



Civility[®] Matters

A B O T A F O U N D A T I O N



Endorsed by the American Inns of Court

CODE OF PROFESSIONALISM

As a member of the American Board of Trial Advocates, I shall

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

Encourage respect for the law, the courts, and the right to trial by jury.

Always remember that my word is my bond and honor my responsibilities to serve as an officer of the court and protector of individual rights.

Contribute time and resources to public service, public education, charitable and pro bono activities in my community.

Work with the other members of the bar, including judges, opposing counsel, and those whose practices are different from mine, to make our system of justice more accessible and responsive.

Resolve matters and disputes expeditiously, without unnecessary expense, and through negotiation whenever possible.

Keep my clients well-informed and involved in making decisions affecting them.

Achieve and maintain proficiency in my practice and continue to expand my knowledge of the law.

Be respectful in my conduct toward my adversaries.

Honor the spirit and intent, as well as the requirements of applicable rules or codes of professional conduct, and shall encourage others to do so.

American Board
of Trial Advocates™



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What is Civility Matters®?

The Foundation of the American Board of Trial Advocates is proud to present Civility Matters, an effort to promote one of the main tenets of ABOTA's Constitution:

“To elevate the standards of integrity, honor and courtesy in the legal profession.”

ABOTA created Civility Matters with the hope that the program would be presented at ABOTA educational activities, other bar and professional programs, and, especially, in every law school in the country. The programs feature first-hand lessons and experience from ABOTA members and are intended to instill values and standards that promote high regard for the legal profession.

What is the ABOTA Foundation?

The mission of the Foundation is to support the purposes of the American Board of Trial Advocates, to preserve the constitutional vision of equal justice for all Americans, and to preserve our civil justice system for future generations.

Who are ABOTA Members?

The American Board of Trial Advocates is an invitation-only membership organization comprising more than 7,500 of the nation's premier civil trial lawyers equally balanced between plaintiff and defense. Members must complete a requisite number of civil jury trials and maintain high personal character and honorable reputation in their field.

Civility Matters® is a publication of the ABOTA Foundation's Professional Education Committee. We recognize the vision of David B. Casselman. We thank Wilma J. Gray, Donald J. Winder, and William B. Smith from the Professionalism, Ethics and Civility Committee for their contributions to this program.

Help us spread civility nationwide! Each year, hundreds of Civility Matters programs across the country seek to raise the level of professionalism and respect in the legal community. If your chapter or firm would like to host a Civility Matters program in your area, visit **ABOTACivilityMatters.org** to obtain the resources, guides and information. Please contact the Foundation if you plan to host or have previously hosted a Civility Matters program. We maintain a list of programs and would like to recognize your efforts.

ABOTA also seeks to have civility language added to the attorney oath in each state. Visit our website for a map of current oaths containing civility language, and for information on getting language added in your state, contact the ABOTA Foundation at (800) 779-5879.



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Principles of Civility, Integrity and Professionalism

American Board of Trial Advocates

Preamble

These Principles supplement the precepts set forth in ABOTA's Code of Professionalism and are a guide to the proper conduct of litigation. Civility, integrity, and professionalism are the hallmarks of our learned calling, dedicated to the administration of justice for all. Counsel adhering to these principles will further the truth-seeking process so that disputes will be resolved in a just, dignified, courteous, and efficient manner.

These principles are not intended to inhibit vigorous advocacy or detract from an attorney's duty to represent a client's cause with faithful dedication to the best of counsel's ability. Rather, they are intended to discourage conduct that demeans, hampers, or obstructs our system of justice.

These Principles apply to attorneys and judges, who have mutual obligations to one another to enhance and preserve the dignity and integrity of our system of justice. As lawyers must practice these Principles when appearing in court, it is not presumptuous of them to expect judges to observe them in kind. The Principles as to the conduct of judges set forth herein are derived from judiciary codes and standards.

These Principles are not intended to be a basis for imposing sanctions, penalties, or liability, nor can they supersede or detract from the professional, ethical, or disciplinary codes of conduct adopted by regulatory boards.

As a member of the American Board of Trial Advocates, I will adhere to the following Principles:

1. Advance the legitimate interests of my 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.

2. Never encourage or knowingly authorize a person under my direction or supervision to engage in conduct proscribed by these principles.

3. Never, without good cause, attribute to other counsel bad motives or improprieties.

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.

5. Adhere to all express promises and agreements, whether oral or written, and, in good faith, to all commitments implied by the circumstances or local custom.

6. When called on to do so, commit oral understandings to writing accurately and completely, provide other counsel with a copy for review, and never include matters on which there has been no agreement without explicitly advising other counsel.

7. Timely confer with other counsel to explore settlement possibilities and never falsely hold out the potential of settlement for the purpose of foreclosing discovery or delaying trial.

8. Always stipulate to undisputed relevant matters when it is obvious that they can be proved and where there is no good faith basis for not doing so.

9. Never initiate communication with a judge without the knowledge or presence of opposing counsel concerning a matter at issue before the court.

10. Never use any form of discovery scheduling as a means of harassment.

11. Make good faith efforts to resolve disputes concerning pleadings and discovery.

12. Never file or serve motions or pleadings at a time calculated to unfairly limit opposing counsel's opportunity to respond.

13. Never request an extension of time solely for the purpose of unjustified delay or to obtain a tactical advantage.

14. Consult other counsel on scheduling matters in a good faith effort to avoid conflicts.

15. When calendar conflicts occur, accommodate counsel by rescheduling dates for hearings, depositions, meetings, and other events.

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 use previously reserved time for other matters.

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.

18. Never cause the entry of a default or dismissal without first notifying opposing counsel, unless material prejudice has been suffered by my client.

19. Never take depositions for the purpose of harassment or to burden an opponent with increased litigation expenses.

20. During a deposition, never engage in conduct which would not be appropriate in the presence of a judge.

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.

22. During depositions, ask only those questions reasonably necessary for the prosecution or defense of an action.

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.

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 nonprivileged documents.

25. Never produce documents in a manner designed to obscure their source, create confusion, or hide the existence of particular documents.

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 nonprivileged information.

27. When called on, draft orders that accurately and completely reflect a court's ruling, submit them to other counsel for review, and attempt to reconcile any differences before presenting them to the court.

28. During argument, never attribute to other counsel a position or claim not taken, or seek to create such an unjustified inference.

29. Unless specifically permitted or invited, never send to the court copies of correspondence between counsel.

When In Court I Will:

1. Always uphold the dignity of the court and never be disrespectful.

2. Never publicly criticize a judge for his or her rulings or a jury for its verdict. Criticism should be reserved for appellate court briefs.

3. Be punctual and prepared for all court appearances, and, if unavoidably delayed, notify the court and counsel as soon as possible.

4. Never engage in conduct that brings disorder or disruption to the courtroom.

5. Advise clients and witnesses of the proper courtroom conduct expected and required.

6. Never misrepresent or misquote facts or authorities.

7. Verify the availability of clients and witnesses, if possible, before dates for hearings or trials are scheduled, or immediately thereafter, and promptly notify the court and counsel if their attendance cannot be assured.

8. Be respectful and courteous to court marshals or bailiffs, clerks, reporters, secretaries, and law clerks.

Conduct Expected of Judges

A lawyer is entitled to expect judges to observe the following Principles:

1. Be courteous and respectful to lawyers, parties, witnesses, and court personnel.

2. Control courtroom decorum and proceedings so as to ensure that all litigation is conducted in a civil and efficient manner.

3. Abstain from hostile, demeaning, or humiliating language in written opinions or oral communications with lawyers, parties, or witnesses.

4. Be punctual in convening all hearings and conferences, and, if unavoidably delayed, notify counsel, if possible.

5. Be considerate of time schedules of lawyers, parties, and witnesses in setting dates for hearings, meetings, and conferences. When possible, avoid scheduling matters for a time that conflicts with counsel's required appearance before another judge.

6. Make all reasonable efforts to promptly decide matters under submission.

7. Give issues in controversy deliberate, impartial, and studied analysis before rendering a decision.

8. Be considerate of the time constraints and pressures imposed on lawyers by the demands of litigation practice, while endeavoring to resolve disputes efficiently.

9. Be mindful that a lawyer has a right and duty to present a case fully, make a complete record, and argue the facts and law vigorously.

10. Never impugn the integrity or professionalism of a lawyer based solely on the clients or causes he represents.

11. Require court personnel to be respectful and courteous toward lawyers, parties, and witnesses.

12. Abstain from adopting procedures that needlessly increase litigation time and expense.

13. Promptly bring to counsel's attention uncivil conduct on the part of clients, witnesses, or counsel.

Ever wonder what happened to the ideals of civility, integrity, and professionalism to which you aspired in law school? They are alive and well in the American Board of Trial Advocates. The legal profession as a whole and each individual lawyer and judge must adopt and practice these concepts so that the members of our profession will again be looked upon as the greatest protectors of our life, liberty and property.

Reference Articles

In an effort to provide relevant and compelling information to legal professionals, students, and teachers, the ABOTA Foundation has compiled a library of resources for those interested in learning about and teaching civility. Abstracts of key articles that discuss the importance and implementation of civility are included below. For the complete text and many more resources, visit our online library at ABOTACivilityMatters.org.

If Incivility Strikes...

By the Professionalism, Ethics and Civility Committee of ABOTA
The nuts and bolts of how to respond to the challenge of incivility from the ABOTA's National Professionalism , Ethics and Civility Committee. This will help you avoid taking the bait and joining your opponent in a downward spiral of incivility. It will help you learn how to transform uncivil conduct into an upward spiral of cooperation.

Why Civility . . . And Why Now?

By David B. Casselman
ABOTA recognizes a full-scale epidemic with toxic effects from a growing problem of serious decline in civility and collegiality in the practice of civil law. By focusing on civility, we can protect the integrity of the judicial system and serve the best interests of the clients.

Judges' Top 10 Pet Peeves

Prepared by Caroline C. Emery
Learn a popular trial judge's Top 10 Pet Peeves regarding incivility.

ABA White Paper

By Justice Douglas S. Lang
The ABA, joined by the Conference of Chief Justices, has adopted a Resolution recommending, among other things: civility oaths, professional boards to resolve complaints, and mentoring.

Why Civility Matters – It Is The Essence of Professionalism

By Justice Douglas S. Lang
The core values of professionalism are honesty, integrity and civility. The meaning and importance of these values are explored in this article, as well as the importance of mentoring in encouraging these values.

Civility in the Legal Profession — Our Common Goal

By Justice Donald W. Lemons
The American Inns of Court is devoted to promoting professionalism, civility, ethics and excellent legal skills. This national movement of legal apprenticeship brings together lawyers, judges, academics and students for continuing education and mentoring to help lawyers become more effective advocates and counselors with a keener ethical awareness.

Civility: Setting the Tone for Respect!

By William B. Smith
Civility is all about respect. It is the obligation of every lawyer to set the proper tone. It all comes down to you and the Golden Rule. Bill Smith is a Co-Chair of ABOTA's National Professionalism, Ethics and Civility Committee and he discusses civility, its importance, the roots of incivility and how to deal with it when it surfaces.

Making Civility Contagious

By Jerry Spolter, JAMS
Incivility is counter productive to ADR. The JAMS Foundation supports ABOTA's efforts to promote civility and has been a partner from the beginning. Jerry Spolter of JAMS has a short message about the importance of civility.

Enforcing Civility in an Uncivilized World

By Donald J. Winder and Jerald V. Hale
As of 2012, 42 of 50 states had civility codes. However, these codes are guidelines only.


How can we enforce civility? It can be done through court decisions, bar mechanisms and placing civility in attorney oaths. Seventeen states have civility in the oath. A common approach is to “Pledge fairness, integrity, and civility, not only in court, but in all written and oral communications.”

Utah Standards of Professionalism and Civility

To enhance the daily experience of lawyers and the reputation of the Bar as a whole, the Utah Supreme Court, by order dated October 16, 2003, approved the following Standards of Professionalism and Civility as recommended by its Advisory Committee on Professionalism.

Host a Civility Matters® Program

Contact the ABOTA Foundation at (800) 799-5879 for more information. A separate supplement for teaching Civility Matters is available, as are copies of this Civility Matters publication and DVDs. The teaching supplement includes guidelines for conducting a Civility Matters panel, discussion questions, role play vignettes and a presentation DVD containing a PowerPoint presentation along with actual video, audio, and written instances of incivility to further group discussions regarding what a civil lawyer should do when faced with such situations. All resources are available at ABOTACivilityMatters.org.



ON CIVILITY

“Civility requires respect — respect for ideas, respect for persons, and respect for the institutions that have held together our nation in times of revolution, civil war, and economic uncertainties.

Civility is not a quaint notion; civility allows the architect and the fiscal officer to agree on the scope of a basketball arena; the pedagogical detail of the restoration of a magnificent university library; and yes, even a discussion about the level of school tuition.

Civility constrained passion when our founding fathers drafted the United States Constitution. It allowed President Lincoln to reach across the Mason-Dixon Line to pull together a fractured nation. And, civility fueled the airlift of the Marshall Plan when the victorious nations of World War II fed those who were conquered.

Civility requires no operator’s manual, no updates to download, no complicated set of rules. It is simple; it is easy; and it produces positive and constructive human interaction.

Civility may be the forum for our civic conversation, but that discussion is captured in all its colorful hues in our laws and in our constitutions.”

— The late Chief Justice Thomas J. Moyher, Ohio Supreme Court
The Ohio State University Commencement, August 30, 2009



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