

Good Sportsmanship: What Attorneys Can Learn from Fencing

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As a young attorney, I joked to family and friends that ours is the only profession where we expect a “hostile work environment.” Our profession is unique because we work to undo everything that opposing counsel has done. We clash for a living.

We can analogize the legal profession to sports because both have a win-or-lose structure. As a combat sport, fencing provides a poignant analogy. A coach or team members may support a fencer from the sidelines, but fencers compete one against one on a *piste*. The two athletes compete by striking each other with a sword. Fencers may cut with an *épée*, thrust with a foil, or cut and thrust with a *sabre*. Fencing is a modern-day battle, not unlike the legal practice

Fencing has distinctive rules meant to elevate the discipline of the competitors, so they focus on skill and not brute force. For example, fencers must salute one another and the referee at the beginning and end of the bout. Failure to salute can result in suspension or disqualification.

Fencers score points by striking each other, but there are also unique rules for scoring. For example, a referee will not award points for strikes below the waist because they are ungentlemanly. Should fencers strike each other at the same time, under the right-of-way rule, the referee will award a point to the fencer with priority. Fencers will not expose themselves to score unless they have priority.

Fencers must stay on the *piste*. Stepping off the *piste* stops the bout. The opponent may advance one meter toward the penalized fencer. The penalized fencer must retreat to a normal distance before the referee can restart the bout. A normal distance is where both fencers can stand on-guard with their swords extended toward each other without crossing blades. If the penalized fencer is beyond the back edge of the *piste*, then the opponent receives a point. Thus, going out of bounds may avoid an immediate loss, but the opponent can still ultimately get the point anyway.

Finally, referees issue yellow, red, and black cards for offensive conduct. A yellow card warns a fencer for body contact or delay. A red card awards a point to the opponent. Referees issue red cards for:

- (i) repeated body contact or delays, and
- (ii) violent or vindictive conduct.

A black card excludes the fencer from the competition, tournament, venue, or worse. Referees issue black cards on rare occasions for disturbing the order of a bout.

Law has similar rules. Lawyers must provide discovery and not impede the other side’s access to relevant information. *See* RPC 3.4 (Fairness to Opposing Party and Counsel). Lawyers may not pursue meritless claims. *See* RPC 3.1 (Meritorious Claims and Contentions) And prosecutors may not prosecute a charge that they know lacks probable cause. *See* RPC 3.8 (Special Responsibilities of a Prosecutor). These rules seek fairness, similar to fencing’s boundary rules.

Even beyond these boundary rules, attorneys have an obligation to be civil. When attorneys join the State Bar of Nevada, they take an oath to conduct themselves “in a civil and professional manner, whether dealing with clients, opposing parties and counsel, judicial officers or the general public, and will promote the administration of justice.”

Nevada also has specific rules that codify civility in the profession. First, there is RPC 3.5A, which requires a lawyer to contact a known opposing counsel before seeking default or dismissal. Its language gives a clear mandate that lawyers “should not take advantage of” opposing counsel. There is also a Nevada-specific provision in RPC 3.2 (Expediting Litigation), which allows a lawyer to grant “a reasonable request from opposing counsel for an accommodation” even when it may disagree with a client’s administrative or tactical matters wishes. This rule is akin to fencers’ requirement to salute and the rules that penalize overly aggressive fencers.

A courtroom is a place for intellectual and orderly resolution of conflicts. Decorum and civility “maintain respect for the institution of the court and the rule of law so that people need not feel that they must resort to brute force, mob action, street brawls, or domestic disturbances in order to seek and obtain justice.” *Office of Disciplinary Counsel v. Breiner*, 89 Haw. 167, 173, 969 P.2d 1290 (Haw. 1999). Lawyers, as officers of the court, may advocate for their clients with zeal but must maintain civility. Like fencing, we fight our clients’ battles with decorum and respect. We never strike below the waist with personal attacks or by taking unfair advantage of a situation.

Clients often come to us with emotionally charged situations or ill-formed intentions to take advantage of another. It is our obligation to maintain civility in the practice of law so that the integrity of the result is indisputable.