



Negligence Law Section

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“Civility in Litigation and Softball”

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In the adversarial arena of civil litigation, the line between zealous advocacy and incivility can sometimes blur. Maintaining professional courtesy is not a matter of politeness alone. It is essential for effective advocacy. As courts, clients, and colleagues increasingly call for professionalism, it is worth re-examining why civility remains vital to our legal system and how its erosion threatens both the legal profession and the positive outcomes we seek for our clients.

Professional courtesy also extends beyond opposing counsel. It includes treating court staff, witnesses, and even difficult clients with respect. The everyday acts of granting a reasonable scheduling extension, refraining from inflammatory language in correspondence, or acknowledging an opponent’s legitimate argument all reinforce the trust and professionalism that make our system function.

Administrative Order No. 2020-23 - Administrative Order Regarding Professionalism Principles for Lawyers and Judges, which is endorsed by the State Bar of Michigan offers some practical guidance. It urges attorneys to “accord professional courtesy, wherever reasonably possible,” communicate respectfully, avoid misrepresentations, and refrain from personal attacks. These are not symbolic aspirations but tools to advance justice and the practice of law both efficiently and honorably.

The Practical Case for Civility

Litigation is already costly and time-consuming. Unnecessary hostility only magnifies those burdens. Lawyers who can negotiate discovery disputes, stipulate to uncontested facts, and communicate openly with opposing counsel reduce motion practice and streamline resolution. Professionalism signals control, confidence, and respect for the tribunal.

Moreover, incivility often backfires. Aggressive emails, obstructionist discovery tactics, and personal arguments may alienate judges and juries, leading to adverse rulings or sanctions. Clients, especially institutional ones, are increasingly unwilling to pay for avoidable conflict.

The modern litigator's effectiveness is measured not by how fiercely they fight every inch, but by how strategically and professionally they achieve their client's objectives.

Building a Culture of Courtesy

One way to foster civil discourse is to get to know the opposition outside of the courtroom and deposition room. Relaxing over a meal or a cup of coffee and learning about someone's family or hobbies, lets attorneys be viewed as people with outside interests, not just lawyers.

In August of the last three years, the Battle of the Bar has pitted members of MAJ against members of MDTC in a softball game at the site of the former Tiger Stadium. While there is competition to score runs, steal bases and throw strikeouts, and there are talented players who push their limits, the games have been played with camaraderie and merriment. Following the games which have found each organization victorious, the players gather for food and drinks, forging bonds of friendship and understanding. All of this was done for a great cause, the Police Athletic League (PAL).

Restoring civility begins with leadership by example. Senior attorneys should mentor younger lawyers to handle disputes firmly but respectfully. Courts can also play a role through promotion of civility and collegiality in the courtroom and by addressing unprofessional conduct swiftly and consistently.

The emotional distance caused by technology and remote hearings has had a deleterious effect on interpersonal skills. Words typed in haste can come across as hostile and lack of face-to-face interaction can embolden sharp rhetoric that would never occur in person. Michigan's legal community can combat this by returning to the basics: pick up the phone, meet for coffee, and remember that today's opposing counsel may be tomorrow's co-counsel, or even your judge.

Conclusion

Just as our softball games are adversarial, they are played with respect and congeniality. Civility is not weakness; it is strength under control. The most effective litigators understand that professionalism enhances credibility, advances client interests, and upholds the integrity of the legal process. In the end, how we conduct ourselves in the practice of law speaks as loudly as the cases we win.

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