Enough Already! New Rules and Policies to Reduce Incivility

Judicial Obligations to be Civil and Require Civility

A Discussion with Gibson Dunn

Presiding Justice Brian Currey, Second District Court of Appeal, Div. 4

Civility Resources and Authorities	**Notes**
California Civility Task Force (CCTF) "Beyond the Oath: Recommendations for Improving Civility," Initial Report of the California Civility Task Force (September 2021), available at www.CalJudges.org/Civility	The CCTF report sets forth proposals for (1) State Bar disciplinary rule changes to require civility, (2) mandatory civility MCLE, (3) expansion of the State Bar civility oath, and (4) more judicial education on maintaining civility. Extensive appendices contain summaries of California cases requiring civility, selected articles on civility (including how judges can and why they should promote/require civility), an explanation of bias-driven incivility (uncivil conduct as a manifestation of implicit or explicit bias), lists of civility experts and their publications, and more.
State Bar Petition to California Supreme Court After providing notice to the profession and receiving comments from local bar associations, other attorney organizations, and individual lawyers, The State Bar Board of Trustees considered the proposals contained in the CCTF initial report. It adopted the key proposals (other than judicial education, which is not within the State Bar's purview). The State Bar's proposals are contained in Petition S281631, filed in the California Supreme Court on August 28, 2023.	The proposed changes include: • Amendments to California Rule of Court 9.7 to require lawyers to annually affirm or reaffirm their civility oath; • A new State Bar Rule 2.3 to implement the

Civility Resources and Authorities	Notes
	changes to the oath; and • Amendments to the Rules of Professional Conduct to make incivility a basis for discipline.
Canons of Judicial Ethics, Canon 1 - An independent, impartial,* and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe those standards so that the integrity* and independence* of the judiciary is preserved. ADVISORY COMMITTEE COMMENTARY: Canon 1 Deference to the judgments and rulings of courts depends upon public confidence in the integrity* and independence* of judges. The integrity* and independence* of judges depend in turn upon their acting without fear or favor. Although judges should be independent, they must comply with the law* and the provisions of this code. Public confidence in the impartiality* of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violations of this code diminish public confidence in the judiciary and thereby do injury to the system of government under law. The basic function of an independent, impartial,* and honorable judiciary is to maintain the utmost integrity* in decision-making, and this code should be read and interpreted with that function in mind.	The Canons require judges to act with high standards of conduct - which can be read to include civility - and to require attorneys and litigants to do so as well.
Canon 3(B)(3): A judge shall require* order and decorum in proceedings before the judge. "In situations involving the misconduct of lawyers in court or settlement conferences, the judge's obligation to take action may be difficult and embarrassing to the offending lawyer. The consequences of not acting, however, could	Creates a judicial obligation to require civility. Can be read to include requiring civility among lawyers engaged in discovery in the

Civility Resources and Authorities	Notes
result in the appearance of tacit approval of the conduct, creating an invitation for further like conduct." Rothman, Fybel, MacLaren and Jacobson, California Judicial Conduct Handbook (California Judges Association, 2017) at §2.11, pg. 75 ("Rothman").	proceedings before the judge.
***Lossing v. Superior Ct.* (1989) 207 Cal.App.3d 635**: "We conclude by reminding members of the Bar that their responsibilities as officers of the court include professional courtesy to the court and to opposing counsel. All too often today we see signs that the practice of law is becoming more like a business and less like a profession. We decry any such change, but the profession itself must chart its own course. The legal profession has already suffered a loss of stature and of public respect. This is more easily understood when the public perspective of the profession is shaped by cases such as this where lawyers await the slightest provocation to turn upon each other. Lawyers and judges should work to improve and enhance the rule of law, not allow a return to the law of the jungle." (*Id*. at 641.)	
***In re Mahoney* (2021) 65 Cal.App.5th 376**: attacks on parties and on judiciary (judicial "slight" [sic] of hand" and suggestions the court did not "follow the law" and ignored the facts, and conclusion that the court "indiscriminately screw[ed' [party]." Counsel persisted even after given attempts by court to "nudge him towards a more temperate position." ". . . [W]e are confronted with a member of the bar who, after 52 years of practice, believes this is legitimate argument." (Id. at 380.) This kind of over-the-top, anything goes, devil-take-the-hindmost rhetoric has to stop." (*Ibid*.)	A judge must protect judicial integrity and the integrity of the court.
""The judge of a court is well within his rights in protecting his own reputation from groundless attacks upon his judicial integrity and it is his bounden duty to protect the integrity of his court.' [citations]. 'However willing he may be to forego the private injury, the obligation is upon him by his oath to maintain the respect due to the court over which he presides.'" (*In re Mahoney, supra,* 65 Cal.App.5th at p. 380.) "The timbre of our time has become unfortunately aggressive and disrespectful. Language	

Civility Resources and Authorities	Notes
addressed to opposing counsel and courts has lurched off the path of discourse and into the ditch of abuse . . . . 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."" (*Id*. at 381.) ***People v. Chong* (1999) 76 Cal.App.4th 232**: "By mocking the court's authority, an attorney in effect sends a message to the jurors that they, too, may disregard the court's directives and ignore its authority. This type of attorney misconduct must be dealt with in the jury's presence in order to dispel any misperception regarding the credence that jurors must give the court's instructions. Furthermore, when an attorney engages in repetitious misconduct, it is too disruptive to the proceedings to repeatedly excuse the jury to admonish counsel." (*Id.* at 244.) The court concluded "[i]n our collective 97 years in the legal profession, we have seldom seen such unprofessional, offensive and contemptuous conduct by an attorney in a court of law." (*Id.* at 245.)	
Canon 3(B)(4): A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and shall require* similar conduct of lawyers and of all staff and court personnel under the judge's direction and control. Embroilment: "The process by which the judge surrenders the role of impartial factfinder/decisionmaker and joins the fray." (Rothman, et al., California Judicial Conduct Handbook at 2:1.)	Creates an obligation for the judge to require civility and for the judge to be civil also. The judge must not join the fray.
Canon 3(B)(6): A judge shall require* lawyers in proceedings before the judge to refrain from (a) manifesting, by words or conduct, bias, prejudice, or harassment based upon race, sex, gender, gender identity,* gender expression,* religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, or (b) sexual harassment against parties, witnesses, counsel, or others. This canon does not preclude legitimate advocacy	Bias-driven incivility is prohibited. The judge must put a stop to it.

Civility Resources and Authorities	Notes
when race, sex, gender, gender identity,* gender expression,* religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, political affiliation, or other similar factors are issues in the proceeding. ***Briganti v. Chow* (2019) 42 Cal.App.5th 504**, appellate brief characterized the trial judge as "an attractive, hard-working, brilliant, young, politically well-connected judge on a fast track for the California Supreme Court or Federal Bench," and says, "with due respect, every so often, an attractive, hard-working, brilliant, young, politically well-connected judge can err! Let's review the errors!" (*Id.* at pp. 510- 511.) When questioned at oral argument about the statements, counsel noted he intended them as a compliment. (*Id.* at p. 511) The appellate court found the statements to reflect gender bias and disrespect for the judicial system and would not have been made regarding a male judge. (*Ibid.*) The court cited its responsibility to "take steps to help reduce incivility . . . by calling gendered incivility out for what it is and insisting it not be repeated." (*Id.* at pp. 511-12.) While the court reminded counsel that more serious incivility would demand a report to the state bar, the court's intention was "not to punish or embarrass, but to take advantage of a teachable moment." (*Id.* at p. 510.) ***Martinez v. O'Hara* (2019) 32 Cal.App.5th 853**: appellate brief calls female trial judge's ruling "succubustic." Court of Appeal found this manifested gender bias and reported counsel to the State Bar. (*Id.* at p. 855.) The court chose to publish only the portion of the opinion admonishing counsel "to make the point that gender bias by an attorney appearing before us will not be tolerated, period." (*Ibid.*) **CRPC 8.4.1** (State Bar Disciplinary Rule) "In representing a client, or in terminating or refusing to accept the representation of any client, a lawyer shall not: (1) unlawfully harass or unlawfully discriminate against persons* on the basis of any protected characteristic;	

Civility Resources and Authorities	Notes
… (f) This rule shall not preclude a lawyer from: … (3) providing advice and engaging in advocacy as otherwise required or permitted by these rules and the State Bar Act." Comment [1] Conduct that violates this rule undermines confidence in the legal profession and our legal system and is contrary to the fundamental principle that all people are created equal. A lawyer may not engage in such conduct through the acts of another. (See rule 8.4(a).) Comment [2] The conduct prohibited by paragraph (a) includes the conduct of a lawyer in a proceeding before a judicial officer. (See Cal. Code Jud. Ethics, canon 3B(6).)	
Attorney Oath: The civility portion of the current attorney oath was added in 2014. It says: "As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy and integrity." A proposed new rule would require all lawyers to take or re-take this version of the Oath annually.	The judge should consider the attorney oath when addressing uncivil lawyers. For example, the Judge might remind uncivil lawyers of the oath and suggest they are not striving hard enough to be civil.
A Selection of Fairly Recent Published Civility Opinions ***Lasalle v. Vogel* (2019) 36 Cal.App.5th 127**: reversing the denial of a motion to set aside a default judgment and noting that "The State Bar Civility Guidelines deplore the conduct of an attorney who races opposing counsel to the courthouse to enter a default before a responsive pleading can be filed. [Citation.] Accordingly, it is now well acknowledged that an attorney has an *ethical* obligation to warn opposing counsel that the attorney is about to take an adversary's default." (*Id*. at p. 135; see also *McClain v. Kissler* (2019) 39 Cal.App.5th 399.)	

Civility Resources and Authorities	Notes
***Karton v. Ari Design & Construction, Inc.* (2021) 61 Cal.App.5th 734**: affirming reduction in attorney fee award due, in part, to attorney's incivility in attacking opposing counsel's integrity with repeated baseless claims that counsel knowingly made false statements. "Attorney skill is a traditional touchstone for deciding whether to adjust a lodestar. [Citation.] Civility is an aspect of skill. [¶] Excellent lawyers deserve higher fees, and excellent lawyers are civil. Sound logic and bitter experience support these points." (*Id*. at p. 747.) "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. Seasoning a disagreement with avoidable irritants can turn a minor conflict into a costly and protracted war. All those human hours, which could have been put to socially productive uses, instead are devoted to the unnecessary war and are lost forever. All sides lose, as does the justice system, which must supervise the hostilities." (*Ibid.*) ***In re Mahoney* (2021) 65 Cal.App.5th 376**: contempt proceedings against counsel who filed a petition for rehearing "in which he impugned the integrity of both the trial court and [appellate] court." (*Id*. at p. 376.) Counsel's comments suggested the trial and appellate courts ignored the law and facts and that "political clout" accounted for their rulings. (*Id*. at p. 379.) Counsel also likened the court's conduct to that of disgraced attorney Thomas Girardi. (*Id*.) "This kind of over-the-top, anything-goes, devil-take-the-hindmost rhetoric has to stop. [¶] If you think the court is wrong, don't hesitate to say so. Explain the error. Analyze the cases the court relied upon and delineate its mistake. Do so forcefully. Do so con brio; do so with zeal, with passion. We in the appellate courts will respect your efforts and understand your ardor. Sometimes we will agree with you. That's why you file a petition for rehearing—because they are sometimes granted. [¶] But don't expect to get anywhere—except the reported decisions—with jeremiads about 'society going down the tubes' and courts whose	

Civility Resources and Authorities	Notes
decisions are based not on a reading of the law but on their general corruption and openness to political influence." (*Id*. at p. 380.) ***Findleton v. Coyote Valley Band of Pomo Indians* (2021) 69 Cal.App.5th 736:** comments in an appellate brief accusing another litigant of embezzlement and opposing counsel of having "known histories of harassment and personal animus" toward Native Americans was inappropriate. "These assertions are scurrilous and have no place in this appeal. They pertain to disputes completely unrelated to the appeals in this breach of contract action and, more problematic, serve no purpose other than to impugn the motives and integrity of an opposing litigant, his counsel, and the witnesses on whom he relies." (*Id*. at p. 762.) ***Hansen v. Volkov* (2023) 96 Cal.App.5th 94:** case involving a civil harassment restraining order an attorney sought against opposing counsel based on comments made in email correspondence and his alleged refusal to leave an attorney's office after appearing for a canceled deposition. In dicta, the appellate court noted the "mutual lack of civility in this case lends all the more support for the recommendations of the California Civility Task Force, which warned that '[d]iscourtesy, hostility, intemperance, and other unprofessional conduct prolong litigation, making it more expensive for the litigants and the court system.'" (*Id.* at p. 107.) ***Snoeck v. ExakTime Innovations, Inc.* (2023) 96 Cal.App.5th 908:** relying heavily on the *Karton* opinion to affirm an attorney fee award reduction based on counsel's repeated incivility and hostile statements to opposing counsel, the trial court, and the appellate court. "Certainly, attorneys must advocate for their clients' positions, point out the flaws in opposing counsel's argument, and express disagreement with the court. But Snoeck's counsel's frustration did not give him a license to personally attack defense counsel and belittle the trial court. Smith's incivility does not reflect persuasive advocacy. A reasonable attorney would not believe that	

Civility Resources and Authorities	Notes
communicating with opposing counsel in such a way would 'bring them around,' so to speak. Nor does antagonizing the trial court help further one's client's cause." (*Id*. at p. 925.) Civility is an aspect of an attorney's skill, and thus incivility "may be considered" in adjusting the lodestar on an award of attorney's fees. (*Id*. at p. 927.) ***Masimo Corp. v. The Vanderpool Law Firm, Inc.* (2024) 101 Cal.App.5th 902:** Affirming discovery sanctions against defendants' counsel based on hostile and belittling email correspondence directed at opposing counsel. "Civility is not about etiquette. This is not a matter of bad manners. Incivility slows things down, it costs people money—money they were counting on their lawyers to help them save." (*Id*. at p. 911.) "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." (*Ibid*.) ***WasteXperts, Inc. v. Arakelian Enterprises, Inc.* (2024) 103 Cal.App.5th 652**: appellant's briefing on appeal used "inappropriately harsh terms to launch needless and unsubstantiated attacks on the decisions made by the trial judge, the opposing party, and its lawyers. "Emotional diatribes do nothing to support the arguments made by counsel. In fact, this verbiage serves the opposite purpose. It requires the court to spend additional resources filtering out the hyperbole, and requires opposing counsel to bill their client for additional time to compose a response. 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." (*Id*. at p. 667.)	

Civility Resources and Authorities	Notes
***People v. Ramirez* (2024) 104 Cal.App.5th 315**: appeal addressing a motion to suppress evidence in a criminal case. The appellate court cautioned the District Attorney's office regarding comments in its appellate briefing accusing the trial court of fabricating a legal theory in granting the motion to suppress. "It is also a long-standing rule that an appellate brief 'containing matter manifestly disrespectful toward the trial judge is to be deemed contempt of the appellate court.'" (*Id*. at p. 319.) "We advise the district attorney in the future to be more cautious and consider his language more carefully when challenging a ruling of a trial court in an appellate brief, or he may be subject to sanctions. Words are to lawyers, as scalpels are to surgeons. They are tools to be used with precision." (*Id*. at p. 320.) ***Young v. Hartford* (2024) ___Cal.App.5th___ [2024 Cal. App. LEXIS 718]**: denying request for sanctions but chastising defense counsel for hostile comments made in a letter to opposing counsel. Counsel's "belittling comments . . . paint[] an unfortunate picture of defendants' counsel's approach to the practice of law, and transformed what otherwise would have been a straightforward denial of a sanctions motion, fit only for a footnote, into a close call consuming pages of this opinion. In other words, this letter served only to imperil counsel's interests and those of his clients, rather than advancing them." **Selected Civility Cases:** ***D.M. v. M.P.* (Nov. 30, 2001, G023935) [nonpub.opn.]**: The appellate court reversed the trial court's sanctions against (i) the mother's counsel in the amount of $368,000 and $16,200, and (ii) the exhusband's counsel in the amount of $297,000 holding the lower court had abused its discretion. The underlying case involved a paternity suit for increased child support brought by the mother against the father, whom she had a child with while married to her husband (whom she later divorced, i.e., ex-husband). The father had previously recognized the child as his own, paying monthly child support, as it there was little doubt	

Civility Resources and Authorities	Notes
he was the father given the ex-husband had previously had a vasectomy. However, when confronted with a paternity suit, the father resisted a DNA-test and the mother's suit and requests for attorneys fees claiming she must first overcome the statutory presumption the ex-husband was the father given their marriage. After a drawn out litigation, the father was eventually found to be the rightful father, but the trial judge awarded sanctions against counsel for the mother and ex-husband for over-litigating the case, bad-faith tactics, and general incivility. The appellate court held the trial court erred in finding the mother's counsel over-litigated the case by "acting frivolously in trying to obtain pendente lite support and fees." (*Id*. at 6.) Instead, the court noted "[t]he main reason that this paternity case took such a ridiculously long time to try was the father's insistence on litigating the issues of the nature of the exhusband's relationship with the child and the reason for the mother's delay in bringing suit." (*Id*.) Under the basic facts of the case, there was "enough there for a 'preliminary determination' of paternity," meaning the mother's counsel's requests for fees was not frivolous. (*Id*.) The appellate court also held that trial court abused its discretion in awarding sanctions for perceived bad faith tactics delaying the litigation and general incivility. The lower court had stated "this case has not been a pleasant one for the court," warned "many of the behaviors that [the court] observed could conceivably be career threatening," and laid a trap "to confirm that counsel had continued to engage in bickering, accusation and miscommunication between the parties and their counsel" after being instructed otherwise. (*Id*. at 3-4.) The trial court found inappropriate behavior among all parties' counsel: (i) mother's counsel had filed frivolous motions to obtain fees and lied about delaying the filing because of fear; (ii) ex-husband's counsel had frivolously attacked the integrity of opposing counsel while also giving false testimony about an abortion; and (iii) father's counsel had insinuated opposing counsel were "padding the bills" or "milk[ing] the case." (*Id*. at 4.) The appellate court disagreed held that	

Civility Resources and Authorities	Notes
the mother's counsel's attempts to gain fees and support were not frivolous given the facts of the case, the sanctions for false statements contravened traditional due process, and that the ex-husband's counsel's attacks on the integrity of opposing counsel were not frivolous given the record. While the court noted the "growing incivility among attorneys has commanded considerable attention," the court remarked this appeal "presents a textbook case of incivility among attorneys, but unfortunately also presents a textbook case in how not to go about correcting it." (*Id.* at 8.) In reversing the sanctions, the court remarked: "No doubt the trial judge's motive here was a worthy one. Civility in the profession ought to be promoted by a strong hand from the bench. But sanction orders (particularly large ones) must surely be a disfavored means of doing so. Given the intense competitive pressures facing lawyers today, the opportunity to have your opponent pay part of your client's bill has become too much of a temptation: Judges have the duty to curb counsel's temptation in that regard." (*Ibid.*) Further, the court noted the danger in waiting to oppose sanctions at the end of case, as well as the unsuitability of laying a trap, because it risks "all kinds of conduct, ranging from lack of professional courtesy to something really bad will be[ing] jumbled together," so that "the relationship between the bad conduct and the amount of sanctions will be attenuated." (*Ibid.*) ***DeRose v. Heurlin* (2002) 100 Cal.App.4th 158**: The appellate court imposed sanctions in the amount of $6,000 against appellant's counsel for filing and prosecuting a frivolous appeal to delay an adverse judgment and cover up his dishonesty and mishandling of client trust funds. While the sanctions were for bringing and maintaining a frivolous appeal, in chronicling counsel's misconduct, the court recounted numerous instances of rude and offensive behavior made by appellant to opposing counsel. Appellant's counsel had not responded to opposing counsel's repeated attempts to obtain documents, prompting opposing counsel to suggest his lack of	

Civility Resources and Authorities	Notes
cooperation constituted unprofessional conduct. Counsel told opposing counsel to "educate himself" on attorney liens, he would "see [him] in court," and "I plan on disseminating your little letter to as many referring counsel as possible, you diminutive shit." (*Id.* at 162.) In response to statutory offers to compromise, appellant's counsel had replied "Let me ask: from what planet did you just arrive. It is my full intent to take judgment against Mr. DeRose on July 11, 2000 when my motion for summary judgment is heard, move for sanctions against you and your firm and do all in my power to see that you, and your firm, suffer to [the] full extent possible through a subsequent claim for malicious prosecution and, very likely, a malpractice action by your ex-client Mr. DeRose when he is presented with a fee demand for thousands of dollars. . . . [Y]ou can take [the American Board of Trial Advocates] Code of Professionalism and shove it— where this case is concerned. When all is said and done, you, Mr. Day and Mr. DeRose will be so very, very sorry this course was pursued." (*Id.* at 165.) Counsel's incivility continued as he later described opposing counsel as "a frightened Brier [sic] Rabbit who is now stuck to a tar baby of a case in which his client is on the hook for significant damages, attorney's fees, costs, etc.," and a "scared man looking for any way to avoid significant personal liability." (*Id.* at 166.) The court was clear in remarking that appellant's counsel's "conduct ha[d] been disgraceful" and published their opinion as a reminder and lesson to the bench, bar, and public. (*Id.* at 161.) ***In re S.C.* (2006) 138 Cal.App.4th 396**: In affirming the orders of the juvenile court declaring a 15-year old minor with Down syndrome dependent and finding it detrimental to return to her mother's custody after being sexually abused by her stepfather, the appellate court referred the opinion to the California State Bar due to the gross misconduct contained in appellant's briefing. The court noted that appellant's 202-page opening brief was "a textbook example of what an appellate brief should not be." (*Id.* at 400.) The court further described appellant's brief as "failing to provide meaningful legal analysis and record	

Civility Resources and Authorities	Notes
citations for complaints raised," (*Id.* at 408) and "an unprofessional and, in many respects, virulent brief." (*Id.* at 401.) The court commented that appellant's brief "attack[ed] the character and motives of a social worker in this case" by gross exaggeration of the facts. (*Id.* at 413.) Appellant's counsel mischaracterized a physical examination as providing zero support of penetration when the examination was in fact inconclusive as it never occurred. Second, appellant's counsel mischaracterized the interviews by social workers with the minor as showing she "cannot distinguish between truth and fantasy," when the interviews actually showed "a developmentally disabled girl who clearly understood the difference between being truthful and telling a lie." (Id.) Appellant's counsel also misrepresented: (i) orders by the juvenile court regarding visitation, which were clearly refuted by the record; (ii) holdings of appellate decisions cited, which were clearly refuted by the court's review; and (iii) quoted expert authorities, which upon examination were not expert statements, but a recasting of her cross-examination questions. The court took great issue with "the uncivil, unprofessional, and offensive advocacy employed by appellant's counsel" in attacking the mental ability of the minor, as "[t]he attack [was] stunning in terms of its verbosity, needless repetition, use of offensive descriptions of the developmentally disabled minor, and misrepresentations of the record." (*Id.* at 420.) Appellant's counsel "attribute[d] to the judge a statement that the minor, 'with an IQ of 44' and 'test results . . . in the moderately retarded range in all areas, is more akin to broccoli, than to a single celled amoeba,'" when in fact those were appellant's counsel's words. (*Id.* at 421.) Appellant's counsel also mischaracterized the expert witness in saying, "Dr. Miller think[s] [the minor is] pretty much a tree trunk at a 44 IQ." (*Ibid*) Appellant's counsel belittled the minor's testimony about being sexually molested by accusing the minor of having "several more versions of her story, worthy of the Goosebumps series for	

Civility Resources and Authorities	Notes
children, with which to titillate her audience." (*Ibid.*) Appellant's counsel additionally described the minor's testimony as "jibber jabber," "meaningless mumble," "mumbles, in a world of her own," and "little more than word salad." (*Ibid.*) The court also admonished appellant's counsel for disparaging the trial judge by making unsupported assertions the judge acted out of bias. Appellant's counsel claimed the trial judge pressed the minor into saying words the judge wanted and mischaracterized the judge's words to claim he admitted he was biased. In examining the record, the court noted the judge had asked questions to understand the minor's testimony and "no reasonable attorney could interpret the judge's questions of the minor as a biased effort to help DHHS prove its case." (*Id.* at 423.) Next, the court remarked appellant's counsel had taken one statement by the trial judge out of context: "So that whole process is one in which I was very active, and I wasn't just an impartial person sitting on the sidelines evaluating the child." (Id.) In the proper context it was not an admission of bias, but "an observation that because of the minor's developmental disability, the judge was unable to just sit back to hear and observe her testimony; instead, he was required to get involved in the questioning in order to ensure that he understood the minor's answers." (*Id.* at 424.) ***In re Marriage of Lewis*** **(Nov. 3, 2015, B255900) [nonpub. opn.]**: In affirming the lower court's settling of a marital estate, the appellate court noted to both parties "attacks on the character of opposing counsel are not well-received in this court, and pejorative adjectives, including those directed towards the parties and the trial court, do not persuade." (*Id.* at 2.) While appellant's counsel disputed the trial court's findings of certain assets as community property, charging appellant for inappropriate transfers of money, and awarding more than $25,000 per month in support, the court held appellant's counsel had failed to meet his burden by not adequately pleading his argument or citing to the record.	

Civility Resources and Authorities	Notes
In a footnote, the court highlighted the inappropriate attacks on opposing counsel in both parties' briefing. Respondent's brief improperly used the word "mantra" in claiming why appellant did not pay respondent and asserted "[appellant] does not believe that the rules apply to him and that he is one of those people who takes his anger and greed beyond the bounds of reason." (Id. at n. 3, internal quotations omitted.) Appellant's brief accused opposing counsel of "'[t]aking the low road,' of characterizing [respondent's counsel's] argument as a 'a vain effort to make up for the deficiencies in her proof,' of describing an expert's testimony as 'gibberish.'" (*Ibid.*) Appellant's briefing also improperly criticized the trial court as having "commit[ed] a 'whopping' miscarriage of justice, of paying 'lip service' to a legally recognized distinction, and of having 'plucked [numbers] out of thin air' . . . 'The trial court has no discretion to use overblown financial figures to determine spousal support. As with all computer programming, garbage in, garbage out.'" (*Ibid.*) ***Sullivan v. Lotfimoghaddas*** **(June 18, 2018, B279175) [nonpub. opn.]**: The appellate court affirmed the judgment of the trial court and denied appellant's motion for a new trial based in part on inappropriate arguments made by respondent's counsel to the jury. Appellant's counsel had requested a new trial after the jury found respondent was not negligent concerning a car crash between the parties. The court denied appellant's counsel's motion because any misconduct was not prejudicial and appellant's counsel had not properly objected at trial. In affirming the lower court, the court did note two instances of unprofessional and uncivil conduct by respondent's counsel when addressing the jury during closing arguments. Respondent's counsel had improperly appealed to the jury's selfinterest by arguing the community's time and resources were being wasted for two trials "all based upon lies." (*Id.* at 7.) Respondent's counsel continued stating "if as a community we allow that type of misuse of scarce resources and good people's time, that maybe Shakespeare was right: First thing, let's kill all the lawyers." (*Ibid.*) The	

Civility Resources and Authorities	Notes
court noted respondent's counsel's argument was an improper and troubling argument to be made, especially because it was unsupported by any evidence. Further, the court admonished respondent's counsel's "questionable advocacy" in commenting on the fact appellant's son was present during appellant's cross examination. (*Id*. at 8.) Respondent's counsel had said, "the plaintiff chose to allow his son to sit in this courtroom while he was crossexamined and shown to have lied at a public forum by his own testimony. He allowed his son to observe him in an attempt to misuse and manipulate this process for financial gain. That's wrong. That's really wrong. And killing all the lawyers won't fix that." (*Ibid*.) The court noted in making a "jury argument that attacks a litigant's personal integrity, impugns his parenting decisions, and gratuitously suggests the exercise of his constitutional right to petition the courts is worse than murdering attorneys, falls below the level of acceptable advocacy and civility that courts and bar associations are striving to restore in our profession." (*Ibid*.) Citing the ABTL civility guidelines, the court issued a reminder that "[e]ven when advocating zealously, counsel must recognize there are lines that are not to be, and need not be, crossed." (*Ibid*.) ***Fridman v. Beach Crest Villas Homeowners Ass'n*, No. (Mar. 19, 2018, G052868) [nonpub.opn.]**: In a protracted litigation between a couple and their homeowner's association, the appellate court concluded by urging the parties to return to civility. The original dispute was regarding the alleged improper installation of air conditioners in which the Fridmans were successful in their arbitration and were awarded attorneys' fees. As the homeowners association had no assets, to be awarded the money a writ of mandate was needed to compel a special assessment to pay the fees. While the Fridmans received this, they also lost a subsequent suit against the homeowners association president, declared bankruptcy, and assigned the right to the fees to their attorneys. During bankruptcy, the Fridmans attempted to enforce	

Civility Resources and Authorities	Notes
their writ of mandate, but were denied as they no longer had a beneficial interest. As the court concluded its denial of Fridmans' motion, they "strongly urge[d] all sides to quickly and civilly resolve the litigation between them before even more attorney fees are expended." (*Id.* at 8.) The court noted that various other courts had chronicled the rampant incivility among the parties: "The amount of energy which the parties have devoted to this litigation, and the extraordinary degree of venom they have poured on each other, make it clear that this case is more of a personal vendetta than a rational attempt by the parties to protect their legitimate interests. To say that either of these parties is acting in 'good faith' stretches the common meaning of that phrase to the breaking point." (*Ibid.*) (internal citation omitted). The trial court commented, "Finally, this Court notes the lack of professional civility and courtesy displayed by counsel in this action. The Motion, Opposition, and Reply are replete with harsh accusations, personal attacks, and unsupported tirades. Such attacks have no place in litigation." (*Ibid.*) ***Mayorga v. Mountview Properties Ltd. P'ship* (Apr. 9, 2021, B298284) [nonpub. opn.]:** In a footnote affirming the trial court's decision to set aside a default judgment for respondent's reasonable mistake, the appellate court noted incivility in respondent's counsel's briefing. In a dispute over an apartment, appellant as tenant had filed an action against respondent landlord alleging uninhabitable conditions, while respondent had initiated eviction proceedings. Given the eviction proceeding was dismissed, respondent did not file a response to the uninhabitable conditions complaint, alleging his attorneys led him to believe it had been dismissed as well. The court noted that respondent's counsel's reference to appellant's "sloth and stealth" and having "extreme lack of hygiene" was "unnecessary to the resolution of the issues on appeal, and violate[d] the 'civility oath' as well as [California's] civility guidelines." (*Id.* at n. 4.) However, the court did not "take further action in light of counsel's apology at oral argument." (*Id.*)	

Civility Resources and Authorities	Notes
Additional civility cases can be found in the California Civility Task Force Report: https://caljudges.org/civility.asp	