



**MCLE PRESENTATION BY JUDGE RUTH ANN KWAN:**

**WHEN INCIVILITY OR ZEALOUS ADVOCACY BECOME UNETHICAL  
AND/OR CONTEMPTUOUS**

**June 16, 2022: One Hour of Ethics Credit**

*Judge Kwan will discuss her observations in the courtroom setting about when zealous advocacy crosses a line and becomes unethical or contemptuous, and she will also discuss issues arising from implicit bias as part of her presentation. Her presentation will use the following cases as examples.*

**1. Jackson v. Park, (July, 2021) WL3162526**

In a civil personal injury action arising out of a car accident, the trial court excluded evidence of defendant's arrest, conviction, and blood alcohol result. In closing argument, defense counsel argued that "[t]here is zero evidence of arrest, BAC, or [c]onviction;..." and also improperly implied that certain witness was not identified in Plaintiff's discovery response. The trial court granted Plaintiff's new trial motion based on counsel's misconduct in closing argument. In affirming the trial court, the Court of Appeal found that the trial court did not err in finding the defense counsel's argument constituted misconduct, and described the conduct as a "sorry episode."

**2. In re Mahoney on Contempt, (2021) 65 Cal.App.5<sup>th</sup> 376**

Attorney found in contempt of court for impugning the integrity of the trial court and appellate court.

**3. Karton v. Ari Design & Construction, Inc., (2021) 61 Cal.App.5<sup>th</sup> 734**

Appellate court upheld a trial court's decision in considering attorney's incivility, amongst other factors, in reducing an attorney's requested fee from \$300,000 to \$90,000.

**4. Crawford v. JP Morgan Chase Bank (2015) 242 Cal.App.4<sup>th</sup> 1265**

Appellate court held that dismissal of the case by the trial court was justified when attorney threatened opposing counsel with stun gun and pepper spray during deposition.

**5. Briganti v. Chow (2019) 42 Cal.App.5<sup>th</sup> 504**

Appellant's inappropriate reference to trial judge's personal characteristic is "irrelevant and sexist".

**6. Martinez v. O'Hara (2019) 32 Cal.App.5<sup>th</sup> 853**

Appellant's reference in its notice of appeal to the trial judge's ruling "...as 'succubustic' constitutes a demonstration 'by words or conduct, bias, prejudice, or harassment based upon...gender' and thus qualifies as reportable misconduct."