The Importance of Being Civil
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"Civility is a code of decency that characterizes a civilized society."[1] In today's world of tweetstorms, Internet trolls, and divisive rhetoric, it may seem as though our society has abandoned this "code of decency." As attorneys, we have a unique opportunity and obligation to model civility, however. And, in my own experience, I have learned that civility is the key to success in our profession.

We so often hear lawyers refer to "zealous advocacy" without regard to the fact that our Rules of Professional Conduct expressly require us – equally – to be professional, courteous, and *civil*. Specifically, paragraph 9 of the Preamble to our Rules, which addresses the reality that ethical issues may arise for which a solution may not be explicitly prescribed by the Rules, requires us to be both zealous and civil. The paragraph states, in relevant part:

> Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules. These principles include the lawyer's obligation zealously to protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous, and civil attitude toward all persons involved in the legal system.

Thus, as Jayne R. Reardon writes, "Capacity to act in a manner that engenders respect for the law and the profession – in other words, civility – is a requirement for receiving a law license and, in some jurisdictions, for retaining the privilege of practicing law."[2] The consequences of incivility, beyond injuring an attorney's reputation, may include discipline or the loss of her license.[3]

In my personal experience, I have learned that civility is the key to achieving results for my clients. Perhaps due to television portrayals of attorneys (or YouTube videos of depositions gone awry), I have occasionally had clients question why being kind and respectful to opposing counsel is a good strategy. Often, I can rely on the fact that the Rules of Civil Procedure or local court rules require it. But the proof is truly in the pudding: in each instance where we have refused to engage in scorched-earth tactics or respond in-kind to a low blow from our opponent, our clients have witnessed the benefits of civility. It is indisputable that building a rapport and a level of trust with opposing counsel and the court enables attorneys to more efficiently resolve disputes. If nothing else, it really deflates an aggressive opposing counsel's balloon when you refuse to take their bait.

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[1] Reardon, J. R. (2013). Civility as the Core of Professionalism. In P.A. Haskins (Ed.), *Essential Qualities of the Professional Lawyer* (pp. 35-47). ABA Book Publishing.
[2] *Id.*
[3] *See* Filisko, G.M., "You're Out of Order! Dealing with the Costs of Incivility in the Legal Profession" (http://www.abajournal.com/magazine/article/youre_out_of_order_dealing_with_the_costs_of_incivility_in_the_legal)

So, what does being civil entail? Ms. Reardon writes that civility is not the same as agreement, liking someone, or the absence of criticism.[4] As Professor Stephen Carter of Yale Law School states, "A nation where everybody agrees is not a nation of civility but a nation without diversity, waiting to die."[5] Nor should civility be "equated with politeness or manners alone."[6] Politely refusing to grant opposing counsel an extension of time when it will not prejudice your client is not civil behavior, for example.

Civil behavior requires reasonableness, respect, candor, fairness, and kindness. Civil behavior is fostering a dialogue where differing views can be expressed without name-calling. Civil behavior is upholding the rule of law and not abusing processes or power to achieve an unjust result. At its most basic level, civil behavior is treating others as you would like to be treated.

This fundamental code of decency is incredibly easy to follow if you are careful to check your emotions and manage your stress levels. If yours is a busy practice with clients who are acrimonious, or if you find yourself opposed to counsel who has not read the Preamble to the Rules lately, there are a few simple steps you can take to help you remain civil. First, in all situations, put yourself in the other party's shoes. Empathy breeds compassion. Compassion informs civil behavior. Second, resist the temptation to fire off an immediate response to an unpleasant email. Draft a response, and let it sit for a few hours or a few days. You will not regret waiting to respond with a cooler head. Third, when and if you slip, apologize. We are human beings. However well-intentioned our behavior may be, we will make mistakes. You can apologize for uncivil behavior without ceding ground on a substantive legal issue.

This obligation to act with civility extends beyond the walls of our offices. Remember, as lawyers, we are required to "further the public's understanding of and confidence in the rule of law and the justice system."[7] Our conduct on social media and in interactions with others can positively or negatively impact our fellow citizens' confidence in the rule of law. That confidence is of paramount importance. As the Preamble to the Rules notes, "legal institutions in a constitutional democracy depend upon popular participation and support to maintain their authority."[8] Now, more than ever, attorneys need to model this "code of decency." Your career success and our democracy's success depend upon it.



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[4] Reardon, J. R. (2013). Civility as the Core of Professionalism. In P.A. Haskins (Ed.), *Essential Qualities of the Professional Lawyer* (pp. 35-47). ABA Book Publishing.
[5] Stephen L. Carter, Civility: Manners, Morals, and the Etiquette of Democracy (1998).
[6] Reardon, J. R. (2013). Civility as the Core of Professionalism. In P.A. Haskins (Ed.), *Essential Qualities of the Professional Lawyer* (pp. 35-47). ABA Book Publishing.
[7] *See* Rules of Professional Conduct, Preamble: A Lawyer's Responsibilities at para. 6.
[8] *Id.*