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Cultivating civility in the legal community

THE CORE PRINCIPLES FOR PROMOTING CIVILITY AND 10 PRACTICAL STRATEGIES FOR DEALING WITH UNCIVIL BEHAVIOR

“Civility costs nothing, and buys everything.”
~ Lady Mary Wortley Montagu

During a daunting deposition, a resilient Plaintiff found herself facing an attorney whose approach bordered on hostility rather than professionalism. With a demeanor as nasty as the questions he posed, he ventured into territory far beyond the scope of the case at hand. With a sneer and sarcasm dripping from his voice he asked her, “Do you really believe any woman can handle running a business and starting a family at the same time?”

His questions were more personal attacks than legal questions. Fortunately, this client’s attorney had the foresight to prepare the witness for this challenging encounter. She knew that this opposing counsel had a penchant for veering off course and using uncivil tactics, so with preparation and practice, her client entered the deposition room with a shield of readiness. While the attorney’s rude questions may have rattled others, both the client and her attorney stood their ground, unfazed and well-prepared, showcasing their strength and poise that made them a powerful presence.

The woman above, who faced off against a discourteous attorney during her deposition, happens to be one of my former clients. This experience highlights a stark reality within our legal world – the prevalence of incivility which still exists in the legal community. It happens far too often for attorneys to employ disruptive tactics, resorting to personal attacks or straying from the issues at hand. As cool and collected attorneys, we must acknowledge that this isn’t an isolated incident, but rather a persistent issue that can undermine the pursuit of justice. Unfortunately, incivility happens, perpetuating the

misguided notion that one must be uncivil to be perceived as a formidable advocate.

In the legal profession, where brilliance, advocacy and tenacity reign supreme, there is this age-old stereotype that just won’t take the hint – the idea that civility, especially when a lady lawyer is at the helm, somehow translates to vulnerability or weakness. The legal landscape, known for its assertive and combative nature, has clung to this misconception, suggesting that a woman who champions civility might be seen as less fierce, less competitive, or simply less capable. But as we ride the wave of progress and inclusivity, it’s clearer than ever that civility isn’t a sign of frailty; it’s a symbol of strength, professionalism and unwavering ethical conduct. It’s high time we acknowledge that, in a world where justice and ethics are non-negotiable, being a female lawyer (heck, any lawyer) who champions civility is not a weakness; it’s the basis of our noble profession’s core values.

The practice of law, with all its intricate complexities and multifaceted challenges, rests upon the cornerstone of civility. Civility in the legal profession is not merely a nicety, but a fundamental imperative, a linchpin that holds the wheels of justice in motion. It is the adhesive that binds lawyers, judges, and our clients in the pursuit of truth, fairness, and ethical conduct. Without civility, the legal system would crumble under the weight of animosity, disrespect, and discord.

In practicing law with civility, we not only uphold the highest ethical standards, but also preserve the integrity of the profession itself. Civility fosters an environment where open dialogue, cooperation, and respectful disagreement can flourish, ultimately serving the interests of justice and the clients we are

sworn to represent. Practicing law with civility strengthens the very foundation of our legal system and advances the cause of justice for all. As my now 98-year-old grandma always taught me, you catch more flies with honey than with vinegar; a lesson that resonates in the realm of law and in life.

Core principles of civility

Civility is the compass guiding our interactions in the courtroom, the conference room, or even that never-ending string of emails. Civility means not losing our cool when the heat of litigation flares up, showing courtesy even when the gloves come off. Civility doesn’t mean being a pushover; it means fighting fiercely for our client’s interests while keeping it classy.

In maneuvering through the complex and often unpredictable terrain of the legal landscape, it is essential to adhere steadfastly to certain fundamental principles. These principles find their embodiment in the oath that every attorney now must take upon admission to practice law in the State of California. This oath concludes with a powerful declaration: “As an officer of the court, I commit to maintaining a demeanor characterized by dignity, courtesy and integrity at all times.”

Embarking on our quest for civility, the cardinal rule is respect – extending it unwaveringly to opposing counsel and involved parties, regardless of the case’s intensity. Honesty and transparency are the bedrock of our practice; we owe it to the legal process to be authentic and unequivocal, steering clear of even the slightest hint of deception.

This entails avoiding litigation strategies that serve to intimidate or burden the opposing party, steering

clear of contributing to needless delays, and collaborating with opposing counsel when continuances are justified and essential. Maintaining dignity and decorum should always be a priority in our professional demeanor. While our zeal as advocates is unquenchable, it should be tempered with grace and poise. And when the opportunity arises, embracing collaboration can be both a time-saver and a bridge-builder, smoothing the path to resolution. This means consulting with opposing counsel before scheduling depositions, meetings and court hearings and cooperating when rescheduling is necessary. These core principles form the framework of civility in the legal realm, ensuring that as we navigate the complexities of law, we remain committed to justice and professionalism.

A wealth of resources is now available that offer attorneys sophisticated training in the art of civility, equipping them with the tools and techniques to conduct themselves with poise and professionalism. Numerous bar associations require their members to abide by specific Codes of Civility as a condition of membership, and many courts have established their own Guidelines for Civility in Litigation. Notably, the State Bar of California goes a step further by providing a dedicated page with links to these guidelines, emphasizing the significance of civility in the legal profession.

The ethical significance of civility

Civility represents more than just polite behavior; it embodies the ethical principles of respect, fairness and integrity that are essential to the functioning of a just legal system. Civility ensures that all participants in legal proceedings are treated with dignity, which helps to maintain public confidence in the legal process. Ethically, civility is crucial for ensuring that the adversarial nature of legal disputes does not devolve into personal attacks or disrespectful conduct. Lawyers are often seen as

representatives of the legal system; thus, their behavior can either reinforce or undermine the public's trust in the law.

Civility has gained prominence as a topic of considerable importance and frequent discussions, so much so that Rule 2.72 of the Rules of the California State Bar has been revised to include a new civility requirement. Starting with the compliance period ending January 31, 2025, licensees are now required to complete at least one hour of education addressing civility in the legal profession (Civility in the Legal Profession Credit).

I recently had the privilege of participating in a panel during Judicate West's MCLE week, addressing specialty credits prior to the upcoming compliance period for the California State Bar. Our panel's focus was a discussion on the topic of civility within the legal profession. I was taken aback by the multitude of narratives we learned about concerning incivility and the notably objectionable behavior exhibited by certain counsel. While I have personally navigated through numerous challenging encounters with uncivil opposing counsel, it was particularly disheartening to learn of the persistent and profound frustrations that many female attorneys are forced to endure in the legal arena.

One of these frustrating encounters that I heard included a story where during a contentious deposition, the opposing counsel repeatedly interrupted and talked over the female attorney while she was attempting to question the witness. He made derogatory comments about her appearance, suggesting that her attire was inappropriate for a professional setting. Additionally, he used condescending and patronizing language, undermining her legal arguments and questioning her competence. He repeatedly made speaking objections that were calculated to coach the witness. Such behavior not only disrupted the deposition but also created a hostile and disrespectful environment, making it difficult for the

female attorney to effectively represent her client.

Women attorneys, despite their significant strides in the legal profession, continue to confront the disheartening reality of dealing with uncivil opposing counsel. This persistent challenge not only undermines the professionalism expected in legal proceedings but also amplifies the existing frustrations in a field where women often grapple with gender biases. These attorneys frequently encounter disrespectful behavior, condescending attitudes, and in some cases, blatant sexism, which not only disrupts the decorum of legal discourse, but also hinders their ability to advocate effectively for their clients. The indignity of having to constantly prove their competence, while managing uncivil interactions, adds an unnecessary layer of stress and serves as a stark reminder of the ongoing struggles for respect and equality within the legal community. This environment not only affects their professional experience but also reinforces the urgent need for a cultural shift towards more respectful and equitable treatment in the legal profession. "Objectifying or demeaning a member of the profession, especially when based on gender, race, sexual preference, gender identify, or other such characteristics, is uncivil and unacceptable." (*Briganti v. Chow* (2019) 42 Cal.App.5th 504.)

Consequences of incivility

When we engage in hostile exchanges, personal attacks, or discourteous behavior, it chips away at the mutual respect and trust essential for effective collaboration. Clients, judges, and colleagues alike begin to question not only our professionalism but also our dedication to the pursuit of justice.

But the fallout from incivility doesn't stop there. Lengthy, contentious interactions consume valuable time and resources that could be better allocated to

serving clients and achieving meaningful resolutions. Legal battles become more protracted, settlements less attainable, and the pursuit of justice turns into an uphill struggle.

Moreover, the toll on mental health and well-being cannot be underestimated. In a profession already known for its stress and pressure, incivility adds a toxic layer, leading to burnout, emotional exhaustion, and strained personal relationships. For the individuals involved, the aftermath of incivility can result in damaged reputations and lost opportunities for future collaboration or advancement. Additionally, the stress and negativity borne from such environments can spill over, affecting staff morale and office dynamics, further eroding the quality of work life.

That is why as legal professionals, we must be the champions of civility. By fostering a culture of respect and courtesy, we not only uplift our own practice but also contribute to the integrity and efficacy of the legal system as a whole. As composed and discerning attorneys, it is imperative to understand that maintaining civility transcends mere courtroom etiquette; it is the keystone that ensures the smooth operation of our legal framework. It enhances procedural efficiency, protects the mental well-being of all legal participants, and is vital for the unwavering quest for justice.

Practical strategies for promoting civility

A question that frequently arises in conversations about incivility is what strategy should be employed when the other side begins to forgo legal arguments in favor of disparaging attacks. How do we eloquently sidestep this unprofessional conduct and put an end to such conduct? It's about outsmarting, not out-shouting, and remembering that our strongest weapons are our wits and the ethical high ground. It may be easier said than done, so first *just breathe*. Then try the following:

1. **Maintain composure**

Stay calm and composed, even in the face of wretched behavior. Avoid reacting emotionally or becoming confrontational. Taking a deep breath and pausing before responding can provide a moment of clarity and prevent emotional reactions. It's also beneficial to practice active listening, which can defuse tension and allow for a measured, thoughtful reply. Staying focused on the facts and the law, rather than the opposing counsel's behavior, keeps the discourse professional. Furthermore, setting clear boundaries and calmly communicating them can serve as a reminder of the standards of conduct expected in legal proceedings.

2. **Assertiveness**

Politely but firmly address the uncivil behavior. For example, you can say something like, "I would appreciate it if we could maintain a respectful and professional tone during this deposition." Establishing a firm stance from the outset sets the tone for the interaction, making it clear that while you are open to constructive dialogue, you will not tolerate disrespectful behavior. An assertive attorney will use confident language, speaking with authority and precision, yet without aggression. It's also crucial to assert boundaries clearly and directly, ensuring that any overstepping by the opposing counsel is met with a calm but firm correction. Consistent eye contact and a composed demeanor can further convey confidence and command respect. By remaining steadfast in your principles and approach, you not only advocate for your client's interests but also uphold the decorum of the legal profession.

3. **Document incidents**

Keep a record of uncivil behavior, noting specific instances, comments and dates. This documentation may be useful if further action is required. If you are at a deposition, make sure to get the transcript and identify the bad behavior. If it happens after a private conversation, send a follow-up email summarizing what was discussed and any agreements or

commitments made during the conversation. This creates a written record of the attempt to address the issue professionally. Keep a close eye on the opposing counsel's behavior in subsequent interactions to determine whether the private conversation had a positive impact. In more severe instances, an attorney might consider having a third-party witness during interactions to provide an objective account of the events. Be prepared to take further action if the incivility continues.

4. **Propose solutions**

Suggest possible solutions or ground rules for future interactions to promote a more civil atmosphere. For example, agreeing on speaking turns, using respectful language, or avoiding personal comments. It's sometimes beneficial to initiate a candid conversation, either in person or in writing, to address the uncivil behavior directly and propose a path to more professional interactions.

If faced with an overly boisterous or obstinate opposing attorney, it may be prudent to transition to written correspondence in lieu of verbal exchanges to ensure clarity and maintain a record of communication. Each solution should aim not only to mitigate immediate tensions but also to establish a framework for preventing future incidents, thus fostering a constructive working relationship.

5. **Motions for sanctions, protective order and a discovery referee**

When facing persistent incivility that impedes the legal process, you may consider escalating the response through formal legal channels. If a motion for sanctions is appropriate, you should demonstrate how the opposing counsel's behavior violates court rules or ethical standards, thus warranting the court's intervention. Numerous courts have incorporated civility guidelines into their local rules, possessing the authority to uphold these standards by imposing sanctions on attorneys who fail to comply.

This should include a declaration with specific examples of the uncivil

conduct. Of course, you will want to attach excerpts from the deposition where the attorney was out of line and the nasty emails he sent you to support your contentions.

In situations where the opposing party's actions are harassing or abusive, particularly during the discovery phase, filing a motion for a protective order is a strategic move. This motion should clearly outline the need to protect yourself or your client from undue burden or harassment, and propose specific protections, such as limits on the scope of discovery or on methods of communication.

Alternatively, if the issue primarily revolves around discovery disputes exacerbated by incivility, proposing the appointment of a discovery referee could be an effective strategy. The motion should argue the benefits of having an independent third party to oversee and resolve complex or contentious discovery issues, thus streamlining the process and reducing the potential for incivility to derail the proceedings.

In each of these motions, it's crucial to convey not only the necessity of the court's intervention due to the opposing counsel's conduct but also the potential impact on the administration of justice. Your tone should remain professional, focusing on resolving the issues at hand and maintaining the integrity of the legal process.

6. Addressing inappropriate comments

In addressing inappropriate comments from opposing counsel, you must take firm and decisive action. This can involve immediately and clearly objecting to the comment on the record, which serves as an immediate deterrent and documents the incident. You can firmly request that such comments cease, stating that they are irrelevant to the case and unprofessional. If the conduct persists despite these efforts, it may be necessary to escalate the matter by seeking court intervention as described above.

7. Focus on the case

Continue to advocate for your client's

interests and stay focused on the legal issues at hand, regardless of the opposing counsel's behavior. This demonstrates professionalism and commitment to your client. In the moment, addressing an inappropriate comment can involve a pointed yet professional objection. This serves to both confront the incivility and steer the conversation back to the pertinent legal matters.

8. Seek support

Reach out to colleagues or mentors within your law firm or professional network for advice and support in handling the situation. These seasoned professionals can offer advice, share similar experiences and suggest effective strategies for dealing with difficult opposing counsel. This kind of peer consultation not only provides emotional support, but also provides practical tips on handling the situation. When you discuss these issues with others in your community, it allows for the exchange of ideas and strategies and fosters a sense of solidarity among practitioners facing similar issues.

9. Bar Association complaint

If the opposing counsel's behavior persists and crosses ethical boundaries, you can consider reporting their conduct to the State Bar of California. The State Bar is actively working on amendments to the Rules of Professional Conduct to specifically address incivility as a disciplinable offense. These proposed amendments aim to clarify that lawyers may be disciplined for such conduct under current rules and establish a new basis for discipline regarding incivility in the practice of law. The proposed Rule 8.4.2 would define incivility as "significantly unprofessional conduct that is abusive or harassing and shall be determined on the basis of all the facts and circumstances surrounding the conduct."

10. Promote civility

Encourage a culture of civility in the legal profession by setting an example of professionalism and respect in all interactions. By upholding high standards of conduct you can contribute to a more

respectful and inclusive legal environment. Proactively establishing ground rules for communication with opposing counsel can also lay the foundation for mutual respect. Additionally, you can encourage civility by acknowledging and appreciating civil behavior when it occurs, reinforcing positive interactions. When tensions rise, suggesting a brief recess can allow all parties to regain their composure. Finally, participating in or even organizing seminars and workshops on professionalism can help to cultivate a broader culture of civility with our legal community.

It's essential to remember that responding to incivility should prioritize professionalism and maintaining the integrity of the legal process, rather than engaging in a retaliatory or confrontational manner. Taking the high road when dealing with incivility may be challenging, but it can ultimately benefit your reputation, client relationships and the legal profession as a whole.

Conclusion

I think again of my client who was dismissed and demeaned by an uncouth opposing attorney who boldly claimed she couldn't possibly juggle success with family life. Yet here she stands today, not just thriving but soaring. Her career has blossomed, her family life flourishes, and her success is the sweetest rebuttal to that baseless assertion.

It's a powerful reminder that our role as legal professionals extends beyond the courtroom; we are advocates for fairness not just in the law, but in life. Upholding civility plays a pivotal role in this, as it lays the groundwork for our clients' stories to evolve from challenge to triumph. Let their successes be the measure of our commitment to civility and justice.

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