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# Rules of Professional Conduct for City Attorneys

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**Rules of Professional Conduct for  
City Attorneys**

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## **I. OVERVIEW AND THE EVOLUTION OF THE CALIFORNIA RULES OF PROFESSIONAL CONDUCT**

Creating and maintaining confidence in lawyers and the profession of law has always been a mainstay in our system of justice. California lawyers service clients from around the globe in a very wide variety of matters. How lawyers are perceived is not only a function of the results they achieve, but how the profession adheres to and embraces the ethical standards. The public unquestionably expects lawyers, with their specialized training and education and status in society, combined with the oath of office, to adhere to the highest of standards.

The California State Bar Act of 1927 created the State Bar of California as an integrated bar; since that time the State Bar has been de-unified, with the traditional professional association functions taken up by the California Lawyers Association. As part of that package of reforms almost a century ago, the first California Rules of Professional Conduct were written and adopted in 1928. The more modern form of the Rules of Professional Conduct were adopted in 1987, with California rejecting the ABA Model Rules of Professional Conduct.

As the profession evolved, and it became clear that the rules were outdated, the First Rules Revision Commission was established, and an extensive package of revisions was proposed to the State Bar Board of Trustees in 2010. In 2014, the Supreme Court of California asked the State Bar Board of Trustees to institute a Second Rules Revision Commission to start the revision process over, with a deadline to complete the project of March 2017.

In the charter that was given to the Commission, the Supreme Court indicated that the Commission's work should promote confidence in the legal profession and the administration of justice, and ensure adequate protection to the public. It was additionally requested that this new Commission consider the historical purpose of the Rules of Professional Conduct in California, and ensure that the proposed rules set forth a clear and enforceable articulation of disciplinary standards, as opposed to purely aspirational objectives. The Supreme Court further mandated that the Commission's work facilitate compliance with and enforcement of the Rules by eliminating ambiguities and uncertainties.

The Second Rules Revision Commission engaged in extensive process to propose new rules and submitted a new package of rules to the Supreme Court by the deadline. They were substantially adopted and put into effect on November 1, 2018. Importantly, the Rules of Professional Conduct are designed to be entirely consistent with, and must be read in conjunction with, the legislation governing the profession of law, which is known as the State Bar Act, found in Business & Professions Code section 6000 et seq.

The purpose of the Rules is to regulate the conduct of lawyers through discipline. The Rules do not create independent civil causes of action. Though governmental lawyers such as those with the Office of the City Attorney face unique challenges in a highly specialized environment, such governmental lawyers are equally bound by the Rules of Professional Conduct, and subject to discipline accordingly.

Most importantly, understanding and living by the rules of ethics, as well as maintaining a high level of civility and morality, inures confidence in our noble profession and helps us maintain our democracy, with confidence that all persons and entities that seek remedy through our legal system will have equal access to justice.

## **II. FIVE CORE ETHICS AREAS FOR CITY ATTORNEYS**

### **A. Who is the client in the Office of the City Attorney?**

This is not a question that is unique to a City Attorney. To the contrary, this is a question that all licensed practitioners across the country grapple with on a daily basis.

The primary Rule of Professional Conduct in California that addresses the issue is Rule 1.13, Organization as Client. In section (a), it provides that “[a] lawyer employed or retained by an organization shall conform his or her representation to the concept that the client is the organization itself, acting through its duly authorized directors, officers, employees, members, shareholders, or other constituents overseeing the particular engagement.” In other words, while the client is the

entity itself, the direction in the course of the relationship must come from a duly authorized person.

In subsection (f), the Rule goes on to explain as follows: “In dealing with an organization’s constituents, a lawyer representing the organization shall explain the identity of the lawyer’s client whenever the lawyer knows or reasonably should know that the organization’s interests are adverse to those of the constituent(s) with whom the lawyer is dealing.” In other words, if the lawyer for the entity is speaking to a constituent who may be adverse to the client, the lawyer should clearly explain who that lawyer represents. In that manner, there can be no confusion.

The Rule also imposes certain duties to proceed as is reasonably necessary in the best lawful interests of the organization (subsection (b) and (d)) and to refer matters to higher authorities within the organization (subsection (b)), as well as to consider whether resignation or withdrawal would be appropriate under certain circumstances under Rule 1.16 (subsection (d)).

Importantly, as described in Comment [1], the Rule applies to all forms of private, public, governmental organizations. Comment [6] specifically addresses governmental organizations, and explains as follows:

[6] It is beyond the scope of this rule to define precisely the identity of the client and the lawyer’s obligations when representing a governmental agency. Although in some circumstances the client may be a specific agency, it may also be a branch of government or the government as a whole. In a matter involving the conduct of government officials, a government lawyer may have authority under applicable law to question such conduct more extensively than that of a lawyer for a private organization in similar circumstances. Duties of lawyers employed by the government or lawyers in military service may be defined by statutes and regulations. In addition, a governmental organization may establish internal organizational rules and procedures that identify an official, agency, organization, or other person to serve as the designated recipient of whistle-blower reports from the organization’s lawyers, consistent with Business and Professions Code section 6068,

subdivision (e) and rule 1.6. This rule is not intended to limit that authority.

In the case of any attorney who works within the Office of the City Attorney, the primary client is, unequivocally, the city. The job should be viewed through this lens, particularly in situations where the interests of certain constituents, community members, employees, or elected officials could conflict with the interest of the city.

The case of *Ward v. Superior Court* (May 24, 1997) 70 Cal.App.3d 23, provides guidance on the issue. In this matter, the real party in interest, Watson, was the incumbent assessor for the County of Los Angeles. He represented that the County Counsel had been the legal representative of his office and advised his office on questions of law and taxability. He also represented that County Counsel had counseled him upon personal matters and in civil actions in which he was individually named as a defendant. Watson listed several cases in which County Counsel had provided such representation. He sought to disqualify County Counsel from providing representation adverse to him in a matter brought by him individually and as a taxpayer, claiming that County Counsel's clients violated his constitutional rights by unlawful surveillance, unlawful attempts to obtain tax records, and the publishing of libelous statements concerning him.

In response to the motion for disqualification, County Counsel stated that Watson had only been represented as a public officer, and he had not been provided representation in personal matters unrelated to his duties and responsibilities as a public officer. County Counsel also denied receiving confidential communications from Watson which related to the subject matter of the lawsuit.

The appellate court vacated the trial court's order granting the motion for disqualification. In doing so, the appellate court began the analysis by stating that County Counsel only has one client, "namely, the County of Los Angeles." The court further found that County Counsel is obligated to represent County officers in civil actions, but only as to matters wherein such officers acted in the representative capacity within the scope of their official duties. The court examined the case of *In Meehan v. Hopps*, 144 Cal.App.2d 284, wherein the Court of Appeal held that "the mere fact that attorneys...served as corporate counsel to [a corporation] on various matters did not establish

an attorney-client relationship between ... a former director, chairman of the executive committee, chairman of the board of directors and principal shareholder of the corporation, and the former corporate counsel..." Accordingly, in the *Ward* matter, the appellate court found that no attorney-client relationship existed between County Counsel and Watson.

Additionally, the Court of Appeal found that Watson's declaration in support of his motion to disqualify the County Counsel set forth no facts showing the nature of alleged confidential communications between him and County Counsel. In so finding, the court commented as follows: "Any communication between Watson and the county counsel, pursuant to the discharge of their respective duties, concerning the operation of the assessor's office could not be considered a secret confidential communication so as to bar the county, acting through the board of supervisors, from obtaining that information. The assessor is an agent of the county... As such, the assessor has a duty of full disclosure to his principal, the county. Communications by the assessor with respect to the operations of his office made to the county counsel are not subject to a claim of privilege as between the assessor and members of the board of supervisors, who are charged by law with the duty of supervising the conduct of the assessor's office."

Another illustrative case is *People ex rel Deukmejian v. Brown* (March 12, 1981) 29 Cal.3d 150. In that matter, at the urging of the Atty. Gen., the Governor adopted a measure that was described as a well-accepted, existing method of resolving labor/management disputes. Shortly thereafter, several groups filed a petition for writ of mandate, contending the legislation was unconstitutional. The Atty. Gen. thereafter met with the State Personnel Board to discuss options with regard to the lawsuit.

The Court of Appeal found that the Atty. Gen. was, by law, the designated attorney for both the Governor and the State Personnel Board. However, the Atty. Gen., in the same timeframe, initiated a proceeding by filing an independent petition for writ of mandate against the Governor and state agencies, asking for relief comparable to that requested by the groups seeking to have the legislation declared unconstitutional.

The appellate court framed the question, and stated the holding, as follows: “The issue then becomes whether the Attorney General may represent clients one day, give them legal advice with regard to pending litigation, withdraw, and then sue the same clients the next day on a purported cause of action arising out of the identical controversy. We can find no constitutional, statutory, or ethical authority for such conduct by the Attorney General.”

In making these determinations, the Court of Appeal analyzed a number of cases, and grappled with the contention of the Atty. Gen. that he is not bound by the rules that control the conduct of other attorneys in the state, because he is a protector of the public interest. While acknowledging the role of the Atty. Gen. as a guardian of the public interest, the court found nothing to justify the relaxation of the rules governing the assumption of a position adverse to clients or former clients, particularly in litigation that arose during the course of the attorney-client relationship. Accordingly, the Court of Appeal found that the Atty. Gen. was enjoined from proceeding in a matter, and the petition should be dismissed.

In dissent, one justice found that the majority opinion “may well serve to deprive the office of the Attorney General of its traditional authority to initiate judicial proceedings which challenge the constitutional basis for procedures which are undertaken or threatened to be undertaken by public officials, including the Governor, when the Attorney General reasonably and in good faith believes such procedures to be defective.”

These application of these nuanced and fact specific cases, and others like them, are complicated by the fact that there is law typically requiring city attorneys to advise specific officials. See, Government Code section 41801.



In one matter, which has been partially distinguished by other cases, the appellate court found that a city councilmember facing criminal charges could not evade prosecution by arguing “entrapment by estoppel,” claiming she acted in reliance upon the direction of the City Attorney. *People v. Chacon* (February 8, 2017) 40 Cal. 4th 558. The defendant argued she was entitled to assert the defense because the City Attorney was a government lawyer authorized to advise the city council members on legal matters.

The trial court denied a motion to exclude evidence of the City Attorney’s advice, and ruled that the city councilmember defendant could present evidence of entrapment by estoppel. The prosecution determined that it could not proceed, and, after an order of dismissal was entered, appealed.

The Court of Appeal reversed the order of dismissal, finding that the City Attorney has neither enforcement nor regulatory authority over criminal conflict of interest statutes. The appellate court found that while the City Attorney as a lawyer may interpret statutes, the City Attorney is not authorized to criminally of force or administer the law. Therefore, the City Attorney is not similarly situated to those public officials whose actions have been found to bind the state. Accordingly, the defense of entrapment by estoppel was not available under that particular record.

While the city is the client, there are instances in which the City Attorney has more than one client. In these instances, the joint representation should be recognized, as well as the consequences. For example, if the joint clients become adverse at some point in time, the city may not represent either in litigation. Outside counsel may need to be retained.

Practical note: The question of *who is the client*, and how to navigate the relationship in light of the identification with client, is the primary and threshold question for every lawyer at the outset of representation. It is difficult, if not impossible, for a lawyer to conduct him or herself without knowing who the clients are in that particular matter, and, therefore, knowing what considerations in both the confidentiality and conflict of interest arenas may apply to the scenario.

In particular, with regard to confidentiality, the attorneys in the Office of the City Attorney should, in the course of communicating with city employees, be very diligent about advising and reminding that the client is the city itself, and there is no confidentiality as to communications with a particular city employee.

**B. What is the proper methodology for communication with the city client?**

Proper and thoughtful lines of communication are critical for the maintenance and success of any attorney-client relationship. Rules of Professional Conduct Rule 1.14, Communication with Clients, requires a lawyer to reasonably consult with the client about the means by which to accomplish the client's objectives (subsection (a)(2)), and keep the client reasonably informed about significant developments (subsection (a)(3)). The lawyer is also obligated to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation (subsection (b)). A lawyer is not required, however, to communicate insignificant or irrelevant information (Comment [1]).

The standard is reinforced by Business and Professions Code section 6068(m), which indicates that it is a duty of an attorney "[t]o respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services."

As discussed above, Rule of Professional Conduct Rule 1.13 imposes certain duties upon any attorney to "report up the chain" as a protective measure for the entity. Specifically, this duty may exist if the lawyer knows or reasonably should know that a constituent is acting, intends to act, or refuses to act in a manner that is "(i) a violation of a legal obligation to the organization or a violation of law reasonably imputable to the organization, and (ii) likely to result in substantial injury to the organization." In so conducting his or herself, the attorney must be cognizant of the duty of confidentiality as set forth below, and not disclose information outside of the entity itself.

In considering the obligations of communication, the City Attorney must also keep in mind that ultimately he or she takes direction from a majority of the City Council members, on issues

subject to City Council approval. Therefore, the lines of communication must conform to this ultimate decision-making authority. With regard to interactions with a mayor or city manager, the City Attorney must intimately understand the parameters of that person's authority, versus the authority of the City Council, and communicate accordingly.

Practical note: While city attorneys are not subject to malpractice lawsuits in the same way that nongovernmental attorneys are, it is commonly claimed in both malpractice matters and State Bar disciplinary matters that the attorney has failed to communicate with the client, leaving the client feeling abandoned, or in a position where the client does not have adequate information to make informed decisions regarding his or her legal affairs. It is very easy for a lawyer to get caught up in his or her day-to-day work, neglecting regular and clear client communications not only about the status of the matter in hand, but the pros and cons of different courses of action and recommendations regarding the same. While verbal communications are a critical part of any attorney-client relationship, creating and transmitting writings that nonlawyer clients can easily understand has become a necessity in today's environment. All lawyers are encouraged to speak with their client representatives regarding preferred courses of communication and to consciously decide on the best methodologies for keeping that particular client informed.

### **C. What is the application of the duty of confidentiality?**

California has one of the strongest duties of confidentiality in the country, as set forth in Business and Professions Code section 6068(e). This is described as the duty "to maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client."

The duty of confidentiality is distinct from the attorney-client privilege, and, in most instances, is broader, as it transcends communications between the attorney and the client. Evidence Code section 952 describes a confidential communication between a lawyer to client as "information transmitted between a client and his or her lawyer in the course of that relationship and in confidence by a means which, so far as the client is aware, discloses the information to no third persons other than those who are present to further the interest of the client in the consultation or those to whom disclosure is reasonably necessary for the transmission of the information or the

accomplishment of the purpose for which the lawyer is consulted, and includes a legal opinion formed and the advice given by the lawyer in the course of that relationship.”

The holder of the privilege is not the lawyer, but the client, pursuant to Evidence Code section 953. The lawyer is in fact obligated to claim the privilege under Evidence Code section 955. There are several exceptions to the privilege, including the crime fraud exception under Evidence Code section 956.

The application of the duty of confidentiality is also discussed in Rules of Professional Conduct Rule 1.6, Confidential Information of the Client. Pursuant to that Rule, “[a] lawyer shall not reveal information protected from disclosure by Business and Professions Code section 6068, subdivision (e)(1) unless the client gives informed consent, or the disclosure is permitted by paragraph (b) of this rule.” Under subsection (b), “[a] lawyer may, but is not required to, reveal information protected by Business and Professions Code section 6068, subdivision (e)(1) to the extent that the lawyer reasonably believes the disclosure is necessary to prevent a criminal act that the lawyer reasonably believes is likely to result in death of, or substantial bodily harm to, an individual, as provided in paragraph (c).”

When advice is given to an official or constituent within the city in the individual’s capacity with the city, there is generally no separate attorney-client privilege or duty of confidentiality inuring to the benefit of that individual. As discussed above, prior to communications with any officials or constituents, the lawyer with the Office of the City Attorney should advise of the fact that such communications are not privileged from the city itself. In other words, the individual should have no expectation of confidentiality in that regard.

*Roberts v. City of Palmdale* (June 24, 1993) 5 Cal.4<sup>th</sup> 3 is illustrative on this point. In this case, the California Supreme Court considered a number of questions pertaining to the application of the attorney-client privilege in the context of a relationship between the City Attorney and city council.

In confirming the applicability of the attorney-client privilege between the City Attorney and the city council, the Supreme Court stated that “a city council needs freedom to confer with its lawyers confidentially in order to obtain adequate advice, just as does a private citizen who seeks legal counsel, even though the scope of confidential meetings is limited by this state's public meeting requirements.” Neither the Public Records Act nor the Brown Act abrogate the privilege as to written legal advice transmitted from the City Attorney to members of the local governing body.

In considering the duty of confidentiality, all City Attorneys should also keep in mind California State Bar Formal Opinion 2010-179, which confirms that an attorney can violate his or her duty of confidentiality and competence failing to ensure that the technology used in the course of the provision of legal representations is sufficient to ensure that the information is not subject to invasion. Specifically, before using a particular technology, the Office of the City Attorney must take appropriate steps to evaluate “1) the level of security attendant to the use of that technology, including whether reasonable precautions may be taken when using the technology to increase the level of security; 2) the legal ramifications to a third party who intercepts, accesses or exceeds authorized use of the electronic information; 3) the degree of sensitivity of the information; 4) the possible impact on the client of an inadvertent disclosure of privileged or confidential information or work product; 5) the urgency of the situation; and 6) the client’s instructions and circumstances, such as access by others to the client’s devices and communications.”

Confidentiality has gained new attention in light of remote working environments as well. For decades, lawyers have practiced law from their office, appeared personally in the courts; and attended key events such as client meetings, mediations, depositions, transactional closings, and more in person. The pandemic changed that, giving lawyers the flexibility to provide legal services remotely from another state or even potentially another country. This has been widely viewed as a positive development, for example, allowing lawyers to spend more time with their families and achieve a higher level of work life balance.

Until recently, there were few ethics opinions addressing the situation. In response to the pandemic, on March 10, 2021, the American Bar Association issued Formal Opinion 498,

indicating that the ABA Model Rules permit virtual practice, while reminding lawyers that they must particularly consider ethical duties regarding competence, diligence, communication, and supervision. The opinion recognizes that “a lawyer’s virtual practice often occurs when a lawyer at home or on-the-go is working from a location outside the office, but a lawyer’s practice may be entirely virtual because there is no requirement in the Model Rules that a lawyer have a brick-and-mortar office.”

The State Bar of California published Interim Ethics Opinion 20-0004, addressing a California lawyer’s ethical duties when working remotely in response to the COVID 19 pandemic or another disaster situation. The Interim Opinion draws conclusions similar to those found in ABA Formal Opinion 498. It states, in conclusion, “Lawyers may ethically practice remotely under the California Rules of Professional Conduct and the State Bar Act, provided they continue to comply with these rules, including the duties of confidentiality, competence, communication, and supervision. Lawyers must implement reasonable measures to ensure compliance that are tailored to the relevant circumstances and remote working environment.”

These opinions stressed the importance of confidentiality in remote working arrangements, and, in particular, ensuring that the lawyer has reasonable measures through the IT infrastructure to safeguard the client information, and ensuring that the law firm or agency has reasonable remote policies and practices in place, including the attendant training of relevant employees.

Practical note: The duty of confidentiality can also be violated through inadvertence. This can include holding a confidential conversation on a mobile phone in an area where others can overhear the conversation; engaging casual chatter at a cocktail party; leaving confidential documents unsecure in public areas; and an inappropriate level of sharing of confidential information with family members or intimate acquaintances. A constant state of heightened awareness is necessary in order to ensure the protection of client information.

**D. What are the managerial and supervisory responsibilities within the Office of the City Attorney?**

With the promulgation of the new Rules of Professional Conduct on November 1, 2018 came newly articulated standards regarding the responsibilities of managerial and supervisory lawyers.

Rule 5.1 provides that “[a] lawyer who individually or together with other lawyers possesses managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm comply with these rules and the State Bar Act.” Moreover, “[a] lawyer having direct supervisory authority over another lawyer, whether or not a member or employee of the same law firm, shall make reasonable efforts to ensure that the other lawyer complies with these rules and the State Bar Act.” Under the terminology section of the Rules of Professional Conduct, firm or law firm includes a governmental organization. Rule 5.1 concludes with section (c), which indicates that a lawyer can be responsible for another lawyer’s violation of the Rules of Professional Conduct in the State Bar Act, under certain circumstances. In other words, a lawyer can be disciplined for the conduct of an attorney that he or she manages or supervises.

It was widely anticipated that the new Rule 5.1 would have an effect on how law organizations are managed and how more junior attorneys are trained and supervised. Practical tips emerged as a result, including the following best practices:

- Establishment of internal policies and procedures
  - to detect and resolve conflicts of interest
  - to identify dates by which actions must be taken in pending matters,
  - to account for client funds and property
  - to ensure that experienced lawyers are properly supervised
  - to take remedial action in the event that misconduct is detected
- Establishment of a point of contact for lawyers to consult regarding ethics-related matters
- Development of systems for nonlawyers to make reports regarding problematic lawyer conduct
- Creation and implementation of reasonable guidelines relating to the assignment of cases and distribution of workload for all lawyers, but particularly lawyers in a public sector legal agency or other legal department

Rule 5.3, Responsibilities regarding Nonlawyer Assistants, also went into effect on November 1, 2018, and provides that “[w]ith respect to a nonlawyer, . . . a lawyer who individually or together with other lawyers possesses managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the nonlawyer’s conduct is compatible with the professional obligations of the lawyer.” The same general premise is in effect for lawyers having direct supervisory authority over nonlawyers. As with Rule 5.1, a lawyer responsible for the managing or supervising a nonlawyer shall be responsible for the conduct of that person under certain circumstances.

Nonlawyers covered by this rule can include secretaries, investigators, law school interns, and paraprofessionals, whether employed or serving as independent contractors. This could also include outsourced legal services.

*In the Matter of Sullivan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 608, is an illustrative tale regarding supervision of nonlawyers. In that matter, the lawyer respondent, who had no record of discipline, maintained a practice emphasizing personal injury matters. During the relevant time period, he had 4 law offices and employed 7 attorneys and 15 nonlawyer staff members. He maintained a volume of approximately 1600 cases.

Sullivan represented a client named Yang in an arbitration hearing, and, after Sullivan failed to appear at several hearings, the action was dismissed. After the departure of a secretary, Sullivan found notices of the various dates and proceedings in the matter in her desk drawer. It was uncontested that Sullivan was unaware of these notices. Nevertheless, the hearing judge concluded that “[h]ad there been in place an effective system for periodic attorney review, the problem would have been discovered much earlier; and the client, better served.”

Based on this violation, as well as others, it was recommended he be suspended from the practice of law for a period of one year, with the execution of the order of suspension stayed.



Practical tips have emerged in light matters such as *Sullivan* and Rule 5.3, including the following:

- Thoughtful training of all new employees, and especially those who may not have had prior legal training
- Carefully formulated employee manual with signatures
- Regular controls and review for all matters in the office
- Clear lines of communication within the office
- Proactive steps to address breakdowns in communication
- Reports up the chain of command in the law organization

These rules regarding supervision do not differentiate between small offices, large offices, and in-house legal departments at corporations or governmental organizations. They apply uniformly to all organizations.

#### **E. What is the interplay between civility and ethics in the context of representation provided by the Office of the City Attorney?**

For decades, Bar Associations have promulgated ethics codes that talk about the ideal conduct of lawyers. These codes ask that all lawyers aspire to act with the highest levels of civility, integrity, and professionalism.

In recent years, given what some perceive to be a decline of civility in the profession, the focus has shifted from aspirational codes to decisive measures to combat incivility, particularly in the context of litigation. The rationale is that incivility frustrates the ability of judges to control the courtroom and allow the smooth progress of the cases. It sometimes manifests itself in the context of bias against attorneys or parties of a certain gender, race, or other protected characteristic. Inappropriate animosity among counsel can cause the fees charged to the clients to double or even triple. The consequences to the system of justice and the perception of the profession of law are enormous.

The State Bar of California, the California Lawyers Association, and the California Judges Association came together to start a statewide Civility Task Force, which issued a report on September 9, 2021. The report is entitled “Beyond the Oath: Recommendations for Improving Civility.” It presents four concrete proposals. The first is ask the State Bar Board of Trustees to mandate one hour of civility MCLE training. The second is to ask the Chief Justice, as head of the Judicial Council and the Center for Judicial Education and Research Advisory Committee, provide specific training to judges on promoting civility inside and outside courtrooms.

The third proposal is to ask the State Bar Board of Trustees to recommend revisions to the Rules of Professional Conduct to state that repeated incivility constitutes professional misconduct under certain circumstances. The final proposal asks that the Supreme Court amend the Rules of Court to require all attorneys to swear and affirm that they will conduct themselves at all times of dignity, courtesy, and integrity.

The appellate courts across the state have also issued a variety of opinions that discuss the consequence of incivility on a matter being adjudicated in our state court system. In *LaSalle v. Vogel* (2019) 36 Cal.App.5th 127, the appellate court specifically found that, in the fact pattern presented to it, “dignity, courtesy, and integrity were conspicuously lacking.” The appellate court set aside a default judgment that was taken without appropriate courtesies to the other side. In *Karton v. Ari Design & Constr.* (2021) 61 Cal.App.5th 734, in the course of a considering a motion for attorney’s fees, the trial court noted incivility in the attorney’s briefing. The appellate court found that “excellent lawyers deserve higher fees, and excellent lawyers are civil.... Incivility can rankle relations and thereby increase the friction, extent, and cost of litigation. Calling opposing counsel a liar, for instance, can invite destructive reciprocity and generate needless controversies.” Both the trial court and the appellate court found that the findings of incivility were a sound base (among other bases) for reducing the requested attorney fee from about \$300,000 to \$90,000.

Practical note: Given the enhanced scrutiny given to actions of the Office of the City Attorney in any given municipality, adherence to civility standards is doubly important. The

conduct of the attorneys for the city reflect upon the city itself, and ultimately influence public perception and support of the office.