



BY SCOTT M. ABBOTT, ESQ.

One day early in my legal career, I was on the telephone with an attorney regarding a file that was being transferred from his office to mine. The attorney, obviously displeased with the decision to change counsel, was reluctant to speak with me. When I asked why something had not been done in the case, the attorney said, “Go [expletive] yourself!” Shocked by his outburst, I hung up the phone. It was an action I immediately regretted, and never repeated.

That incident reinforces the adage that two wrongs do not make a right. Having now practiced law in Nevada for more than 30 years and having served as a TIP mentor to several new attorneys, I have always stressed the importance of attorneys treating each other respectfully. Sadly, that often does not happen. My colleagues and I have encountered some truly unpleasant and rude opposing counsel. Ironically, many of these attorneys have been from other jurisdictions, who have had to seek permission to practice here by filing a *pro hac vice* petition. Perhaps those attorneys are emboldened in their behavior by the fact that they do not need to appear regularly before our judges and interact with members of our bar.

This lack of civility may be due to some attorneys believing that they must always fight with their opponents to represent the best interests of their client. In law school we learn about the adversarial process, in which each party is allowed to present its case to an impartial factfinder. However, the term “adversary” may be taken a step too far by some attorneys. An adversary is an opponent, but not an enemy, and some attorneys tend to blur the line between them.

Civility: A Guide for Attorneys

Attorneys have a duty to zealously represent their clients' interests within the bounds of the law and our Nevada Rules of Professional Conduct. Clients retain attorneys to help navigate through disputes that are often highly emotional and personal. Clients who experience a catastrophic injury, a messy divorce, or an unjust termination rightfully expect their attorney to advocate their interests. However, lawyers need to remember that our clients' disputes are not *our* disputes with each other.

My colleagues and I have dealt with many opposing counsel who understood this important distinction. These are the attorneys who know they have a job to do in representing their client, without resorting to uncalled for behavior. These are the attorneys I have been proud to have vigorously disagreed with over the merits of a particular case, but I also will still talk to them about non-work matters and, even more importantly, refer a new client.

Other attorneys, however, have missed the memo on professionalism and have acted abysmally. There have been some attorneys who have made nasty comments about an attorney's physical appearance or wardrobe.

One opposing counsel insulted my office staff in a motion filed with the court. Another attorney continuously interrupted one of my colleagues in court while he was speaking to the judge. Others have assumed my female colleagues are legal assistants and called them "honey" and "sweetheart." This kind of behavior has no place in our profession.

When judges describe their pet peeves, they frequently mention counsel engaging in *ad hominem* attacks on other counsel. These kinds of personal attacks do little to advance a client's interests. Instead, they only tend to alienate judges and inflame the other side. The attorneys who engage in this behavior may believe they are zealously representing their clients, but in fact they are doing them a disservice.

Some attorneys may mistakenly believe that being civil and courteous to their opponents signifies weakness. It does not. It shows professionalism. As

attorneys, we are expected to argue about the respective merits of a case. We should not have to constantly argue about whether an extension of time or the date for a deposition is acceptable. Attorneys who understand this know that extensions of time are a matter of professional courtesy. The same is true for coordinating with opposing counsel about their availability for a deposition. Some attorneys may believe these types of decisions are to be made by their clients. That is incorrect, as such decisions are reserved for the attorney.

Many attorneys already know this and do act professionally with each other. Still, there remain many who do not, which is why, for example, the Eighth Judicial District Court in Clark County issued an administrative order last year regarding deposition behavior. At the very outset of the order, the court states, "Counsel must behave professionally at all

times during depositions; they must treat parties, other counsel, court reporters, videographers, interpreters, and others involved in any aspect of a deposition with civility and respect."¹ The order addresses many other aspects of depositions, including scheduling, document use, deposition conduct, objections, and

coaching. When the court issued this order, many attorneys felt it was long overdue. It is unfortunate that such expectations even needed to be codified.

Recalling that long-ago telephone call I had, the other attorney and I were both wrong in different respects. I cannot speak for him, but I know I learned an important lesson that day—never allow yourself to get baited by another individual's conduct, no matter how insulting or reprehensible. In 2016, former First Lady Michelle Obama, an accomplished attorney herself, famously stated in response to political attacks, "When they go low, we go high."² I am proud to say that my firm and I have always subscribed to that message, long before Mrs. Obama said it. It is not easy to do. We are all human beings, and the instinct when we are attacked is to defend ourselves. However, engaging in a war of words serves nothing more than momentary self-satisfaction. Oftentimes, it is regrettable.

The late Supreme Court Justices Antonin Scalia and Ruth Bader Ginsburg can still teach all of us a great deal about the importance of civility. Ideologically, Justices Scalia and Ginsburg could not have been more different. There are many Supreme Court opinions in which they sharply disagreed. Yet, they respected each other and, to the surprise of many, forged a lasting friendship. They bonded over shared interests like opera, travel, and good food, and even traditionally celebrated New Year's Eve together. When once asked about Ginsburg, Scalia famously said, "What's not to like? Except her views on the law."³

Professional disagreements are just that and should never cross the line. Too many of our colleagues have left the profession, tired of all the fighting. It has nothing to do with intellectually challenging the merits of a particular claim or defense. Rather, it concerns the constant squabbling between some attorneys that only inflames and aggravates. Attorneys already cope with significant stress, and the last thing we need is to treat each other disrespectfully. Our clients and our profession demand better of us.

In closing, I offer the following guidance for attorney civility based on my own practice:

1. Remember the Golden Rule. Treat others with respect, and they will hopefully do the same.
2. Freely grant extensions of time. We all experience unexpected work conflicts, family emergencies, illnesses, vacations, weddings, funerals, etc., and professionalism requires us to act reasonably and reciprocally when such events occur.
3. Upon receipt of an inflammatory or rude communication such as a motion, letter, or email, do not respond in the heat of the moment. It is much better to sleep on it and formulate a response after your temper has cooled.
4. Never attack or demean another attorney, especially in writing. Our opponents are neither stupid nor ridiculous, and they should not be referred to as such. The same is true for an opposing party. It is far more effective to

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challenge the opposing party's *theory* of a case, rather than the party or attorney personally.

5. Never compromise your ethics or integrity. Your professional reputation in the legal community will follow you long after that lucrative client or huge case is gone.
6. Be confident, and always be prepared. This is especially important for newer attorneys, who are sometimes treated disrespectfully by more seasoned attorneys to exploit their inexperience. Remember that all of us at one time were new lawyers who needed to learn.
7. Acting courteously is not a sign of weakness or capitulation. It is a reasonable expectation among mature adults.
8. If you must deal with an uncivil opponent, take the high road and do not become distracted, no matter how outrageous the behavior. Remain focused on achieving your client's desired outcome.

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9. Recognize that opposing counsel is not your enemy, only your opponent. Clients may have bad feelings toward each other, but attorneys need not follow suit.
10. Refrain from badmouthing or criticizing other attorneys and judges. The Nevada legal community is still relatively small, and people do talk, including clients.

ENDNOTES:

1. See Administrative Order 22-08, May 9, 2022, at 1.
2. *Transcript: Read Michelle Obama's full speech from the 2016 DNC*, The Washington Post, July 26, 2016, <https://www.washingtonpost.com/news/post-politics/wp/2016/07/26/transcript-read-michelle-obamas-full-speech-from-the-2016-dnc/>.
3. Robert Barnes, *The Scalia/Ginsburg Reality Show: A 'not 100 percent sober' friendship*, The Washington Post, February 13, 2015, https://www.washingtonpost.com/politics/courts_law/the-scaliaginsburg-reality-show-a-not-100-percent-sober-friendship/2015/02/13/b8336930-b368-11e4-886b-c22184f27c35_story.html.



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Parsons Behle & Latimer Welcomes Justina Caviglia to its Reno Office

Parsons Behle & Latimer is pleased to welcome Justina Caviglia to its Energy, and Environmental and Natural Resources practice teams. Ms. Caviglia brings 15 years of administrative, litigation and appellate experience in utility, regulatory, water, environmental and natural resource fields to the firm. Learn more at parsonsbehle.com/people.

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