



Federal Bar Association

Seventh Annual Ethics, Competence, and Elimination of Bias All-Day MCLE Event

**January 26, 2021
9:00 a.m. to 3:35 p.m.**

1:30pm-2:30pm

Remote Practice

in the COVID-19 Era (Ethics)

Wendy Patrick, Irean Zhang,

Eric Deitz, Timothy Casey

San Diego County Bar Association Ethics Committee

Ethical Obligations When Lawyering in Difficult Times

Remote Practice in the COVID-19 Era

Timothy Casey, Eric Deitz, Wendy Patrick, and Irean Zhang

Civility and Ethics

- ▶ Civility and professionalism still apply, even when you are not in the office.
- ▶ Candor to the Tribunal applies, even if you're not in a courtroom.
- ▶ It's not just a good idea, it's the law.



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Authorities on Civility and Ethics



- ▶ Business and Professions Code section 6068
- ▶ California State Bar Attorney Guidelines of Civility and Professionalism
- ▶ Courts have adopted civility and professionalism guidelines:
 - ▶ Central District of California guidelines
 - ▶ Southern District of California, Civil Local Rule 2.1
- ▶ SDCBA Attorney Civility and Practice Guidelines

Civility and Ethics

- ▶ It's not just a good idea, it's the law!



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Authorities on Civility and Ethics, Cont.

- Business and Professions Code sections 6068(b), 6068(d), and 6103
- California Rules of Professional Conduct Rule 3.3: Candor to the Tribunal (*mandatory* in California).
 - A lawyer shall not:
 - Knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal;
 - Knowingly fail to disclose controlling, adverse legal authority or misquote language of a book, statute, decision or other authority; or
 - Offer evidence that the lawyer knows to be false.
- Southern District of California, Civil Local Rule 2.1(a)(2)



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Be a leader...



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- ▶ “[I]t is vital to the integrity of our adversary legal process that attorneys strive to maintain the highest standards of ethics, civility, and professionalism in the practice of law. In order to instill public confidence in the legal profession and our judicial system, an attorney must be an example of lawfulness, not lawlessness.”
People v. Chong, 76 Cal.App.4th 232, 243 (1999).

Client Confidentiality in the Remote Workplace

- Confidentiality is fundamental to the attorney-client relationship, and a lawyer must protect information relating to the representation of the client
 - Business and Professions Code section 6068(e)
 - California Rules of Professional Conduct Rule 1.6 (confidential information of a client)
- Includes inadvertent or unauthorized disclosure or unauthorized access to client information
- American Bar Association Formal Opinion 482 on Ethical Obligations Related to Disasters

Client Confidentiality in the Remote Workplace Cont.

- Tips to avoid unintended disclosure of confidential information:
 - Learn how to use the platforms and technologies, and remain current as they evolve (California Rules of Professional Conduct Rule 1.1);
 - Update security protocols on your devices;
 - Multi-Factor Authentication
 - Virtual Private Networks
 - Train yourself, subordinate lawyers and your staff on data security practices: California Rules of Professional Conduct Rule 5.1 (supervising lawyer), 5.2 (subordinate lawyers), and 5.3 (non-lawyer assistants); and
 - Stay vigilant against cyber scams.