



Are You Effective or Are You Just a Jerk? Civility and Professionalism

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What is Civility or, conversely, What is Incivility?



Civility is on the decline:

In one study 98% of workers reported experiencing uncivil behavior on the job

50% said it happened at least once or more each week



See Christine Porath and Christine Pearson,
The Price of Incivility, Harvard Business Review (Jan.-Feb. 2013)

Scenarios Legal Professionals Encounter

- The nasty negotiator
- The combative deposition
- The belligerent brief
- The volatile/critical boss, colleague or both
- The “we all pay our dues”
- The “my time is more valuable”
- The “what you are saying is not important”
- “I’ll take the credit, you take the blame”



The “Gift” that is Email, Texts, and Social Media



And for those of you in litigation,
the ever present: Strategic incivility



A background image of a calm lake with misty, forested mountains in the distance. The water is still, reflecting the soft light of the fog. The overall color palette is cool, with various shades of blue and green.

Let's analyze some?

Why Does it Matter, or Does It?



Real costs –

- Almost half of workers who experienced incivility cut back their work effort
- 80% of people lost time worrying about what happened in an uncivil encounter
- 63% lost work time avoiding the offender
- Study participants who were treated rudely by other study participants were 30% less creative and produced 25% fewer ideas.
- Merely witnessing uncivil conduct directed at others can diminish the witness' problem-solving skills
- And it doesn't matter if the target was actually incompetent or did something questionable – it still was uncomfortable for everyone

See Christine Porath and Christine Pearson, *The Price of Incivility*, Harvard Business Review (Jan.-Feb. 2013)

Real costs –

Managers and HR Execs reported spending 13% of their time (basically 7 weeks out of the year) dealing with the aftermath of incivility.

See Christine Porath and Christine Pearson, The Price of Incivility, Harvard Business Review (Jan.-Feb. 2013)

Some Considerations

- Negatively affects cognitive abilities, including memory
- Diminishes creativity
- Damages reputation
- Drives up costs
- Drives down satisfaction
- Drives good legal professionals from the profession
- Takes a toll on mental and physical health



- *“More civility and greater professionalism can only enhance the pleasure lawyers find in practice, increase the effectiveness of our system of justice, and improve the public’s perception of lawyers.”*

Former United States Supreme Court Justice Sandra Day O’Connor

- **Aspirational, Enforceable, Both?**





- There Is Some Conduct That Requires a Hard Stop.
 - Consider RPCs 16-404, 16-804



What to do . . .
What to do . . .

Typical Responses to Incivility That Are Ineffective

- Retaliation and sabotage
- Avoidance (of the person, of work)
- Lashing out at others (the “kick the dog” effect)
- Reduction in effort
- Quit (the job and the profession)

What About Directly Confronting?

- Might escalate
- Might not find the result as satisfying as you think
- Questions in advance
 - Do I feel safe?
 - Was the conduct intentional?
 - Was this a one-off?

If all three are yes, find a time to talk and try to get to mutual resolution and a commitment to positive relationship going forward

Some other approaches that might be more effective

- Model Good Behavior
- In future encounters keep it brief, on point, polite, firm
- Focus on civility vs incivility – positive feedback for and build on appropriate conduct
- Thrive
 - Cognitively (don't dwell – pursue better memories and build resilience)
 - Physically (exercise, sleep, eat healthy, be mindful)

Teach civility as a tool, not just an aspirational goal

- Civility is not a sign of weakness
- Civility is a sign of confidence and strength



Civility

- Civility is beneficial to legal practices
 - Improves own well-being
 - It's also in the best interest of clients



Professional Training and Accountability

- Prioritize professionalism and civility trainings
- Establish a civility code using state bar guidelines as a baseline
 - Teaching tool and/or regulatory tool
 - Should apply to lawyers and judges and staff (via lawyers' supervision duty)

Mentorship

- New lawyers are sometimes under the false impression that they always need to *fight, fight, fight!*
- Mentorship programs that focus on civility help new lawyers develop good habits at the start of their careers
- Mentorship for new judges on how to conduct themselves
- Teaching the value of experienced staff and using them as mentors

Think About Well-being

- Incivility is sometimes a symptom of an underlying issue in a legal professional's life
 - Depression
 - Anxiety
 - Family crisis
 - Substance abuse
- Prioritizing well-being can help reduce incivility

Ten Common Core Concepts of Civility

(Developed by Professor A. Campbell based on his study of over 140 Civility Codes)

- (1) Keep commitments and seek agreement and accommodation with regard to scheduling and extensions
- (2) Be respectful and act in a courteous, cordial, and civil manner
- (3) Be prompt, punctual, and prepared
- (4) Maintain honesty and personal integrity
- (5) Communicate with opposing counsel

Ten Common Core Concepts of Civility

Cont'd

- (6) Avoid actions taken merely to delay or harass
- (7) Ensure proper conduct before the court
- (8) Act with dignity and cooperation in pre-trial proceedings
- (9) Act as a role model to the client and public and as a mentor to young lawyers
- (10) Utilize the court system in an efficient and fair manner

The End
Be well, be safe, be civil and be happy

