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Civility, the First Amendment, and the attorney's oath

HOW THE SUPREME COURT BALANCED PROFESSIONALISM WITH FIRST AMENDMENT PROTECTIONS AND WHY CIVILITY REMAINS AN ETHICAL OBLIGATION FOR TRIAL LAWYERS

Civility in the practice of law is under renewed scrutiny. In September 2025, the California Supreme Court addressed attorney civility with deliberate constitutional restraint. Through amendments to Rule of Court 9.7, the Court required attorneys to annually reaffirm their oath, including the commitment to conduct themselves with dignity, courtesy, and integrity, while declining to adopt proposed rules that would have made incivility itself a standalone basis for professional discipline.

For California trial lawyers, this decision is more than symbolic. It marks a defining moment in the profession's effort to reconcile zealous advocacy, free speech protections, and ethical responsibility.

Although the amendments to Rule of Court 9.7 became effective October 1, 2025, enforcement consequences attach beginning April 1, 2026, when annual reaffirmation of the attorney's oath becomes a condition of maintaining active licensure. At the same time, the Court expressly declined to convert civility into a vague disciplinary rule, recognizing that poorly defined standards risk chilling protected advocacy and undermining First Amendment values. The resulting framework reinforces professionalism without weaponizing civility against lawyers who speak forcefully on behalf of their clients.

This article examines the intersection of civility, free speech, and the attorney's oath, with particular attention to how the 2026 amendments to Rule 9.7 affect trial practice. It also illustrates, through cautionary narratives drawn from recent events, how lapses in civility by lawyers and judges alike can erode public trust and compromise the integrity of the justice system.

The 2026 update: Annual

reaffirmation of the oath

Beginning April 1, 2026, every active California attorney must annually declare adherence to the attorney's oath as part of the State Bar licensing process. Attorneys who fail to submit the required declaration will be placed on inactive status. This requirement applies equally to active licensees and attorneys admitted by special permission.

The amendment does not create a new disciplinary offense for incivility. The Court rejected proposals that would have added incivility as an independent basis for professional discipline, citing concerns that such a rule would be impermissibly vague and could infringe on constitutionally protected speech. Instead, the Court reaffirmed civility as an ethical obligation grounded in the oath rather than a subjective standard enforced through punishment.

The oath's language is familiar but consequential. In addition to swearing to faithfully discharge the duties of an attorney, each lawyer promises to conduct themselves at all times with dignity, courtesy, and integrity. Codified in Business and Professions Code section 6067, this promise is not ceremonial. It defines the professional identity of lawyers as officers of the court and underscores that the practice of law is both a privilege and a public trust.

The legal limits of a lawyer's free speech

Trial lawyers rely on speech as their primary tool. Persuasion, argument, and narrative drive advocacy. Yet the First Amendment does not grant attorneys unfettered freedom to say anything in any setting without consequence. Courts have long recognized that lawyer speech may be regulated to ensure that judicial pro-

ceedings remain fair, efficient, and dignified. In *In re Buckley* (1973) 10 Cal.3d 237, the California Supreme Court made clear that courtroom advocacy must be tempered to allow courts to accomplish their fundamental purpose of dispensing justice.

The Supreme Court of the United States has likewise recognized that attorneys, as officers of the court, are subject to greater professional constraints than ordinary speakers. Ethical rules must be clear and narrowly drawn, but they may limit speech that undermines the administration of justice. (See *Gentile v. State Bar of Nevada* (1991) 501 U.S. 1030.)

California law reflects this balance. The Rules of Professional Conduct prohibit discriminatory or harassing conduct, false or reckless statements concerning judges, and dishonesty or deceit. Statutory duties require attorneys to maintain respect for the courts and to employ only truthful means in representation. (See Rules of Professional Conduct, rules 8.2, 8.4.1, and 8.4(c); Bus. & Prof. Code, § 6068, subds. (b), (d).) Speech intended to demean, mislead, or disrupt proceedings falls outside constitutional protection and into the realm of professional misconduct. (*People v. Cooks* (1983) 141 Cal.App.3d 224.)

Cautionary Tale One: When courtroom speech becomes misconduct

In 2024, inside a San Diego Superior Court courtroom during a civil trial, what seemed like a proper farewell for the weekend, in an open-court exchange, took a peculiar and sinister turn. When (male) counsel was departing for the weekend after an adverse ruling, counsel included a coded insult, "See You Next Tuesday." The judge thought he was being

gracious, but the following week it was the subject of an in camera, on-the-record hearing after the court realized this language was an acrostic for an extremely misogynistic slur, directed toward opposing counsel, two female attorneys. Plainly, the remark was delivered in a manner designed to mislead the judge and maintain plausible deniability while still conveying its intended message.

When the court inquired about the statement in chambers, counsel attempted to minimize its meaning, characterizing it as a misunderstanding or an inside joke. That explanation did not stand scrutiny. The court found the justification disingenuous and the conduct incompatible with professional standards, emphasizing that courtroom advocacy does not permit insults disguised as wordplay. The matter was referred for further review, not because the lawyer spoke forcefully, but because the speech was calculated to demean and then compounded by a lack of candor.

The lesson is clear. Zealous advocacy is protected and encouraged. Speech intended to demean opposing counsel or undermine the dignity of the courtroom is not. Civility in this context is not about politeness for its own sake. It is about preserving the integrity of proceedings and ensuring that advocacy remains focused on the merits rather than personal attacks.

Cautionary Tale Two: Civility from the bench matters too

Civility is not solely the obligation of attorneys. Judicial demeanor plays a powerful role in shaping courtroom culture and public confidence. In another recent matter, a pattern of discourteous and dismissive conduct from the bench came under scrutiny following findings by judicial oversight authorities.

Over time, the judge repeatedly refused to address a female attorney by name, instead referring to her as “lady” or “ma’am,” questioned her qualifications in open court, and denied her the opportunity to speak

on behalf of her client, all while affording greater deference to her male co-counsel. When the attorney calmly attempted to assert her right to make a record, her conduct was characterized as disrespectful.

This pattern of behavior created an atmosphere that compromised the perception of fairness and discouraged effective advocacy. As the California Supreme Court has long recognized, conduct that degrades the dignity of the courtroom undermines public confidence in the rule of law. (*Gallagher v. Municipal Court* (1948) 31 Cal.2d 784.)

Civility as a trial lawyer’s professional strength

For trial lawyers, civility is sometimes misunderstood as weakness or restraint. In practice, it is a professional strength. The ability to object firmly, preserve the record, and challenge unfairness without resorting to personal attacks enhances credibility with juries and courts alike.

Civility does not require silence in the face of injustice. It demands clarity, composure, and ethical resolve. Lawyers who maintain professionalism under pressure demonstrate respect not only for the court but also for their clients and the legal system as a whole. This form of advocacy reinforces public trust and strengthens the legitimacy of trial practice.

The Court’s 2025 decision reflects an understanding that civility cannot be manufactured through vague disciplinary rules. It must be cultivated through professional culture, reinforced through education, and reaffirmed through personal accountability. The annual oath requirement embodies this approach by reminding lawyers that their authority flows from continued adherence to shared ethical commitments.

The oath as a living obligation

The attorney’s oath is often recited once and then forgotten. The 2026 amendments bring it back to the forefront of professional life.

Annual reaffirmation serves as a reminder that the oath is not a ceremonial relic but a living obligation that guides conduct inside and outside the courtroom.

As officers of the court, lawyers occupy a unique constitutional position. They are advocates, but they are also guardians of the justice system’s legitimacy. This dual role requires balancing vigorous representation with respect for the process. Civility, properly understood, is the mechanism by which that balance is maintained.

Conclusion

Civility is not a matter of personal preference. It is a constitutional and professional mandate woven into statutes, ethics rules, and the attorney’s oath. The California Supreme Court’s 2025 amendments to Rule of Court 9.7 reaffirm this principle while preserving essential First Amendment protections.

By requiring attorneys to annually recommit to dignity, courtesy, and integrity beginning in 2026, California has chosen a measured and principled path. Lawyers are expected to speak boldly for their clients, but to do so in a manner that honors the profession and the public trust. For trial lawyers, civility is not a limitation on advocacy. It is a defining mark of credibility, effectiveness, and commitment to justice. ♦

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