooks. Eat a bowl of dicks.

Attorney's Explanation

23. The undersigned sought to employ a confidential negotiating tactic by employing harsh language and provocative insults against counsel for ALLSTATE, out of an interest in trying to resolve this case only. The undersigned recognizes that perhaps some of the language "crossed the line" of civility and was offensive and inappropriate. With that said, the language used was "for effect," similar to bluster or "puffery" and was not intended to actually be considered personal insults. At no time did the undersigned threaten or intend to threaten defense counsel, their co-workers or families with harm. The undersigned apologized to defense counsel and the Court and represents and warrants that such language will not be used by the undersigned again in this matter. The undersigned's clients had absolutely no idea about or input in the language allegedly used by the undersigned. It would be extremely unfair and prejudicial to hold them to account in any way for the indiscretions of their counsel, who may have used some inappropriate language out of frustration and anger.

Expletive Laden Calls

“Counsel for the parties have traded barbs in their briefs and during oral argument about each other’s lack of professionalism and motives Counsel must act with “a high degree of professionalism and collegiality” during any meet and confer. LCR 1(c)(6). Regardless of whose story is to be believed, counsel fell short of this standard here. Expletive-laden phone calls, hang-ups, backing out of prior agreements without explanation, and misleading emails purporting to “memorialize” phone calls demean the integrity of the legal process and show disrespect to all concerned, including the Court in having to resolve petty disputes. Let it be clear: the Court will not tolerate such conduct moving forward and it expects all attorneys to adhere to the highest standards of professionalism, civility, and ethical practice moving forward.”

- *Wright v. State Farm*, Case No. 2:23-cv-179 (W.D. Wash. Dec. 4, 2024)

Digital “Bytes” or Cyber Incivility

Cyber Incivility Defined

Rude, discourteous behaviors

Electronic communication

Violating norms of mutual respect

Est. Volume of Email and Messages

The chaos of the infinite workday

It starts early, mostly in email, and quickly swells to a focus-sapping flood of messages, meetings, and interruptions.

Email

117

Average emails received per employee **each workday**

Messages

153

Average **Teams messages** received per workday

Meetings

57%

Portion of meetings that are **ad hoc**—called in the moment without a calendar invitation

Interruptions

2 minutes

Average time **between interruptions** by a meeting, email, or message during core work hours

Source: Microsoft Work Trend Index Special Report, June 2025

Cyber Incivility Pervasive

“Indeed, 34% of employees report experiencing incivility in cyberspace such that they receive one to three uncivil e-mails per workday, and an additional 2% of employees report receiving more than five rude e-mails in a single workday (Park et al., 2015).”

Devalina Nag, Kristen P. Jones, Alex P. Lindsey, Ashley N. Robinson, David F. Arena Jr., *A theoretical model of selective cyber incivility: Exploring the roles of perceived informality and perceived distance* (2024) *Human Resource Mgmt. J.* 34:421-436

Why Cyber Incivility?

Absence of face to face

Difficult to communicate emotions in writing

Missing nonverbal cues including facial expression and voice

Incomplete communication – clarity missing

Passive Cyber Incivility: More Mental Energy

“Passive cyber incivility refers to “subtle and unclear behaviors, like ignoring messages or handling sensitive topics in a cold, impersonal way. Unlike the active form of incivility, *the ambiguity of PCI forces employees to spend extra mental energy trying to figure out the intent behind it.*”

- Yi Lu, Yu Uan, Shai-Ping Xiao, Kai-Chen Zhao, Zhao-Xue Cao, and Yan-Hui Zhou, *How Does Passive Cyber Incivility Influence Work Engagement? A Serial Mediation via Motivation and Emotion*, Behavioral Sciences, 15(2), 113. <https://doi.org/10.3390/bs15020113> (emphasis added)

Responding to High Conflict Emails

Responding to Digital Incivility: Goals & Guardrails

De-escalate conflict without mirroring hostility

Re-center on work, facts, and next steps

Set clear boundaries around tone and process

Create a professional record suitable for review

Communicating With High Conflict Individuals: “BIFF” Model

Response

- Brief
- Informative
- Friendly
- Firm

From Bill Eddy *BIFF Quick Responses to High-Conflict People, Their Personal Attacks, Hostile Email and Social Media Meltdowns* (2011)

SBI Model: Situation–Behavior–Impact

Describe the specific situation

Identify the observable behavior

Explain the impact without judgment

Optionally inquire about intent

See Center for Creative Leadership (ccl.org)

DESC Script: Assertive Boundaries

- Describe the behavior objectively
- Express impact using I-statements
- Specify the change you want
- State consequences or next steps

Comparison: BIFF, DESC, and SBI

Model	Best Used When	Core Focus	One-Sentence Shorthand
BIFF	Message is hostile or emotionally charged	De-escalation and containment	Stop the bleeding
DESC	Boundary needs to be set or enforced	Assertive clarity + consequences	Draw the line
SBI	Impact of behavior needs explaining	Behavior-impact clarity	Explain the impact

What can we do?

Accountability?

“Well done is better than well said.” – Benjamin Franklin

“Rather than continue to talk about how lawyers need to be more civil (well said), states should require civil behavior (well done) from all their attorneys. Systemic change requires it. The carrot must give way to the stick if systemic changes are to occur. **The stick approach (punishments) may influence behavior more than the carrot approach (rewards), and strong-willed, uncivil lawyers might change their behavior only if they are punished or face potential punishment.** Should the legal profession not adopt mandatory civility, incivility will simply continue and likely worsen.”

David A. Grenardo, “*Civility Rules: Debunking the Major Myths Surrounding Mandatory Civility for Lawyers and Five Mandatory Civility Rules That Will Work*,” 37 Geo. J. Legal Ethics 167 (2024) (footnotes omitted) (emphasis added).

Order: Break Bread Together

Further, the court **ORDERS** that, **on or before December 31, 2024**, counsel for both Plaintiff and Defendants are to go to lunch together. Plaintiff's counsel will pay the bill; Defendants' counsel will leave the tip. The parties will discuss how they can act professionally throughout the rest of this case. **Within ten (10) days** of the lunch, the parties **SHALL** file a joint report describing the conversation that occurred at lunch and the amount of the tip.

DONE and **ORDERED** this November 26, 2024.


R. DAVID PROCTOR
CHIEF U.S. DISTRICT JUDGE

McCullers v. Koch Foods, Case No.
1:24-cv-01496 (N.D. Ala. Nov. 16, 2024)

Joint Report Re Lunch

Pursuant to this Court's November 16, 2024 Order [Doc. 7], Plaintiff and Defendants hereby submit this Joint Report Regarding Lunch. On December 16, 2024, undersigned counsel met for lunch at Saw's BBQ in Hoover, Alabama, for over an hour. The discussion covered the practice of law, families, some big-ticket items for the 2024 holiday season, everyone's small town bona fides, and the plan for communication going forward in this matter. A healthy dialogue regarding professional norms ensued. Plaintiff's counsel paid the \$74.00 bill, and Defendants' counsel left a \$74.00 tip.

McCullers v. Koch Foods, Case No.
1:24-cv-01496 (N.D. Ala. Dec. 19,
2024) (Joint Report Regarding Lunch)

Stand Up to Bullying Challenge

Six day challenge for lawyers and bar associations

- <https://www.2civility.org/stand-up-to-bullying-6-day-challenge-for-lawyers/>

Recommendations from the challenge when you witness bullying

- Intervene in the moment
- Offer support after the incident
- Communicate with the bully after the incident
- Consider reporting

See also Andrea Keckley, III. *Commission Urges Attys to Confront Workplace Bullying*, www.law360.com (June 10, 2025)

Creating a Culture of Civility

1

Create shared understanding of civility

2

Establish team norms

- respectful communications
- mutual accountability

3

Promote civility

- model respectful behavior
- consistency

Nicki Macklin, Thomas H. Lee and Amy C. Edmondson, *Why Kindness Isn't a Nice to Have*, Harvard Business Review (July 29, 2025)

As Individuals

Check our own behavior.

Educate ourselves about strategies to reduce implicit bias.

Always communicate respectfully.

Is your answer direct? If not, why not?

Consider your choice of communication channel – are you hiding behind email?

Is your decision tactical or gamesmanship?

Speak Up!

Do not let incivility go unremarked.

Follow the five-second rule:

- “Wow! That was unexpected.”
- “Ouch! Was that what you meant to say/do?”
- “Let’s take a break and resume this discussion later.”

ABA Model Rule 5.1: Responsibilities of a Partner or Supervising Lawyer

Rule 5.1:

- “(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.”

Rule 5.3:

- “(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person’s conduct is compatible with the professional obligations of the lawyer; . . .”



Questions?

Conclusion

These materials are intended as an introduction to the subject matter covered in the presentation. The presentation and the materials contained herein do not attempt to provide legal advice for any particular situation. Each particular situation must be analyzed individually in light of all of the surrounding facts and circumstances. Because of the complexity of the legal issues that will always arise in connection with the subject matter hereof, it is critical that counsel be involved. These materials are provided for educational and discussion purposes **only** and are not to be copied, used or distributed outside of this seminar without the express written consent of Cooley LLP. Copyright Cooley LLP and Michelle Greer Galloway 2025-26.

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Thank you.

