

Everyone Deserves Civility: Why It Matters Across the Legal System

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The story of how I became managing partner of my law firm here illustrates why litigators should maintain a professional, courteous, and civil attitude toward everyone involved in the legal system.

More than ten years ago, my then firm and my current firm were on opposite sides of a very contentious joint venture dispute. For nearly three years, we battled on every issue from the meaning of the joint venture agreement, the applicable law, the proper scope of discovery, and admissibility of expert testimony. Ultimately, the parties settled the case on the courthouse steps minutes before we started picking a jury.

Both relieved and disappointed about losing the chance to try the case, I moved on to other cases. Then, a few years later, I received a call out of the blue from my former opponents. The firm was looking to expand and thought I was what they needed. They were impressed by my skills as a litigator but, more importantly, they were impressed with my ethics and civility in the conduct of a very contentious case.

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Though it was a difficult decision to leave my old firm, I accepted the opportunity and quickly became the first new partner in the firm's 25-year history. A few years later, I became managing partner. These career developments not only benefited me financially but, more importantly, reinvigorated my enjoyment of the practice of law.

Every lawyer's story is unique, but I never would have had these opportunities had I acted like a jerk during the case. Treating opposing counsel, judges, clients, and everyone else in the litigation system with courtesy and respect won't guarantee a corner office, but it will have immediate practical benefits.

Being a Jerk Is Not Zealous Advocacy

There are numerous benefits to getting along with opposing counsel. First and foremost, the practice of law is more enjoyable when you can shake hands and have professional conversations with opposing counsel. Instead of fighting over who said what and whether actions were taken in good faith, your conversations can focus on the law, facts, and achieving a resolution. When there is a level of trust between counsel, you can better serve your client by discussing settlement without worrying that anything you say can and will be used against you. And you can do this without compromising your client's position or being a less effective advocate.

This is a key point, as many lawyers are taught that opposing counsel is the enemy and to best represent your client, you need to go to "war" with opposing counsel. Twenty-five years of litigating has taught me nothing could be further from truth, and most effective lawyers are the ones that can persuade through solid legal arguments and fact development. While from time to time, bullying and abusive tactics may intimidate a less confident or experienced attorney, most litigators are not affected by such behavior. To the contrary, such tactics build a

culture of distrust that harms the parties and the administration of justice.

Further, being a jerk may signal weakness in your case. There is an adage in the law that, if you are strong on the facts, pound the facts. If you are strong on the law, pound the law. And, if you have nothing else, pound the table. So, when attorneys do nothing but pound the table, it indicates their case is weak on the facts and laws. On the other hand, lawyers who confidently and civilly present the law and facts often get the best result.

Civility and professionalism also tend to lower the costs of litigation, as clients can avoid the costs of unnecessary motions and discovery disputes. In a similar vein, inevitably, during a lawsuit, your clients will need an extension on discovery, to reschedule a deposition or hearing date, or get a short trial continuance. You are far more likely to get these accommodations from opposing counsel without an expensive fight if you treat them and their client with civility.

On a final note, as it relates to opposing counsel, civility and professionalism extend beyond attorneys. Regardless of how you feel about opposing counsel, you should always treat their staff with courtesy. Nothing upsets me more than when opposing counsel treat my staff with even the slightest disrespect. By and large, these are hard-working and often underpaid employees who do not deserve to be mistreated.

Developing a Reputation for Civility Is Good Business

Your biggest asset when it comes to business development is your reputation. Treating opposing counsel with respect and civility only enhances that reputation. Attorneys talk about attorneys. If you give your opposing counsel negative things to say about you, word will get out in your legal community.

Your legal reputation is something that takes years to build, but only seconds to destroy. Further, every year, lawyers (including myself) trot out faux accomplishments like Super Lawyers, Best Lawyers, and the like. Right or wrong, these lists are effective marketing tools, but at their core, are just popularity contests.

I am also proud to say I have received numerous referrals from former opposing counsel. I consider this a tremendous compliment. Lawyers tend to refer cases to people that they like and trust. I take pride in the fact that I can develop those feelings during adversary relationships. As most cases have at least one opposing counsel, acting like a jerk in litigation effectively eliminates a large group of lawyers from your referral base. And again, I am not selling out my clients for the chance of getting a later referral. You can be a good advocate and civil, and, in fact, the best advocates are typically the most civil.

Civility and professionalism can also benefit you in billing disputes as well, as illustrated in the recent California case *Snoeck v. Exaktime Innovations, Inc.*,² where the appellate court affirmed a negative 0.4 multiplier in an attorney's fee award based on the attorney's "lack of civility throughout the entire course of this litigation." In that case, the attorney made ad hominem attacks unnecessary for the zealous representation of his client, accused opposing counsel of telling the courts lies, committing fraud and engaging in "sleazy" and "cringeworthy" conduct. As to the court, the attorney's tone was "belittling and antagonistic" and "verged on the contemptuous." The attorney also belittled the court in his emails to opposing counsel, claiming defense counsel made "a total fool of," "exploited," and "duped" the trial court, and treated the trial court as an "easy mark." Based on this conduct, that attorney's chronic incivility cost him \$457,683 in attorney's fees.

2. *Snoeck v. Exaktime Innovations, Inc.* 96 Cal. App. 5th 908 (2023).

Sadly, the *Snoeck* case is not alone in providing newsworthy examples of incivility toward opposing counsel. In a recent case out of San Diego, a litigator was referred to the State Bar for saying “See You Next Tuesday” (an apparently familiar code for a misogynistic term) to two female lawyers. Most of us have also seen the classic YouTube clip of Texas lawyers challenging each other to a fight during a deposition. In another example out of my home state of California, an attorney sent his adversary over 100 profane and insulting emails, including telling opposing counsel to “eat a bowl of dicks.” There is no place for this conduct in our profession.

Treat the Court and Its Staff Like They Will Be Judging Your Case

Every judge I have spoken to cringes when an attorney utters the words “With all due respect” or “Respectfully, your honor[.]” These phrases are better demonstrated than said aloud. Nevertheless, treating the judge that is deciding your motion or your case with respect and civility seems like a no-brainer. Yet, I am constantly amazed at how frequently lawyers disrespect the bench.

Judges will grant or deny motions or decide cases based on the law and evidence—not on their opinions of counsel. Yet, civility enhances your chances of success, as it gets a judge to focus on what you are saying instead of how you are saying it. It further enhances your credibility as an advocate. A judge’s decision does not always come down to a rigid application of the law to the facts and sometimes, as lawyers cannot nail down every single point the way we might like to, because of time or page limits. In those cases, the judge’s perception of reliability, trustworthiness, and integrity matters, and being rude or abusive is just as bad as being ignorant or sloppy in terms of how reliable our arguments appear. As seen in the *Snoeck* case, it is

a tall order to present an attorney fee motion to a judge you treated with “chronic incivility” throughout the case.

Civility toward the bench also helps at trial, as juries typically like the judge. So, if the jury sees you treat the judge with respect, and the judge reciprocates, the jury is more likely to like you and, by extension, your client. If the jury sees you treat the judge with disrespect, the jury is less likely to like you and, by extension, your client. Thus, treating the bench with proper respect during trial is the best way to be a zealous advocate for your client.

I have been told judges talk about attorneys behind closed doors. I have no knowledge if that is true and doubt any judge would admit that backroom chatter impacts any of their judicial decisions. But judges are human. And, if an attorney has a negative reputation with some judges, that is likely to spread to other judges. In other words, incivility in one case can impact you in future cases for years to come.

Lastly, as with opposing counsel, treating the court staff with courtesy and respect is imperative. Judges are far more likely to get angry with a lawyer that mistreats the judge’s staff than the judge itself. Even if the judge is not on the bench when it occurs, she will hear about it. Plus, court staff is the gateway to the judge. Attorneys often need things from court staff, so maintaining a good relationship with the judge’s clerks can make your life much easier.

Clients and Prospective Clients Want Civility and Results

A significant amount of my practice deals with representing clients in disputes with their former attorneys, either large-dollar fee disputes or legal malpractice claims. In doing this work, I have noticed a very important trend: Clients rarely sue lawyers they like. This is true even if the results are not as expected.

In my experience, the clients that sue their lawyers (or do not pay their bills) are the ones that feel disrespected or unheard. It is not enough to do the work, send the invoices, and expect payment. Attorneys have an ethical obligation to communicate with their clients, and this where many fall down on the job.

ABA Model Rule 1.4 generally requires attorneys communicate with their clients about significant matters and developments concerning their case. This includes things about what is happening in the case, costs and budgets, legal strategy, and other key matters. It is not just a matter of what you say to the client, but also how and when you say it. Clients want to be a partner in deciding their own legal fate. They are the ones that must live with the results of their cases—not the attorneys who get to walk away and move on to the next case. Therefore, it is important when communicating with clients to engage in a discussion, listen to their ideas, and patiently explain aspects of the legal process they do not understand. If a lawyer tries to dictate legal strategy to the client, the client will not hesitate to hold the attorney liable when things go wrong.

In addition, lawyers tend to forget that legal matters, be it a lawsuit, divorce, or potential criminal liability, can be incredibly stressful for clients. When people get stressed, they can be short, rude, demanding, or even, at times, insulting. While lawyers are not required to—and should not—accept insulting or demeaning behavior from clients, they also should not react to such behavior in kind. Lawyers need to remember the emotional and mental toll the legal process takes on ordinary people. Lawyers need to address such conduct calmly and take the time to explain the process to the client, why things are happening and what limitations exist. Often, the client will calm down and apologize, and the relationship should move forward. If it does not, the lawyer needs to end the relationship. But always, the lawyer should treat the client respectfully and with civility, even if not reciprocated.

Treating clients with civility also helps set the tone and expectations for the entire litigation process. Many clients think they want a “pit bull” to represent them, at least at the beginning of the case, because their goal may be to inflict maximum pain on the other side. This is where lawyers need to step in to set the client’s expectations early that the litigation will be conducted with civility and professionalism. This is a lawsuit, not a bar fight. Clients need to understand the difference.

Going back to my belief that clients do not sue attorneys they like; civility and courtesy are in the attorney’s own self-interest. This is true for potential clients as well, who have social media and the internet to fight against incivility in lawyers. Unhappy clients, or potential or former clients, can easily jump on a message board and bad mouth you online. Your duty of confidentiality limits your ability to respond. But, if you are polite and courteous when you are declining a case or terminating a representation with a client, that person is far less likely to take to the message boards to complain about the attorney who politely declined to accept their case.

I think most lawyers will agree there is a civility problem in this profession. Yet, most lawyers will also refuse to admit that they treat others discourteously. The problem, at least in most lawyers’ minds, is with the other person: “Opposing counsel is a jerk.” “My client is an idiot.” “The court clerk is rude and angry.” “That potential client is crazy.” We need to get out of the blaming mindset and focus on how you treat people regardless of how they treat you, because that is all you can control.

Treating all people with civility can open you up to new opportunities, increase your productivity, make you more money, avoid malpractice claims and fee disputes, and generally improve the practice of law. But that is not why you should treat people with civility and respect. You should do it because it is the right thing to do.