

Anything Less Would Be Uncivilized

By DANIEL J. HORGAN

Civility in the legal profession has routinely been a topic of studies and conversations among bar associations across the country for a number of years. Have you noticed recently, however, there has been an increase of calls for civility? When I was installed as CBA president last May, I felt the need to make civility a part of my bar year platform, along with collaboration and wellness. Newly installed American Bar Association president, Debra Enix-Ross (NY), has also made civility a critical piece of her national platform during this bar year as she announced to the House of Delegates in Chicago at the ABA's Annual Meeting, where she stated: "Our differences are aggravated by incivility in public discourse..."¹

Bullying, intimidation, and nastiness in our profession all too often has replaced negotiation, discussion, and skillful advocacy. Frayed patience and frustration coupled with the wall wedged between lawyers from remote communication and lack of face-to-face meetings with our colleagues brought on by the COVID-19 pandemic has increased rude behavior in our profession. The refusal to give a reasonable extension of time in litigation is one example of rude and unnecessary behavior, while not returning phone calls and engaging in obnoxious and abrasive rhetoric with colleagues in

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transactional matters wastes time and invariably increases fees to clients. What can we do about it? Is discussing and writing about civility going to make a difference? Perhaps not, but it is a start. We are lawyers having earned our Juris Doctorates and who have passed the bar examination. We have ethical responsibilities preached to us since our first day of practice. Civil behavior is a core element of our profession. Moreover, incivility among lawyers extends beyond litigation interfering with transactions of every kind. Even more concerning when discussing the topic of incivility is that younger lawyers, women lawyers, and lawyers of color and other marginalized groups are disproportionately on

the receiving end. Speaking of younger lawyers, the concept of civility should begin in our law schools. Former United States Supreme Court Chief Justice Burger once gave the following response to law school professors who believed they only needed to teach law students how to think: "Lawyers who know how to think but have not learned how to behave are a menace and a liability, not an asset, to the administration of justice."²

Not only are bar associations focused on this topic, but our judiciary is concerned as well. Recently appointed Connecticut Supreme Court Justice Joan Alexander spoke of respect, dignity, and emphasized civility during her keynote

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address to the CBA's Young lawyers Section (YLS) Leadership Retreat attendees: "Zealous advocacy does not authorize lawyers to be rude or disrespectful."³ Justice Alexander went on to tell our YLS leaders that their reputation is their most prized professional asset and that civility and respect should not only be given to courts and colleagues but also to the people you work with, from janitors to secretaries.

We have all seen various definitions of civility and understand the word. I came across former President of Boston University, John Silber's take on civility that I find particularly enlightening: "The lawyers' contribution to the civilizing of humanity is evidenced in the capacity of lawyers to argue furiously in the courtroom, then sit down as friends over a drink or dinner. This habit is often interpreted by the layman as a mark of their ultimate corruption. In my opinion, it is their greatest achievement: It is a characteristic of humane tolerance that is most desperately needed at the present time."⁴ At this present time in our profession, with all that we have been through and facing great challenges ahead, we must try to add some empathy and understanding when dealing with colleagues without forfeiting our principles of zealous advocacy. Both maxims have in the past and must in the future co-exist.

The only reference to civility in Connecticut's Rules of Professional Conduct is buried in the preamble, where it states: "A lawyer should demonstrate respect for the legal system and for those who

serve it, including judges, other lawyers and public officials." We have plenty of rules governing our conduct as lawyers, but it seems to me and many others that we need to place a greater emphasis on civility within our profession. Therefore, I am creating a task force entitled—We can do better: Connecticut's Civility Task Force. This is an issue I am confident our profession can address and overcome. It starts with the top of our profession—our judges, bar leaders, senior partners, and our most experienced mentors. We must meet this challenge by doing everything in our power. Anything less than our maximum efforts to

address rude and destructive behavior in our profession is, well, frankly, **UNCIVILIZED!** ■

NOTES

1. Debra Enix-Ross, Presidential Address (ABA 2022 Annual Meeting, Chicago, IL, August 10, 2022).
2. Chief Justice Warren E. Burger, "Excerpts From the Chief Justice's Speech on the Need for Civility," *The New York Times*, May 19, 1971, pg 28.
3. Justice Joan Alexander, Keynote Address (Young lawyers Section Leadership Retreat, Mashantucket, CT, August 12, 2022).
4. John R. Silber, quoted in *The Wall Street Journal*, March 16, 1972.

