CIVILITY IN CONSERVATORSHIPS

I. What are the civility standards generally?

a. CCCBA Professional Standards incorporated into Local Rules
   i. Advance notice of scheduling activities
   ii. Avoid continuances/delay
   iii. Notice and service best practices
   iv. Discovery best practices
   v. Conflict with counsel and parties (demeanor)
   vi. Accuracy to court
   vii. Avoid unnecessary action, illegitimate objections

b. California State Bar
   i. Avoid actions with no substantial purpose/delay
   ii. Candor to tribunal – *ex parte* requires full information
   iii. Truthfulness to others

II. What makes conservatorships different?

a. Focus on the best interests of conservatee
   i. Capacity issues
   ii. Rights taken away
   iii. Conservatee ends up paying fees for everyone

b. Family distress and emotions

c. Not plaintiff/defendant

d. Court-appointed counsel, probate examiners, court investigators, accountings

e. Lots of pro pers

f. Private fiduciaries

g. Cultural and socio-economic issues

III. What does Contra Costa do well, badly differently (my view)?

a. Court system
   i. Ex partes can actually get something done in a day
   ii. Probate examiners very accessible
   iii. Fee petitions granted liberally

b. Attorneys
   i. Very collaborative, mentoring
   ii. Trending toward more civil-procedure

IV. Why?

V. What do we do about it?

(4) In addition to any other required information, the facsimile filing cover sheet shall indicate the time, location and department of the scheduled detention hearing in the matter.

(5) Upon receipt, the Clerk's Office shall stamp the petition as filed, and shall transmit by return facsimile to the petitioner a copy of the initial page of the petition reflecting the dated file stamp. The petitioner shall present a copy of that file stamped petition to the Court at the detention hearing.

(6) The original petition shall be delivered to the Clerk of Court Juvenile Department for filing the next business day following the facsimile filing of the petition. The original petition shall be stamped as filed by the Clerk with the date the facsimile petition was received and filed. The facsimile copy of the petition shall be retained in the court file along with the original petition.

(Rule 2.86(b)(6) revised effective 1/1/13)

(Rule 2.86 revised effective 1/1/16)

Chapter 8. Standards of Professional Courtesy

Rule 2.90. Consideration of History of Breaches in Professional Courtesy

The Court acknowledges that the Contra Costa County Bar Association has adopted "Standards of Professional Courtesy," which are incorporated in these Local Court Rules.

In any motion filed pursuant to Code of Civil Procedure Sections 128, 128.7, 177 and 177.5 and various local rules, the Court may take into consideration counsel's history of breaches of these standards in deciding what, if any, sanctions to impose.

(Rule 2.90 revised effective 1/1/15)

Rule 2.91. Standards of Professional Courtesy

(a) Purpose of these standards

Attorneys are most often retained to represent their clients in disputes. The practice of law is largely an adversarial process. Attorneys are ethically bound to zealously represent and advocate their clients' interest. Nonetheless, there exist certain standards of professional courtesy that are observed, and certain duties of professionalism are owed by attorneys to their clients, opposing parties and their counsel, the Courts and other tribunals, and the public as a whole. Members of the Contra Costa County Bar Association have practiced law with a level of professionalism that goes well beyond the requirements of the State Bar mandated Code of Professional Conduct. The following standards of professional courtesy describe the conduct preferred and expected by a majority of attorneys practicing in Contra Costa County in performing their duties of civility, professional integrity, personal dignity, candor, diligence, respect, courtesy, cooperation

and competence. These standards are not meant to be exhaustive. They should, however, set a tone or guide for conduct not specifically mentioned in these standards.

(b) Professional courtesy standards

These standards have been codified to make the level of professionalism reflected in them the standard for practice within Contra Costa County, with the hope that their dissemination will educate new attorneys and others who may be unfamiliar with the customary local practices. These Standards have received the approval of the Board of Directors of the Contra Costa County Bar Association. They have also been endorsed by the Judges of the Superior Court of Contra Costa County, who expect professional conduct by all attorneys who appear and practice before them. They will be considered by those judges in their rulings pursuant to California Code of Civil Procedure Sections 128, 128.7, 177, and 177.5, as provided for in Local Court Rule 2.90.

All attorneys conducting any practice of law in Contra Costa County are encouraged to comply with the spirit of these standards and not simply blindly adhere to the strict letter of them. The goals stated and inherent herein are equally applicable to all attorneys regardless of area of practice.

(c) Conformity with other statutes or rules

This Code is not a substitute for the statutes and rules, and no provision of this Code is intended to be a method to extend time limitations of statutes and rules, including fast track time limitations, without appropriate court order.

(Rule 2.91 revised effective 1/1/15)

Rule 2.120. Scheduling

(a) Advance notice of scheduling activities

(1) Attorneys should communicate with opposing counsel before scheduling depositions, hearings, meetings and other proceedings and make reasonable efforts to schedule such meetings, hearings, depositions, and other proceedings by agreement whenever possible, at all times attempting to provide opposing counsel, parties, witnesses and other affected persons, sufficient notice.

(2) Where such advanced efforts at scheduling are not feasible (for example, in an emergency, or in other circumstances compelling more expedited scheduling, or upon agreement of counsel) an attorney should not arbitrarily or unreasonably withhold consent to a request for scheduling accommodations that do not prejudice their clients or unduly delay a proceeding.

(b) Sufficient time to complete proceedings

In all cases an attorney should attempt to reserve sufficient time for the completion of the proceeding to permit a complete presentation by counsel for all parties.

(c) Avoid continuances or undue delays in scheduling

An attorney should not engage in delay tactics in scheduling meetings, hearings and discovery. An attorney should not seek extensions or continuances for the purpose of harassment or solely to extend litigation.

(d) Notice of scheduling conflicts

Attorneys should notify opposing counsel, the Court and others affected, of scheduling conflicts as soon as they become apparent and shall cooperate in canceling or rescheduling. An attorney should notify opposing counsel and, if appropriate, the Court or other tribunal, as early as possible of any resolutions between the parties that renders a scheduled hearing, position or meeting unnecessary or otherwise moot.

(e) Requests for time extensions

Consistent with existing law and court orders, attorneys should grant reasonable requests by opposing counsel for extensions of time within which to respond to pleadings, Discovery and other matters when such an extension will not prejudice their client or unduly delay a proceeding.

(f) Disclosure of identity of witnesses

Attorneys should cooperate with opposing counsel during trials and evidentiary hearings by disclosing the identities of all witnesses reasonably expected to be called and the length of time needed to present their entire case, except when a client's material rights would be adversely affected. They should also cooperate with the calling of witnesses out of turn when the circumstances justify it.

(g) Time and manner of service of papers

The timing and manner of service of papers should not be calculated to disadvantage, overwhelm or embarrass the party receiving the papers. An attorney should not serve papers simply to take advantage of an opponent's known absence from the office or at a time or in a manner designed to inconvenience the adversary, such as late in the day (after normal business hours), or so close to a court appearance that it inhibits the ability of opposing counsel to prepare for that appearance or to respond to the papers (if permitted by law), or in such other way as would unfairly limit the other party's opportunity to respond to those papers or other matters pending in the action.

(Rule 2.120 revised effective 1/1/16)

Rule 2.121. Discovery

(a) Purpose of Discovery

Attorneys should pursue discovery requests that are reasonably related to the matter at issue. Attorneys should not use Discovery for the purpose of harassing, embarrassing or causing the adversary to incur unnecessary expenses, as a means of delaying the timely, efficient and cost-effective resolution of a dispute, or to obtain unfair advantage.

(b) Response to requests for discovery

Attorneys should ensure that responses to reasonable discovery requests are timely, organized, complete and consistent with the obvious intent of the request. Attorneys responding to document demands and interrogatories should not do so in an artificial manner designed to assure that answers and responses are not truly responsive or solely to attempt to avoid disclosure.

(c) Discovery questions

Attorneys should avoid repetitive or argumentative questions, questions asked solely for purposes of harassment, or questions which are known to the questioner to be an invasion of the rights of privacy of third parties not present or represented at the deposition.

(d) Conduct of deposition proceedings

Attorneys should bear in mind that depositions are to be taken as if the testimony was being given in court, and they should therefore not engage in any conduct during the deposition that would not be allowed in the presence of a judicial officer. An attorney should avoid, through objections or otherwise, improper coaching of the deponent or suggesting answers.

(e) Requirement to meet and confer on discovery

Attorneys should meet and confer on Discovery requests in a timely manner and make good faith attempts to actually resolve as many issues as can possibly be resolved before proceeding with motions concerning the discovery. Before filing a motion concerning discovery, or otherwise, an attorney should engage in more than a mere pro forma effort to resolve the issue(s).

(Rule 2.121 revised effective 1/1/15)

Rule 2.122. Conduct Towards Other Attorneys, the Court and Participants

(a) Professional conduct

Attorneys must remember that conflicts with opposing counsel are professional and not personal, that vigorous advocacy is not inconsistent with professional courtesy, and that they should not be influenced by ill feelings or anger between clients in their conduct, attitude, or demeanor toward opposing attorneys.

(b) Service of papers

An attorney should never use the mode, timing or place of serving papers primarily to embarrass a party or witness.

(c) Filing of motions

Motions should be filed sparingly, in good faith and when the issue(s) cannot be otherwise resolved. An attorney should not engage in conduct which forces opposing counsel to file

a motion and then not oppose the motion, or provide information called for in the motion only after the motion is filed.

(d) Professional demeanor

Attorneys should refrain from disparaging or denigrating the Court, opposing counsel, parties or witnesses before their clients, the public or the media.

(e) Conduct of clients and witnesses

Attorneys should be, and should impress upon their clients and witnesses the need to be, courteous and respectful and not rude or disruptive with the Court, court personnel, opposing counsel, parties and witnesses.

(f) Instructions to attorneys on witnesses

Attorneys should make an effort to explain to witnesses the purpose of their required attendance at depositions, hearing or trial. They should further attempt to accommodate the schedules of witnesses when setting or resetting their appearance, and promptly notify them of any cancellations. Dealings with nonparty witnesses should always be courteous and designed to leave them with an appropriately good impression of the legal system. Attorneys should instruct their clients and witnesses that they are not to communicate with the Court on the pending case except with all counsel or parties present in a reported proceeding.

(g) Notification to opposing party regarding ex parte

Where applicable laws or rules permit an ex parte application or communication to the Court, before making such an application or communication, an attorney should make diligent efforts to notify opposing party or opposing counsel known to represent or likely to represent the opposing party, should make reasonable efforts to accommodate the schedule of such attorney or party to permit the opposing party to be represented, and should avoid taking advantage of an opponent's known absence from the office.

(h) Drafting court documents

Attorneys should draft agreements and other documents promptly and so as to fairly reflect the true intent of the parties.

(i) Prohibiting bias

No attorney shall engage in any act of age, gender, sexual orientation, physical or mental impairment, religion, or race bias while engaging in the practice of law in Contra Costa County.

(Rule 2.122 revised effective 1/1/15)

Rule 2.123. Candor to the Court and Opposing Counsel

(a) Accuracy of written and oral statements

Attorneys should not knowingly misstate, misrepresent or distort any fact or legal authority to the Court or to the opposing counsel, and shall not mislead by inaction or silence.

Written materials and oral argument to the Court should accurately state current law and fairly represent the party's position without unfairly attacking the opposing counsel or opposing party.

(b) Manner to present new information

If, after all briefing allowed by law or the Court has been submitted, an attorney locates new authority that s/he desires to bring to the Court's attention at a hearing on the matter, a copy of such new authority shall be provided to both the Court and to all opposing counsel in the case at or before the hearing.

(c) Proposed orders

Attorneys should draft proposed orders promptly, and the orders should fairly and adequately represent the ruling of the Court. When proposed orders are submitted to counsel for approval, attorneys should promptly communicate any objections to the party preparing the proposed order so that good faith discussions can be had concerning the language of the proposed order.

(d) Court rulings

Attorneys should respect and abide by the spirit and letter of all rulings of the Court.

(e) Opposing letters to counsel

An attorney should not draft letters assigning to an opposing party or opposing counsel a position that party or counsel has not taken or to create a "record" of events that have not occurred.

(Rule 2.123 revised effective 1/1/16)

Rule 2.124. Efficient Administration

(a) Avoid unnecessary action

Attorneys should refrain from actions which cause unnecessary expense, or delay the efficient and cost-effective resolution of a dispute.

(b) Stipulate to facts and legal authority

Attorneys should, whenever appropriate, stipulate to all facts and legal authority not reasonably in dispute.

(c) Encourage negotiation and resolution

Attorneys should encourage principled negotiations and efficient resolution of disputes on their merits.

(d) Punctuality and preparedness

Attorneys should be punctual in communications with others, and punctual and prepared for all scheduled appearances.

(e) Consider Alternative Dispute Resolution (ADR)

In every case, and as soon as the case can be reasonably evaluated, an attorney should consider whether the client's interest could be adequately served and the case more expeditiously and economically disposed of by settlement, arbitration, mediation or other form of alternative dispute resolution.

(f) Make legitimate objections during deposition or trial

An attorney in making objections during a deposition, trial or hearing should do so for legitimate and good faith reasons and should not make such objections only for the purpose of making a speech, harassment or delay. All remarks, argument, objections and requests by counsel during trial shall be addressed to the Court rather than directly to adversaries. Objections should be in legal form and without argument, unless directed to make argument by the Court.

(g) Arrange witness appearance to eliminate delay

An attorney shall arrange for the appearance of witnesses during presentation of their case so as to eliminate delay caused by waiting for witnesses who have been placed on call.

APPROVED BY THE BOARD OF DIRECTORS OF THE CONTRA COSTA COUNTY BAR ASSOCIATION JUNE 1993.

(Rules 2.124 revised effective 1/1/16)

Rule 2.150. Committee on Bias

The Superior Court, in cooperation with the Contra County Bar Association, re-establishes a Committee on Bias, and adopts the procedures and stated purpose that are in these Local Rules of Court (see Title 10, Standard 10.20, Standards of Judicial Administration).

(Rule 2.150 new effective 1/1/15)

(a) Informal complaint process defined

The Judges of the Superior Court and the Contra Costa County Bar Association have agreed upon an informal complaint procedure addressing issues of age, gender, sexual orientation, disability, socioeconomic status, religion, national origin and race bias in the Courts (see Title 10, Standard 10.20, Standards of Judicial Administration).

Rule 3.2 Delay of Litigation
(Rule Approved by the Supreme Court, Effective November 1, 2018)

In representing a client, a lawyer shall not use means that have no substantial* purpose other than to delay or prolong the proceeding or to cause needless expense.

Comment

See rule 1.3 with respect to a lawyer's duty to act with reasonable* diligence and rule 3.1(b) with respect to a lawyer's representation of a defendant in a criminal proceeding. See also Business and Professions Code section 6128, subdivision (b).

Rule 3.3 Candor Toward the Tribunal*
(Rule Approved by the Supreme Court, Effective November 1, 2018)

(a) A lawyer shall not:

(1) knowingly* make a false statement of fact or law to a tribunal* or fail to correct a false statement of material fact or law previously made to the tribunal* by the lawyer;

(2) fail to disclose to the tribunal* legal authority in the controlling jurisdiction known* to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel, or knowingly* misquote to a tribunal* the language of a book, statute, decision or other authority; or

(3) offer evidence that the lawyer knows* to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence, and the lawyer comes to know* of its falsity, the lawyer shall take reasonable* remedial measures, including, if necessary, disclosure to the tribunal,* unless disclosure is prohibited by Business and Professions Code section 6068, subdivision (e) and rule 1.6. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes* is false.

(b) A lawyer who represents a client in a proceeding before a tribunal* and who knows* that a person* intends to engage, is engaging or has engaged in criminal or fraudulent* conduct related to the proceeding shall take reasonable* remedial measures to the extent permitted by Business and Professions Code section 6068, subdivision (e) and rule 1.6.

(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding.

(d) In an ex parte proceeding where notice to the opposing party in the proceeding is not required or given and the opposing party is not present, a lawyer shall inform the tribunal* of all material facts known* to the lawyer that will enable the tribunal* to make an informed decision, whether or not the facts are adverse to the position of the client.

Comment

[1] This rule governs the conduct of a lawyer in proceedings of a tribunal,* including ancillary proceedings such as a deposition conducted pursuant to a tribunal's* authority. See rule 1.0.1(m) for the definition of "tribunal."

[2] The prohibition in paragraph (a)(1) against making false statements of law or failing to correct a material misstatement of law includes citing as authority a decision that has been overruled or a statute that has been repealed or declared unconstitutional, or failing to correct such a citation previously made to the tribunal* by the lawyer.

Legal Argument

[3] Legal authority in the controlling jurisdiction may include legal authority outside the jurisdiction in which the tribunal* sits, such as a federal statute or case that is determinative of an issue in a state court proceeding or a Supreme Court decision that is binding on a lower court.

[4] The duties stated in paragraphs (a) and (b) apply to all lawyers, including defense counsel in criminal cases. If a lawyer knows* that a client intends to testify falsely or wants the lawyer to introduce false evidence, the lawyer should seek to persuade the client that the evidence should not be offered and, if unsuccessful, must refuse to offer the false evidence. If a criminal defendant insists on testifying, and the lawyer knows* that the testimony will be false, the lawyer may offer the testimony in a narrative form if the lawyer made reasonable* efforts to dissuade the client from the unlawful course of conduct and the lawyer has sought permission from the court to withdraw as required by rule 1.16. (See, e.g., *People v. Johnson* (1998) 62 Cal.App.4th 608 [72 Cal.Rptr.2d 805]; *People v. Jennings* (1999) 70 Cal.App.4th 899 [83 Cal.Rptr.2d 33].) The obligations of a lawyer under these rules and the State Bar Act are subordinate to applicable constitutional provisions.

Remedial Measures

[5] Reasonable* remedial measures under paragraphs (a)(3) and (b) refer to measures that are available under these rules and the State Bar Act, and which a reasonable* lawyer would consider appropriate under the circumstances to comply with the lawyer's duty of candor to the tribunal.* (See, e.g., rules 1.2.1, 1.4(a)(4), 1.16(a), 8.4; Bus. & Prof. Code, §§ 6068, subd. (d), 6128.) Remedial measures also include explaining to the client the lawyer's obligations under this rule and, where applicable, the reasons for the lawyer's decision to seek permission from the tribunal* to withdraw, and remonstrating further with the client to take corrective action that would eliminate the need for the lawyer to withdraw. If the client is an organization, the lawyer should also consider the provisions of rule 1.13. Remedial measures do not include disclosure of client confidential information, which the lawyer is required to protect under Business and Professions Code section 6068, subdivision (e) and rule 1.6.

Duration of Obligation

[6] A proceeding has concluded within the meaning of this rule when a final judgment in the proceeding has been affirmed on appeal or the time for review has passed. A prosecutor may have obligations that go beyond the scope of this rule. (See, e.g., rule 3.8(f) and (g).)

Ex Parte Communications

[7] Paragraph (d) does not apply to ex parte communications that are not otherwise prohibited by law or the tribunal.*

Withdrawal

[8] A lawyer's compliance with the duty of candor imposed by this rule does not require that the lawyer withdraw from the representation. The lawyer may, however, be required by rule 1.16 to seek permission of the tribunal* to withdraw if the lawyer's compliance with this rule results in a deterioration of the lawyer-client relationship such that the lawyer can no longer competently and diligently represent the client, or where continued employment will result in a violation of these rules. A lawyer must comply with Business and Professions Code section 6068, subdivision (e) and rule 1.6 with respect to a request to withdraw that is premised on a client's misconduct.

[9] In addition to this rule, lawyers remain bound by Business and Professions Code sections 6068, subdivision (d) and 6106.

Rule 4.1 Truthfulness in Statements to Others
(Rule Approved by the Supreme Court, Effective November 1, 2018)

In the course of representing a client a lawyer shall not knowingly:*

(a) make a false statement of material fact or law to a third person;* or

(b) fail to disclose a material fact to a third person* when disclosure is necessary to avoid assisting a criminal or fraudulent* act by a client, unless disclosure is prohibited by Business and Professions Code section 6068, subdivision (e)(1) or rule 1.6.

Comment

[1] A lawyer is required to be truthful when dealing with others on a client's behalf, but generally has no affirmative duty to inform an opposing party of relevant facts. A misrepresentation can occur if the lawyer incorporates or affirms the truth of a statement of another person* that the lawyer knows* is false. However, in drafting an agreement or other document on behalf of a client, a lawyer does not necessarily affirm or vouch for the truthfulness of representations made by the client in the agreement or document. A nondisclosure can be the equivalent of a false statement of material fact or law under paragraph (a) where a lawyer makes a partially true but misleading material statement or material omission. In addition to this rule, lawyers remain bound by Business and Professions Code section 6106 and rule 8.4.

[2] This rule refers to statements of fact. Whether a particular statement should be regarded as one of fact can depend on the circumstances. For example, in negotiation, certain types of statements ordinarily are not taken as statements of material fact. Estimates of price or value placed on the subject of a transaction and a party's intentions as to an acceptable settlement of a claim are ordinarily in this category, and so is the existence of an undisclosed principal except where nondisclosure of the principal would constitute fraud.*

[3] Under rule 1.2.1, a lawyer is prohibited from counseling or assisting a client in conduct that the lawyer knows* is criminal or fraudulent.* See rule 1.4(a)(4) regarding a lawyer's obligation to consult with the client about limitations on the lawyer's conduct. In some circumstances, a lawyer can avoid assisting a client's crime or fraud* by withdrawing from the representation in compliance with rule 1.16.

[4] Regarding a lawyer's involvement in lawful covert activity in the investigation of violations of law, see rule 8.4, Comment [5].

Creating a Culture of Civility in the Practice of Law

BY JOHN "SEAN" DOYLE ON JANUARY 14, 2019 ·

Cursing just loud enough to be heard. Making fun of opposing counsel's accent. Toxic emails, tweets, and inappropriate gestures. Harassing phone calls. Gossiping on social media. Abusing procedural processes. All under the pretense of zealous advocacy. The levels of hostility and incivility in the practice of law are rising. Not only does this behavior reflect poorly upon the profession and undermine public trust in lawyers, but it also directly affects attorney job satisfaction, depression, substance abuse, and other traumas to our well-being.

State bars, continuing legal education classes, and Supreme Court commissions have focused on setting standards for behavior and providing actions for when a judge or lawyer behaves badly. However, what can we do, as individual lawyers, law firms and departments, and as a community, to reclaim the profession and minimize the bad behaviors that have become all too common?

What Gets in the Way?

Most of us have a sense of what constitutes unprofessional behavior. We also know the environment in which we want to practice. Yet somehow, something gets in the way. Psychologists have identified several factors that contribute to the failure to intervene when witnessing misbehavior.

- **Mindlessly unprofessional.** Law is a stressful profession. As lawyers, we must consider everything that could go wrong with a potential deal or relationship. Attorneys are the ones who raise important issues that we have been taught should not be discussed in polite company. These may involve financial matters or matters of the heart, whether employees lose their jobs or parents lose their children. The issues can affect our client's freedom, self-worth or self-respect. And while we are busy raising the uncomfortable things, another lawyer on the other side of the aisle is vigorously fighting for the outcome we fear most. Add to this the long hours and unreasonable expectations, and it is easy to mindlessly fall into rude, disrespectable and petty unprofessional behavior. Opposing counsel smugly attacks us, questions our integrity or overwhelms us with worthless filings, and it is easy to snap back. We are human after all. Yet we are called upon to be the

level-headed guides and iron-willed advocates when everyone else is being their least humane.

- **Deliberately unprofessional.** Rude and uncivil behavior is not always the product of mindlessness. Some attorneys see it as part of their job to use whatever they can to zealously represent their client, even if it means creating unwarranted delays, undermining or frustrating opposing counsel, or even insulting or threatening behavior. A creative, unscrupulous lawyer can do any number of uncivil and unprofessional things without triggering disciplinary action. Sometimes these strategies work. However, it would be disingenuous to say these types of behaviors are necessary for effective advocacy. Research has shown that business people who treat one another with respect and in good faith do better most of the time. After surveying data across over 3,500 business units, Wharton psychologist Adam Grant found that most of the time, these "givers," those who contribute to others without seeking anything in return, get the best results. Contrary to the words of Michael Corleone, acting like a jerk in the practice of law is not "strictly business." It is personal. It reflects who we are as a person.
- **Uncritical conformity to group norms.** Most often, people assimilate to the culture around them. When that culture is one of the lawyers behaving badly, whether toward opposing counsel, other attorneys in our firms or certain segments of the bar, it is hard to hear that voice deep down that senses that something just is not right. As such, we begin to accept as normal behavior that would be unacceptable in every other domain in our lives.
- **Diffusion of personal responsibility.** Even if we can maintain our better sense and remain above the fray, we may not feel like it is our business to speak up when a law partner or friend acts unprofessionally or rudely. It is their case. They are adults and learned professionals. The approach they take is up to them.
- **Passive tolerance through inaction or indifference.** The problem, however, is that if we fail to act, whether out of mindlessness or feeling that it is not our responsibility, we allow the inappropriate behavior to become the standard, undermining the profession and cutting even deeper into our personal well-being.

What Can We Do About It?

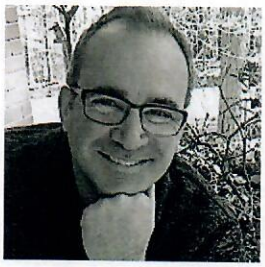
It is up to all of us to insist upon the culture that we want in the law, through our own actions and in setting our expectations with those around us.

- **Self-awareness**. Bad behavior is not limited to the courtroom or negotiation table. Gossip about other lawyers at holiday parties, spreading rumors, chuckling at racist or sexist jokes. All of us want to fit in, and it is easy to get drawn into behavior that is demeaning to other lawyers and to ourselves. When this occurs, you do not need to loudly drive a stake into the moral high ground and denounce those around you. Simply refuse to participate in the small transgressions that make all of us smaller. Or softly point to the counter-evidence, the times when the one talked about did something kind or honorable or made you proud to be a lawyer. Point out the things that restore a sense of shared humanity between you and them and those who would offend.
- **Confront bad behavior directly.** When you are witness to bad behavior, call it out. If a lawyer is abusive toward another lawyer or uses offensive language, respond directly. Name what is happening. Assist the person who was targeted without being drawn in into a debate with the harasser. Of course, a direct response might not always be possible or appropriate. Maybe you are an associate witnessing unprofessional behavior by a partner, or by a judge presiding over your case. Reach out to others who might be able to assist, maybe another partner or judge. Also, document what occurred.
- **Quiet moments among friends.** At times, our peers or our colleagues may behave unprofessionally. Confronting the behavior does not always have to be loud and public. Being gentle with a friend, but unwavering about our commitment to humanity, can be extremely powerful and effective in reestablishing the sort of culture we would be proud to call our own.
- **Celebrate good behavior.** While it is important to call out incivility, it is essential to identify and encourage the behavior we want to see. A colleague may have handled themselves with dignity, grace, and self-restraint in dealing with an abusive attorney or judge. Tell them how well they handled it. Point it out to others. By so doing, you will affirm for them that character matters, help solidify their self-image as one who stays above the fray and provide pro-social modeling for other lawyers. It also could open further dialogue about civility, the culture of law, and who we want to be as human beings. As we raise our consciousness about bad behavior, do not forget to notice and note those lawyers who are a tribute to the profession. They can be real-life models for all of us.

Conclusion

Every one of us affects the culture in which we live and practice. Every one of us is in a position to stand up for civility. It is about demanding a culture that is appropriate and fair and professional. It is about enhancing your well-being and ability to thrive over the entire course of your career.

About the Author



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