Winning Inside and Outside the Courtroom While Remaining Civil

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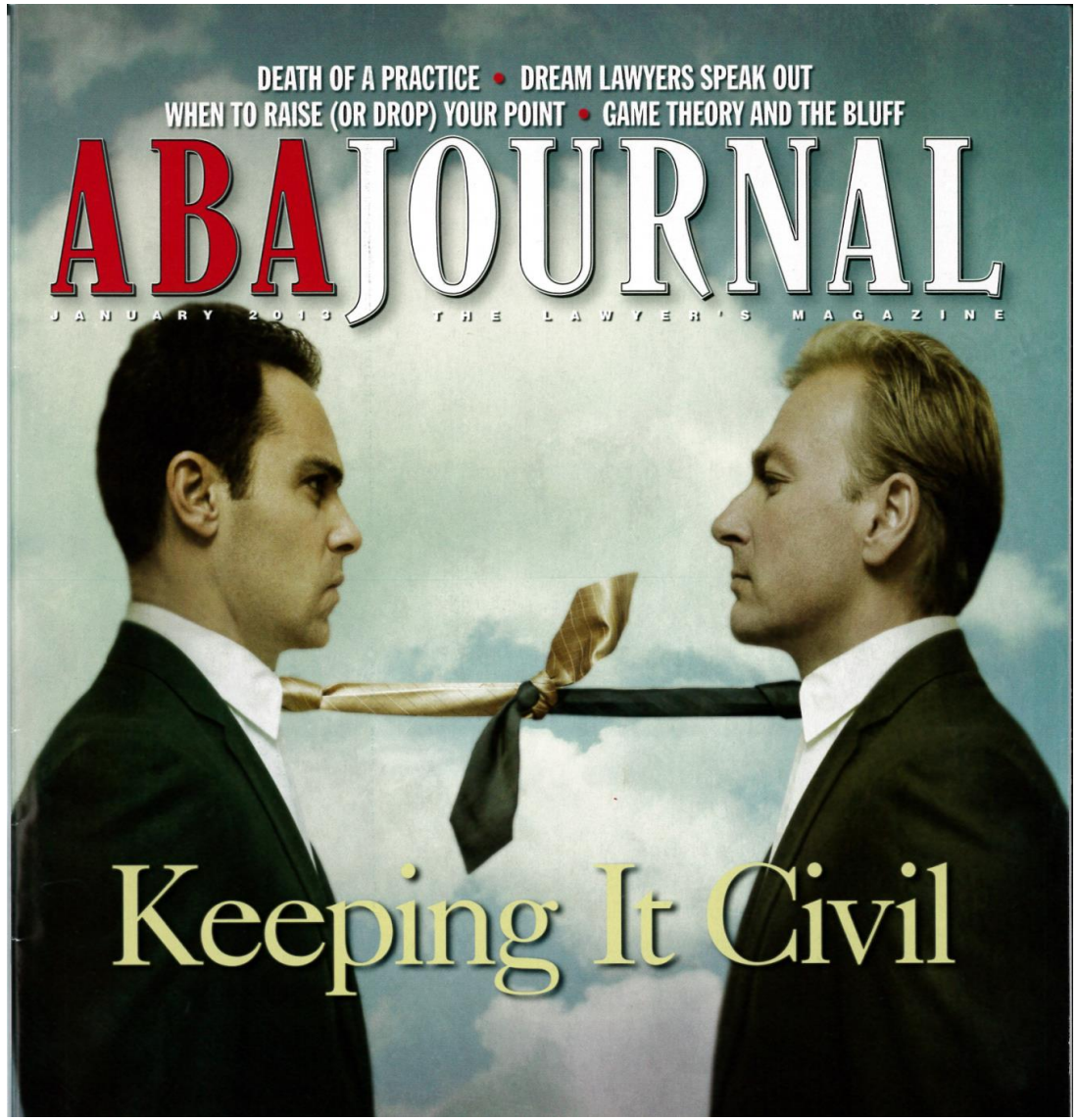
Why do a civility program for lawyers?


DEATH OF A PRACTICE • DREAM LAWYERS SPEAK OUT
WHEN TO RAISE (OR DROP) YOUR POINT • GAME THEORY AND THE BLUFF
ABA JOURNAL
JANUARY 2013 THE LAWYER'S MAGAZINE
Keeping It Civil

Is lack of civility a problem?

"Courts have had to urge counsel to turn down the heat on their litigation zeitgeist far too often. And while the factual scenarios of these cases differ, they are all variations on a theme of incivility that the bench has been decrying for decades, with very little success.

It's gotten so bad the California State Bar amended the oath new attorneys take to add a civility *requirement.*"

Lasalle v. Vogel (2019) 36 Cal. App.5th 127

Civility during the Pandemic

What do you do if your client insists that you play “hardball” with opposing counsel?

What do you do if your partner is uncivil and that is the style or practice in your office?

What do you do at a deposition if your opponent improperly objects, coaches the witness or insults you or your client?

ABOTA Principles of Civility, Integrity and Professionalism

During a deposition, never engage in conduct which would not be appropriate in the presence of a judge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What do you do if your client is uncivil to your opponent during a deposition?

Mediation

Importance of civility at mediation

What do you do if your trial judge is uncivil?

What should you do if you receive argumentative, nasty emails, letters, or voicemails from your opponent?

Bias and Civility

What if your opponent overlooks or misses a deadline?

Questions?

THANK YOU

Civility and the Mediation Process (Contra Costa County Lawyer Magazine)
By Mark LeHocky (April 2017)

Civility is more critical to the mediation process than to any other form of dispute resolution. The reasons are several: First, unlike trial and arbitration, success in mediation depends entirely upon adversaries agreeing. No agreement; no deal. To no surprise, civility helps draw people toward a consensus, while incivility has the opposite effect.

Second, behavioral studies of client and attorney decision-making show that lawyers *and* clients often develop unduly optimistic views of their litigation prospects, often with unfortunate consequences.[1] As these studies reveal, both clients and counsel predict their chances of success with levels of confidence that defy mathematic principles and common sense. In turn, they often turn down pre-trial settlement opportunities only to incur much less attractive adjudicated outcomes – both for clients and counsel-client relationships.

Third, other psychological studies by no means unique to disputes reveal patterns whereby we all seek out reaffirming information and discount contrary data. Often referred to as cognitive dissonance, this phenomenon impacts us all, particularly under adversarial situations, where the contrary position and the adverse parties are discredited in favor of our rosier predictions.

Now link these phenomena to the mediation process: Lawyers and their clients approach mediation with rose colored glasses and a proclivity to undervalue the other side's position, and no one can make you do anything – not the mediator; not anyone. With these phenomena in mind, civility is critical to success – in initiating the mediation process, presenting your position, and conducting the mediation session.

***Commencing the mediation process*:** Incivility is often the biggest hurdle to simply initiating a mediation. Having served as the general counsel of different companies, I encountered several instances where our counsel warned that mediation would be pointless precisely because the other side was incapable of being civil.

However, we decided to plow ahead anyway with mediation, trusting our team and the mediator to maintain decorum and focus upon a realistic discussion of strengths, weaknesses, alternatives and tradeoffs. These efforts consistently bore fruit, immediately if not soon thereafter, contrary to the prior predictions. Obviously, maintaining a civil discourse from the outset is the best set up. But even in the face of prior incivility (on the other side *as well as*

[1] See, Donna Shestowsky, J.D., Ph.D., University of California, Davis School of Law, *The Psychology of Procedural Preference: How Litigants Evaluate Legal Procedures Ex Ante*, Iowa Law Review, Vol. 99., No. 2, 2014, http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=402976 ; Randall Kiser, *Beyond Right and Wrong: The Power of Effective Decision-Making for Attorneys and Clients* (Springer 2010), pp. 29-48;; Mark LeHocky, *Navigating the Litigation Conversation: Confessions of a Litigator Turned General Counsel Turned Mediator*, Best Law Firms 2016, 6th Edition, U.S. News & World Report, www.issuu.com/bestlawyers/docs/blf2016-cover-elements/52?e=3342698/30903449

your own), the mediation forum provides a fresh opportunity to civilly engage with the aid of a skilled neutral.

Presenting your case: Remembering that counsel and clients start out with rose-colored glasses and an unfavorable view of the other side's position, imagine the impact of a mediation brief laced with invective as to parties and their positions. Briefs maligning the other side's intentions, brimming with words like "frivolous", "specious" or "baseless" rarely change the adversary's mind. Rather, they prompt the adversary to reply in kind, and the exercise devolves into both sides focusing on the slights and affronts rather than the merits of the dispute.

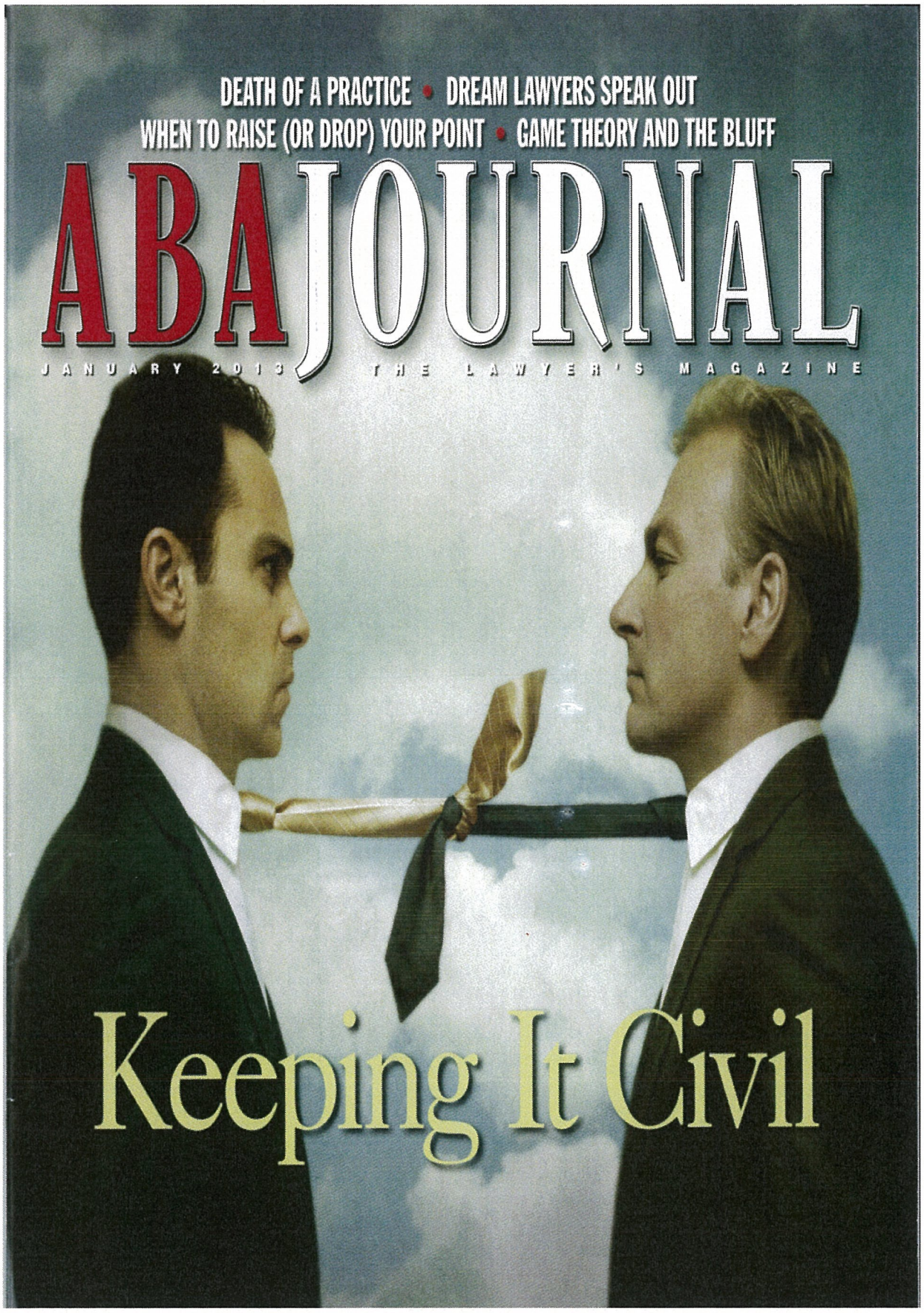
So what to do? Leave the incendiary language at home. Focus on the essential elements of liability and damages – what's there and what's not. Concurrently, exercise the discipline to only argue what truly matters. Strong points are lost in the mire of arguing everything, and worse, minor points distract the mediator and impede the mediation.

Second, share your brief with the other side. While some courts mandate such exchanges, other courts and regional practice may not. Do it anyway. If your purpose is to convince the other side to compromise, this is one of your best means of doing so. Concurrently, holding back your best evidence rarely makes sense. Despite the protest that one side needs to hold their "smoking gun" in reserve, rarely does that protest hold up to scrutiny. To the contrary, cases settle *because* the parties have exchanged more, rather than less.

Civility at the mediation session: Practicing civility at the mediation session also produces unmistakable dividends, starting with your credibility with the mediator. While mediators take pride in our neutrality, uncivil behavior directed at the other side or the mediator is sheer madness. While your mediator does not decide your case, she or he will be positively or negatively impacted by the tone and level of professionalism counsel and their clients exhibit, with corollary effects on the mediation session.

Interestingly, the fear of uncivil exchanges has prompted many attorneys to avoid joint sessions altogether. But think about this tradeoff: The joint session may be your only real opportunity to speak directly with key decision makers about strengths and weaknesses, freed from concerns that what you say can and will be used against you. It is also an opportunity to show that you are not the demon or simpleton that maybe, just maybe, you have been described to be by adversary counsel. This is also your chance -- shorn of invective and affronts -- to tell the compelling story that you will lay out to a judge, jury or arbitrator if the case does not settle. Properly executed, this type of presentation will shape the mediator's assessment, and with the neutral's input, should prompt the adversary to reevaluate their position. It takes poise, discipline and confidence. But isn't this what you have been trained to do?

Mark LeHocky *is a former commercial litigator and public company general counsel, and a full-time mediator and arbitrator with ADR Services, Inc. Repeatedly voted a Best Lawyer in America for Mediation©, Mark's full profile is at www.marklehocky.com.*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You're Out of Order! Dealing with the Costs of Incivility in the Legal Profession

BY G.M. FILISKO

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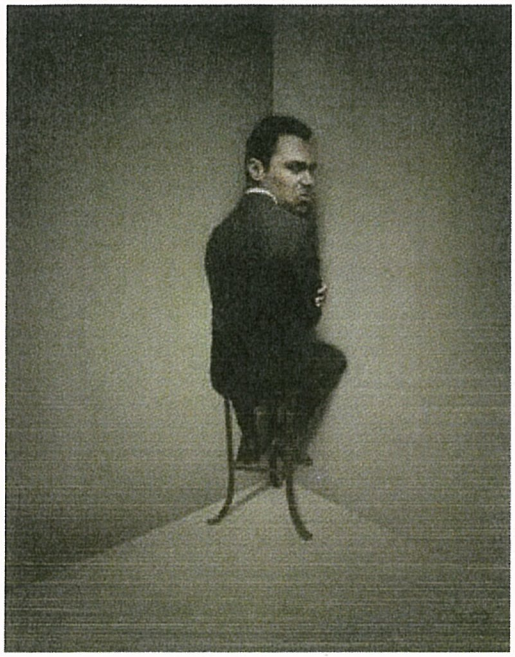


Illustration by Matt Mahurin

William Gary White III was accused of being so uncivil and unprofessional that the South Carolina Supreme Court suspended him in 2011 for 90 days and ordered him to complete the state bar's legal ethics and professionalism program.

White was found to have violated a slew of South Carolina's ethics rules in a letter to his client, an Atlantic Beach, S.C., church that had received a town notice that it needed to comply with zoning laws. White's letter, copied to the town manager and later made part of the published opinion, was a scorcher:

"You have been sent a letter by purported Town Manager Kenneth McIver. The letter is false. You notice McIver has no order. He also has no brains, and it is questionable if he has a soul. Christ was crucified some 2,000 years ago. The church is His body on Earth. The pagans at Atlantic Beach want to crucify His body here on Earth yet again. …

"First-graders know about freedom of religion. The pagans of Atlantic Beach think they are above God and the federal law. They do not seem to be able to learn. People like them in S.C. tried to defy federal law before with similar lack of success."

A town council member filed the disciplinary complaint that led to White's suspension. In its opinion, the state supreme court held that White ran roughshod over an oath it implemented in 2003 mandating that lawyers act with "fairness, integrity and civility, not only in court, but also in all written and oral communications."

White says he's learned from the experience. He says his client told him to make the comments in the letter and at the time believed them to be political statements regarding a religious matter. "I thought it was free speech," he explains. "I think the rules are clearer now; I didn't consider it a breach of ethics before that. I considered it representing a client."

South Carolina is just the latest in a string of states formally demanding their lawyers treat others with respect. But it's been only recently that the state's highest court has punished lawyers solely for uncivil acts, as it did with White. "Until two years ago, we didn't have any public opinions or sanctions simply on civility," says Lesley M. Coggiola, disciplinary counsel for the Supreme Court of South Carolina. "There might have been problems with communication, diligence and any number of other issues, and the court would say, 'By the way, we'll cite the oath as well.' We now have four or five opinions that are strictly on civility, including three in one year and one for a lawyer hitting an opponent in a deposition."

The South Carolina court may just be warming up. "We take this opportunity to address what we see as a growing problem among the bar, namely the manner in which attorneys treat one another in oral and written communication," it said in a 2011 opinion. "We are concerned with the increasing complaints of incivility in the bar."

Lesley Coggiola: "The Supreme Court of South Carolina has issued "four or five opinions that are strictly on civility, including three in one year and one for a lawyer hitting an opponent in a deposition." Photo by Stan Kaady.

MULTILATERAL APPROACH

It's impossible to say whether incivility in law is escalating or there's simply more grousing about it. But the profession's leaders are calling out what they say is a troubling lack of civility, and states like South Carolina are cracking down. However, the most effective tools for erasing incivility in the profession may be the judges and lawyers willing to tamp down uncivil behavior the moment it emerges.

Coggiola's agency doesn't track complaints about incivility, nor do other states. And even anecdotally, some aren't discerning a spike. "We haven't seen it here," says Wallace E. "Gene" Shipp Jr., bar counsel at the District of Columbia Bar. "We're not receiving complaints about that sort of thing."

However, there is unmistakably more talk about a troubling growth in incivility. "My speech to the opening assembly at the 2011 ABA Annual Meeting was all about civility," then-President Stephen N. Zack recalls. "At the same meeting, former Supreme Court Justice Sandra Day O'Connor, Justice Stephen G. Breyer and the chief justice of Canada's highest court all talked about civility. We didn't plan it, but we all ended up on the same page."

Lawyers posit a range of theories on where and against whom incivility is most often directed. Some believe it's more prevalent in large cities. Others say they've seen entirely too much directed at young female associates, often to gain a tactical advantage. Yet the more important question may be why incivility may be becoming the norm. Lawyers blame incivility on:

- Over-the-top portrayals of lawyers on TV and in films.
- Inexperienced lawyers and a lack of mentoring.
- The fuzzy line between aggressive advocacy and rudeness.
- The broad platform provided by today's technology, coupled with the ability to act anonymously online.
- The country's current, fractious public discourse.

By far, technology is cited most often as the foundation for boorish behavior. Coggiola says she feels old saying it, but she attributes a good deal of the problem to the ability of the everyday jerk lawyer to broadcast views online. "We've had some serious issues, and they're all related to social media," she explains. "Our court has already spoken on the First Amendment—you give some of that up when you become a lawyer. But we're really struggling with a case sitting at the court right now. A lawyer is blogging, and it's just vile, insulting everybody from Hispanics to women to 'midgets.' It's horrible."

Because South Carolina's civility oath applies only to opposing parties and counsel, Coggiola's office has asked the court to sanction the lawyer for bringing the profession into disrepute. The argument? If he were personally blogging or posting the comments on Facebook, without identifying that he's a lawyer, the bar couldn't touch him. "However, if you say you're a lawyer, and if there's a nexus between you being a lawyer and what you're posting, then we're going to come back to this rule and find it a ground for discipline," contends Coggiola. "We need the court to come out and say this is not OK."

A close second and third place behind technology are just-licensed lawyers who perhaps watch too many rogue lawyers on TV and in movies. The labor market has forced many to hang their own shingles without the mentoring they'd have through a traditional employer. "Young lawyers are hungry for information on the proper balance between advocacy and civility," says Jonathan Smaby, executive director for the Texas Center for Legal Ethics in Austin. "They get mixed messages from law school and the media, which portrays lawyers in movies, television and fiction—and sometimes in real life—as much more cutthroat and cutting corners than really goes on.

"They want to do the right thing," he says, "but don't know what the right thing is."

FIGHTING BACK

Lawyers aren't just complaining about incivility. They're fighting back—civilly, of course.

Bar organizations and disciplinary bodies are flooding the zone with training. Florida's Orange County Bar has reached out to local law schools to provide more professionalism education to students. A recent topic, according to James Edwards—a shareholder at Zimmerman, Kiser & Sutcliffe in Orlando, who's headed his state and local bar's professionalism committees—covered the interplay between professionalism and civility on one hand and technology and social media on the other. Coggiola and her staff are also providing more frequent opportunities for civility education. "One thing we do in this office is speak [to legal audiences] all the time," she says. "I've made it very clear that if somebody wants us, we're there—and we always cover civility. I often say it baffles me that we had to change the oath to tell people to be nice to each other. But clearly the court thought it was necessary."

Jonathan Smaby: "Young lawyers are hungry for information on the proper balance between advocacy and civility. …They want to do the right thing, but don't know what the right thing is." Photo by Josh Huskin.

Other state courts have also felt obligated to formalize a civility requirement. Florida is among the latest, revising its oath of admission to include a duty of civility in 2011, citing the American Board of Trial Advocates' similar inclusion. Also in 2011, the ABA's policymaking House of Delegates endorsed a renewed commitment to civility. And in 2012, ABOTA published an online Civility Matters tool kit to provide ideas and direction for sessions teaching civility. Courts are also more often sanctioning egregious behavior. But that requires lawyers

and judges to report louts, which can still be a roadblock. "I don't think people are often willing to report," Coggiola says. "They like to complain about other lawyers, but they don't want their name on it. We also speak to judges and tell them that if they see this behavior, they've got to report it."

First, however, judges have to know the basics of civility themselves, something that can be disputed. In March 2010, the Plain Dealer in Cleveland reported that Cuyahoga County Common Pleas Court Judge Shirley Strickland Saffold used her office computer to comment on cases before her under the online username "lawmiss." A later search revealed comments attacking Arabs, Asians and white men on at least 10 other websites using that name. Saffold denied making comments about any cases before her, while her daughter admitted to making some under the lawmiss moniker.

"Judge Saffold has always recognized the fine line between civility and enforcing decorum in the courtroom," says her lawyer, Brian Spitz of South Euclid, Ohio. Saffold and her daughter sued and later settled with the company that administers the newspaper's website over the release of their names to reporters, according to the Plain Dealer.

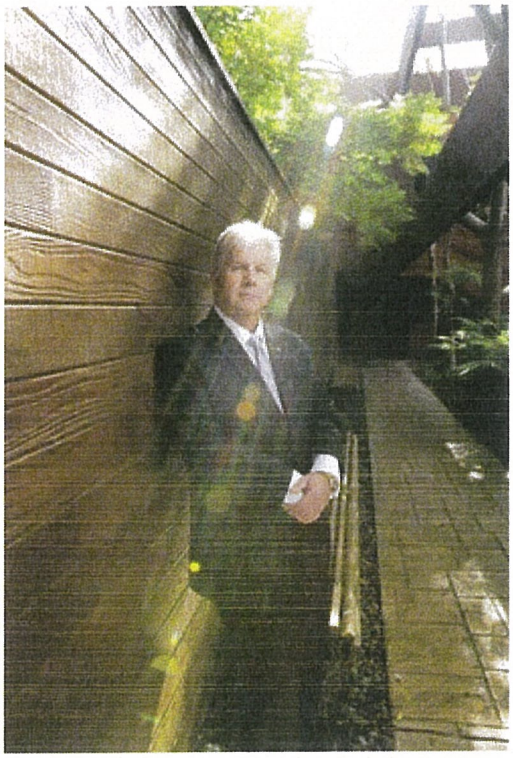
The best judges set an example and rein in bad behavior before it becomes the norm. "My father was a judge for 20 years, and he was very strict," Edwards says. "People frequently tell me they were afraid of him because he required absolute adherence to the rules and politeness, and if you didn't do right you were in trouble."

That's the opposite of what Calvin House, a partner at Gutierrez, Preciado & House in Pasadena, Calif., recently saw in court. While waiting for a case to be called, House witnessed a lengthy argument between a lawyer and a judge that included the lawyer accusing the judge of violating a bankruptcy stay. "It was a very heated discussion throughout, and to accuse a judge of basically committing a criminal act—which violating a bankruptcy stay is—was pretty extreme," says House. "That comment the judge sort of rolled with. Eventually he got visibly angry and said, 'We're done!' But that was after, I'd say, 30 minutes of interchange."

House was not only taken aback at how personal and persistent the lawyer's behavior toward the judge became; but also astounded at how long the judge tolerated the lawyer's rant. "One thing that's surprised me is the amount judges will sometimes put up with before they get to that point," House says. "I get it. From their standpoint, if they're harsh early on, they run the risk of not getting information they need and not appearing fair. But that's part of the problem. There were probably three other cases besides mine while this was going on, so four sets of attorneys were observing what happened. That lawyer got a $4,000 reduction in what his client had to pay. So someone just learning the business might get the message that this is the way to represent your client."

A judge in that situation risks losing credibility with lawyers and lay observers, neither of which is good for the administration of justice. "I think judges get involved in exchanges with attorneys more often than they did 10 years ago," adds House. "With that exchange, the judge seemed to feel the need to justify his position. I don't understand why he didn't say, 'Look, I've made my ruling. If you believe I'm wrong, you'll need to appeal. Let's move on.' Where that's done, it can be effective, and it doesn't have to be done in a vehement or rude way."

Edwards says most judges he appears before do just that. Most, but not all: "One told me—and I was sad to hear it—that if you're too tough on people, you're going to draw an opponent in the next election. How can you worry about that? If you do a good job, all the good lawyers will stand up for you."



Mick Meagher, on switching from litigation to transactional work: "Civil litigation is all about fighting over money, and I don't need an ulcer or heart attack fighting over people's money." Photo by Jonah Light.

IT TAKES A VILLAGE

Lawyers are also policing their peers. In the past few years, Edwards has begun to try to set a professional tone by calling opposing counsel at the beginning of each case to pledge cooperation. "I say, 'I really hope we can get along because we'll have enough to fight over without fighting over the petty details,' " he explains. "Surprisingly, that works pretty well."

Many also advocate professionally pushing back as soon as an ugly incident erupts. M. David "Mick" Meagher, a solo litigator in Escondido, Calif., had his first experience with incivility about an hour and a half after he began practicing. "It was a fairly simple dispute, and this attorney just went off on me on a phone call," he recalls. "He was attacking me personally and I was completely caught off guard."

A friend suggested a tactic Meagher has employed ever since. "I send a confirming letter spelling out as closely as I can recall everything the person said," he explains. "In that case, this guy called me every name in the book, so I put all that in a letter. Later, I got a phone call from the lawyer complaining, 'My daughter's the secretary, and she had to read that letter!' I told him, 'Then I suggest you not use that language again.' "

Meagher says calling out the behavior is especially important when incivility occurs in public. A lawyer recently shook Meagher's hand and exchanged pleasantries—and then walked into court and told the judge Meagher had lied and deserved to be sanctioned. Stunned, Meagher called his bluff. "I suggested something I've now used several times," he explains. "I told the judge: 'Let's set a show-cause hearing. This attorney just accused me of gross misconduct in front of a whole gallery of people who don't understand the law, making all lawyers look bad. I think he should prove everything he just said. If he can't, you should sanction him.' " Each time, the lawyer has backed down, Meagher says.

The difficulty for new lawyers is not only recognizing that they should stand up for themselves but also properly calibrating their response.

"If I'm a young lawyer dealing with a particularly difficult opponent whom I think is trying to intimidate me, I may be tough back," explains Smaby of the Texas Center for Legal Ethics. "But as lawyers get more experienced, the good ones figure out how to handle the difficult opposing counsel just like they handle difficult clients. A more experienced lawyer may have more tricks in the tool bag to counter that."

One female family lawyer in Dallas told Smaby that when she runs into a nasty opposing counsel, she mails a copy of the Texas Lawyer's Creed, the state's professionalism and civility code. "I've also seen young female lawyers not respond to intimidation but make the older lawyer believe they're naive and not very sophisticated," Smaby adds. "Then at the proper time, they come in and wipe them out in court. I tell young lawyers that the most effective way to be a lawyer is to understand your own personality and use that."

Despite his ability to do that, Meagher has had enough. After 19 years of a primarily litigation-based practice, he's transitioning exclusively to transactional work to escape the ugliness. "[Transactional work isn't] perfect—I get that," he says. "But it's better. Most of the civil transactional lawyers have been very reasonable because their goal is solution-oriented, not win-oriented. Civil litigation is all about fighting over money, and I don't need an ulcer or heart attack fighting over people's money."

CAN WE ALL GET ALONG?

Ultimately the best solutions, lawyers say, are those that bring diverse practitioners together. Patricia Lee Refo, a litigation partner at Snell & Wilmer in Phoenix and former chair of the ABA Section of Litigation, supports the American Inns of Court. "It organizes lawyers from all years of practice into small groups to meet to create an environment in which young, medium and seasoned lawyers talk about the pressing issues of the day," she explains. "That also helps provide an opportunity for younger lawyers to be mentored by seasoned practitioners."

Specialized bar groups are also attempting to bridge divides. The National District Attorneys Association has created a committee to work with the defense bar to foster civility, says Scott Burns, executive director of the NDAA in Alexandria, Va. It's also working with the ABA to offer joint training sessions with prosecutors and defense attorneys covering civility toward one another.

"I'm personally in close contact with the Innocence Project, the Constitution Project and the National Association of Criminal Defense Lawyers," says Burns. "They've all been very receptive about how we can come together and agree to handle criminal trials and deal with one another."

Burns' "pie in the sky" goal to increase cooperation among prosecutors and defense attorneys is the National Criminal Justice Academy, a facility backed by the S.J. Quinney College of Law at the University of Utah, the NDAA and leaders in the defense bar. So far, they've raised $1.2 million to launch the center, which would train prosecutors and defense attorneys under one roof.

"We'd each have our own training tracks, but there would also be a coming together of America's prosecutors and America's defense attorneys—and nothing but good can come from that," Burns says. "Those I've spoken with on both sides say that would go far in fixing our roles in civility. I truly believe if you bring people together, things get better."

G.M. Filisko is a lawyer and freelance journalist in Chicago.

CIVILITY: SETTING THE TONE FOR RESPECT!

William B. Smith
Abramson Smith Waldsmith, LLP
San Francisco, California[1]

What is Civility?

Civility is an attitude that lawyers will treat everyone (opponents, witnesses and judges) with dignity and respect. Respect is the foundation of civility as it is to good sportsmanship, good manners and the Golden Rule. We as trial lawyers are expected to fight the good fight but we must always remember that our individual and collective reputations and the viability of the legal system are more important than any disputed issue or case. We seem to have forgotten this and that is why our reputation has fallen to such depths.

Although lawyers have always been subject to scorn because we take sides in hotly contested public disputes, even William Shakespeare acknowledged that we understood civility in his day when he wrote the following passage in The Taming of the Shrew:

"And do as adversaries do in law - strive mightily but eat and drink as friends."

We must not lose our way as a profession. Without respect there can be no civility, and without civility there can be no respect for lawyers or the legal system. We are not just another "business," rather than a noble profession. Incivility manifests itself in many forms, including bad behavior during discovery, distasteful advertising and rudeness to judicial officers. Our reputation as a profession has fallen so far so fast as reflected in best selling novels, popular TV shows and movies, because of a lack of civility.

The good news is that we can do something about it and it starts with each of us. We must learn what incivility is, how it manifests itself, how to combat it, and then try to do something everyday to change the tone. Good behavior based on respect has the power to influence the behavior of others; it is an infectious attitude. You will find that the practice of law is easier, less stressful, less costly and more profitable when you make civility a habit.

1. The California Civility Guidelines

Incivility usually arises in the context of pretrial discovery where there is less judicial supervision. Following is an outline of where you will expect to see it with citations (where applicable) to the California Attorney Guidelines of Civility and Professionalism issued by the State Bar of California on July 20, 2007. In its Introduction, the State Bar made it clear that its guidelines are "voluntary" and not to be used as an independent basis for disciplinary charges by the State Bar or for claims of professional negligence. The goal is to transform these

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[1]To be published in ABOTA's Civility Matters publication in 2011.

"guidelines" into enforceable rules of court.

A. Depositions

-Scheduling depositions without prior contact for convenient times and locations.
[Sections 6(a), 6(b), 9(a)(1)]
-Cancelling depositions at the last moment. [Section 6(d)]
-Showing up late for depositions. [Sections 5(a), 5(b), 9(a)(2)]
-The use of foul and hostile language. [Sections 4(f), 9(a)3), 9(a)(4)]
-Rude toned questioning techniques, intimidation and badgering.
-Obstructionism: speaking objections [Section 9(a)(8)], inappropriate instructions to witnesses [Section 9(a)(7)], witness coaching [9(a)(6)], attempts to manufacture inconsistencies with broad, repetitive, tiresome questioning.

B. Interrogatories

-Lengthy or frequent sets of interrogatories used as a weapon. Ask only what you need. [Section 9(c)(1)]
-Do not hide the ball. Be responsive when you are answering. [Section 9(c)(2)] Object only in good faith and answer what is not objectionable. [Section 9(c)(3)]
-Extensions of time. Reasonable requests for extensions of time not adverse to your client's interests should be granted. [Section 6]

C. Document Requests

-Lengthy requests used as a weapon. Ask only for what you need. [Section 9(b)(1)] You should avoid trying to use a request to create an "inordinate burden or expense." [Section 9(b)(2)]
-Do not hide the ball. When you receive a document request do not purposely try to avoid disclosure or withhold documents on the basis of privilege. [Section 9(b)(4)] It also is inappropriate to take a "needle in a haystack" approach of providing documents in a disorganized fashion or in an unintelligible form to hide them. [Section 9(b)(5)]. Likewise, delaying the production of documents until the last moment hoping an opponent will not inspect them or use them is improper. [Section 9(b)(6)]

D. Scheduling, Continuances and Extensions of Time

-Section 6(a) provides: Unless time is of the essence, an attorney should agree to an extension without requiring motions or other formalities *regardless of whether the requesting counsel previously refused to grant an extension.* This is an acknowledgement that it is up to you to end the downward spiral of incivility. You should not bear grudges nor seek sweet revenge. Again, this is an opportunity to apply the Golden Rule to reset the tone.

E. Conducting litigation in bad faith: accusations, name-calling, claims that are baseless

F. The use of threats: threatening no settlement discussions unless certain conditions are met, threatening the reputation of an opponent (e.g., threatening to or reporting someone to the State Bar without a valid reason) and threatening adverse publicity

If you do not practice in California, check your state and local rules for the applicable civility rules.

2. The ABOTA Civility Principles

ABOTA has been the leader in promulgating civility and professionalism standards. In the early 1990s it published *Principles of Civility, Integrity and Professionalism* and a one page *Code of Professionalism*. These early standards are echoed in California's civility guidelines and those issued by other states and courts.

The ABOTA Code of Professionalism contains ten general rules to follow. The last two rules justify an early telephone call to your adversary before the case starts: Rule 9: Be respectful in my conduct toward my adversaries. Rule 10: Honor the spirit and intent as well as the requirements of applicable rules or codes of professional conduct, and ... encourage others to do the same. The entire Code can be found online at www.ABOTA.org.

ABOTA's Principles of Civility, Integrity and Professionalism supplement the Code of Professionalism and are more specific. For example:

A. Depositions

-Principle 19: Never take depositions for the purpose of harassment or to burden an opponent with increased litigation expenses.
-Principle 20: During a deposition, never engage in conduct which would not be appropriate in the presence of a judge.
-Principle 21: During a deposition, never obstruct the interrogator or object to questions unless reasonably necessary to preserve an objection or

privilege for resolution by the court.
-Principle 22: During depositions, ask only those questions reasonably necessary for the prosecution or defense of an action.

B. Interrogatories/Document Requests

-Principle 23: Draft document production requests and interrogatories limited to those reasonably necessary for the prosecution or defense of an action, and never design them to place an undue burden or expense on a party.
-Principle 24: Make reasonable responses to document requests and interrogatories and not interpret them in an artificially restrictive manner so as to avoid disclosure of relevant and non-privileged documents.
-Principle 25: Never produce documents in a manner designed to obscure their source, create confusion, or hide the existence of particular documents.

C. Scheduling, Continuances and Extensions of Time

-Principle 10: Never use any form of discovery scheduling as a means of harassment.
-Principle 13: Never request an extension of time solely for the purpose of unjustified delay or to obtain a tactical advantage.
-Principle 14: Consult other counsel on scheduling matters in a good faith effort to avoid conflicts.
-Principle 15: When calendar conflicts occur, accommodate counsel by rescheduling dates for hearings, depositions, meetings and other events.
-Principle 16: When hearings, depositions, meetings, or other events are to be canceled or postponed, notify as early as possible other counsel, the court, or other persons as appropriate, so as to avoid unnecessary inconvenience, wasted time and expense, and to enable the court to sue previously-reserved time for other matters.
-Principle 17: Agree to reasonable requests for extension of time and waiver of procedural formalities when doing so will not adversely affect my client's legitimate rights.

D. Conducting Litigation in Bad Faith: Accusations, name-calling, claims that are baseless

-Principle 1: Advance the legitimate interests of clients without reflecting any ill will they may have for their adversaries, even if called on to do so, and treat all other counsel, parties and witnesses in a courteous manner.
-Principle 2: Never encourage or knowingly authorize a person under your direction or supervision to engage in conduct proscribed by these principles.

-Principle 3: Never, without good cause, attribute to other counsel bad motives or improprieties.
-Principle 26: Base discovery objections on a good faith belief in their merit, and not for the purpose of withholding or delaying the disclosure of relevant and non-privileged information.
-Principle 28: During argument, never attribute to other counsel a position or claim not taken, or seek to create such an unjustified inference.

E. The Use of Threats

-Principle 4: Never seek court sanctions unless they are fully justified by the circumstances and necessary to protect a client's legitimate interests and then only after a good faith effort to informally resolve the issue with counsel.

Once again, the ABOTA Principles of Civility, Integrity and Professionalism can be found at www.ABOTA.org.

Why Is The Profession Less Civil Today?

1. Society Has Changed

People are less civil to one another and courtesy, good manners and chivalry are disappearing. The Golden Rule is not valued as much as it was in the past. You see it on the roads, in the supermarket and in the courthouse. The focus now is on immediate results and winning at all costs. Technology has increased the pace of life, and fax machines, email and texting help keep the focus on immediacy. We have forgotten the need to pause, take a deep breathe and reflect before reacting.

As noted above, lawyers' reputations have declined as reflected by lawyer jokes, books and movies. Television shows on CNN, Fox News, the McLaughlin Group and Judge Judy put a premium on rude behavior and constant interruption which send the message that it is acceptable to not respect the views of others.

Incivility and bad manners are everywhere. We see it in sports with recent outbursts by tennis stars Roger Federer and Serena Williams at the 2009 U.S. Open. We see it in the rude behavior of rapper Kanye West at the 2009 MTV Music Video Awards that resulted in President Obama calling him a "jackass." We also see it in the political arena at the highest levels. South Carolina Congressman Joe Wilson felt it was appropriate to call President Obama a liar to his face during a joint session of Congress nationally televised in prime time.

2. Lawyers' Attitudes About Law As A Profession Have Changed

The first rule in ABOTA's Code of Professionalism is:

"Always remember that the practice of law is first and foremost a profession."

Unfortunately, many of us have forgotten this principle but it is not surprising that more and more lawyers view their calling as a "business." Law firms pressure their lawyers to increase billable hours when this is inconsistent with the fact that the best time to resolve a dispute is at the beginning and not at the end. There is intense competition for clients who are shopping for legal services. Declining client loyalty is a reality.

Distasteful advertising is another form of incivility. Lawyers market themselves as attack dogs, fighters, Supermen and gladiators where winning and big results are promoted and valued. This is becoming more prevalent on internet websites, the Yellow Pages, TV and billboards. A prevailing attitude is that litigation is war and that trial practice should be described in military terms. Winning at all costs is the goal which means that you can justify Rambo and "scorched earth" tactics to make life miserable for your opponent. The underlying concept is that discovery is to be used for purposes of intimidation rather than for fact finding. In fact, clients select lawyers for this aggressive "take no prisoners" attitude.

Threats are used to achieve the desired goals. The John McEnroe Syndrome is popular with some lawyers who think it is productive and actually "enjoyable." There is a declining importance of the concept that "my word is my bond" because, once again, it is the results that count.

There is a declining appreciation for one's reputation as opposed to how much money you can make, how many clients you have and how many cases you have won. In fact, many lawyers have realized that you do not need a good reputation in the legal community to get cases if you have a good marketing strategy and spend a lot of money on a fancy website on the internet. Who cares about being recognized by your peers and being a member of organizations like ABOTA, IATL, ISOB and the American College of Trial Lawyers, when you are dealing on the internet with potential clients who do not know the difference and do not care?

So, when you add this all up does it sound like we are becoming just another business? It certainly does.

3. The Legal Community Has Changed

There are more lawyers so there is less incentive to maintain cordial relationships because lawyers may never meet again. The legal community is no longer insular; it is more diverse and globalized. This inevitably leads to loss of collegiality. There seems to be an inverse relationship between the size of the community and civility.

The disappearing jury trial is another big change. Many lawyers have never tried a case let alone a jury trial and many never will. Jury trials teach you important lessons. If you are

uncivil at trial, the jury will hold it against you and you will learn a very expensive lesson.

Mushrooming discovery also is a perfect medium for the growth of incivility as outlined above. Discovery abuse can lead to sanctions and bad will.

Mentoring of young lawyers no longer exists. There is little time for it in the big firms and many of the more senior lawyers have little experience.

There are many more judges and they do not always appreciate that they are in a position to set the tone for civility. In fact, Code of Judicial Conduct, Canon (3)A(3) "requires" judges to be patient, dignified and courteous. ABOTA's *Principles of Civility, Integrity and Professionalism* also applies to judicial conduct.

Why Should We Embrace Civility?

1. Incivility Hurts Your Client

Incivility results in increased costs and fees. It leads to law and motion, sanctions, unnecessary expensive discovery and the need to pay expensive expert witnesses. It delays resolution of a dispute. No one wants to talk settlement or attend a mediation when they are engaged in an uncivil emotional battle.

Incivility is less effective. Why offend a witness at a deposition causing the witness to be guarded and defensive when a friendly, skilled approach will usually obtain all the the facts you need to develop and to win your case?

2. Incivility Hurts You

It destroys your reputation. No one wants to refer cases to someone who is unprofessional and who wastes a client's time and money. The most respected lawyers get the business.

It makes your life miserable. Unnecessary fighting generates stress and can make the practice of law intolerable. It can adversely affect your health and relationships. Collegiality is rewarding and healthy.

3. Incivility Hurts The Legal Profession and the Justice System

Incivility results in a lowered image of lawyers. No one likes it except the comedians. It interferes with a lawyer's role in society i.e. to serve his/her client to obtain justice. Any lawyer who has selected a jury recently can tell you about juror attitudes and how they affect the system.

How Do We Solve The Problem of Incivility?

1. The Short Term Solutions

Start every case with a telephone call to your opponent to introduce yourself and discuss how you would prefer to handle issues like discovery disputes, deposition notices, extensions of time and vacation scheduling. This will set an early tone of mutual respect and make your life easier. Instead of risking a downward spiral of incivility, you can hope to create an upward spiral of cooperation.

When you encounter uncivil behavior, say something about it. Invite your uncivil opponent to lunch so you can talk about it. You have the power to change attitudes and take the high road. Remember that civility starts with you.

Encourage voluntary disclosure during discovery whenever possible including identifying persons with knowledge, the mutual exchange of documents, arranging document reviews of voluminous records so an opponent can mark what he needs, and arranging informal interviews of parties in the presence of counsel where appropriate or necessary. Thinking "outside the box" may help you resolve your case sooner and more profitably for your client.

Stand up to bullies. Videotape depositions with uncivil opponents. Take up uncivil behavior with a judge who has the inherent power in most courts to control it. Also see Federal Rules of Civil Procedure, Rules 30 and 37.

2. The Long Term Solutions

We have to educate lawyers and law students about the advantages of civility. They need to learn to appreciate what John F. Kennedy said years ago: "Civility is not a sign of weakness." ABOTA is at the forefront of these efforts with its Civility Matters Programs in law schools, local bar associations and law firms. The various Inns of Court mentoring programs address civility and professionalism, too. Some law firms still have active mentoring programs. What we need is for more states to have a standing program for mentoring young lawyers in civility.

In 2008 the Utah Supreme Court approved a mandatory program to help lawyers during their first year of practice in professionalism, ethics and civility. The Montana ABOTA chapter is in the process of establishing a Civility Mentor/Mediator Program.

Other efforts are being made to make civility part of a lawyer's oath. This has been accomplished in South Carolina and Utah. Utah's oath provides as follows:

> I do solemnly swear that I will support, obey and defend the Constitution of the United States and the Constitution of Utah; that I will discharge the duties of attorney and counselor at law as an officer of the courts of this State with honesty, *professionalism* and *civility*; and that I will Observe the Rules of Professional Conduct and the Standards of Professionalism and Civility

promulgated by the Supreme Court of the State of Utah."

All the states should take Utah's lead of adding professionalism and civility to their attorney oaths and incorporating the state's civility standards, as well. Civility standards should be mandatory and not merely voluntary guidelines. Incivility will not end until we demand that officers of the court treat others with respect.

Filed 11/22/19

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

CYNTHIA BRIGANTI, Plaintiff and Respondent, v. KEITH CHOW, Defendant and Appellant.	B289046 (Los Angeles County Super. Ct. No. BC676243)

APPEAL from an order of the Superior Court of Los Angeles County, Gail Ruderman Feuer, Judge. Affirmed.

Khouri Law Firm, Michael J. Khouri & Behzad Vahidi for Plaintiff and Respondent.

Law Offices of Jan Stanley Mason, Jan Stanley Mason for Defendant and Appellant.

INTRODUCTION

Plaintiff and respondent Cynthia Briganti sued defendant and appellant Keith Chow for defamation and intentional interference with prospective economic advantage after Chow posted a comment on Facebook stating, among other things, that Briganti had been indicted, was a convicted criminal, and had stolen the identities of thousands of people. In response, Chow filed a special motion to strike the complaint under Code of Civil Procedure section 425.16[1] (i.e., an anti-SLAPP motion). The trial court granted the motion in part, striking the intentional interference with prospective economic advantage claim but not the defamation claim.

On appeal, Chow contends the trial court erred by denying the portion of his anti-SLAPP motion directed to the defamation claim. We apply well-established law to reject Chow's contention and affirm the trial court's order. We publish to draw attention to our concluding note on civility, sexism, and persuasive brief writing.

FACTUAL AND PROCEDURAL BACKGROUND

In her complaint, Briganti describes herself as a motivational speaker for an international water distributor. The distributor, Enagic, Inc. dba Kangen Water, sells water-ionization devices. Briganti says she speaks to large audiences about the water distributor to help sell its products. She also alleges she was the executive producer of a movie, "Slamma Jamma," released in theaters in 2017.

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[1] All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

Briganti has several mutual Facebook friends with Chow. In January 2017, Chow posted this comment on the Facebook timeline of one of their mutual friends: "CYNTHIA CABUNGCAL BRIGANTI the crooked Filipina Convicted CRIMINAL aka Queen of the SCAM artists stole thousands of innocent victims [sic] identities by parading in sheep [sic] dressing as an angel. But now the whole world knows after her indictment by the U.S. courts that she is nothing but Lucifer the Devil enriching herself at the expense of innocent victims by her multi-level marketing scams. Her latest scam was as Enagic Kangen water machine Queen duping tens of thousands of innocent victims out of their hard earned cash money. Good, our gracious and loving LORD best known as Jesus aka God will always triumph over evil. Believe in the Almighty God and he will protect and help you from CCB the criminal."

As noted above, Briganti sued Chow for defamation and intentional interference with prospective economic advantage, alleging Chow's statements were false and malicious, that they were seen by Enagic's Facebook followers, and they caused several investors to back out of her movie. She further alleges the post caused her movie to be released on a smaller scale and make less money than it would have otherwise.

Chow filed an anti-SLAPP motion, asking the trial court to strike Briganti's complaint in its entirety. He asserted Briganti's claims arose from protected activity and she could not provide evidence demonstrating she would prevail on her claims. Briganti opposed the motion, arguing her complaint does not arise from activity protected under the anti-SLAPP statute and she had shown a probability of success on the merits. She submitted her

own declaration and the declaration of her business partner in support of her opposition.

In a lengthy and detailed ruling, the trial court granted Chow's motion to strike Briganti's intentional interference with prospective economic advantage claim, but declined to strike Briganti's defamation claim. As noted above, Chow contends the trial court erred by not striking Briganti's defamation claim.

DISCUSSION

We review de novo a trial court's decision on an anti-SLAPP motion. (*Monster Energy Co. v. Schechter* (2019) 7 Cal.5th 781, 788.) The anti-SLAPP statute requires a two-step process: "At the first step, the moving defendant bears the burden of identifying all allegations of protected activity, and the claims for relief supported by them. . . . If the court determines that relief is sought based on allegations arising from activity protected by the statute, the second step is reached. There, the burden shifts to the plaintiff to demonstrate that each challenged claim based on protected activity is legally sufficient and factually substantiated. The court, without resolving evidentiary conflicts, must determine whether the plaintiff's showing, if accepted by the trier of fact, would be sufficient to sustain a favorable judgment. If not, the claim is stricken." (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 396.) In making these determinations the court considers "the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based." (§ 425.16, subd. (b)(2).)

A. Briganti's Complaint Arose from Protected Activity

The anti-SLAPP statute defines protected activities as: "(1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest." (§ 425.16, subd. (e).)

We agree with the trial court's conclusion that the comments upon which Briganti bases her claims implicate an issue of public interest, and therefore qualify as a protected activity. As the trial court explained, "Chow's comments describe a widespread pattern of identity theft and multi-level marketing scams, which, he claims, have ensnared 'tens of thousands of innocent victims.' [citation.] [fn. omitted] This alleged mass criminality would be 'of concern to a substantial number of people.' [citation.] This was evidently Chow's hope for the Facebook post, as Briganti has provided additional posts made by Chow in the same Facebook thread in which he exhorts commenters to warn their friends and family of Briganti's conduct in the hopes of building mass awareness. [citation.]"

Briganti argues Chow "has failed to produce a single shred of evidence to support his statement that Briganti has stolen thousands of innocent victims' identities." But the inquiry at this stage of the anti-SLAPP analysis is not whether the statements are true, but whether the *allegations* in the complaint are a matter of public interest. We conclude alleged widespread, criminal identity theft is a matter of public interest.

B. Briganti Met Her Burden to Show a Probability of Prevailing on Her Defamation Claim

At the second anti-SLAPP step, the plaintiff bears the burden of demonstrating a probability of prevailing on each claim arising from protected activity. (*Baral, supra*, 1 Cal.5th at p. 384.) A plaintiff must "demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited." (*Matson v. Dvorak* (1995) 40 Cal.App.4th 539, 548.) Under the "'summary-judgment-like procedure'" applicable at this step, the court "does not weigh evidence or resolve conflicting factual claims." (*Baral, supra*, 1 Cal.5th at p. 384.) Chow contends Briganti cannot establish a prima facie claim for defamation because Chow's statements on Facebook constituted "'nonactionable opinion.'" We disagree.

"The elements of a defamation claim are (1) a publication that is (2) false, (3) defamatory, (4) unprivileged, and (5) has a tendency to injure or causes special damage." (*Wong v. Jing* (2010) 189 Cal.App.4th 1354, 1369.) "Libel is a false and unprivileged publication by writing, printing, picture, effigy, or other fixed representation to the eye, which exposes any person

to hatred, contempt, ridicule, or obloquy, or which causes him to be shunned or avoided, or which has a tendency to injure him in his occupation." (Civ. Code, § 45.)

In support of her defamation claim, Briganti submitted the following evidence: (1) the Facebook post at issue, in which Chow states she is a convicted criminal, that she has been indicted, and that she has stolen thousands of individuals' identities; (2) her declaration stating she has never been convicted of, or indicted for, any crime, and she has not stolen thousands of innocent victims' identities[2]; (3) her declaration stating Chow's Facebook post inhibited her ability to raise sufficient marketing funds to fully support the release of the movie she had produced; and (4) a declaration of her business partner stating multiple international investors backed out of investing in the movie because of the damage to Briganti's reputation from Chow's Facebook post.

Chow argues a reasonable reader of his Facebook post would have known the statements were mere "'epithets, fiery rhetoric or hyperbole'" constituting nonactionable opinions as opposed to factual assertions. At this stage of the anti-SLAPP analysis, however, Briganti need only establish her claim has at least "'minimal merit'" (*Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, 1061.) Briganti is "not required 'to *prove* the specified claim to the trial court;' rather, so as to not deprive the plaintiff of a jury trial, the appropriate inquiry is whether the plaintiff has stated and substantiated a legally sufficient claim." (*Whitehall v. County of San Bernardino* (2017) 17 Cal.App.5th 352, 364.) She has met this burden. (See,

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[2] Briganti acknowledges Chow sought and obtained a civil judgment against her for fraudulent conduct, but she was never charged with or convicted of a crime.

e.g. *Barnes-Hind, Inc. v. Superior Court* (1986) 181 Cal.App.3d 377, 385 ["Perhaps the clearest example of libel per se is an accusation of crime."]*; ZL Technologies, Inc. v. Does 1-7* (2017) 13 Cal.App.5th 603, 625 [""[N]ot every word of an allegedly defamatory publication has to be false and defamatory to sustain a libel action . . . . 'The test of libel is not quantitative; a single sentence may be the basis for an action in libel even though buried in a much longer text . . .'"[Citation.]']") Thus, we agree with the trial court's conclusion that Briganti's showing "is adequate to establish a prima facie claim for defamation. The statements complained of – that she had been indicted, that she was a convicted criminal, and that she had stolen the identities of thousands of people – are plainly defamatory in character and would tend to expose their subject 'to hatred, contempt, ridicule, or obloquy.' (*Wong, supra,* 189 Cal.App.4th at p. 1369.)."

Accordingly, Briganti has demonstrated her defamation claim has "at least 'minimal merit'" and therefore, should not be stricken. (*Park v. Board of Trustees of California State University*, *supra*, 2 Cal.5th at p. 1061.)[3]

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[3] Chow argued in the court below that his Facebook post is privileged; thus, he asserted, Briganti must prove the statement was made with malice. Chow failed to raise this argument on appeal, however. We therefore treat it as abandoned. (*108 Holdings, Ltd. v. City of Rohnert Park* (2006) 136 Cal.App.4th 186, 193, fn. 3.)

C. A Note on Civility, Sexism, and Persuasive Brief Writing

Having resolved the merits of this appeal, we would be remiss if we did not also comment on a highly inappropriate assessment of certain personal characteristics of the trial judge, including her appearance, in the opening paragraph of Chow's reply brief. We do so not to punish or embarrass, but to take advantage of a teachable moment.

The offending paragraph states: "Briganti . . . claims that . . . Chow defamed her by claiming she was 'indicted' for criminal conduct, which is the remaining charge [in the case] after the [trial judge] . . . an attractive, hard-working, brilliant, young, politically well-connected judge on a fast track for the California Supreme Court or Federal Bench, ruled for Chow granting his anti-SLAPP Motion to Strike Respondent's Second Cause of Action but against Chow denying his anti-SLAPP Motion against the First Cause of Action . . . . With due respect, every so often, an attractive, hard-working, brilliant, young, politically well-connected judge can err! Let's review the errors!" [Original capitalization preserved.]

When questioned at oral argument, Chow's counsel stated he intended to compliment the trial judge. Nevertheless, we conclude the brief's opening paragraph reflects gender bias and disrespect for the judicial system.

As two of our judicial colleagues noted recently, "[d]espite the record numbers of women graduating from law school and entering the legal profession in recent decades, as well as the increase in women judges and women in leadership positions — not to mention the [#MeToo] movement — women in the legal

profession continue to encounter" discrimination.[4] Unfortunately, "unequal treatment does not cease once a woman joins the judiciary." (*Ibid.*) Calling a woman judge — now an Associate Justice of this court — "attractive," as Chow does twice at the outset of his reply brief, is inappropriate because it is both irrelevant and sexist. This is true whether intended as a compliment or not. Such comments would not likely have been made about a male judge. (*Ibid.*)

As Presiding Justice Edmon and Supervising Judge Jessner observed in their article, gender discrimination is a subcategory of the larger scourge of incivility afflicting law practice. (*Ibid.*) Objectifying or demeaning a member of the profession, especially when based on gender, race, sexual preference, gender identity, or other such characteristics, is uncivil and unacceptable. Moreover, the comments in the brief demean the serious business of this court. We review judgments and judicial rulings, not physical or other supposed personal characteristics of superior court judges.

The California Code of Judicial Ethics compels us to require lawyers in proceedings before us "to refrain from . . . manifesting, by words or conduct, bias, prejudice, or harassment based upon race, sex, gender, gender identity, gender expression, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation . . . ." (Cal. Code Jud. Ethics, canon 3B(6)(a).) That goes for unconscious as well as conscious bias. Moreover, as

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[4] (L. Edmon & S. Jessner, Gender Equality is Part of the Civility Issue (Summer 2019) ABTL Report Los Angeles 21, http://www.abtl.org/report/la/abtlla_summer2019.pdf [as of October 28, 2019], archived at <https://perma.cc/2HSM-XQZW>.)

judicial officers, we can and should take steps to help reduce incivility, including gender-based incivility.[5] One method is by calling gendered incivility out for what it is and insisting it not be repeated. In a more extreme case we would be obliged to report the offending lawyer to the California State Bar. (*Martinez v. O'Hara* (2019) 32 Cal.App.5th 853, 854.)

We conclude by extending our thanks to the many talented lawyers whose excellent briefs and scrupulous professionalism make our work product better and our task more enjoyable. Good brief-writing requires hard work, rigorous analysis, and careful attention to detail. Moreover, we recognize "every brief presents opportunities for creativity— for imaginative approaches that will convey the point most effectively."[6] We welcome creativity and do not require perfection. We simply did not find the peculiar style and content of this brief's opening paragraph appropriate, helpful, or persuasive.

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[5] (See B. Currey & K. Brazille, Seven Things Judges Can Do to Promote Civility Outside the Courtroom (Summer 2019) ABTL Report Los Angeles 11, 12-13, http://www.abtl.org/report/la/abtlla_summer2019.pdf [as of October 28, 2019], archived at ,https://perma.cc/2HSM-XQZW7>.)

[6] (Garner, The Winning Brief 18 (3rd ed. 2014).)

DISPOSITION

The order is affirmed. Briganti is awarded her costs on appeal.

CERTIFIED FOR PUBLICATION

CURREY, J.

WE CONCUR:

WILLHITE, Acting P. J.

COLLINS, J.

California Attorney
Guidelines of Civility and Professionalism

The State Bar of California
180 Howard Street
San Francisco, CA 94105-1639

Adopted by the Board of Governors on
July 20, 2007

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ENTIRE GUIDELINES WITH EXAMPLES

CALIFORNIA ATTORNEY
GUIDELINES OF CIVILITY AND PROFESSIONALISM

(Adopted July 20, 2007)

INTRODUCTION

As officers of the court with responsibilities to the administration of justice, attorneys have an obligation to be professional with clients, other parties and counsel, the courts and the public. This obligation includes civility, professional integrity, personal dignity, candor, diligence, respect, courtesy, and cooperation, all of which are essential to the fair administration of justice and conflict resolution.

These are guidelines for civility. The Guidelines are offered because civility in the practice of law promotes both the effectiveness and the enjoyment of the practice and economical client representation. The legal profession must strive for the highest standards of attorney behavior to elevate and enhance our service to justice. Uncivil or unprofessional conduct not only disserves the individual involved, it demeans the profession as a whole and our system of justice.

These voluntary Guidelines foster a level of civility and professionalism that exceed the minimum requirements of the mandated Rules of Professional Conduct as the best practices of civility in the practice of law in California. The Guidelines are not intended to supplant these or any other rules or laws that govern attorney conduct. Since the Guidelines are not mandatory rules of professional conduct, nor rules of practice, nor standards of care, they are not to be used as an independent basis for disciplinary charges by the State Bar or claims of professional negligence.

The Guidelines are intended to complement codes of professionalism adopted by bar associations in California. Individual attorneys are encouraged to make these guidelines their personal standards by taking the pledge that appears at the end. The Guidelines can be applicable to all lawyers regardless of practice area. Attorneys are encouraged to comply with both the spirit and letter of these guidelines, recognizing that complying with these guidelines does not in any way denigrate the attorney's duty of zealous representation.

SECTION 1
RESPONSIBILITIES TO THE JUSTICE SYSTEM

The dignity, decorum and courtesy that have traditionally characterized the courts and legal profession of civilized nations are not empty formalities. They are essential to an atmosphere that promotes justice and to an attorney's responsibility for the fair and impartial administration of justice.

SECTION 2
RESPONSIBILITIES TO THE PUBLIC AND THE PROFESSION

An attorney should be mindful that, as individual circumstances permit, the goals of the profession include improving the administration of justice and contributing time to persons and organizations that cannot afford legal assistance.

An attorney should encourage new members of the bar to adopt these guidelines of civility and professionalism and mentor them in applying the guidelines.

SECTION 3
RESPONSIBILITIES TO THE CLIENT AND CLIENT REPRESENTATION

An attorney should treat clients with courtesy and respect, and represent them in a civil and professional manner. An attorney should advise current and potential clients that it is not acceptable for an attorney to engage in abusive behavior or other conduct unbecoming a member of the bar and an officer of the court.

As an officer of the court, an attorney should not allow clients to prevail upon the attorney to engage in uncivil behavior.

An attorney should not compromise the guidelines of civility and professionalism to achieve an advantage.

SECTION 4
COMMUNICATIONS

An attorney's communications about the legal system should at all times reflect civility, professional integrity, personal dignity, and respect for the legal system. An attorney should not engage in conduct that is unbecoming a member of the Bar and an officer of the court.

For example, in communications about the legal system and with adversaries:

a. An attorney's conduct should be consistent with high respect and esteem for the civil and criminal justice systems.

b. This guideline does not prohibit an attorney's good faith expression of dissent or criticism made in public or private discussions for the purpose of improving the legal system or profession.

c. An attorney should not disparage the intelligence, integrity, ethics, morals or behavior of the court or other counsel, parties or participants when those characteristics are not at issue.

d. Respecting cultural diversity, an attorney should not disparage another's personal characteristics.

e. An attorney should not make exaggerated, false, or misleading statements to the media while representing a party in a pending matter.

f. An attorney should avoid hostile, demeaning or humiliating words.

g. An attorney should not create a false or misleading record of events or attribute to an opposing counsel a position not taken.

h. An attorney should agree to reasonable requests in the interests of efficiency and economy, including agreeing to a waiver of procedural formalities where appropriate.

i. Unless specifically permitted or invited by the court or authorized by law, an attorney should not correspond directly with the court regarding a case.

Nothing above shall be construed as discouraging the reporting of conduct that fails to comply with the Rules of Professional Conduct.

SECTION 5
PUNCTUALITY

An attorney should be punctual in appearing at trials, hearings, meetings, depositions and other scheduled appearances.

For example:

a. An attorney should arrive sufficiently in advance to resolve preliminary matters.

b. An attorney should timely notify participants when the attorney will be late or is aware that a participant will be late.

SECTION 6
SCHEDULING, CONTINUANCES AND EXTENSIONS OF TIME

An attorney should advise clients that civility and courtesy in scheduling meetings, hearings and discovery are expected as professional conduct.

For example:

a. An attorney should consider the scheduling interests of the court, other counsel or party, and other participants, should schedule by agreement whenever possible, and should send formal notice after agreement is reached.

b. An attorney should not arbitrarily or unreasonably withhold consent to a request for scheduling accommodations or engage in delay tactics.

c. An attorney should promptly notify the court and other counsel of problems with key participants' availability.

d. An attorney should promptly notify other counsel and, if appropriate, the court, when scheduled meetings, hearings or depositions must be cancelled or rescheduled, and provide alternate dates when possible.

In considering requests for an extension of time, an attorney should consider the client's interests and need to promptly resolve matters, the schedules and willingness of others to grant reciprocal extensions, the time needed for a task, and other relevant factors.

Consistent with existing law and court orders, an attorney should agree to reasonable requests for extensions of time that are not adverse to a client's interests.

For example:

a. Unless time is of the essence, an attorney should agree to an extension without requiring motions or other formalities, regardless of whether the requesting counsel previously refused to grant an extension.

b. An attorney should agree to an appropriate continuance when new counsel substitutes in.

c. An attorney should advise clients that failing to agree with reasonable requests for time extensions is inappropriate.

d. An attorney should not use extensions or continuances for harassment or to extend litigation.

e. An attorney should place conditions on an agreement to an extension only if they are fair and essential or if the attorney is entitled to impose them, for instance to preserve rights or seek reciprocal scheduling concessions.

f. If an attorney intends that a request for or agreement to an extension shall cut off a party's substantive rights or procedural options, the attorney should disclose that intent at the time of the request or agreement.

SECTION 7
SERVICE OF PAPERS

The timing and manner of service of papers should not be used to the disadvantage of the party receiving the papers.

For example:

a. An attorney should serve papers on the attorney who is responsible for the matter at his or her principal place of work.

b. If possible, papers should be served upon counsel at a time agreed upon in advance.

c. When serving papers, an attorney should allow sufficient time for opposing counsel to prepare for a court appearance or to respond to the papers.

d. An attorney should not serve papers to take advantage of an opponent's absence or to inconvenience the opponent, for instance by serving papers late on Friday afternoon or the day preceding a holiday.

e. When it is likely that service by mail will prejudice an opposing party, an attorney should serve the papers by other permissible means.

SECTION 8
WRITINGS SUBMITTED TO THE COURT, COUNSEL OR OTHER PARTIES

Written materials directed to counsel, third parties or a court should be factual and concise and focused on the issue to be decided.

For example:

a. An attorney should not make ad hominem attacks on opposing counsel.

b. Unless at issue or relevant in a particular proceeding, an attorney should avoid degrading the intelligence, ethics, morals, integrity, or personal behavior of others.

c. An attorney should clearly identify all revisions in a document previously submitted to the court or other counsel.

SECTION 9
DISCOVERY

Attorneys are encouraged to meet and confer early in order to explore voluntary disclosure, which includes identification of issues, identification of persons with knowledge of such issues, and exchange of documents.

Attorneys are encouraged to propound and respond to formal discovery in a manner designed to fully implement the purposes of the Civil Discovery Act.

An attorney should not use discovery to harass an opposing counsel, parties, or witnesses. An attorney should not use discovery to delay the resolution of a dispute.

For example:

a. As to Depositions:

1. When another party notices a deposition for the near future, absent unusual circumstances, an attorney should not schedule another deposition in the same case for an earlier date without opposing counsel's agreement.

2. An attorney should delay a scheduled deposition only when necessary to address scheduling problems and not in bad faith.

3. An attorney should treat other counsel and participants with courtesy and civility, and should not engage in conduct that would be inappropriate in the presence of a judicial officer.

4. An attorney should remember that vigorous advocacy can be consistent with professional courtesy, and that arguments or conflicts with other counsel should not be personal.

5. An attorney questioning a deponent should provide other counsel present with a copy of any documents shown to the deponent before or contemporaneously with showing the document to the deponent.

6. Once a question is asked, an attorney should not interrupt a deposition or make an objection for the purpose of coaching a deponent or suggesting answers.

7. An attorney should not direct a deponent to refuse to answer a question or end the deposition without a legal basis for doing so.

8. An attorney should refrain from self-serving speeches and speaking objections.

b. As to Document Demands:

1. Document requests should be used only to seek those documents that are reasonably needed to prosecute or defend an action.

2. An attorney should not make demands to harass or embarrass a party or witness or to impose an inordinate burden or expense in responding.

3. If an attorney inadvertently receives a privileged document, the attorney should promptly notify the producing party that the document has been received.

4. In responding to a document demand, an attorney should not intentionally misconstrue a request in such a way as to avoid disclosure or withhold a document on the grounds of privilege.

5. An attorney should not produce disorganized or unintelligible documents, or produce documents in a way that hides or obscures the existence of particular documents.

6. An attorney should not delay in producing a document in order to prevent opposing counsel from inspecting the document prior to or during a scheduled deposition or for some other tactical reason.

c. As to Interrogatories:

1. An attorney should narrowly tailor special interrogatories and not use them to harass or impose an undue burden or expense on an opposing party.

2. An attorney should not intentionally misconstrue or respond to interrogatories in a manner that is not truly responsive.

3. When an attorney lacks a good faith belief in the merit of an objection, the attorney should not object to an interrogatory. If an interrogatory is objectionable in part, an attorney should answer the unobjectionable part.

SECTION 10
MOTION PRACTICE

An attorney should consider whether, before filing or pursuing a motion, to contact opposing counsel to attempt to informally resolve or limit the dispute.

For example:

a. Before filing demurrers, motions to strike, motions to transfer venue, and motions for judgment on the pleadings, an attorney should engage in more than a pro forma effort to resolve the issue.

b. In complying with any meet and confer requirement in the California Code of Civil Procedure, an attorney should speak personally with opposing counsel and engage in a good faith effort to resolve or informally limit an issue.

c. An attorney should not engage in conduct that forces an opposing counsel to file a motion and then not oppose the motion.

d. An attorney who has no reasonable objection to a proposed motion should promptly make this position known to opposing counsel, who then may file an unopposed motion or avoid filing a motion.

e. After opposing a motion, if an attorney recognizes that the movant's position is correct, the attorney should promptly advise the movant and the court of this change in position.

f. Because requests for monetary sanctions, even if statutorily authorized, can lead to the destruction of a productive relationship between counsel or parties, monetary sanctions should not be sought unless fully justified by the circumstances and necessary to protect a client's legitimate interests and then only after a good faith effort to resolve the issue informally among counsel.

SECTION 11
DEALING WITH NONPARTY WITNESSES

It is important to promote high regard for the profession and the legal system among those who are neither attorneys nor litigants. An attorney's conduct in dealings with nonparty witnesses should exhibit the highest standards of civility.

For example:

a. An attorney should be courteous and respectful in communications with nonparty witnesses.

b. Upon request, an attorney should extend professional courtesies and grant reasonable accommodations, unless to do so would materially prejudice the client's lawful objectives.

c. An attorney should take special care to protect a witness from undue harassment or embarrassment and to state questions in a form that is appropriate to the witness's age and development.

d. An attorney should not issue a subpoena to a nonparty witness for inappropriate tactical or strategic purposes, such as to intimidate or harass the nonparty.

e. As soon as an attorney knows that a previously scheduled deposition will or will not, in fact, go forward as scheduled, the attorney should notify all counsel.

f. An attorney who obtains a document pursuant to a deposition subpoena should, upon request, make copies of the document available to all other counsel at their expense.

SECTION 12
EX PARTE COMMUNICATION WITH THE COURT

In a social setting or otherwise, an attorney should not communicate ex parte with a judicial officer on the substance of a case pending before the court, unless permitted by law.

SECTION 13
SETTLEMENT AND ALTERNATIVE DISPUTE RESOLUTION

An attorney should raise and explore with the client and, if the client consents, with opposing counsel, the possibility of settlement and alternative dispute resolution in every matter as soon as possible and, when appropriate, during the course of litigation.

For example:

a. An attorney should advise a client at the outset of the relationship of the availability of informal or alternative dispute resolution.

b. An attorney should attempt to evaluate a matter objectively and to de-escalate any controversy or dispute in an effort to resolve or limit the controversy or dispute.

c. An attorney should consider whether alternative dispute resolution would adequately serve a client's interest and dispose of the controversy expeditiously and economically.

d. An attorney should honor a client's desire to settle the dispute quickly and in a cost-effective manner.

e. An attorney should use an alternative dispute resolution process for purposes of settlement and not for delay or other improper purposes, such as discovery.

f. An attorney should participate in good faith, and assist the alternative dispute officer by providing pertinent and accurate facts, law, theories, opinions and arguments in an attempt to resolve a dispute.

g. An attorney should not falsely hold out the possibility of settlement as a means for terminating discovery or delaying trial.

SECTION 14
CONDUCT IN COURT

To promote a positive image of the profession, an attorney should always act respectfully and with dignity in court and assist the court in proper handling of a case.

For example:

a. An attorney should be punctual and prepared.

b. An attorney's conduct should avoid disorder or disruption and preserve the right to a fair trial.

c. An attorney should maintain respect for and confidence in a judicial office by displaying courtesy, dignity and respect toward the court and courtroom personnel.

d. An attorney should refrain from conduct that inappropriately demeans another person.

e. Before appearing in court, an attorney should advise a client of the kind of behavior expected of the client and endeavor to prevent the client from creating disorder or disruption in the courtroom.

f. An attorney should make objections for legitimate and good faith reasons, and not for the purpose of harassment or delay.

g. An attorney should honor an opposing counsel's requests that do not materially prejudice the rights of the attorney's client or sacrifice tactical advantage.

h. While appearing before the court, an attorney should address all arguments, objections and requests to the court, rather than directly to opposing counsel.

i. While appearing in court, an attorney should demonstrate sensitivity to any party, witness or attorney who has requested, or may need, accommodation as a person with physical or mental impairment, so as to foster full and fair access of all persons to the court.

SECTION 15
DEFAULT

An attorney should not take the default of an opposing party known to be represented by counsel without giving the party advance warning.

For example an attorney should not race opposing counsel to the courthouse to knowingly enter a default before a responsive pleading can be filed. This guideline is intended to apply only to taking a default when there is a failure to timely respond to complaints, cross-complaints, and amended pleadings.

SECTION 16
SOCIAL RELATIONSHIPS WITH JUDICIAL OFFICERS, NEUTRALS AND COURT APPOINTED EXPERTS

An attorney should avoid even the appearance of bias by notifying opposing counsel or an unrepresented opposing party of any close, personal relationships between the attorney and a judicial officer, arbitrator, mediator or court-appointed expert and allowing a reasonable opportunity to object.

SECTION 17
PRIVACY

An attorney should respect the privacy rights of parties and nonparties.

For example:

a. An attorney should not inquire into, attempt or threaten to use, private facts concerning any party or other individuals for the purpose of gaining an advantage in a case. This guideline does not preclude inquiry into sensitive matters relevant to an issue, as long as the inquiry is pursued as narrowly as possible.

b. If an attorney must inquire into an individual's private affairs, the attorney should cooperate in arranging for protective measures, including stipulating to an appropriate protective order, designed to assure that the information revealed is disclosed only for purposes relevant to the pending litigation.

c. Nothing herein shall be construed as authorizing the withholding of information in violation of applicable law.

SECTION 18
NEGOTIATION OF WRITTEN AGREEMENTS

An attorney should negotiate and conclude written agreements in a cooperative manner and with informed authority of the client.

For example:

a. An attorney should use boilerplate provisions only if they apply to the subject of the agreement.

b. If an attorney modifies a document, the attorney should clearly identify the change and bring it to the attention of other counsel.

c. An attorney should avoid negotiating tactics that are abusive; that are not made in good faith; that threaten inappropriate legal action; that are not true; that set arbitrary deadlines; that are intended solely to gain an unfair advantage or take unfair advantage of a superior bargaining position; or that do not accurately reflect the client's wishes or previous oral agreements.

d. An attorney should not participate in an action or the preparation of a document that is intended to circumvent or violate applicable laws or rules.

In addition to other applicable Sections of these Guidelines, attorneys engaged in a transactional practice have unique responsibilities because much of the practice is conducted without judicial supervision.

For example:

a. Attorneys should be mindful that their primary goals are to negotiate in a manner that accurately represents their client and the purpose for which they were retained.

b. Attorneys should successfully and timely conclude a transaction in a manner that accurately represents the parties' intentions and has the least likely potential for litigation.

c. With client approval, attorneys should consider giving each party permission to contact the employees of the other party for the purpose of promptly and efficiently obtaining necessary information and documents.

SECTION 19
ADDITIONAL PROVISION FOR FAMILY LAW PRACTITIONERS

In addition to other applicable Sections of these Guidelines, in family law proceedings an attorney should seek to reduce emotional tension and trauma and encourage the parties and attorneys to interact in a cooperative atmosphere, and keep the best interest of the children in mind.

For example:

a. An attorney should discourage and should not abet vindictive conduct.

b. An attorney should treat all participants with courtesy and respect in order to minimize the emotional intensity of a family dispute.

c. An attorney representing a parent should consider the welfare of a minor child and seek to minimize the adverse impact of the family law proceeding on the child.

SECTION 20
ADDITIONAL PROVISION FOR CRIMINAL LAW PRACTITIONERS

In addition to other applicable Sections of these Guidelines, criminal law practitioners have unique responsibilities. Prosecutors are charged with seeking justice, while defenders must zealously represent their clients even in the face of seemingly overwhelming evidence of guilt. In practicing criminal law, an attorney should appreciate these roles.

For example:

a. A prosecutor should not question the propriety of defending a person accused of a crime.

b. Appellate counsel and trial counsel should communicate openly, civilly and without rancor, endeavoring to keep the proceedings on a professional level.

SECTION 21
COURT PROCEEDINGS

Judges are encouraged to become familiar with these Guidelines and to support and promote them where appropriate in court proceedings.

ATTORNEY'S PLEDGE

I commit to these Guidelines of Civility and Professionalism and will be guided by a sense of integrity, cooperation and fair play.

I will abstain from rude, disruptive, disrespectful, and abusive behavior, and will act with dignity, decency, courtesy, and candor with opposing counsel, the courts and the public.

As part of my responsibility for the fair administration of justice, I will inform my clients of this commitment and, in an effort to help promote the responsible practice of law, I will encourage other attorneys to observe these Guidelines.

_____ _____

(Signature) (Date)

_____

(Print Name)

California Attorney
Guidelines of Civility and Professionalism

(Abbreviated Without Examples)

The State Bar of California
180 Howard Street
San Francisco, CA 94105-1639

Adopted by the Board of Governors on
July 20, 2007

California Attorney Guidelines of Civility and Professionalism

(Abbreviated, adopted July 20, 2007)

INTRODUCTION. As officers of the court with responsibilities to the administration of justice, attorneys have an obligation to be professional with clients, other parties and counsel, the courts and the public. This obligation includes civility, professional integrity, personal dignity, candor, diligence, respect, courtesy, and cooperation, all of which are essential to the fair administration of justice and conflict resolution.

These are guidelines for civility. The Guidelines are offered because civility in the practice of law promotes both the effectiveness and the enjoyment of the practice and economical client representation. The legal profession must strive for the highest standards of attorney behavior to elevate and enhance our service to justice. Uncivil or unprofessional conduct not only disserves the individual involved, it demeans the profession as a whole and our system of justice.

These voluntary Guidelines foster a level of civility and professionalism that exceed the minimum requirements of the mandated Rules of Professional Conduct as the best practices of civility in the practice of law in California. The Guidelines are not intended to supplant these or any other rules or laws that govern attorney conduct. Since the Guidelines are not mandatory rules of professional conduct, nor rules of practice, nor standards of care, they are not to be used as an independent basis for disciplinary charges by the State Bar or claims of professional negligence.

The Guidelines are intended to complement codes of professionalism adopted by bar associations in California. Individual attorneys are encouraged to make these guidelines their personal standards by taking the pledge that appears at the end. The Guidelines can be applicable to all lawyers regardless of practice area. Attorneys are encouraged to comply with both the spirit and letter of these guidelines, recognizing that complying with these guidelines does not in any way denigrate the attorney's duty of zealous representation.

SECTION 1. The dignity, decorum and courtesy that have traditionally characterized the courts and legal profession of civilized nations are not empty formalities. They are essential to an atmosphere that promotes justice and to an attorney's responsibility for the fair and impartial administration of justice.

SECTION 2. An attorney should be mindful that, as individual circumstances permit, the goals of the profession include improving the administration of justice and contributing time to persons and organizations that cannot afford legal assistance.

An attorney should encourage new members of the bar to adopt these guidelines of civility and professionalism and mentor them in applying the guidelines.

SECTION 3. An attorney should treat clients with courtesy and respect, and represent them in a civil and professional manner. An attorney should advise current and potential clients that it is not acceptable for an attorney to engage in abusive behavior or other conduct unbecoming a member of the bar and an officer of the court.

As an officer of the court, an attorney should not allow clients to prevail upon the attorney to engage in uncivil behavior.

An attorney should not compromise the guidelines of civility and professionalism to achieve an advantage.

SECTION 4. An attorney's communications about the legal system should at all times reflect civility, professional integrity, personal dignity, and respect for the legal system. An attorney should not engage in conduct that is unbecoming a member of the Bar and an officer of the court.

Nothing above shall be construed as discouraging the reporting of conduct that fails to comply with the Rules of Professional Conduct.

SECTION 5. An attorney should be punctual in appearing at trials, hearings, meetings, depositions and other scheduled appearances.

SECTION 6. An attorney should advise clients that civility and courtesy in scheduling meetings, hearings and discovery are expected as professional conduct.

In considering requests for an extension of time, an attorney should consider the client's interests and need to promptly resolve matters, the schedules and willingness of others to grant reciprocal extensions, the time needed for a task, and other relevant factors.

Consistent with existing law and court orders, an attorney should agree to reasonable requests for extensions of time that are not adverse to a client's interests.

SECTION 7. The timing and manner of service of papers should not be used to the disadvantage of the party receiving the papers.

SECTION 8. Written materials directed to counsel, third parties or a court should be factual and concise and focused on the issue to be decided.

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SECTION 10. An attorney should consider whether, before filing or pursuing a motion, to contact opposing counsel to attempt to informally resolve or limit the dispute.

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SECTION 18. An attorney should negotiate and conclude written agreements in a cooperative manner and with informed authority of the client.

In addition to other applicable Sections of these Guidelines, attorneys engaged in a transactional practice have unique responsibilities because much of the practice is conducted without judicial supervision.

SECTION 19. In addition to other applicable Sections of these Guidelines, in family law proceedings an attorney should seek to reduce emotional tension and trauma and encourage the parties and attorneys to interact in a cooperative atmosphere, and keep the best interests of the children in mind.

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SECTION 21. Judges are encouraged to become familiar with these Guidelines and to support and promote them where appropriate in court proceedings.

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