

# Legal Ethics, Competence and Elimination of Bias in the Law

## Inspiration from Justice Ruth Bader Ginsburg

Brenda Radmacher & Lisa Cappelluti, Gordon Rees Scully Mansukhani, LLP

January 14, 2021



# Legal Ethics in the Era of COVID-19

- You must have competence in Technology
- You must have sufficient Communication with Clients
- You must ensure sufficient Confidentiality
- You must take care that you are not practicing Without a license
- You must provide “up-the-chain” reporting
- You must ensure that you properly supervise
- No sexual relations with your “client”

# Competence in Technology

- Rule 1.1 (Former Rule 3-110) – Act with competence: learning and skill and mental, emotional, and physical ability reasonably necessary for the performance of the legal service.
  - Associate or Consult with another lawyer whom the lawyer reasonably believes to be competent
  - Acquire sufficient learning/skill before performance required, or
  - Refer to another lawyer
- Rule 3.4 (Former Rule 5-310) – Fairness to Opposing Party and Counsel - shall not unlawfully obstruct another party's access to evidence/witness/documents

# Compliant Client Communications

- Rule 1.4 (Former Rule 3-500)

- promptly inform client of any decision or circumstance which disclosure or client's informed consent is required; required to advise of significant developments;

- advise of any relevant limitation on lawyer's conduct when client expects assistance not permitted by the Rules/law;

- may provide copies of significant documents by electronic or other means.

# WFH Impacts on Confidentiality and Potential for Unlicensed Practice of Law

- Working remotely or telecommuting could be construed as the unlawful practice of law without a license. In our virtual age it is possible for most lawyers to work from anywhere, making it tempting to represent clients wherever they may be found. Rule 5.5.
- Nature and duration of temporary practice in jurisdictions in which an attorney is not barred should be carefully evaluated. The lack of a bright-line rule should inspire practitioners to approach even temporary practice cautiously.
- When clients are from another state, working for them may constitute unauthorized practice in the state the clients are from. For example, *Ohio State Bar Ass'n v. Klosk*, California attorney was sanctioned by the Ohio Supreme Court for mailing a letter on behalf of an Ohio resident in an effort to negotiate a debt reduction.

# “Up-the-Chain” Reporting for In-House Attorneys

- Rule 1.13 (prior Rule 3-600), effective 11/1/18, imposes much broader reporting requirements on lawyers representing organizations. In house counsel are required to report to “a higher authority in the organization” any conduct that the lawyer knows/ reasonably should know is (1) a violation of a legal obligation or violation of law; and (2) is likely to result in substantial injury to the organization.

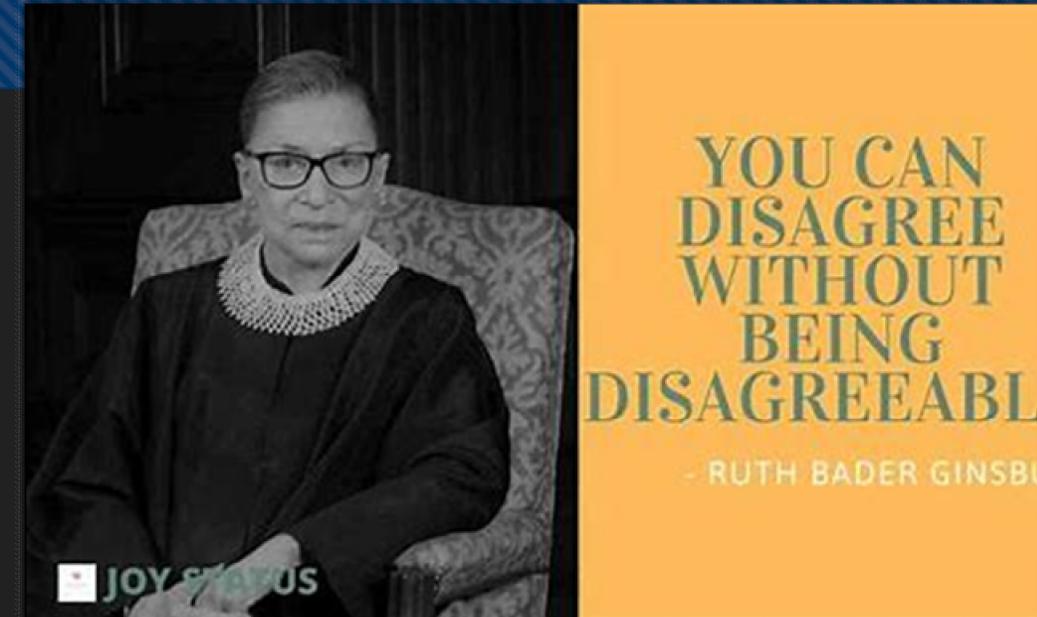
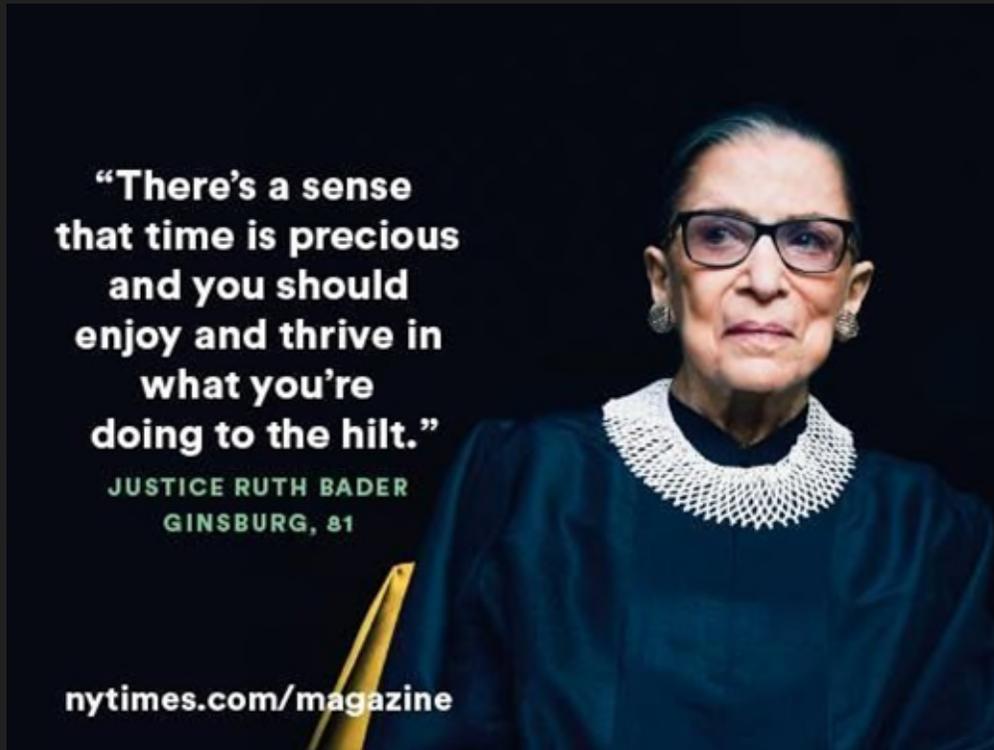
# Supervision While Remote

- Being remote does not diminish a lawyer's obligation to supervise lawyers, paralegals, and other legal staff.
- Rules 5.1, 5.2, and 5.3 require an attorney to make "reasonable efforts" to ensure those reporting to them are compliant with professional conduct rules. In-house counsel may need to implement policies and procedures to ensure their attorneys, paralegals and staff are in compliance.
- May need an in-house "ethics counsel" who can respond to legal ethics questions and provide CLE courses.

# Updated CA Rule 1.8.10 - Sex in the Workplace

- Rule 1.8.10 - new as of 11/1/18 – expressly prohibits sex with clients with very limited exceptions (consensual sexual relationship that predated the representation). In-house counsel's "client" is any person in the organization who "supervises, directs, or regularly consults with that lawyer concerning the organization's legal matters."

# Competency Issues: Wellness and Mental Health



# Tips from RBG on Wellness and Mental Health:

- Do things that helps you feel better and be healthier on a daily basis. Things that:
  - Improve your work-life balance
  - Help you manage stress better
  - Foster a more positive mindset
  - Promotes habits of consistent self-care
- RBG – exercise daily
- RBG – engage in things that are important to you and stay in community.



**GORDON&REES**  
**SCULLY MANSUKHANI**  
YOUR **50 STATE** PARTNER®

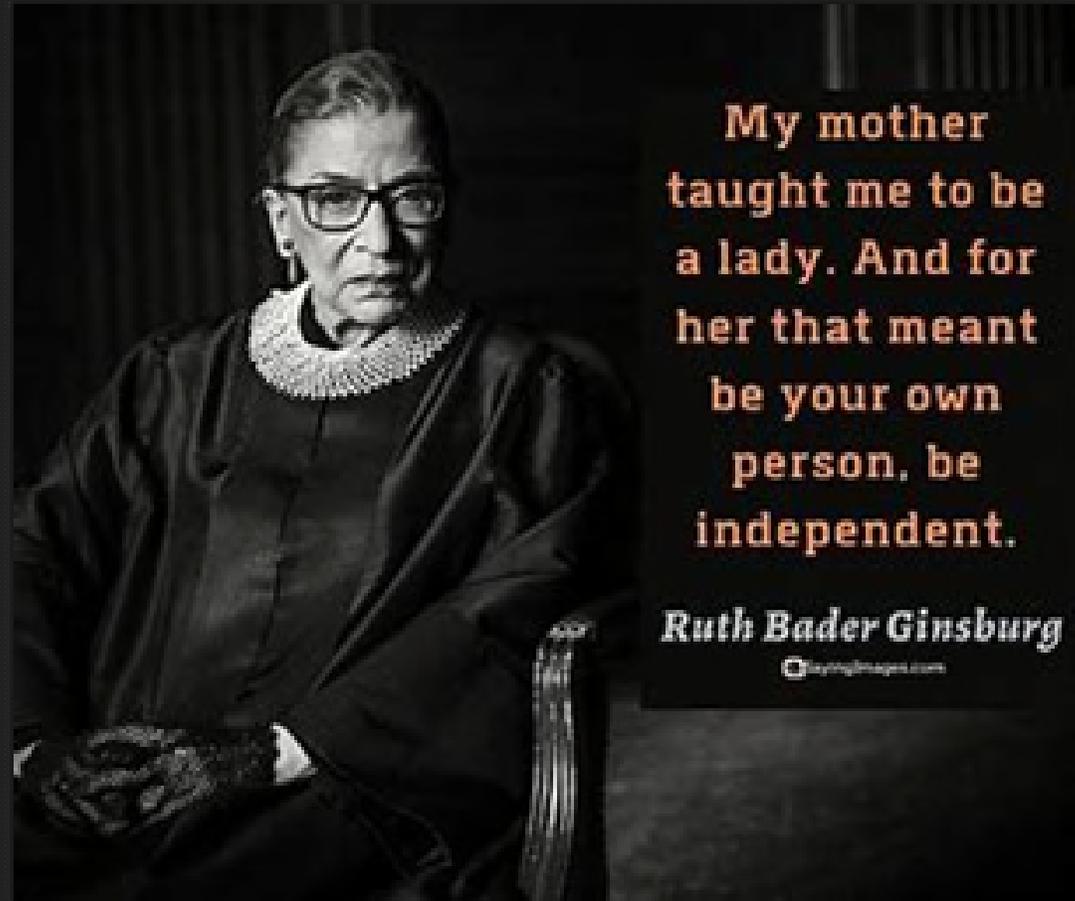
# Be True to What is Right

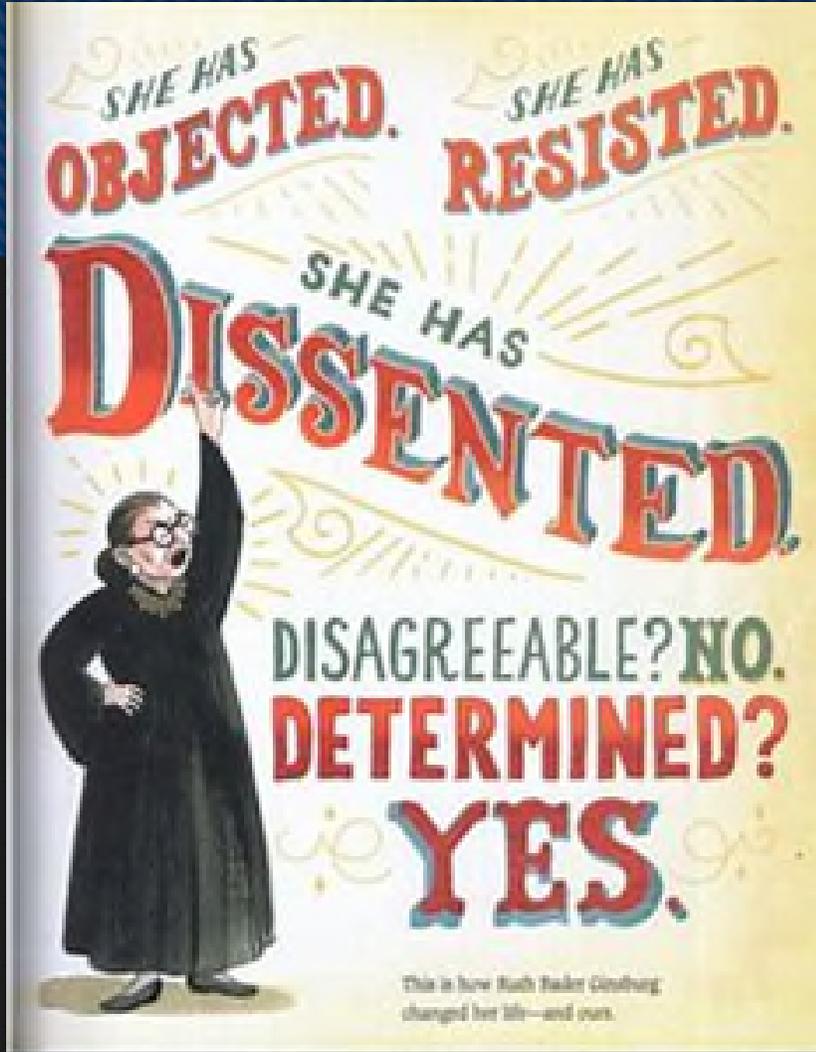
- “One of the reasons RBG became such a household name is that she continually fought for what she believed in, even when it was unpopular.” -- Goldie Chan, Forbes, 12/14/2020.
- "Someone who used whatever talent she had to do her work to the very best of her ability and to help repair tears in her society, to make things a little better through the use of whatever ability she has. To do something, as my colleague David Souter would say, outside myself. Because I've gotten much more satisfaction for the things that I've done for which I was not paid." —On how she'd like to be remembered, MSNBC interview, 2015

# Elimination of Bias in the Law

- U.S. v. Virginia - Virginia Military Institute case – RBG for the majority: struck down all-male military academies.
- Stereotypes about the way men and women are cannot be used to limit the opportunities available to either gender.

# Elimination of Bias in the Law





**GORDON&REES**  
SCULLY MANSUKHANI  
YOUR 50 STATE PARTNER®

'Women belong in all places where decisions are being made. ... It shouldn't be that women are the exception.'

— Ruth Bader Ginsburg



**PWENTH**

**GORDON & REES**  
SCULLY MANSUKHANI  
YOUR **50 STATE** PARTNER®

# Questions?



Brenda Radmacher

Partner, Los Angeles

[bradmacher@grsm.com](mailto:bradmacher@grsm.com)



Lisa Cappelluti

Partner, San Francisco

[lcappelluti@grsm.com](mailto:lcappelluti@grsm.com)

**GORDON&REES**  
SCULLY MANSUKHANI  
YOUR **50 STATE** PARTNER®

# MCLE

- MCLE credit (.5 hrs of CA 'Competence Issue' and .5 hrs of CA 'Recognition and Elimination of Bias') for attorneys in California and in jurisdictions that have reciprocity agreements with California (AK, AZ, CT, FL, HI, MD, MA, MI, MO, NJ, NY).
- If you would like to receive an MCLE Certificate, please leave a note in the comments section of the survey or you may contact us at [marketing@grsm.com](mailto:marketing@grsm.com).
- Presentation materials will be emailed to all attendees. If you would like to request a recording of the webinar please contact us at [marketing@grsm.com](mailto:marketing@grsm.com).