

Civility, Safety, and Detached Lawyer Syndrome in Family Court

BY AUDREY J. BEESON, ESQ.

If the first thing that caught your attention was “detached lawyer syndrome” and you are wondering if this is real, don’t bother typing the phrase into any search engine website because I made it up. It’s the description I use for a myriad of problematic behaviors that I see among the family law bar and bench.

Civility¹ and safety in family court are not new topics, yet the problems persist. I have seen continued incivility, showmanship, and ongoing inappropriate and unprofessional behavior.

When I discuss this topic with friends, colleagues, and judicial officers, we inevitably circle back to the question of what to do when we find ourselves in this problematic situation. As a result, this

article will deal primarily with tools that may prove useful to us as we continue to navigate the storm that family law practitioners face.

Blamespeak

Blame what? “Blamespeak” is a term devised by Bill Eddy in 2010.² It is defined as a disrespectful way of interacting and communicating with others that is blaming and intended to divert attention away from the blamespeaker.³ The following are some examples of blamespeak that many of us have encountered during our years of practice, whether from pro per litigants, or opposing counsel:

- “Do you know what your client did this weekend?”
- “You need to get your client under control NOW!”
- “What’s wrong with your client?”
- “Are you stupid?”
- “I will destroy you and your reputation!”

Likely, we all reverted to this type of communication in the heat of the moment, and we typically regret it after the fact.⁴

BIFF⁵ Communication Method⁶

Before you respond to blamespeak, hit send on that reply email, e-file your responsive pleading, or orally respond on the record during a court hearing, try using the following techniques to diffuse the situation. First, print out the email and strike through or redact all unnecessary and/or inciting comments. Once you have done that, read the email only looking at what remains. Then use these questions to tailor a response that will diffuse the conflict:

1. Is it brief?
2. Is it informative?
3. Is it friendly?
4. Is it firm?

Is it Brief?

Limit your written response to one paragraph if possible. If speaking, four to six sentences will usually suffice.⁷

Is it Informative?

Limit your response to who, what, when, and where. Do not add defenses, argument, opinion, emotions, or judgments.⁸



PHOTO CREDIT: SHUTTERSTOCK.COM

Is it Friendly?

Try including friendly words to avoid inflaming the hostility such as, “Thank you for letting me know your concerns,” “Thank you for responding,” or “I hope my response helps clear up this misunderstanding.”⁹ You’re not asking this person out to lunch, but a little friendliness helps maintain the tone of professionalism and civility.

Is it Firm?

Your goal should be to end the hostility, not to tell the blamespeaker that they can go pound sand. Firm does not mean harsh.¹⁰ It means that this communication is geared toward resolving the problem, not adding to the problem.

Remember who your audience is. While the client is paying you, at the end of the day the audience is typically the judge. Your responses should be focused on what the judge needs to know (i.e. the facts).

If you just can’t help yourself and you feel the need to furiously type out how you really feel about the horrible email you just got – go ahead, but do not send it. Print it, set it aside, and come back to it later. If possible, have

a colleague read it to strike through any statement that does not align with BIFF.

“Detached Lawyer Syndrome”

Over time, lawyers tend to become desensitized to what they see and hear. Some attorneys figure if you can’t beat them, then you may as well join them in similar behavior, anticipating minimal consequences. This type of lawyering is a disservice to the profession, to our community, and to our clients—especially those clients who share children with the opposing party. When the case is over, the lawyer can move on to the next case. For parents, the sting of what is said and done during their case may never go away and can cause irreparable damage to the relationship with their co-parent—the effects of which trickle down to their children. That thought should bother any lawyer.

Some attorneys get too emotionally invested in their client’s case and take everything that happens during a case personally. As a result, emotions tend to guide the lawyer rather than a focus on proper legal strategy. While you should care about your clients and what’s right versus what’s wrong; we must remember

that we did not create the situation that led the clients to us. You are not responsible for this situation. However, as their attorney, you do have the power to significantly impact their lives depending on how you handle their case.

Bullying and Incivility

As a result of the aftereffects of the COVID pandemic, the inability of attorneys to socialize, network, and get to know their colleagues outside of litigation has likely increased the boldness that comes with using technology to interact. Social media and technology can facilitate and amplify bullying and incivility in many ways. Those factors may include increasing access, faster response times, and a sense of detachment and anonymity.¹¹

Bullying behavior is different than advocacy. How can we tell the difference? Well, most of us, like the famous quote from U.S. Supreme Court Justice Potter Stewart, “know it when I see it.”¹² Certain characteristics and tactics commonly associated with bullying include intimidation and coercion such as aggressive questioning, threats, or attempts to provoke fear in the opposing party or their counsel.¹³ Unprofessional conduct, such as derogatory remarks or disrespectful comments, is designed to assert dominance rather than pursue a legitimate legal strategy.¹⁴ When the law is not on their side, some family law attorneys tend to rely on outrageous claims or storytelling rather than facts. Excessive filing of motions or seeking unnecessary delays to prolong litigation are ways to manipulate the process.¹⁵ And finally, legal bullies have a lack of respect for legal boundaries, because they focus on winning at any cost, and ethical standards and boundaries are meaningless to them. They are not typically impeded by making false statements, misrepresenting facts, or using confidential information against an adversary.¹⁶

If you or your client are being bullied, document each instance. Consult with a colleague or mentor to help you deal with the stress of the situation. If you are concerned for your personal safety or the safety of your client: file a police report; file for a restraining order; notify the marshals at court and request an escort; keep your eyes open and on your surroundings, not on your phone; change your routine; and take steps that help you feel safe and secure.

CONTINUED ON PAGE 20

Civility, Safety, and Detached Lawyer Syndrome in Family Court

In the courtroom, remember that if the bully had the law on their side, or supportive facts, that is what they would be arguing. The fact that they are not is likely intended to derail you and shift your focus away from your strategy. Do not let that happen. Argue the facts of your case and how they apply to the law. Maintain your composure. Do not get sucked into the atmosphere that they are trying to create. Shut it down. Do not engage. If it helps, maintain your focus and your view on the judge. Do not look at opposing counsel. Do not respond to opposing counsel. Speak to the court. If you find yourself getting upset, start taking notes and only write down or type relevant facts or legal arguments that you need to respond to and mentally filter out the rest.

The Role of the Bench

Two words: courtroom control. Some “judges use their wit and humor to defuse uncivil behavior. That’s a rare quality, and in an age when we are surrounded by uncivil behavior in our streets and even our halls of government, the bench and the bar need to unite to insist that the courtroom is a sanctuary of quiet reason, not naked aggression. Our clients want their counsel to win, and many clients conflate aggression with legal skill. The judiciary needs to understand that civility begins to erode the second that uncivil behavior is tolerated – and that once the uncivil bull escapes its pen, it is not easily recaptured.”¹⁷

Judges who read the pleadings before a hearing and take control by defining the issues signal to parties and counsel that the judge is in charge.¹⁸ Judges can designate how much time each side has to cogently argue their points. Judges can ask questions to gain clarity. This allows clients to see that their attorney is advocating for them and

the judge is listening. The moment an attorney crosses a line, the judge needs to immediately stop the proceedings and admonish counsel. Judges may be hesitant to take corrective action, to sanction attorneys, or to report them to the state bar. Remember that judges are elected officials that rely, at least in part, on the contributions of the attorneys who practice before them on a regular basis. Unfortunately, possible remedies for those concerns are beyond the scope of this article, but there is a desire for the legislature to make changes that would negate this concern. There is nothing wrong with politely asking the judicial officer to control their courtroom.



AUDREY J. BEESON

graduated from the William S. Boyd School of Law in 2007 and has been licensed since October 2007, practicing primarily in family law. She became a Nevada Board Certified Family Law Specialist in 2015 and began serving as a Transitioning Into Practice (TIP) mentor that same year. She obtained her LLM in ADR with a focus in mediation from the Straus Institute for Dispute Resolution, Pepperdine School of Law in 2018 and began serving as a mediator for the Juvenile Dependency Mediation Program that same year. She has been a member of the Family Law Executive Council since 2019. Beeson served two years as chair for the ADR Section of the State Bar of Nevada. She is also a Special Education Hearing Officer for the Nevada Department of Education.

ENDNOTES:

1. In June 2015, the Eighth Judicial Court, Family Law Division issued a resolution that spells out seven rules on civility. “The resolution spells out the rules as a reminder to all parties that courtesy and

preparation are essential to smooth and efficient court operations.” said the civil Presiding Family Division Judge Charles Hoskin. “It points out that candor, courtesy and cooperation facilitate faster, less costly and mutually accepted resolution of disputes; reduce stress for lawyers, staff and clients; reduce waste of judicial time; and generate respect for the court system, the individual attorney and the profession as a whole.” (1) Attorneys and litigants shall, at all times, demonstrate respect for the opposing attorney, litigant and the court; (2) Attorneys and litigants shall be adequately prepared for each court appearance; (3) Attorneys and litigants shall permit the opposing party to present their arguments without interruption (no objections during argument); (4) Attorneys and litigants shall refrain from excessively repeating facts or arguments; (5) Attorneys and litigants shall refrain from personal attacks on the opposing attorney or litigant; (6) Attorneys and litigants shall address all comments to the Judge and not the opposing attorney or litigant; and (7) Attorneys and litigants shall maintain control over their emotions. <http://www.clarkcountycourts.us/family-court-issues-resolution-that-spells-out-seven-rules-on-civility-in-court-to-improve-courtroom-courtesy-and-efficacy/>

2. BILL EDDY & REHANA JAMAL, *BIFF FOR LAWYERS AND LAW OFFICES*, Chapter 1, (Unhooked Publishing, 1st ed. 2024) (ebook).
3. *Id.*
4. *Id.* at Chapter 19.
5. BIFF Response® is a Registered Trademark of the High Conflict Institute
6. Eddy & Jamal, *supra* n. 4
7. Eddy & Jamal, *supra* n. 4
8. Eddy & Jamal, *supra* n. 4
9. Eddy & Jamal, *supra* n. 4
10. Eddy & Jamal, *supra* n. 4
11. Elisa Reiter & Daniel Pollack, *The Legal Profession Needs Some Bullying Prevention and Intervention Strategies*, originally published in the *Texas Lawyer* online magazine July 2024 issue and re-posted by permission on <https://highconflictinstitute.com/legal/the-legal-profession-needs-some-bullying-prevention-and-intervention-strategies/>
12. I shall not today attempt further to define the kinds of material I understand to be embraced within that shorthand description; and perhaps I could never succeed in intelligibly doing so. But I know it when I see it, and the motion picture involved in this case is not that. *Jacobellis v. State of Ohio*, 378 U.S. 184, 197, 84 S. Ct. 1676, 1683, 12 L. Ed. 2d 793 (1964).
13. Reiter & Pollack, *supra* n. 10
14. Reiter & Pollack, *supra* n. 10
15. Reiter & Pollack, *supra* n. 10
16. Reiter & Pollack, *supra* n. 10
17. Mark Ashton, *Ensuring Civility in Family Law*, Published on February 1, 2022, in *Family Lawyer* magazine.
18. *Id.*