

Radical Civility

BY KRISTINE KUZEMKA, ESQ.

Incorporating Kindness into Your Legal Practice for Well-Being and to Reform the Legal Culture



As a newly minted attorney working in a civil law firm, I was representing a client in a post-divorce matter. There were three parties and their respective attorneys. A deposition was noticed for my client by opposing counsel which necessitated a continuance due to my client's schedule. Rather than agreeing to a continuance, he said, "File a Motion for a Protective Order."

Before doing the motion, I contacted the attorney for the third party and asked her about the upcoming deposition and if she was planning on attending. She replied, “don’t tell attorney ‘X,’ but he has no intention of going forward and taking the deposition. He said he was just f*c&ing with you and had been fired by his client.”

This is just one example of bad behavior under the guise of what some would label “zealous representation.” To consider an alternate path to zealous representation, I posit it is possible to be both effective and civil.

To be fair, there are numerous examples in my career and others where it is likely 90 to 95 percent of the time, most attorneys are cordial, considerate, and kind in working with opposing counsel. It is the small percentage of attorneys who engage in incivility that gives our profession a reputation for being bottom dwellers or other descriptors.

According to the 2014 American Bar Association article “Civility as the Core of Professionalism” by Jayne Reardon, civil behavior is a core element of attorney professionalism. As guardians of the rule of law that defines the American social and political fabric, lawyers should embody civility in all they do. Not only do lawyers serve as representatives of their clients, lawyers also serve as officers of the legal system and public citizens, having special responsibility for the quality of justice. To fulfill these overarching and overlapping roles, lawyers must make civility their professional standard and ideal.

In 2019, the State Bar of Nevada conducted a survey based on information gleaned from two well-being summits, held in Southern Nevada and Northern Nevada. The consensus was that deadlines were a significant problem that created stress, specifically when opposing counsel wouldn’t agree to a continuance.

On January 19, 2023, the State Bar of Nevada adopted the Creed of Professionalism and Civility, which includes the following pertinent excerpts to this article:

A lawyer should always show personal courtesy and professional

integrity in the fullest sense of those terms ... We remain committed to the rule of law as the foundation for a just and peaceful society ... Uncivil, abrasive, abusive, hostile or obstructive conduct impedes the fundamental goal of resolving disputes rationally, peacefully, and efficiently. Incivility tends to delay, and often deny, justice.

Lawyers should exhibit courtesy, candor, and cooperation when participating in the legal system and dealing with the public ... These honorable actions achieve the twin goals of civility and professionalism, both of which are hallmarks of a learned profession dedicated to public service.

<https://nvbar.org/for-lawyers/ethics-discipline/creed-of-professionalism-and-civility/>

Moving our profession toward realizing a reputation of civil practitioners, it is incumbent on all of us to encourage a cultural shift in that regard. The following definitions of radical and civility illustrate the simple principles of those outlined in the Creed of Professionalism and Civility:

Radical: affecting the fundamental nature of something; extreme or progressive; thorough complete reform

Civility: decorum, courtesy, respect, tact, consideration

Kindness isn’t often a word used to describe our professional culture. Kindness and civility are synonymous in that they are basically the quality of being considerate or behavior marked by acts of generosity, consideration, or rendering assistance or concern for others. Collegial and/or kind acts can make a dramatic impact on both those we work with and those who work on the opposing side.

Commonsensibly, we all know the relief experienced when we make that call to ask for an extension and opposing counsel agrees without acting smug or magnanimous. On the other hand, we’ve all had at least one experience where opposing counsel used the request as a sword in denying it, and we experienced that rush of adrenaline, fear, and dread. These requests can stem from a myriad of personal or professional reasons.

For example, family health issues can impact our ability to focus and keep our commitments to our clients or colleagues. Being overloaded with work at your firm due to lack of staffing or other reasons may require a continuance or other concessions at a particular time. Remember at the end of the day, we all have personal and professional challenges that life throws our way. Be

kind and considerate, with the caveat that there are certainly repeat offenders who constantly seek continuances as a habit and course of practice.

Simple courtesies are appreciated and often impact our level of stress and contribute to our general sense of well-being. Our mental health is affected

by the stressors in our lives. We deal with deadlines, client demands, business issues, and the ever-present responsibility for representing our clients to the best of our abilities. To foist rudeness and discourtesy on opposing counsel has given our profession a reputation (at times) as cold, calculating, and ruthless. While my experience has been generally positive and collegial with most opposing counsel, the occasional unpleasant incident can linger.

Incivility can also be expressed as an attorney who regularly seeks continuances while giving excuses that ring hollow after several times. Seeking a continuance once in a while is understandable but seeking them on a consistent basis can also affect the

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well-being of opposing counsel who has to rearrange their expectations and their client’s expectations. It can be a stressor as well.

There is hope. At a recent early arbitration conference with both sides, the attorneys were cordial and considerate to each other. I had mentioned I was drafting this article and that I appreciated the level of civility each brought to the table. One of them responded, “the dispute is the dispute, we don’t have to fight with each other.”

To be sure, there are many facets of civility, beyond deadlines, in our everyday dealings with opposing counsel. Coming back to full-speed law practice after more than three years of COVID-19 and its attendant stressors, it has taken time to gear back up to a new normal. Be kind to one another, not just because it is the right thing to do, but because you have no idea what the other person is going through at any given time. If you can’t agree to a continuance, try to convey it in a civil or kind manner. It may come back to you when you find yourself needing a continuance or concession from opposing counsel. A cultural shift requires us to start thinking of how we can practice radical civility and then actually doing so in our everyday practice.

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