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This publication was made possible through generous grants from the JAMS Foundation and the ABOTA Foundation, and is endorsed by the American Inns of Court.

The non-profit JAMS Foundation provides financial assistance for conflict prevention and dispute resolution initiatives with national and international impact. Established in 2002 by JAMS, the nation’s premier provider of alternative dispute resolution services, and funded entirely by contributions from JAMS neutrals and employee associates, the JAMS Foundation encourages the use of alternative dispute resolution (ADR), supports education about collaborative processes for resolving differences, promotes innovation in conflict resolution, and advances the settlement of conflict worldwide. To date, the Foundation has provided more than $3 million in grant funding.

The American Board of Trial Advocates (“ABOTA”) is a civil trial academy dedicated to professionalism and civility and the preservation of the Seventh Amendment right to trial by jury. The Foundation is the educational arm of ABOTA, dedicated to presenting numerous and varied educational programs in furtherance of these objectives. The mission of the Foundation of ABOTA is to support the purposes of the American Board of Trial Advocates to preserve the constitutional vision of equal justice for all Americans and preserve our civil justice system for future generations.

The American Inns of Court (AIC) movement began in 1980 when a group of lawyers and judges, headed by Chief Justice Warren Burger, organized the first Inn. There are now more than 350 chartered Inns that include more than 27,000 active members. Each Inn is a relatively small group of 80 that includes an ecumenical group of judges, lawyers, law professors, and law students who ban together to improve the skills, professionalism, and ethics of the bench and bar. An American Inn of Court is not a fraternal order, a social club, a course in continuing legal education, a lecture series, an apprenticeship system, or an adjunct of a law school’s program. While an Inn has some of each of these features, it is quite different in aim, scope, and effect. Rather, each Inn uses the traditional English model of legal apprenticeship that is modified to fit the particular needs of the American legal system. Each Inn meets approximately once a month, both to “break bread” and to hold programs and discussions on matters of ethics, skills and professionalism. Members learn side-by-side with the most experienced judges and attorneys in their community.

Additional contributions to Civility Matters have been provided by:

The American Association for Justice’s mission is to promote a fair and effective justice system—and to support the work of attorneys in their efforts to ensure that any person who is injured by the misconduct or negligence of others can obtain justice in America’s courtrooms, even when taking on the most powerful interests. With members worldwide, and a network of U.S. and Canadian affiliates involved in diverse areas of trial advocacy, AAJ provides lawyers with the information and professional assistance needed to serve clients successfully and protect the democratic values inherent in the civil justice system.

The Association of Defense Trial Attorneys is a non-profit professional corporation whose purpose is to bring together those selected trial lawyers of the United States, the District of Columbia, Puerto Rico, and Canada, whose practice consists substantially in the defense of claims at the request of insurance companies and self-insurers; for the purpose of continuing the education of its members in matters
pertaining to the defense of such claims; for promoting, fostering and maintaining a system of jurisprudence through the United States, the District of Columbia, Puerto Rico, and Canada for the determination of liability and damages in such matters; to own property, real or personal, and to do all things necessary to carry out its purpose. ADTA invites only one defense trial attorney to be its prime member per one million in population for each city, town, or municipality across the United States, District of Columbia, Puerto Rico and Canada. An ADTA prime membership is, in essence, a statement of the high regard in which that defense trial attorney is held by his or her peers in the defense trial bar of their city and state or province.

The Defense Research Institute is the international organization of attorneys defending the interests of business and individuals in civil litigation. DRI provides numerous educational and informational resources to DRI members and offers many opportunities for liaison among defense trial lawyers, Corporate America, and state and local defense organizations. DRI also has an international presence, seeking to enhance understanding of the law among members of the defense community who have reason to be concerned with the expanding globalization of litigation defense. DRI is committed to: enhancing the skills, effectiveness, and professionalism of defense lawyers; anticipating and addressing issues germane to defense lawyers and the civil justice system; promoting appreciation of the role of the defense lawyer; and improving the civil justice system and preserving the civil jury.

The Federal Bar Association was founded in 1920 to address the needs of federal government attorneys. Today, the Federal Bar Association is recognized as the premier bar association serving the federal practitioner and judiciary. The association strives to strengthen the federal legal system and administration of justice by serving the interests and the needs of the federal practitioner, both public and private, the federal judiciary and the public they serve.

The Federation of Defense & Corporate Counsel is an international organization founded in 1936 to further the principles of knowledge, justice, and fellowship. The Federation has approximately 1,400 members from the United States, Puerto Rico, Australia, Canada, Mexico, Europe, the Middle East and Asia. Our members include experienced attorneys in private practice who specialize in the defense of civil litigation, corporate counsel, risk managers, and insurance claims executives. Membership is by invitation only following an extensive peer review selection process.

The National Center for State Courts is an independent, nonprofit court improvement organization founded at the urging of Chief Justice of the Supreme Court Warren E. Burger. All of NCSC’s services — research, information services, education, consulting — are focused on helping courts plan, make decisions, and implement improvements that save time and money, while ensuring judicial administration that supports fair and impartial decision making.

Primerus is an international society of the world’s finest independent, boutique law firms. Doing business in a global economy calls for a team of trusted legal advisors who offer high-quality service at reasonable fees all around the world. Meeting our rigorous standards isn’t easy, so you can be sure any of our 2,800 attorneys at 180 member law firms in 34 countries and approximately 120 cities can provide assistance on your matter. Every lawyer in Primerus shares a commitment to a set of common values known as the Six Pillars: Integrity, Excellent Work Product, Reasonable Fees, Continuing Education, Civility, and Community Service.
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Presentation Materials

A separate supplement for teaching civility is available, as are copies of this Civility Matters publication and DVDs, free of charge from www.abota.org, or by contacting the Program Coordinator identified on the website.

The teaching supplement includes Guidelines for Conducting a “Civility Matters” Panel, Discussion Questions, Role Play Vignettes and a Presentation DVD containing a Powerpoint presentation along with actual video, audio, and written instances of incivility to further group discussions regarding what a civil lawyer should do when faced with such situations.
Sixty years ago, young lawyers were almost never exposed to instances of incivility or unprofessional conduct. Probably like most places, California trial lawyers lived by a code that demonstrated the highest standards of the profession. They followed an unwritten bible of self-imposed dignity and integrity. Much like professional golfers, who would call penalties on themselves, these gladiators knew it was their job to protect the system, as well as their clients. No one else needed to remind them of the importance of their professionalism.

But, by 1958, incivility, once relatively rare, started to develop. When the American Board of Trial Advocates was formed in Los Angeles, its founding members were already concerned about this incipient problem. They committed themselves to promotion of civility, forming an organization dedicated to only two principles: preservation of the right to civil jury trials and civility in the practice of law.

Thirty years ago, the well-known circles of professionals in each community who frequently tried dozens of cases against each other, had largely disappeared. In their place were populations of lawyers who could litigate for years and never see the same opponent twice. Many litigators were noticing a serious decline in civility and collegiality in the practice of civil law. Winning “at all costs” became common enough that some began to tolerate it. Eventually, for many lawyers, incivility became the rule, not the exception.

There were then two classes of lawyers: those who were mentored in civility, and those whose exposure to discourteous conduct became their de facto training. The fortunate who were mentored, learned and observed that the golden rule applies with full force to the legal profession. They learned that civility protects the integrity of the judicial system and serves the best interests of their clients. The rest were either trained to employ sharp practices and uncivil methods of dealing, or their observations of such conduct led them to seek improper “advantages” thereby.

“Rambo” and “scorched earth” were the monikers attached to these tactics, and many practitioners were not just proud of their incivility, they marketed it. The results were problematic and the court system was ill-equipped to deal with it. Judges found themselves forced to confront these issues primarily on discovery motions. Many affected jurists believed that they lacked authority to address civility issues. Incivility had thus become so prevalent, that many lawyers simply accepted it as a disagreeable, but unchangeable reality associated with the practice of law.

Although the majority of attorneys conduct themselves honorably, nationwide, lawyers report discomfort associated with sharp tactics and incivility in virtually every jurisdiction in the United States. Occasionally, respected members of the bar have attempted to focus attention on the toxic effects of this growing problem. But their well-meaning efforts have been short term and sadly ineffective to stem this rising tide among lawyers in this country.

In response to what is now recognized by many to be a full-scale epidemic, the National Board of Directors of ABOTA recently took a leadership role on this important issue. We prepared and released a simple DVD entitled “Civility Matters” for use primarily in law schools, bar organizations and law firms. It contains interviews with Justices, Judges and top lawyers nationwide, interspersed with video clips from movies and television shows. Full length it is only 35 minutes long and focuses exclusively on why civility is critically important to our system of justice. Shorter versions are available as well.

This DVD has re-ignited the debate regarding this important issue. Civility programs are now being offered across the country. Last year alone ABOTA lawyers and supportive Judges put on nearly one hundred law school programs. Inoculating young lawyers before they get the disease is our mission.

Join us as we endeavor to tackle and eliminate incivility. Remember, as in life, there are only two kinds of lawyers: those whose conduct makes them part of the problem and those whose conduct makes them part of the solution. We need your help to address and resolve this long-standing problem. Practice and teach civility… because it matters.
First, as president of the American Inns of Court Foundation, I want to tell you what an honor it is for the American Inns of Court (AIC) to work closely with ABOTA and JAMS to bring to the legal profession the Civility Matters program. We truly believe the program will make a significant positive difference in the integrity and civility of members of our profession.

Second, I want you to know about the AIC movement. We are devoted to promoting professionalism, civility, ethics and excellent legal skills at the American bench and bar. From the founding of the first American Inn of Court in 1980, lawyers, judges, academics and students throughout the nation have been meeting on a monthly basis in a collegial setting in their local American Inn of Court for continuing education and mentoring.

Today, more than 27,000 members participate on a regular basis in more than 350 chartered American Inns of Court. Since the founding, more than 100,000 members have contributed to, and benefited from, their involvement in this national movement.

Looking for a new way to help lawyers and judges rise to higher levels of excellence, professionalism, and ethical awareness, the American Inns of Court adopted the traditional English model of legal apprenticeship and modified it to fit the particular needs of the American legal system. American Inns of Court help lawyers become more effective advocates and counselors with a keener ethical awareness. Members learn side-by-side with the most experienced judges and attorneys in their community.

An American Inn of Court is not a fraternal order, a social club, a course in continuing legal education, a lecture series, an apprenticeship system or an adjunct of a law school’s program. While an Inn has some of each of these features, it is quite different in aim, scope and effect.

Membership is composed of the following categories: Masters of the Bench—judges, experienced lawyers and law professors; Barristers—lawyers with some experience who do not meet the minimum requirements for Masters; Associates—lawyers who do not meet the minimum requirement for Barristers; and Pupils—law students. The suggested number of active members in an Inn is around 80.

Most Inns concentrate on issues surrounding civil and criminal litigation practice, and include attorneys from a number of specialties. However, there are several Inns that specialize in criminal practice, federal litigation, tax law, administrative law, white-collar crime, bankruptcy, intellectual property, family law, or employment and labor law.

I encourage you to explore our Web site. (www.innsofcourt.org). Read about the history of the American Inns of Court and its mission and goals. Examine the Professional Creed that articulates aspirational conduct for lawyers. Review our diversity policy.

If you are a member of an American Inn of Court, I thank you for your participation, and I invite you to let us know how we can continue to serve and support you. If you are not a member of an American Inn of Court, consider joining thousands of others who share a commitment to improving the legal profession and maintaining the values essential to the success of a noble profession.
A

busive, bombastic, and antagonistic behavior are characteristics that reflect poorly upon the individual attorney and demean our legal profession.

These characteristics also impede communication and the open exchange of ideas and information.

In the field of conflict resolution, these characteristics are anathema to the orderly processes of ADR and reduce the opportunity for successful outcomes.

It is therefore important to JAMS that ABOTA’s “Civility Matters” initiative is so successful that all lawyers who appear in future JAMS proceedings are inculcated with the principles of ethics and civility, the cornerstones of successful advocacy.

The JAMS Foundation is a non-profit organization solely funded through donations of JAMS neutrals and associate personnel. No donations are accepted from outside interests. The JAMS Foundation is dedicated to funding ADR-related programs designed to maximize the spread of effective dispute resolution programs and to improve the mechanisms for dispute resolution.

The JAMS Foundation’s grant to the ABOTA Foundation’s “Civility Matters” program is an investment in hammering home to law students, bar associations, Inns of Court, trade associations, and all manner, make, and kind of attorneys that advocacy in the courtroom, arbitration proceeding, special master hearing and mediation forum benefits from participants who embrace high ethics and civil conduct.

JAMS has a self interest in the success of the “Civility Matters” initiative because our neutrals have found that ADR processes are enhanced — and the percentage of successful, efficacious outcomes are increased — when the parties’ advocates comport themselves to the highest standards of our profession. Professional-acting advocates make for pleasant ADR processes which in turn make for happy JAMS neutrals. Successful ADR outcomes make for happy clients who will avail themselves of ADR processes to resolve their future disputes.

In summary, behaviors affect outcomes. It is the JAMS Foundation’s hope that the ABOTA Foundation’s initiative will prove contagious among the members of the legal profession. Civility Matters!
What is Civility?

Civility is an attitude that lawyers will treat everyone (opponents, witnesses and judges) with dignity and respect. Respect is the foundation of civility as it is to good sportsmanship, good manners, and the Golden Rule. We as trial lawyers are expected to fight the good fight, but we must always remember that our individual and collective reputations and the viability of the legal system are more important than any disputed issue or case. We seem to have forgotten this, and that is why our reputation has fallen to such depths.

Although lawyers have always been subject to scorn because we take sides in hotly contested public disputes. Even William Shakespeare acknowledged that we understood civility in his day when he wrote the following passage in The Taming of the Shrew: “And do as adversaries do in law — strive mightily but eat and drink as friends.”

We must not lose our way as a profession. Without respect there can be no civility, and without civility there can be no respect for lawyers or the legal system. We are not just another “business,” we are a noble profession.

Incivility manifests itself in many forms, including bad behavior during discovery, distasteful advertising and rudeness to judicial officers. Our reputation as a profession has fallen so far, so fast as reflected in best-selling novels, popular TV shows and movies, because of a lack of civility.

The good news is that we can do something about it, and it starts with each of us. We must learn what incivility is, how it manifests itself, how to combat it, and then try to do something every day to change the tone. Good behavior based on respect has the power to influence the behavior of others; it is an infectious attitude. You will find that the practice of law is easier, less stressful, less costly and more profitable when you make civility a habit.

1. The California Civility Guidelines

Incivility usually arises in the context of pretrial discovery where there is less judicial supervision. Following is an outline of where you will expect to see it with citations (where applicable) to the California Attorney Guidelines of Civility and Professionalism issued by the State Bar of California on July 20, 2007.

In its Introduction, the State Bar made it clear that its guidelines are “voluntary” and not to be used as an independent basis for disciplinary charges by the State Bar or for claims of professional negligence. The goal is to transform these “guidelines” into enforceable rules of court.

A. Depositions

- Scheduling depositions without prior contact for convenient times and locations. [Sections 6(a), 6(b), 9(a)(1)]
- Cancelling depositions at the last moment. [Section 6(d)]
- Showing up late for depositions. [Sections 5(a), 5(b), 9(a)(2)]
- The use of foul and hostile language. [Sections 4(f), 9(a)3), 9(a)(4)]
- Rude-toned questioning techniques, intimidation and badgering.
- Obstructionism: speaking objections [Section 9(a)(8)], inappropriate instructions to witnesses [Section 9(a) (7)], witness coaching [9(a) (6)], attempts to manufacture inconsistencies with broad, repetitive, tiresome questioning.

B. Interrogatories

- Lengthy or frequent sets of interrogatories used as a weapon. Ask only what you need. [Section 9(c)(1)]
- Hiding the ball. Be responsive when you are answering. [Section 9(c)(2)]
- Object only in good faith and answer what is not objectionable. [Section 9(c) (3)]
- Refusing extensions of time. Reasonable requests for extensions of time not adverse to your client’s interests should be granted. [Section 6]

C. Document Requests

- Lengthy requests used as a weapon. Ask only for what you need. [Section 9(b)(1)] You should avoid trying to use a request to create an “inordinate burden or expense.” [Section 9(b)(2)]
- Hiding the ball. When you receive a document request, do not purposely try to avoid disclosure or withhold documents on the basis of privilege. [Section 9(b)(4)] It also is inappropriate to take a “needle in a haystack” approach of providing documents in a disorganized fashion or in an unintelligible form to hide them. [Section 9(b)(5)]. Likewise, delaying the production of documents until the last moment hoping an opponent will not
inspect them or use them is improper. [Section 9(b)(6)]

D. Scheduling, Continuances and Extensions of Time

• Section 6(a) provides: Unless time is of the essence, an attorney should agree to an extension without requiring motions or other formalities regardless of whether the requesting counsel previously refused to grant an extension. This is an acknowledgement that it is up to you to end the downward spiral of incivility. You should not bear grudges nor seek sweet revenge. Again, this is an opportunity to apply the Golden Rule to reset the tone.

E. Conducting litigation in bad faith: accusations, name-calling, claims that are baseless

F. The use of threats: threatening no settlement unless certain conditions are met, threatening the reputation of an opponent (e.g., threatening to or reporting someone to the State Bar without a valid reason) and threatening adverse publicity.

If you do not practice in California, check your state and local rules for the applicable civility rules.

2. The ABOTA Civility Principles

ABOTA has been the leader in promulgating civility and professionalism standards. In the early 1990s it published Principles of Civility, Integrity and Professionalism and a one-page Code of Professionalism. These early standards are echoed in California’s civility guidelines and those issued by other states and courts.

The ABOTA Code of Professionalism contains 10 general rules to follow. The last two rules justify an early telephone call to your adversary before the case starts: Rule 9: Be respectful in my conduct toward my adversaries; Rule 10: Honor the spirit and intent, as well as the requirements of applicable rules or codes of professional conduct, and ... encourage others to do the same. The entire Code can be found online at www.ABOTA.org.

ABOTA’s Principles of Civility, Integrity and Professionalism supplement the Code of Professionalism and are more specific. For example:

A. Depositions

• Principle 19: Never take depositions for the purpose of harassment or to burden an opponent with increased litigation expenses.
• Principle 20: During a deposition, never engage in conduct which would not be appropriate in the presence of a judge.
• Principle 21: During a deposition, never obstruct the interrogator or object to questions unless reasonably necessary to preserve an objection or privilege for resolution by the court.
• Principle 22: During depositions, ask only those questions reasonably necessary for the prosecution or defense of an action.

B. Interrogatories/Document Requests

• Principle 23: Draft document production requests and interrogatories limited to those reasonably necessary for the prosecution or defense of an action, and never design them to place an undue burden or expense on a party.
• Principle 24: Make reasonable responses to document requests and interrogatories and do not interpret them in an artificially restrictive manner so as to avoid disclosure of relevant and non-privileged documents.

• Principle 25: Never produce documents in a manner designed to obscure their source, create confusion, or hide the existence of particular documents.

C. Scheduling, Continuances and Extensions of Time

• Principle 10: Never use any form of discovery scheduling as a means of harassment.
• Principle 13: Never request an extension of time solely for the purpose of unjustified delay or to obtain a tactical advantage.
• Principle 14: Consult other counsel on scheduling matters in a good faith effort to avoid conflicts.
• Principle 15: When calendar conflicts occur, accommodate counsel by rescheduling dates for hearings, depositions, meetings and other events.
• Principle 16: When hearings, depositions, meetings or other events are to be canceled or postponed, notify as early as possible other counsel, the court, or other persons as appropriate, so as to avoid unnecessary inconvenience, wasted time and expense, and to enable the court to use previously reserved time for other matters.
• Principle 17: Agree to reasonable requests for extension of time and waiver of procedural formalities when doing so will not adversely affect my client’s legitimate rights.

D. Conducting Litigation in Bad Faith: Accusations, name-calling, claims that are baseless

• Principle 1: Advance the legitimate interests of clients without reflecting any ill will they may have for their adversaries, even if called on to do so, and treat all other
counsel, parties and witnesses in a courteous manner.
  • **Principle 2**: Never encourage or knowingly authorize a person under your direction or supervision to engage in conduct proscribed by these principles.
  • **Principle 3**: Never, without good cause, attribute to other counsel bad motives or improprieties.
  • **Principle 26**: Base discovery objections on a good faith belief in their merit, and not for the purpose of withholding or delaying the disclosure of relevant and non-privileged information.
  • **Principle 28**: During argument, never attribute to other counsel a position or claim not taken, or seek to create such an unjustified inference.

E. The Use of Threats
  • **Principle 4**: Never seek court sanctions unless they are fully justified by the circumstances and necessary to protect a client’s legitimate interests and then only after a good faith effort to informally resolve the issue with counsel.

Once again, the ABOTA Principles of Civility, Integrity and Professionalism can be found on page 34.

Why Is The Profession Less Civil Today?

1. Society Has Changed

People are less civil to one another and courtesy, good manners and chivalry are disappearing. The Golden Rule is not valued as much as it was in the past. You see it on the roads, in the supermarket and at the courthouse. The focus now is on immediate results and winning at all costs. Technology has increased the pace of life, and fax machines, email and texting help keep the focus on immediacy. We have forgotten the need to pause, take a deep breath and reflect before reacting.

As noted above, lawyers’ reputations have declined as reflected by lawyer jokes, books and movies. Television shows on CNN, Fox News, the McLaughlin Group and Judge Judy put a premium on rude behavior and constant interruption, which send the message that it is acceptable not to respect the views of others.

Incivility and bad manners are everywhere. We see it in sports with recent outbursts by tennis stars Roger Federer and Serena Williams at the 2009 U.S. Open. We see it in the rude behavior of rapper Kanye West at the 2009 MTV Music Video Awards that resulted in President Obama calling him a “jackass.” We also see it in the political arena at the highest levels. South Carolina Congressman Joe Wilson felt it was appropriate to call President Obama a liar to his face during a joint session of Congress nationally televised in prime time.

2. Lawyers’ Attitudes About Law As A Profession Have Changed

The first rule in ABOTA’s Code of Professionalism is:

“Always remember that the practice of law is first and foremost a profession.”

Unfortunately, many of us have forgotten this principle but it is not surprising that more and more lawyers view their calling as a “business.” Law firms pressure their lawyers to increase billable hours even though it is well known that the best time to resolve a dispute is at the beginning and not at the end. There is intense competition for clients who are shopping for legal services. Declining client loyalty is a reality.

Distrustful advertising is another form of incivility. Lawyers market themselves as attack dogs, fighters, Supermen and gladiators where winning and big results are promoted and valued. This is becoming more prevalent on internet websites, the Yellow Pages, TV and billboards. A prevailing attitude is that litigation is war and that trial practice should be described in military terms. Winning at all costs is the goal which can justify Rambo and “scorched earth” tactics to make life miserable for your opponent. Discovery is to be used for purposes of intimidation rather than for fact-finding. In fact, clients select lawyers for this aggressive “take no prisoners” attitude.

Threats are used to achieve the desired goals. The John McEnroe Syndrome is popular with some lawyers who think it is productive and actually “enjoyable.” There is a declining importance of the concept that “my word is my bond” because, of a belief that, “it is the result that counts.”

There is a declining appreciation for one’s reputation as opposed to how much money you can make, how many clients you have and how many cases you have won. In fact, many lawyers have realized that you do not need a good reputation in the legal community to get cases if you have a good marketing strategy and spend a lot of money on a fancy website. Who cares about being recognized by your peers and being a member of organizations like ABOTA, IATL, ISOB and the American College of Trial Lawyers, when you are dealing on the Internet with potential clients who do not know the difference and do not care?

So, when you add this all up, does it sound like we are becoming just another business? It certainly does.

3. The Legal Community Has Changed

There are more lawyers, so there is less incentive to maintain cordial relationships because lawyers may never meet again. The legal community is no longer insular; it is more diverse and globalized. This inevitably leads to loss of collegiality. There seems to be an inverse relationship between the size of the community and civility.

The disappearing jury trial is another big change. Many lawyers have never tried a case, let alone a jury trial, and many never will. Jury trials
teach you important lessons. If you are uncivil at trial, the jury will hold it against you and you will learn a very expensive lesson.

Mushrooming discovery also is a perfect medium for the growth of incivility as outlined above. Discovery abuse can lead to sanctions and bad will.

Mentoring of young lawyers no longer exists. There is little time for it in the big firms and many senior lawyers have little experience.

Judges do not always appreciate that they are in a position to set the tone for civility. In fact, Code of Judicial Conduct, Canon (3)A(3) “requires” judges to be patient, dignified and courteous. ABOTA’s Principles of Civility, Integrity and Professionalism also apply to judicial conduct.

Why Should We Embrace Civility?

1. Incivility Hurts Your Client

Incivility results in increased costs and fees. It leads to law and motion, sanctions, unnecessary expensive discovery and the need to pay expensive expert witnesses. It delays resolution of a dispute. No one wants to discuss settlement or attend a mediation when engaged in an uncivil emotional battle.

Incivility is less effective. Offending a witness at a deposition causes the witness to be guarded and defensive, but a friendly, skilled approach will usually obtain all the facts you need to develop and to win your case.

2. Incivility Hurts You

It destroys your reputation. No one wants to refer cases to someone who is unprofessional and who wastes a client’s time and money. The most respected lawyers get the business.

It makes your life miserable. Unnecessary fighting generates stress and can make the practice of law intolerable. It can adversely affect your health and relationships. Collegiality is rewarding and healthy.

3. Incivility Hurts The Legal Profession and the Justice System

Incivility results in a lowered image of lawyers. No one likes this except the comedians. Incivility interferes with a lawyer’s role to help the client to obtain justice. Any lawyer who has selected a jury recently can tell you about juror attitudes and how they affect the system.

How Do We Solve The Problem of Incivility?

1. The Short-Term Solutions

Start every case with a telephone call to your opponent to introduce yourself and discuss how you would prefer to handle issues like discovery disputes, deposition notices, extensions of time and vacation scheduling. This will set an early tone of mutual respect and make your life easier. Instead of risking a downward spiral of incivility, you can hope to create an upward spiral of cooperation.

When you encounter uncivil behavior, say something about it. Invite your uncivil opponent to lunch so you can talk about it. You have the power to change attitudes and take the high road. Remember that civility starts with you.

Encourage voluntary disclosure during discovery whenever possible including identifying persons with knowledge, the mutual exchange of documents, arranging document reviews of voluminous records so an opponent can mark what he needs, and arranging informal interviews of parties in the presence of counsel where appropriate or necessary. Thinking “outside the box” may help you resolve your case sooner and more profitably for your client.

Stand up to bullies. Videotape depositions with uncivil opponents. Disclose uncivil behavior to a judge who has the inherent power in most courts to control it. (See Federal Rules of Civil Procedure, Rules 30 and 37.)

2. The Long-Term Solutions

We have to educate lawyers and law students about the advantages of civility. They need to learn to appreciate what John F. Kennedy said years ago: “Civility is not a sign of weakness.” ABOTA is at the forefront of these efforts with its “Civility Matters” programs in law schools, local bar associations and law firms. The various Inns of Court have mentoring programs that also address civility and professionalism, too. Some law firms still have active mentoring programs. What we need is for more states to have a standing program for mentoring young lawyers in civility.

In 2008, the Utah Supreme Court approved a mandatory program to help lawyers during their first year of practice in professionalism, ethics and civility. The Montana ABOTA chapter is in the process of establishing a Civility Mentor/Mediator Program.

Other efforts are being made to make civility part of a lawyer’s oath. This has been accomplished in South Carolina and Utah. Utah’s oath provides as follows:

I do solemnly swear that I will support, obey and defend the Constitution of the United States and the Constitution of Utah; that I will discharge the duties of attorney and counselor at law as an officer of the courts of this State with honesty, professionalism and civility; and that I will observe the Rules of Professional Conduct and the Standards of Professionalism and Civility promulgated by the Supreme Court of the State of Utah.

All the states should take Utah’s lead of adding professionalism and civility to their attorney oaths and incorporating the state’s civility standards, as well. Civility standards should be mandatory and not merely voluntary guidelines. Incivility will not end until we demand that officers of the court treat others with respect.
I thank the leadership of ABOTA for inviting me to address “professionalism” with ABOTA members. In this article, I will focus on the core values of our profession: honesty, integrity and civility, why we all must strive to cultivate those values, and how we cultivate those values through activities of our professional organizations.

What Is Professionalism?

The word “professionalism” may mean different things to different lawyers. If you ask a lawyer what the term means, my guess is, if that lawyer has thought about the concept of “professionalism,” the response will include a fairly specific and thoughtful definition. Others, who just don’t consider the term very meaningful, may assign the term no definite meaning at all. Perhaps, for those who accord no special meaning to the term, a vague meaning, such as “being a good lawyer,” will suffice.

I know that when I look at that word, “professionalism,” and when I think about it, that concept definitely means more, and a lot more, than simply “being a good lawyer.” In my view, at the “core” of professionalism are the values of honesty, integrity and civility. Because those values are alive at the “core” of professionalism, our profession and our legal system have substance and are not vacuums that are devoid of values.

What does one mean when one speaks of the values of honesty, integrity and civility? I think we all learned the basic meaning of those concepts by the time we arrived in the second grade. We knew the rules were: 1. Don’t lie. 2. Don’t steal. 3. Don’t hurt anyone. Well, those concepts translate directly into the values of our profession.

When it comes to honesty, I think the meaning of that term should be obvious to lawyers. ABOTA and AIC have defined the meaning of that term so there can be no misunderstanding. ABOTA’s Code of Professionalism specifically provides, “I shall . . . always remember that my word is my bond and honor my responsibilities to serve as an officer of the court and protector of individual rights.” (emphasis added). The American Inns of Court (AIC) movement focuses on these values in its Professional Creed where it says, “I will value my integrity above all. My word is my bond” (emphasis added). Can we express the meaning of “honesty” any more clearly than stated in ABOTA’s Code and in the AIC’s Creed?

However, some disagree that we must always be honest. At least one commentator has observed, “In situations where honesty conflicts with other important values, there is no reason to presume that honesty should prevail.” See William H. Simon, Virtuous Lying: A Critique of Quasi-Categorical Moralism, 12 GEO. J. LEGAL ETHICS 433, 436, 463 (1999); see also Fred C. Zacharias, Fitting Lying to the Court into the Central Moral Tradition of Lawyering, 58 CASE W. RES. L. REV. 491, 510 (2008) (stating author’s instinct that “discarding a lawyer’s obligation of candor in favor of the ethic of zeal has serious costs for the institution of the law.”).

Others in our profession use the words, “zealous advocacy” as a sword to pursue a strategy of winning at all costs. See Dondi

Why Civility Matters — It Is The Essence of Professionalism

Justice Douglas S. Lang
Texas 5th District Court of Appeals
Dallas, TX 75202
www.innsofcourt.org

The American Inns of Court (AIC)’s Creed?

ABOTA and AIC have defined the meaning of that term so there can be no misunderstanding. ABOTA’s Code and in the AIC’s Creed? Can we teach any brand of “moral balancing” and excessive, “zealous advocacy” to beginning lawyers? I say, loudly, “No!”

Integrity is a term I believe is as straightforward in its meaning as honesty. To me, it means trustworthiness. That is, how people view you, i.e., respect. The proven liar is not respected, nor trusted. The only thing you can count on with an untrustworthy person is that their lack of trustworthiness is predictable. Such people will be repeat offenders.

So then, what is the meaning of the term civility as applied to the legal profession? I believe one of the best descriptions of civility was stated by United States Supreme Court Justice Anthony M. Kennedy in a speech at the 1987 American Bar Association Annual meeting. He said, “[Civility . . . ] is not some bumper-sticker slogan, ‘Have you hugged your adversary today?’ Civility is the mark of an accomplished and superb professional, but it is even more than this. It is an end in itself. Civility has deep roots in the idea of respect for the individual.” See also Higgins v. Coatsville Area Sch. Dist., No. 07-4917, slip op. at 10 (E. D. Pa. Sept. 16, 2009) (mem. op.).

The importance of these values is obvious to me. To those who question the relevance of these values to the practice of law, I say we adhere to them because it is the right thing to do. However, if more proof is necessary for the “doubters,” I suggest they simply read the disciplinary rules applicable to their
jurisdictions. I cannot imagine that there is a jurisdiction that does not require candor toward opposing counsel, the court, and all others involved in a matter. See, e.g., Tex. Disciplinary R. Prof’l Conduct 2.01 (render candid advice to client), 3.03 (candor toward the tribunal), 4.01 (truthfulness in statements to others), reprinted in TEX. GOV’T CODE ANN., tit. 2, subtit. G app. A (West 2005).

Yet, it is clear the disciplinary rules are the lowest acceptable level of behavior that will be allowed. When any lawyer violates those or other disciplinary rules, that lawyer is subject to sanctions by the regulatory arm of the licensing agency or bar as well as possible sanctions from a court. The ABOTA and AICF credo of “My word is my bond.” is a much higher standard to which we adhere.

If after considering the rules the doubting lawyers still remain unconvinced that we must live by these values, then they should consider the observation of Professors Neil Hamilton and Melissa H. Weresh. The professors contend we must perform at the highest levels of professionalism because we, as lawyers, have a contract with the public, through the legislature. Specifically, they posit pursuant to this contract, the public has granted the legal profession “autonomy” for “peer review,” control of membership, and setting of standards.

In exchange, each member of the legal profession and the profession have solemn duties to maintain high minimum standards, discipline members who fail to meet those standards, promote the “core values and ideals of the profession,” and restrain self-interest to serve the public purpose of the profession. Neil Hamilton, Professionalism Clearly Defined, 18 No. 4 PROF. LAW. 4, 4-5 (2008); Melissa H. Weresh, I’ll Start Walking your Way, You Start Walking Mine: Sociological Perspectives On Professional Identity Development and Influence of Generational Differences, 61 S.C. L. REV. 337 (2009).

If the doubting lawyers remain unconvinced in the face of all of the foregoing, then it seems to me, they are ignoring the evidence. In my view, the evidence clearly proves the necessity of adhering to the values of honesty, integrity, and civility is based not only on morality, but it is also legally and practically based.

Action Speaks — Cultivating Professionalism by Mentoring

With these values and the necessity to adhere to them in mind, one should ask: How do we, as lawyers, address the need to cultivate values in our profession? Can we rely solely on law schools to see to it that values are injected into nascent lawyers? The answer is, probably not. The academy generally focuses on reworking the patterns of a law student’s brain so that a law student “thinks like a lawyer.” See Jeffery A. Maine, Importance of Ethics and Morality in Today’s Legal World, 29 STETSON L. REV. 1073, 1074 (2000); Richard K. Greenstein, Against Professionalism, 22 GEO. J. LEGAL ETHICS 327 (2009). The academy can and must do more to discuss and impress students with the importance of values through more expansive professional responsibility classes and curriculum that injects the sense of these values in class lectures and materials.

Yet, some say, our professional values cannot be taught in the same manner that we teach the rule in Shelley’s case or the definition of murder. See Christopher J. Wehlan, Ethical Conflicts in Legal Practice: Creating Professional Responsibility, 52 S.C. L. REV. 697, 725 (2001). Then, where and how are these values to be taught and acquired? In my estimation, the values of our profession are learned by observing and working with other lawyers. It is a process as old as the human race. We have always learned by observation and through association. Id. This process, at its finest, is what is called mentoring. Mentoring is becoming a primary mission of many of our professional organizations, including the American Inns of Court movement.

The need for mentoring has become almost an “emergency” today. While many firms and law departments have excellent training and mentoring programs, too many beginning lawyers have no such environment in which to learn and grow. That is one of the stark realities of our economic times. Large numbers of beginning lawyers have hung their shingles, but have little opportunity to observe and learn from experienced lawyers. At the same time, some beginning lawyers practice in work environments, even in firms, that do not focus closely enough on those learning needs. Also, working hand in hand with bar groups, law schools, and as part of mentoring programs we should create demonstrative educational programs that graphically teach the meaning of these values.

Developing Goals and Programs To Enhance Mentoring

That is where our professional organizations must step in. We must supplement or even serve as the central supply of mentoring and practical education needed by law students and beginning lawyers. Many state bars and other organizations, including ABOTA and AICF, are on that track. They have created programs and vehicles to foster mentoring and educate law students and beginning lawyers. Additionally, they display on their websites assorted materials available to all that describe ways to develop relatively simple, straightforward programs.

One of the most positive and active programs that fosters the development of professionalism through mentoring, both in the law school student and in the beginning lawyer, is the Nelson Mullins Riley & Scarborough Center on Professionalism at the University of South Carolina School of Law. The Center has sponsored, among
other programs, at least two national conferences on the “best practices” of mentoring. In my view, the Center has demonstrated extraordinary leadership in convening forums to gather a broad spectrum of our legal profession’s organizations so that we can learn of, communicate about, and develop effective mentoring programs. At this time, the Center and the AICF are working together to formulate a model mentoring program adapted for smaller groups, like Inns of Court and local ABOTA chapters. The model is being tested now by at least two Inns in the Southeast.

Further, ABOTA’s Civility Matters program hits the mark. It graphically demonstrates the meaning of civility through DVDs that contain scenes showing conduct of lawyers in excerpts from movies, television productions and video depositions. Combine the two program concepts and you have a foundation on which to build a system for practical education of law students and beginning lawyers about how they must conduct themselves in the practice of law.

A Call to Action—A Vigorous Movement Pushing Ahead

The professionalism movement in the United States is vigorous and strong. We are enthusiastic and moving ahead to cultivate the values of honesty, integrity, and civility in our profession. Strong professional organizations like ABOTA, the American Inns of Court, state and local bar associations and countless others across the country, must join together to cultivate the values of our profession. How do we enhance this effort? We, the “flagship” organizations, must make a concerted effort to work together, use the resources available now, and make professionalism programs function in every local bar to put our beginning lawyers on the right path. Thank you for being part of this great effort to cultivate professionalism!

2007 Judicial Professionalism Symposium, 4th Circuit

1 Not Being on Time
• When lawyers are late to court or unprepared. It “delays the train schedule.”

2 Failing to Identify Yourself
• Beginning your argument in court without first identifying yourself, who you are representing, and the motion under consideration. Even a judge’s best friend should go through the ritual.

3 Forgetting to Inform the Judge or JA
• Faxing or electronically filing a motion to opposing counsel the night before an early morning hearing without providing the judge with a courtesy copy.
• Failing to provide the judge with a courtesy copy of an “emergency motion” in state court (because it is likely that the motion will not be seen as quickly as necessary since all motions are sent up from the clerk’s office in a stack of files that all look alike).
• Failing to notify the judge’s JA that a case has been resolved, especially when it affects the court’s calendar, so that someone else can be given that time.

4 Providing Incomplete Information
• Sending or dropping off a proposed order with no cover letter, no identification of the hearing that it relates to and/or failing to mention whether the proposed order was run by opposing counsel prior to submitting it to the court.
• Failing to candidly describe all relevant fact and case law.

5 Improper and Unprofessional Manners at Court Appearances
• Speaking over each other or over the court.
• Continuing to argue after a ruling is made.
• Reacting emotionally to a ruling, as if an adverse ruling were a personal affront. It is not. “If, for some reason, the case is indeed personal to you, you are too close to the issue to be the attorney for the client.”
• Using sarcasm in arguments and comments to each other or to the court.
• Directing your arguments to each other rather than to the court.
• Making improper or distracting gestures (e.g., holding up a hand while opposing counsel is
arguing a motion, huffing and puffing, rolling your eyes, etc.).
— When litigants, witnesses or lawyers in chambers and courtrooms:
  — Chew gum;
  — Dress inappropriately (wearing flip-flops, tank tops, shorts, etc.);
  — Dress informally or disheveled;
  — Fail to turn off their cell phones; and
  — Set a drink/cup on the podium in court.

6 Ineffective Presentation of Argument
• Failing to answer the question posed by the judge. “Oftentimes, a lawyer is so busy thinking about what he is going to say next, he forgets to listen to the question being asked.”
• Making arguments irrelevant to the analytical framework at issue.
• Poorly drafting motions. “They tend to suffer.”

7 Disparaging Another Lawyer Before the Judge
• Sending the judge copies of letters about their complaints toward each other and, likewise, airing personal arguments about each other in front of the judge. A lawyer must not disparage another lawyer in front of a judge.

8 Failing to Confer or Agree with Opposing Counsel
• Failing to “confer” with opposing counsel regarding attempts to resolve discovery matters prior to setting a hearing on a motion to compel. It is inappropriate to send letters to the judge indicating that counsel has conferred when, in fact, it is evident that no attempt was made to confer as required (i.e., in person or on the phone).
• Agreeing to an amount of attorneys’ fees at a hearing, but later sending a proposed order reflecting a different amount, with a cover letter claiming that a copy was sent to opposing counsel. This is not proper notice.
• When jurisdiction is reserved in a QUADRO and a lawyer appears ex parte, it is improper to request the judge to enter an order prior to the parties’ agreement and without their signatures confirming that they have agreed.

9 Failing to Limit Discovery in Accordance with the Rules
• Failing to limit discovery requests more precisely as to time, scope, and the appropriate number of questions. A lawyer should avoid being over-broad or vague.

10 Using Improper Verbiage in a Proposed Order
• Submitting a proposed order on a matter that did not require a hearing, yet reciting in the proposed order that the matter “came on to be heard” when it actually never did.

*The “Judges’ Top 10 Pet Peeves” were prepared by Caroline C. Emery, Esquire, Past President of the Jacksonville Bar Association, for the 2007 Judicial Professionalism Symposium for which the Fourth Judicial Circuit won the 2007 Florida Bar Professionalism Award. We thank Caroline for allowing us to use the “Judges’ Top 10 Pet Peeves.”

**Added by the ABOTA Committee on Professionalism, Ethics, and Civility
Civility problems can arise in a number of different ways. In an effort to provide some guidance, particularly to young lawyers, the members of the ABOTA Committee on Professionalism, Ethics and Civility have assembled a series of practical suggestions. While there is little question that civility requires maturity and patience, it does not require that you act or feel like a doormat. You can represent your client vigorously, without incivility.

The next time you confront one of the following common situations, please consider the following civil options:

How should you respond to the nasty letter or toxic email sent by your opponent?

This is a common problem. Different approaches are available. Of course, one can always simply decline to provide any response where there is no substance which warrants one. Other times, you may feel it is necessary or prefer to respond to keep a strong profile.

Suppose, after filing an appeal, your opposition writes a two page rant, calling your appeal frivolous, telling you how s/he will have sanctions imposed against you, among other things.

In response, it is best not to engage a lawyer like this. You are not likely to accomplish anything of substance, and psychologically you cannot win playing their game. If you try, you will only draw a longer, more viperous response. Instead, consider something like a two line response which says: “Thank you for your letter. I look forward to personally seeing you at the appellate hearing.”

The same problem also arises, perhaps more frequently, during email exchanges. So-called “toxic emails” are an extension of the same problem. Often they are typed and sent without careful thought, leaving an unfortunate, permanent record.

As but one example, second year associate “A” emails his counterpart at the opposing firm regarding an intensive document production request. “Your client’s response is now 20 days overdue and despite early reminders, we seem to have no cooperation from you.” In response, Associate “B”, who just had three additional projects dropped on his or her desk responds out of frustration, saying: “You’ll get the documents when I get around to it! Stop being a pain in my ass!!”

Perhaps Associate B will, like all of us, occasionally regret the fact that s/he hit the send button so quickly. But, within an hour, supervising partners are involved and things can get ugly. Hopefully, the supervisors will reduce, rather than add to the pressures that are building. But, where there is no objective intermediary, full-scale costly discovery wars often break out. No one benefits in the long run.

What you do if your opponent is “hiding the ball” during discovery?

This tactic is uncivil and unprofessional, yet it has become far too common during discovery. Hiding the ball creates distrust and creates unnecessary expense and delay. It surfaces in the form of direct concealment as well as in failures to disclose during “meet and confer” exchanges which also require good faith. But, perhaps the most common examples involve the use of objections interposed in bad faith in responses to requests for production and endless privilege logs. Ultimately, all such tactics undermine the discovery process and harm the reputation of the lawyer involved.

The California 2007 Guidelines of Civility and Professionalism specifically address and highlight the various aspects of this problem:

4. In responding to a document demand, an attorney should not intentionally misconstrue a request in such a way as to avoid disclosure or withhold a document on the grounds of privilege.

5. An attorney should not produce disorganized or
unintelligible documents, or produce documents in a way that hides or obscures the existence of particular documents.

6. An attorney should not delay in producing a document in order to prevent opposing counsel from inspecting the document prior to or during a scheduled deposition or for some other tactical reason.

As to interrogatories:

2. An attorney should not intentionally misconstrue or respond to interrogatories in a manner that is not truly responsive.

3. When an attorney lacks a good faith belief in the merit of an objection, the attorney should not object to an interrogatory. If an interrogatory is objectionable in part, an attorney should answer the unobjectionable part.

Perhaps the best way to put an end to such tactics is to bring it to the attention of your opponent and encourage mutual candor. This is not a sign of weakness nor do you have to sacrifice your legitimate objections. You can simply agree to the following concept that changes the tone of discovery: If a reasonable request is made for something, I will provide it. Of course, this must be a mutual arrangement.

Where problems arise, it is often beneficial to arrange informal and inexpensive methods of exchanging information. These include informal “sit downs” or even lunch with your opponent. Document inspections can often be made easier by traveling to the source and simply sitting down with your opponent present, while you review their voluminous records, with an understanding that he will mark and copy only what you decide you need. Sometimes if a rapport can be created, it is even possible to jointly meet with witnesses or parties, with lawyers present, to avoid costly depositions, where they are not truly necessary.

The alternative is always available: expensive and time-consuming document exchanges, privilege logs, law and motion hearings and demands for sanctions. If you think your client may potentially benefit from you hiding the ball, consider the following. Sooner or later, the truth will likely come out. It almost always does. If you produced it as required, you can build your case around it. But, if your deception surfaces, both you and your client may face severe consequences, potentially including termination sanctions and disbarment.

How should you respond to an opponent who refuses to grant routine courtesies, like extensions of time or cooperative deposition dates?

Unfortunately, we all find ourselves in this situation from time to time. Acting as if still on the playground, obstreperous counsel employing such tactics are altogether too common. At least two clear alternatives are available to you in response.

One response is to return the discourtesy and escalate the problem. The other is to again take a deep breath and objectively assess your options. In this light, it often becomes easier to see that such inappropriate tactics are usually carried out in the relative obscurity of an office or behind a computer, where letters can be sent out without direct or immediate accountability.

But you can change that and in the process change the tone of your developing relationship. A good way to accomplish this transformation is to invite your opponent out of his or her secure hiding place. Sometimes, with a personal effort, miracles can occur. But, at a bare minimum, respond without anger or annoyance. To try and effect a “miracle”, start by responding with a phone call, not a letter or email.

If possible, invite your adversary out to lunch or for “coffee”. Many times, once confronted personally, even the most uncivil advocates change their demeanor and soften their approach. Give it a try. You might be pleasantly surprised. Once you have found some common ground, you can address some of the inconveniences you are experiencing and hopefully work them out. The more traditional alternative is to engage in a letter-writing campaign, which often costs your clients more and seldom produces meaningful relief.

How should you respond to the lawyer who is more interested in creating a “meet and confer” paper trail, than resolving disputes?

Sadly, this tactic is often indicative of a journeyman approach, with little concern for efficient or creative resolutions. While it is always a good tactic to respond with civility and attempt to create rapport rather than animosity, opponents who proceed in this fashion often leave little room for compromise.

In those cases where your efforts at cooperation and development of a personal rapport have not prompted a cooperative response, it is sometimes necessary to simply follow the rules of court and file motions to obtain the relief you seek. But, even if matters devolve to that point, be ever mindful of the importance of civility in your responsive letters, emails and courtroom behavior.

The court evaluating the issues will often be able to tell who has been trying to resolve the dispute…and who has fomented it. Particularly where the issues will ultimately find their way into court,
keep your focus on civility and professionalism. It will serve you well in this context, as in all others.

**What should you do if your opponent persists in coaching his deposition witness?**

To preserve your record, the first thing you must do is to make an appropriate objection. But, do so in a low key fashion. If the problem persists, you may wish to consider addressing the issue off the record with your opponent. This allows you to speak your mind without escalating the problem and gives your opponent an opportunity to save face without hurting his or her pride. Sometimes it is better to speak to your opponent in the hallway away from his client or his associate counsel. If this does not work, then you must continue to put your concerns on the record.

Under appropriate circumstances, you can stop the deposition, according to your local discovery rules, and seek assistance from the court. If you know in advance that you will be dealing with someone who routinely obstructs your efforts to obtain unfiltered testimony, you may wish to videotape the deposition. Such conduct is easier to capture on video tape and may avoid the problem in the first instance.

Courts can fashion protective orders or any number of sanctions to punish and prevent such conduct. For example, in California, Code of Civil Procedure, section 2023 identifies a number of misuses of the discovery process that are punishable by sanctions. These sanctions include monetary sanctions, issue sanctions, evidence sanctions, terminating sanctions and contempt sanctions.

Some states like California have promulgated civility guidelines. In July 2007 the California State Bar published Guidelines for Civility and Professionalism. Section 9, paragraph a(6) of these guidelines specifically addresses the issue:

“Once a question is asked, an attorney should not interrupt a deposition or make an objection for the purpose of coaching a deponent or suggesting answers.”

Paragraph a(8) of the same section also provides: “An attorney should refrain from self-serving speeches and speaking objections.” While inappropriate, this kind of behavior is not uncommon. Usually, polite demonstration of your unwillingness to permit such interference with the testimony of the witness will suffice.

**What do you do if an attorney makes rude and degrading comments about you or your client?**

Initially, it helps to take a deep breath. Remain calm and attempt to follow the same “meet and confer” approach discussed above. If that does not work, be sure to make a good record of the conduct. Section 9 of the California civility guidelines provides: “An attorney should treat other counsel and participants with courtesy and civility, and should not engage in conduct that would be inappropriate in the presence of a judicial officer.”

Section 9 a(4) of the guidelines provides: “An attorney should remember that vigorous advocacy can be consistent with professional courtesy, and that arguments or conflicts with other counsel should not be personal.” The reference to “personal” evokes Sections 4 and 8 of the guidelines dealing with ad hominem or personal attacks. Disparaging another’s intelligence, integrity, ethics, morals or behavior are personal or character attacks which are simply inappropriate. If your opponent persists in making such personal attacks you may have no other option but to make a good record and let the court deal with it. But, civility does not require that you act like a door mat. You should not tolerate such abusive behavior.

**What do you do if oppressive deposition notices are served without any consultation or cooperation?**

Trial lawyers have busy schedules. It is difficult to schedule depositions convenient for everyone’s calendar. The best way to approach this scheduling problem is to pick some dates for a deposition and then call opposing counsel to cooperatively pick dates (or indicate the same by cover letter). Ideally, you should try to work it out before a notice is served. This approach might make it easier for your opponent, who in turn might produce witnesses without the necessity of expensive subpoenas.

There are many ways that scheduling issues can arise, including situations where someone notices a future deposition and then opposing counsel retaliates by noticing an even earlier, related deposition. Section a(1) of the California guidelines addresses this issue, stating: “When another party notices a deposition for the near future, absent unusual circumstances, an attorney should not schedule another deposition in the same case for an earlier date without opposing counsel’s agreement.”

Deposition scheduling should not be a game. All parties should attempt to cooperate to work out a sane schedule. If your opposition refuses to do so, make your record, but continue to act with civility, regardless of how they respond. Your conduct reflects upon you. As difficult as it may seem, incivility from your opponent cannot justify and should not prompt you into making uncivil responses.

**What if the witness stretches out his answers to make it impossible to finish a deposition?**

This tactic can backfire and often will benefit the attorney taking the deposition because he
can keep the deposition open, review the transcript and come back another day to ask more questions. However, it is sometimes used by opposing counsel for delay and oppression. A classic example of that was documented in the recent case GMAC v. HTFC Corp., 248 F.R.D. 182 (E.D. Pa. 2008). This was a commercial dispute and plaintiff GMAC was deposing the CEO of the defendant. After a very long and windy response, the following exchange occurred between the plaintiff’s lawyer and the witness:

“Q: Are you done?
A: No, I’m not. I’m going to keep going. I’ll have you flying in and out of New York City every single month and this will go on for years. And, by the way, along the way GMAC will be bankrupt along the way and I will laugh at you.”

The trial court punished the witness with substantial monetary sanctions for exploiting the deposition process. This is yet another misuse and abuse of the discovery system. The lawyer who permitted the witness to act in this fashion was also sanctioned. Common sense and the “golden rule” are good guidelines to follow.

**What if your opponent persists in questioning your witness from documents without supplying you and other counsel with copies?**

This seems very straightforward but it happens often. Surprisingly, counsel for deponents often let their opponents get away with it. Section 9, paragraph a(5) of the California guidelines addresses the issue: “An attorney questioning a deponent should provide other counsel present with a copy of any documents shown to the deponent before or contemporaneously with showing the document to the deponent.”

Of course, if many depositions have been taken and all the attorneys have notebooks of the documents being used, extra copies are unnecessary. But, keep in mind that so long as the deponent is not being shown a document, there is no requirement that the deposing attorney provide any copies of source material s/he may be using to formulate questions.

**What do you do when there is an objection, instruction not to answer, and a dispute about whether to call the court to get an immediate ruling?**

Interposing an objection and instructing a witness not to answer can be obstructionist and unprofessional if done without substantial justification. Experienced counsel will only do so where the testimony sought is privileged, immune as work product, or would significantly invade some real privacy interest of the witness. Most other objections are inappropriate if interposed at a normal discovery deposition.

Similarly, repeated threats to call the court can be contentious, unproductive and lack civility as well. Careful counsel will try to avoid a telephone call to the court in this situation, not wanting to appear too contentious or to provoke the ire of judges who seem to hate dealing even with good faith discovery disputes, let alone ones that must be ruled upon immediately. In short, calling the court can be a high stakes gamble for both sides. A few simple rules will help avoid the appearance of incivility.

First, make certain that you have a real, finely-honed dispute. Counsel asking the objectionable question should simply state why the question is appropriate, while the objecting party should state, not simply why the objection was made for the record, but why counsel cannot allow the testimony to be elicited. Counsel should explore whether some protective order could be fashioned, that portion of the deposition sealed, or otherwise permit the testimony without waiving privileges and immunities.

Civility requires that counsel try to work our some arrangement that protects the legitimate interests of both sides, but allows the deposition to go forward. Even where a deal is not possible, consideration should be given to making a clear record of the positions of the parties and preserving the dispute for a later time when it can be handled by routine motion to compel. Calling the court should be limited to situations where such calls have been invited or time constraints make it absolutely necessary.

Finally, where such problems seem to recur, consideration should be given to asking the court to appoint a special master under Federal Rules of Civil Procedure, Rule 53, or corresponding state authority, to resolve any future disputes.

**When should you consider seeking appointment of a special discovery master or referee?**

It is appropriate to request the appointment of a special discovery master or referee when your opponent has shown an unreasonable pattern of incivility and unprofessionalism, which may or may not include rules violations or a violation of legal ethics.

It is now obvious that much of the trial battle has shifted from the courtroom to the discovery practice. If the rules of civil procedure are not consistently enforced on a timely basis, there are those within the profession who will violate these rules in an attempt to gain an advantage. A special discovery master can perform a useful function because he or she is able to either settle these disputes on a timely basis, enter an appropriate order, or make appropriate recommendations to the presiding judge.
This speeds discovery, produces an accurate result, and encourages all parties to abide by the rules. In some jurisdictions, special masters are paid by the parties and the master is allowed to recommend a reapportionment of his or her fees once the master’s function is completed. This is not a sanction. It is simply a recognition by the master that one or more parties is more at fault for the problem than others. In many cases, the parties are equally at fault, but in some cases reapportionment is appropriate.

If the parties know that once a knowledgeable master is appointed, fees can be reapportioned, it generally limits attempts to violate the rules. This, in and of itself, saves the parties money. Even if the parties cannot cooperate on a professional and civil basis, it is in their best economic interest to do so, because it is less expensive to pay the master then it is to file motions to compel, argue them and then wait for a decision.

If your opponent does not consent to the appointment of a special discovery master or referee, the court, either under Rule 53 of the Federal Rules, or under an appropriate local rule, or in accordance with the inherent authority of the court to conduct its own business, can appoint a special discovery master or referee, in appropriate circumstances, without the consent of all parties. The court can also order that the master or referee be paid by the parties.

You will need to convince the court that it is in the interests of justice to appoint a special master and that the circumstances of your case warrant it. It may be that both parties believe they are factually and legally correct in their positions and, therefore, a master is likely to vindicate their position.

If one of the issues dividing the parties has to do with privileged documents, or statements, many lawyers file extensive privilege logs because they do not wish to waive any particular privilege. Many lawyers do not wish the court to examine their privileged documents because they are damaging to their case. A special master can examine those documents, in camera, without disclosing what is in those documents to the court itself. This can be a substantial benefit to the party filing the privilege log.

One word of caution. Many judges are not familiar with the benefits of special masters. Since they have not used special masters, they are not familiar with how to draft the appointment order. This is not a simple procedure. Under the Federal Rules, there are special requirements that must be met, and there are provisions that should be included that are not specifically set forth in the rules. Therefore, you will need to research this issue before requesting the appointment of a special discovery master, and it is recommended that you draft a detailed model appointment order so the judge can easily and conveniently appoint the master.

Then the only issue is obtaining a qualified special master. You and your opponent may agree on this, but if you do not, you may submit a list of recommendations to the court which can be helpful.

Hopefully, use of some of the more personal avenues available to you will resolve most of your incivility problems. We commend them to you. But, if you simply cannot work through them any other way, a special master or referee can make a big difference.
Enforcing Civility in an Uncivilized World

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W e have all seen the entertainment industry’s impressions of the legal profession. Fired-up attorneys in court yelling at witnesses, belittling their opponents, and battling the judge hammer and tong over every perceived slight or unfavorable ruling. Despite the artistic license entertainment writers take in creating these characters for the screen, we know all too well the caricature of the uncivil attorney has a basis in reality and in many cases is not far off the mark.

We live in an increasingly disrespectful and competitive world, and our profession is not immune from the general discourtesies that permeate society. The nature of our adversarial system of law can also foster an environment where it is often believed antisocial behavior can get you noticed and get results.

But does the adversarial system necessarily require incivility on the part of the participants? Does the fact that each party enters a matter with the intent to triumph over the other side require disrespect of one’s opponent? Winston Churchill did not think so. After the Japanese bombing of Singapore and Hong Kong in 1941, Winston Churchill dispatched a letter to the Japanese Ambassador announcing that a state of war existed between England and Japan. After noting the acts of aggression, Churchill’s letter ended with these words: “I have the honour to be, with high consideration, Sir, Your obedient servant, Winston S. Churchill.” Churchill commented in his memoirs, “Some people did not like this ceremonial style. But after all when you have to kill a man it costs nothing to be polite.” Clearly, the ability to maintain civility can be accomplished, even under the most adversarial situations.

The efforts of ABOTA have long been at the forefront of promoting civility in the legal profession. ABOTA’s Principles of Civility provide the benchmark for establishing a framework for civility in all aspects of the legal profession. As a result of the efforts of ABOTA members in state and local bar associations and courts throughout the country, a quiet revolution has been taking place as bar associations and courts seek to put a greater emphasis on civility in the legal profession. Rules of civility, often based upon ABOTA’s Principles of Civility, have been adopted, at least in part, in numerous jurisdictions.

In the mid-1990s, the incivility in the profession that had come to bear from the quest for “zealous” representation began to be called into question. As noted in a law review article in 1994, “Zealous advocacy is the buzz word which is squeezing decency and civility out of the law profession. . . . [It is] the modern day plague which infects and weakens the truth-finding process and which makes a mockery of the lawyers’ claim to officer-of-the-court status.” In response to the quest for more civilized dealings in the practice of law, in 2003 the Arizona Supreme Court eliminated the obligation of attorneys to be “zealous” advocates of their clients in favor of a duty to “act honorably” in furtherance of their client’s interests. Indiana, Louisiana, Montana, Nevada, New Jersey, Oregon and Washington have likewise omitted all references to zealoussness in their rules, preambles, and commentaries.

In 2003, the South Carolina Bar amended its Lawyer’s Oath to include the following: “To opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications.” In Utah, the Attorney’s Oath was recently modified to include a promise to “faithfully observe … the Standards of Professionalism and Civility.” Utah was the second state to follow the South Carolina model. New Mexico has now joined the ranks, adding “I will maintain civility at all times” to its oath.

The next inevitable step in the progression toward more civility in our profession is a decision on how to enforce the civility provisions that have been enacted and to which lawyers are urged to follow. While there have always been professional sanctions available for violating rules of professional conduct, is there more that should or could be done to enforce civility in the profession?
Courts around the country have entered the fray to find a way to enforce what are generally seen as non-binding suggestions on civility. For example, in the Fifth Circuit case, *In re First City Bancorp. of Texas, Inc.*, a “zealous” lawyer referred to opposing counsel, which included an Assistant U.S. Attorney, as a “stooge,” a “puppet,” a “deadhead,” and an “underling who graduated from a 29th tier law school.” The bankruptcy court in which the case was originally heard did not agree with the lawyer’s tactics and slapped him with a $25,000 sanction. When the lawyer appealed to the Fifth Circuit, he argued that his behavior was an appropriate trial tactic, allowing him to recover more money for his clients and giving him the upper hand in settlement negotiations. The Fifth Circuit disagreed, affirming the lower court’s decision that the lawyer’s conduct was “egregious, obnoxious, and insulting.” The $25,000 sanction was deemed appropriate and upheld by the Court. A quick search of recent case law will reveal numerous examples where courts around the country have begun to draw lines in the sand regarding incivility in the practice of law.

In the Utah Supreme Court case *Peters v. Pine Meadow Ranch Home Ass’n.*, the petitioners were appealing an appellate court affirmation of a trial court’s grant of summary judgment to a homeowners’ association regarding the enforceability of its covenants, conditions, and restrictions (“CCR’s”). Rather than reach the issues raised in the appeal, the Utah Supreme Court focused on the petitioners’ briefs and the uncivilized language and tone of the briefs to affirm the holding of the lower court. Specifically, the court noted:

> petitioners’ briefs . . . are replete with unfounded accusations impugning the integrity of the [court below]. These accusations include . . .

allegations, both direct and indirect, that the [court of appeals] panel intentionally fabricated evidence, intentionally mistated the holding of a case, and acted with improper motives. Further, petitioners’ briefs are otherwise disrespectful of the judiciary.

Rather than rule on the merits of the petitions, the court dismissed the petition and ordered the offending attorney to pay the other side’s attorney fees, which at the time had amounted to approximately $17,000. In sum, the court noted if attorneys continue to adopt the “scorched earth” approach to advocacy, they do so at their own peril.

In choosing to disregard the petitioners’ briefs, the *Peters* court relied on Rule 24(k) of the Utah Rules of Appellate procedure, which provides:

> All briefs under this rule must be . . . free from burdensome, irrelevant, immaterial or scandalous matters. Briefs which are not in compliance may be disregarded or stricken, . . . and the court may assess attorney fees against the offending lawyer.

Further, in arriving at its decision the court noted the Utah Standards of Professionalism and Civility as well as Rule 8.2 of the Utah Rules of Professional Conduct. Rule 8.2 provides, “A lawyer shall not make a public statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications of a judge.”

Following up on the issue of enforcement of civility, the Utah Supreme Court has created what is believed to be the first program in the country of professionalism counseling for members of the Utah Bar. Specifically, the program functions through a board of five counselors, appointed by the Utah Supreme Court, who generally counsel and educate members of the Bar concerning the Standards of Professionalism and Civility. The Court intended the counselors to serve a four-fold purpose: (1) to counsel members of the Bar in response to complaints by other lawyers or referrals from judges; (2) to provide counseling to members of the Bar who request advice on their own obligations under the Standards of Professionalism and Civility; (3) to provide CLE on the Standards; and (4) to publish advice and information relating to the work of the counselors. Of these functions, it is the counseling function that is most critical to the notion of enforcing civility in the profession.

The goal is to provide a method in which incidents of incivility or unprofessional conduct could be reported and addressed. The focus, however, would not be punitive in nature, but rather, educational. In responding to a complaint from a fellow attorney or judge, the counselors may issue a written advisory to the offending lawyer, or may simply counsel with the lawyer in a personal meeting, with the goal of educating the offending lawyer as to alternative modes of practice in harmony with the Standards. In conjunction with this direct contact with the offending attorney, the counselors would publish an annual report concerning the Standards it has interpreted, as well as periodically publishing selected portions of its advisories in the Utah Bar Journal for the benefit of practicing lawyers.

ABOTA has long championed civility, and it appears that both bar associations and courts are ready to step in and force the issue where efforts at self-policing have apparently failed to achieve the desired results. Every ABOTA Chapter should urge their respective states to: (1) adopt principles of civility, (2) modify attorney’s oaths to eliminate “zealous” advocacy and require adherence to principles of civility, (3) establish judicial precedent enforcing those principles, (4) create a counseling program, and (5) further the goal of
civility education by devoting a part of any CLE requirement solely to those principles.\textsuperscript{28} As recognized by the Utah Supreme Court, education is the key component to any successful effort to enforce civility. As attorneys learn what is expected in the practice of law, the “culture of belligerence,” \textsuperscript{29} like the typewriter and carbon paper, will become a relic of a bygone era.

\textsuperscript{1} Don Winder is managing partner in the firm Winder & Counsel, PC, Salt Lake City, Utah. Mr. Winder has practiced for almost 40 years, and he has a varied trial practice focusing on business litigation. He is a proud member of ABOTA. Mr. Winder has also been privileged to serve on the Utah Supreme Court Committee on Professionalism, a Committee tasked with developing the Utah Standards of Professionalism and Civility, modifying the Attorney’s Oath and recommending the establishment of a program of professionalism counseling for members of the Utah Bar.

\textsuperscript{2} Jerald Hale is an associate with Winder & Counsel, PC. Mr. Hale has practiced for over 11 years and also has a varied trial practice.

\textsuperscript{3} AND JUSTICE FOR ALL (Columbia Pictures 1979).

\textsuperscript{4} WINSTON S. CHURCHILL, THE SECOND WORLD WAR, VOL. III, CH. 32 (1950).

\textsuperscript{5} Some, but certainly not all, of these jurisdictions include Arizona, California, Florida, Georgia, Texas, Utah and even the San Diego County Bar Association.


\textsuperscript{7} See ARIZ. R. SUP. CT 42 PMBL. ¶ 9 (“These principles include the lawyer’s obligation to protect and pursue a client’s legitimate interests, within the bounds of the law, while acting honorably and maintaining a professional, courteous and civil attitude toward all persons involved in the legal system.”).


\textsuperscript{9} See Preamble: A Lawyer’s Responsibilities, in UTAH RULES OF PROFESSIONAL CONDUCT.


\textsuperscript{11} 282 F.3d 864 (5th Cir. 2002).

\textsuperscript{12} Id. at 866.

\textsuperscript{13} Id.

\textsuperscript{14} Id. at 865.

\textsuperscript{15} Id. at 866-67.

\textsuperscript{16} Id. at 867.

\textsuperscript{17} See e.g., GMAC Bank v. HTFC Corp, 248 F.R.D. 182, 193 (E.D. Penn. 2008) (fining attorney $13,026.00 for actions during deposition described as hostile, uncivil and vulgar); Hagen v. Faherty, 66 P.3d 974, 979-80 (N.M. Ct. App. 2003) (admonishing attorneys for uncivil behavior in briefs, bemoaning “culture of belligerence” that has taken root in legal system); Steven Kreytak, Lewd Gesture Gets Lawyer 90 Days in Jail, AUSTIN AMERICAN STATESMAN, Apr. 17, 2008.

\textsuperscript{18} 151 P.3d 962 (Utah 2007).

\textsuperscript{19} Id. at 962.

\textsuperscript{20} Id.

\textsuperscript{21} Id. at 967 (warning that inappropriate conduct could lead not only to sanctions, but also to ineffectiveness as an advocate).

\textsuperscript{22} Id. at 964.

\textsuperscript{23} Standard 3 of the Utah Standards of Professionalism and Civility (“USPC”) provides, “Lawyers shall not, without an adequate factual basis, attribute to . . . the court improper motives, purpose or conduct.” www.utcourts.gov/courts/sup/civility.htm. Standard 1 of the USPC provides, “[L]awyers shall treat all other counsel, parties, judges, witnesses, and other participants in all proceedings in a courteous and dignified manner.” Id.

\textsuperscript{24} Peters, 151 P.3d at 964 (quoting UTAH RULES OF PROFESSIONAL CONDUCT 8.2(a)).


\textsuperscript{26} Id.

\textsuperscript{27} Id.

\textsuperscript{28} See e.g., RULES GOVERNING THE UTAH STATE BAR 14-404 (requiring active attorneys to take three hours of ethics or professional responsibility CLE credits per reporting period, one credit of which must be in the area of professionalism and civility).

Utah Standards of Professionalism and Civility

To enhance the daily experience of lawyers and the reputation of the Bar as a whole, the Utah Supreme Court, by order dated October 16, 2003, approved the following Standards of Professionalism and Civility as recommended by its Advisory Committee on Professionalism.

Preamble

A lawyer’s conduct should be characterized at all times by personal courtesy and professional integrity in the fullest sense of those terms. In fulfilling a duty to represent a client vigorously as lawyers, we must be mindful of our obligations to the administration of justice, which is a truth-seeking process designed to resolve human and societal problems in a rational, peaceful, and efficient manner. We must remain committed to the rule of law as the foundation for a just and peaceful society.

Conduct that may be characterized as uncivil, abusive, abrasive, hostile, or obstructive impedes the fundamental goal of resolving disputes rationally, peacefully, and efficiently. Such conduct tends to delay and often to deny justice.

Lawyers should exhibit courtesy, candor and cooperation in dealing with the public and participating in the legal system. The following standards are designed to encourage lawyers to meet their obligations to each other, to litigants and to the system of justice, and thereby achieve the twin goals of civility and professionalism, both of which are hallmarks of a learned profession dedicated to public service.

We expect judges and lawyers will make mutual and firm commitments to these standards. Adherence is expected as part of a commitment by all participants to improve the administration of justice throughout this State. We further expect lawyers to educate their clients regarding these standards and judges to reinforce this whenever clients are present in the courtroom by making it clear that such tactics may hurt the client’s case.

Although for ease of usage the term “court” is used throughout, these standards should be followed by all judges and lawyers in all interactions with each other and in any proceedings in this State. Copies may be made available to clients to reinforce our obligation to maintain and foster these standards. Nothing in these standards supersedes or detracts from existing disciplinary codes or standards of conduct.

1. Lawyers shall advance the legitimate interests of their clients, without reflecting any ill-will that clients may have for their adversaries, even if called upon to do so by another. Instead, lawyers shall treat all other counsel, parties, judges, witnesses, and other participants in all proceedings in a courteous and dignified manner.

2. Lawyers shall advise their clients that civility, courtesy, and fair dealing are expected. They are tools for effective advocacy and not signs of weakness. Clients have no right to demand that lawyers abuse anyone or engage in any offensive or improper conduct.

3. Lawyers shall not, without an adequate factual basis, attribute to other counsel or the court improper motives, purpose, or conduct. Lawyers should avoid hostile, demeaning, or humiliating words in written and oral communications with adversaries. Neither written submissions nor oral presentations should disparage the integrity, intelligence, morals, ethics, or personal behavior of an adversary unless such matters are directly relevant under controlling substantive law.

4. Lawyers shall never knowingly attribute to other counsel a position or claim that counsel has not taken or seek to create such an unjustified inference or otherwise seek to create a “record” that has not occurred.

5. Lawyers shall not lightly seek sanctions and will never seek sanctions against or disqualification of another lawyer for any improper purpose.

6. Lawyers shall adhere to their express promises and agreements, oral or written, and to all commitments reasonably implied by the circumstances or by local custom.

7. When committing oral understandings to writing, lawyers shall do so accurately and completely. They shall provide other counsel a copy for review, and never include substantive matters upon which there has been no agreement, without explicitly advising other counsel. As drafts are exchanged, lawyers shall bring to the attention of other counsel changes from prior drafts.

8. When permitted or required by court rule or otherwise, lawyers shall draft orders that accurately and completely reflect the court’s ruling. Lawyers shall promptly prepare and submit proposed orders to other counsel and attempt to reconcile any differences before the proposed orders and any objections are presented to the court.

9. Lawyers shall not hold out the potential of settlement for the purpose of foreclosing discovery, delaying trial, or obtaining other unfair advantage, and lawyers shall timely respond to any offer of settlement or inform opposing counsel that a response has not been authorized by the client.

10. Lawyers shall make good faith efforts to resolve by stipulation undisputed relevant matters, particularly when it is obvious such
matters can be proven, unless there is a sound advocacy basis for not doing so.

11. Lawyers shall avoid impermissible ex parte communications.

12. Lawyers shall not send the court or its staff correspondence between counsel, unless such correspondence is relevant to an issue currently pending before the court and the proper evidentiary foundations are met or as such correspondence is specifically invited by the court.

13. Lawyers shall not knowingly file or serve motions, pleadings or other papers at a time calculated to unfairly limit other counsel’s opportunity to respond or to take other unfair advantage of an opponent, or in a manner intended to take advantage of another lawyer’s unavailability.

14. Lawyers shall advise their clients that they reserve the right to determine whether to grant accommodations to other counsel in all matters not directly affecting the merits of the cause or prejudicing the client’s rights, such as extensions of time, continuances, adjournments, and admissions of facts. Lawyers shall agree to reasonable requests for extension of time and waiver of procedural formalities when doing so will not adversely affect their clients’ legitimate rights. Lawyers shall never request an extension of time solely for the purpose of delay or to obtain a tactical advantage.

15. Lawyers shall endeavor to consult with other counsel so that depositions, hearings, and conferences are scheduled at mutually convenient times. Lawyers shall never request a scheduling change for tactical or unfair purpose. If a scheduling change becomes necessary, lawyers shall notify other counsel and the court immediately. If other counsel requires a scheduling change, lawyers shall cooperate in making any reasonable adjustments.

16. Lawyers shall not cause the entry of a default without first notifying other counsel whose identity is known, unless their clients’ legitimate rights could be adversely affected.

17. Lawyers shall not use or oppose discovery for the purpose of harassment or to burden an opponent with increased litigation expense. Lawyers shall not object to discovery or inappropriately assert a privilege for the purpose of withholding or delaying the disclosure of relevant and non-protected information.

18. During depositions lawyers shall not attempt to obstruct the interrogator or object to questions unless reasonably intended to preserve an objection or protect a privilege for resolution by the court. “Speaking objections” designed to coach a witness are impermissible. During depositions or conferences, lawyers shall engage only in conduct that would be appropriate in the presence of a judge.

19. In responding to document requests and interrogatories, lawyers shall not interpret them in an artificially restrictive manner so as to avoid disclosure of relevant and non-protected documents or information, nor shall they produce documents in a manner designed to obscure their source, create confusion, or hide the existence of particular documents.

20. Lawyers shall not authorize or encourage their clients or anyone under their direction or supervision to engage in conduct proscribed by these Standards.

**Preamble: A Lawyer’s Responsibilities**

Approved Effective: August 14, 2007

A lawyer is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice. Every lawyer is responsible to observe the law and the Rules of Professional Conduct, shall take the Attorney’s Oath upon admission to the practice of law, and shall be subject to the Rules of Lawyer Discipline and Disability.

**Attorney’s Oath**

“I do solemnly swear that I will support, obey and defend the Constitution of the United States and the Constitution of Utah; that I will discharge the duties of attorney and counselor at law as an officer of the courts of this State with honesty, fidelity, professionalism, and civility; and that I will faithfully observe the Rules of Professional Conduct and the Standards of Professionalism and Civility promulgated by the Supreme Court of the State of Utah.”
Utah Supreme Court Standing Order No. 7

(As to establishment of a program of professionalism counseling for members of the Utah State Bar)

Effective April 1, 2008

The Court intends to establish a board of five counselors (hereinafter the “Board”) to counsel and educate members of the Bar concerning the Court’s Standards of Professionalism and Civility (hereinafter the “Standards”). Specifically, the Board’s purposes are: (1) to counsel members Of the Bar, in response to complaints by other lawyers or referrals from judges; (2) to provide counseling to members of the Bar who request advice on their own obligations under the Standards; (3) to provide CLE on the Standards; (4) to publish advice and information relating to the work of the Board.

Board Composition

Appointees shall serve on a volunteer basis and will be appointed based upon stature in the legal community and experience in legal professionalism matters. A minimum of one of the five appointees shall have transactional experience, and at least one attorney shall have small firm or sole practitioner experience. Board members shall serve for staggered terms of no fewer than three years for continuity and so that each Board member has the opportunity to develop expertise on the Standards. The Court will appoint one of the Board members as chair. The Board shall generally sit in panels of three to deal with issues presented to the Board.

Submission of Complaints and Questions to the Board

The Board is authorized to consider complaints by lawyers concerning the professionalism of other lawyers, referrals from judges, and questions about professionalism from practicing lawyers. The Board shall not consider questions or complaints from clients or members of the public.

If a lawyer wishes to lodge a complaint with the Board concerning the conduct of another member of the Bar, the complaint must be in writing (i.e., by letter or email) and signed by the complainant. The Board shall not consider anonymous complaints about lawyers. Questions or requests for counseling from a lawyer concerning his or her own conduct need not be in writing but may be made by telephone or a personal visit with members of the Board. Referrals from judges may be directed by telephone.

Procedure

The Board is authorized to develop its own procedures based upon this Standing Order, the purposes for which the program is established, and upon the Board’s experience. Adherence to formal rules of procedure or evidence is not required.

Panels should generally resolve complaints about the conduct of an attorney within thirty days of the complaint. Resolution may be by written advisory to the lawyers involved or by a face-to-face meeting with the lawyers. Written advisories should reference individual Standards.

Confidentiality

The contents of any statement, communication or opinion made by any participant in the program shall be kept confidential except that members of the panel are permitted to communicate directly with lawyers or clients involved in the dispute concerning the application or interpretation of the Standards. Also, the panel is permitted to disclose the general nature of the situation (without identifying names or facts) and its advice to the members of the Bar and the public in reports and Bar Journal articles. Additionally, the members of the panel may communicate with supervisors in firms and agencies whose lawyers have been the subject of a complaint.

The Duty of Good Faith

Attorneys seeking the assistance of the Board shall do so only in good faith and not for the purposes of harassment or to attain a strategic advantage. The Board is authorized to terminate any proceeding or referral that it believes has been initiated or utilized in bad faith or for an improper purpose.

Publication

The Board shall report annually to the Court concerning its operation, the Standards it has interpreted, the advice it has given, and any trends it believes important for the Court to know about. It should also make suggestions to the Court as to needed changes to the Standards.

The Board shall periodically publish selected portions of its advisories in the Utah Bar Journal for the benefit of practicing lawyers. Published advisories shall be redacted to eliminate the names and identifying factual details of the cases considered by the panels. Also, the Board shall maintain a web page under the auspices of the Court or the Bar that provides a database of its advisories.

FOR THE COURT:
January 9, 2008
Christine M. Durham Chief Justice

Complaints should be sent to:
Diane Abegglen
Appellate Court Administrator
Utah Supreme Court
P. O. Box 140210
Salt Lake City, UT 84114-0210
It seems that many lawyers, especially those who are young and inexperienced, would appreciate the opportunity for advice from more experienced attorneys in how to deal with civility and professionalism problems they have experienced or are currently encountering. As the “victims” of uncivil and unprofessional behavior, it seems that sometimes these attorneys view bad behavior of others as simply an ugly and unpleasant happenstance that they must occasionally endure.

Although most attorneys have no compunction about “brainstorming” with their peers about substantive legal issues and thorny procedural problems, for some it has never occurred to them that they could seek out mentoring and assistance from their more experienced colleagues in the legal community, when they encounter an attorney whose intolerable, uncivil and/or unprofessional conduct has driven them to wit’s end.

This was the genesis of the Montana Civility and Professionalism Mentor/Mediator Program, which has been offered to all members of the Montana State Bar by the members of the Montana ABOTA Chapter. The members of the Montana Chapter have agreed to voluntarily act as “Civility Mentors/Mediators” ("Mentors/Mediators") upon either an assignment of a court or tribunal, or by request of any attorney in the State Bar. Any attorney seeking the assistance of the program may request that the role of the chosen Civility Mentor/Mediator be confidential, and that he/she initially act as an "ex parte" mentor. The invoking attorney could later ask that the Mentor expand his/her role by initiating a form of "mediation" with the other attorney.

A court or tribunal could also initiate an assignment of a Mentor/Mediator and designate a Montana ABOTA Chapter member to act, either as a mediator or master, to resolve a civility or professionalism issue that may not rise to the level of sanctionable conduct, but which the court nevertheless believes that uncivil or acrimonious conduct of one or more attorneys is, or may be, an impediment to an orderly and efficient resolution of the case or matter.

A Mentor/Mediator acting in that role could also file a confidential in-chambers report to the court if so requested. The activities of the Mentor/Mediators and the participants are confidential. By their Mediator status, they should enjoy judicial immunity as provided for statutes governing court-ordered mediation. Likewise, the utilization of the program shall not be considered a disciplinary complaint or a public act that would give rise to public access to any documents or communications relating thereto.

A full copy of the Montana Civility and Professionalism Mentor/Mediator Program can be found beginning on page 29. Initially it was thought that this Program could be presented to the Montana Supreme Court, which regulates all of the requirements and activities of the Montana Bar. Although the Program is self-executing and requires no significant expenditure of public or private funds, nor any significant supervision, it was thought that the Court should be given the opportunity to put its imprimatur on the Program.

At the same time, within the same application, the Montana Chapter urged the Court to adopt the ABOTA Principles of Civility and Professionalism as the standards or principles that would exist in Montana. In the same vein, the Court was urged to include within new attorneys’ oath of office a pledge that the new lawyer is to conduct his/her professional endeavors with “civility and professionalism” (such as has been done in Utah, South Carolina, and New Mexico). We bundled these three requests under the rubric of ABOTA’s Civility Matters program.

The Montana Supreme Court's response to the application was unexpected and somewhat disappointing, but at the same time encouraging and supportive. The Court was urged to include within new attorneys’ oath of office a pledge that the new lawyer is to conduct his/her professional endeavors with “civility and professionalism” (such as has been done in Utah, South Carolina, and New Mexico). We bundled these three requests under the rubric of ABOTA’s Civility Matters program.

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Fortunately, however, the
Montana Court opined that the application’s purposes “are clearly laudable”. Id. Its Order concluded with several encouraging and supportive comments, viz: “...there are parts of the proposed program which could be very helpful and implemented without an order from this Court…” Further, “Lawyers may want to take advantage of the mentoring program.” It concluded by stating, “Trial judges may find it helpful to refer a litigation dispute to an ABOTA member to attempt a resolution. We encourage ABOTA to provide information about its resources and the opportunities for participation to Montana’s lawyers and judges.”

As a consequence of the assurance by the Montana Supreme Court that the Montana Chapter does not need its blessing to initiate and oversee the Civility Mentor/Mediator Program, the Montana Chapter will be rolling out the Program in early 2011. The Program will be included under its own tab in the “Montana Lawyer’s Deskbook and Directory” 2011 edition. The Program was the featured cover story of the Montana State Bar’s The Montana Lawyer April 2011 issue. We may also initiate an individual mailer to all State Bar Members, depending upon feasibility and cost. The Montana Trial Lawyers Association will include the Program and accompanying article in its Spring 2011 Trial Trends magazine.

The Montana Chapter may not give up on a key provision in the Civility Matters program, the inclusion of “civility and professionalism” within the attorney’s oath of office. These words are not simplistic, feel-good eye wash.

If law schools and bar exam courses knew that graduating students were required to make that pledge, then one would expect that their attention would be drawn to it within their curriculum, by expanding upon the Rules of Professional Responsibility to include in-depth coverage of the principles of civility and professionalism, and what that “new” commitment is really all about. ABOTA Chapters should be encouraged to determine to what extent principles of Civility and Professionalism are adequately taught at their state’s law school(s), and offer their assistance, by way of “guest lecturers” (ABOTANS), who are well-versed and comfortable with the Presentation Materials that are available from the National ABOTA office or at http://www.abota.org.

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1 The Application referenced a “Civility Referee/Mentor Program to provide for Civility Mentoring and Mediation Assistance to members of the Bar.” The reference has been changed to “Mentors/Mediators” to clarify and insure a Mediator’s protected status.

2 See, Donald Winder, Enforcing Civility in an Uncivilized World, beginning on page 21, amplifying upon the actual, changed wording of the oaths of the two referenced states.

3 The cooperation “expected” of the adverse attorney has been revised to read that the attorney “will be encouraged to cooperate” with the Mediator and the invoking counsel.

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Don will long be remembered as the consummate gentleman and an all around great guy. He was a highly skilled attorney who never lacked for a kind word. He and Michelle always provided delightful companionship for whatever ABOTA members they encountered. Please keep them and their family in your thoughts and prayers.

Harry T. Widmann
2011 National President
Civility and Professionalism Mentor/Mediator Program
for the State of Montana
Program Sponsor: Montana Chapter, American Board of Trial Advocates (ABOTA)

Outline of Program

1. Montana ABOTA Chapter members will agree to voluntarily act as Civility or Professionalism Mentors or Mediators (“Mentors/Mediators”), upon either an assignment by a court or tribunal, or by request of any attorney. The request may relate to litigation or pre-litigation matters, or to any other adversarial or transactional matter where the assistance of a Mentor/Mediator is requested to resolve a problem or issue which arises from conduct that is alleged to be uncivil or unprofessional, as described in the Principles or the Rules of Professional Responsibility.

2. ABOTA members may opt out of the Mentor/Mediator program at any time, or reserve the right to recuse themselves on a case-by-case basis, or otherwise limit their involvement in the Program.

3. The ABOTA Civility Mentor/Mediator will be designated and assigned in the following instances:

   (a) An order, assignment or suggestion or request by a court judge or other tribunal; or

   (b) A request made either unilaterally, or jointly, by any member(s) of the Montana Bar (or counsel who have pro hac vice status in a Montana case).

4. An attorney invoking the assistance of this Program may initially request that the role of the Civility Mentor be limited to that of a confidential Mentor, to assist the attorney in dealing with the identified problem or issue on an ex parte basis. Only upon the consent of the requesting attorney, the ABOTA Mentor may transform his/her role to that of a Civility Mediator and undertake communications with the other attorney(s) and thereafter engage in the role of a mediator to resolve or assist in the matter.

5. If the bar member initially requests mentoring assistance of a Mentor/Mediator, and thereafter consents to the disclosure of the problem or issue to another attorney(s) for resolution, then the other attorney(s) will be encouraged to cooperate with the Mediator and opposing counsel to facilitate a resolution or conclusion of the civility or professionalism problem which has been raised or alleged.

6. If a court makes an assignment of a Civility Mentor/Mediator, the court may order that the attorneys and Mentor/Mediator resolve the problem(s) or issue(s) on an informal basis. If the court believes that the conduct of an attorney (or both attorneys) borders upon sanctionable conduct, or could lead to sanctionable conduct if not resolved or otherwise rectified by an early intervention of the Mentor/Mediator, the court may require the Mentor/Mediator to provide an in-chambers report, not for filing, describing the problem(s) or issue(s) which have arisen and his/her recommendations, if any, for resolution of those problem(s) or issue(s).

7. Communications and reports will not be filed of record or lodged with a court or tribunal unless so ordered by it, in which case any report or communication from the Mentor/Mediator will be designated as confidential “in-chambers” communications between the court, counsel, and the Mentor/Mediator.

8. Attorneys seeking the assistance of a Civility Mentor/Mediator will do so only in good faith and not to annoy, harass, or embarrass the non-invoking attorney(s), nor for the furtherance of tactical or strategic advantage.
9. The contents of any statement, communication, or reports by any participant in the program, made either orally or in writing, will be confidential and subject to the same rules of confidentiality and privilege as apply to mediation in the federal and state courts of Montana, including the Montana statutes governing mediation confidentiality and privilege, Mont. Code Ann. § 26-1-813. The Civility Mentor/Mediator shall enjoy the same judicial immunity as provided in Mont.R.App.P., Rule 7. The obligations of confidentiality apply to all who may be involved in a mentored or mediated matter, including the Civility Mentor/Mediator.

10. The fact that an attorney or Court may invoke or utilize the Civility Mentor/Mediator program shall not be considered a disciplinary complaint or a public record that would give rise to public access to any documents or communications relating thereto. All such records and communications will be strictly confidential and shall not be disclosed for any purpose.

11. The Civility Mentor/Mediator selected will have complete discretion as to how he/she will conduct an investigation of the problems or issues raised. Adherence to formal rules of procedure or evidence will not be required. If the Mentor/Mediator recommends that a more formal investigative proceeding be undertaken, he/she shall make such a recommendation to the Judge who is assigned to the case, who may determine how the investigation should be undertaken.

12. The ABOTA Civility Mentor/Mediator will not be expected to engage in protracted disputes or problems that may impose an unreasonable burden upon the Mentor/Mediator. The Mentor/Mediator therefore reserves the right to discontinue his/her efforts, or limit his/her involvement in any matter, or seek the involvement of another ABOTA member to assist or assume the Mentor/Mediator’s role. Upon notice to all counsel, the Civility Mentor/Mediator may also terminate ABOTA’s involvement if it appears that the conduct at issue is more properly the subject of a formal disciplinary process, or may be sanctionable by a court or tribunal, or the incivility claims are without merit.
Montana Supreme Court Order

IN THE SUPREME COURT OF THE STATE OF MONTANA
AP 06-0632

In Re the Application of the American Board of Trial Advocates (ABOTA), Montana Chapter
Seeking Adoption and Implementation of ABOTA’s “Civility Matters” Programs.

ORDER

On July 2, 2010, Donald C. Robinson, individually and on behalf of the Montana Chapter of the American Board of Trial Advocates (ABOTA), filed an application invoking the original jurisdiction of this Court to regulate the Bar of Montana. The application requests that this Court adopt and implement a series of initiatives offered by ABOTA, known as the “Civility Matters” program. ABOTA is a national organization of peerselected, experienced trial attorneys. The organization’s purposes include “foster[ing] improvement in the ethical and technical standards of practice in the field of advocacy.”

The application generally references the problem of increased incivility in the legal system, and explains the three components of the “Civility Matters” program designed to address this issue. They include: 1) adoption of ABOTA’s Principles of Professionalism and Civility as the Montana standards of civility; 2) revising the oath of admission to the Bar to add a commitment to faithfully observe the standards of civility; and 3) initiation of a mentoring and refereeing program whereby members of the Montana Chapter of ABOTA would make civility presentations, provide confidential advice or mentoring to lawyers, and, upon request of a judge or lawyer, mediate or referee disputes arising between lawyers during litigation. The program is designed to be self-executing and would not involve judicial financial resources.

While the application’s purposes are clearly laudable, our review of the proposed program has raised several concerns about potential conflicts with current rules and practices. For example, #18 of ABOTA’s Principles provides that a lawyer should never cause the entry of a default without first notifying opposing counsel, yet M. R. Civ. P. 55 does not require this. Another ABOTA principle states that a lawyer may never criticize a judge or jury for a ruling or decision. Temperance is commendable, but we question whether a blanket prohibition on such comments would comport with free speech guarantees. We note that, although the referee program is described as voluntary, once a referral is made by either a court or attorney, then “the other attorney will be expected to cooperate with the referee and opposing counsel to facilitate a resolution of the civility or professionalism problem,” essentially obligating the lawyers to undergo a mediation process. Paragraph 8, Civility Program, Appendix D. Further, this Court’s adoption of ABOTA’s civility standards, which are more detailed and specific than the Rules of Professional Conduct, could conceivably form the basis for disciplinary action if violated, and the judiciary has no resources for alternative enforcement of the standards.

For these reasons, we decline to grant the application at this time. However, there are parts of the proposed program which could be very helpful and be implemented without an order from this Court. ABOTA members should make civility presentations at Bar meetings and continuing educational seminars. Lawyers may want to take advantage of the mentoring program. Trial judges may find it helpful to refer a litigation dispute to an ABOTA member to attempt a resolution. We encourage ABOTA to provide information about its resources and the opportunities for participation to Montana’s lawyers and judges. Accordingly,

IT IS HEREBY ORDERED that the application is DENIED.
DATED this ___ day of August, 2010.

Chief Justice

Justices
Preamble
These Principles supplement the precepts set forth in ABOTA’s Code of Professionalism and are a guide to the proper conduct of litigation. Civility, integrity, and professionalism are the hallmarks of our learned calling, dedicated to the administration of justice for all. Counsel adhering to these principles will further the truth-seeking process so that disputes will be resolved in a just, dignified, courteous, and efficient manner.

These principles are not intended to inhibit vigorous advocacy or detract from an attorney’s duty to represent a client’s cause with faithful dedication to the best of counsel’s ability. Rather, they are intended to discourage conduct that demeans, hampers, or obstructs our system of justice.

These Principles apply to attorneys and judges, who have mutual obligations to one another to enhance and preserve the dignity and integrity of our system of justice. As lawyers must practice these Principles when appearing in court, it is not presumptuous of them to expect judges to observe them in kind. The Principles as to the conduct of judges set forth herein are derived from judiciary codes and standards.

These Principles are not intended to be a basis for imposing sanctions, penalties, or liability, nor can they supersede or detract from the professional, ethical, or disciplinary codes of conduct adopted by regulatory boards.

As a member of the American Board of Trial Advocates, I will adhere to the following Principles:

1. Advance the legitimate interests of my clients, without reflecting any ill will they may have for their adversaries, even if called on to do so, and treat all other counsel, parties, and witnesses in a courteous manner.

2. Never encourage or knowingly authorize a person under my direction or supervision to engage in conduct proscribed by these principles.

3. Never, without good cause, attribute to other counsel bad motives or improprieties.

4. Never seek court sanctions unless they are fully justified by the circumstances and necessary to protect a client’s legitimate interests and then only after a good faith effort to informally resolve the issue with counsel.

5. Adhere to all express promises and agreements, whether oral or written, and, in good faith, to all commitments implied by the circumstances or local custom.

6. When called on to do so, commit oral understandings to writing accurately and completely, provide other counsel with a copy for review, and never include matters on which there has been no agreement without explicitly advising other counsel.

7. Timely confer with other counsel to explore settlement possibilities and never falsely hold out the potential of settlement for the purpose of foreclosing discovery or delaying trial.

8. Always stipulate to undisputed relevant matters when it is obvious that they can be proved and where there is no good faith basis for not doing so.

9. Never initiate communication with a judge without the knowledge or presence of opposing counsel concerning a matter at issue before the court.

10. Never use any form of discovery scheduling as a means of harassment.

11. Make good faith efforts to resolve disputes concerning pleadings and discovery.

12. Never file or serve motions or pleadings at a time calculated to unfairly limit opposing counsel’s opportunity to respond.

13. Never request an extension of time solely for the purpose of unjustified delay or to obtain a tactical advantage.

14. Consult other counsel on scheduling matters in a good faith effort to avoid conflicts.

15. When calendar conflicts occur, accommodate counsel by rescheduling dates for hearings, depositions, meetings, and other events.
16. When hearings, depositions, meetings, or other events are to be canceled or postponed, notify as early as possible other counsel, the court, or other persons as appropriate, so as to avoid unnecessary inconvenience, wasted time and expense, and to enable the court to use previously reserved time for other matters.

17. Agree to reasonable requests for extension of time and waiver of procedural formalities when doing so will not adversely affect my client’s legitimate rights.

18. Never cause the entry of a default or dismissal without first notifying opposing counsel, unless material prejudice has been suffered by my client.

19. Never take depositions for the purpose of harassment or to burden an opponent with increased litigation expenses.

20. During a deposition, never engage in conduct which would not be appropriate in the presence of a judge.

21. During a deposition, never obstruct the interrogator or object to questions unless reasonably necessary to preserve an objection or privilege for resolution by the court.

22. During depositions, ask only those questions reasonably necessary for the prosecution or defense of an action.

23. Draft document production requests and interrogatories limited to those reasonably necessary for the prosecution or defense of an action, and never design them to place an undue burden or expense on a party.

24. Make reasonable responses to document requests and interrogatories and not interpret them in an artificially restrictive manner so as to avoid disclosure of relevant and nonprivileged documents.

25. Never produce documents in a manner designed to obscure their source, create confusion, or hide the existence of particular documents.

26. Base discovery objections on a good faith belief in their merit, and not for the purpose of withholding or delaying the disclosure of relevant and nonprivileged information.

27. When called on, draft orders that accurately and completely reflect a court’s ruling, submit them to other counsel for review, and attempt to reconcile any differences before presenting them to the court.

28. During argument, never attribute to other counsel a position or claim not taken, or seek to create such an unjustified inference.

29. Unless specifically permitted or invited, never send to the court copies of correspondence between counsel.

When In Court I Will:

1. Always uphold the dignity of the court and never be disrespectful.

2. Never publicly criticize a judge for his or her rulings or a jury for its verdict. Criticism should be reserved for appellate court briefs.

3. Be punctual and prepared for all court appearances, and, if unavoidably delayed, notify the court and counsel as soon as possible.

4. Never engage in conduct that brings disorder or disruption to the courtroom.

5. Advise clients and witnesses of the proper courtroom conduct expected and required.

6. Never misrepresent or misquote facts or authorities.

7. Verify the availability of clients and witnesses, if possible, before dates for hearings or trials are scheduled, or immediately thereafter, and promptly notify the court and counsel if their attendance cannot be assured.

8. Be respectful and courteous to court marshals or bailiffs, clerks, reporters, secretaries, and law clerks.

Conduct Expected of Judges

A lawyer is entitled to expect judges to observe the following Principles:

1. Be courteous and respectful to lawyers, parties, witnesses, and court personnel.

2. Control courtroom decorum and proceedings so as to ensure that all litigation is conducted in a civil and efficient manner.

3. Abstain from hostile, demeaning, or humiliating language in written opinions or oral communications with lawyers, parties, or witnesses.

4. Be punctual in convening all hearings and conferences, and, if unavoidably delayed, notify counsel, if possible.

5. Be considerate of time schedules of lawyers, parties, and witnesses in setting dates for hearings, meetings, and conferences. When possible, avoid scheduling matters for a time that conflicts with counsel’s required appearance before another judge.
6. Make all reasonable efforts to promptly decide matters under submission.

7. Give issues in controversy deliberate, impartial, and studied analysis before rendering a decision.

8. Be considerate of the time constraints and pressures imposed on lawyers by the demands of litigation practice, while endeavoring to resolve disputes efficiently.

9. Be mindful that a lawyer has a right and duty to present a case fully, make a complete record, and argue the facts and law vigorously.

10. Never impugn the integrity or professionalism of a lawyer based solely on the clients or causes he represents.

11. Require court personnel to be respectful and courteous toward lawyers, parties, and witnesses.

12. Abstain from adopting procedures that needlessly increase litigation time and expense.

13. Promptly bring to counsel’s attention uncivil conduct on the part of clients, witnesses, or counsel.

Ever wonder what happened to the ideals of civility, integrity, and professionalism to which you aspired in law school? They are alive and well in the American Board of Trial Advocates. Admittedly, these principles are difficult to define. Nevertheless, the legal profession as a whole and each individual lawyer and judge must adopt and practice these concepts so that the members of our profession will again be looked upon as the greatest protectors of our life, liberty and property.

Please join ABOTA in making these principles a reality once again.

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American Board of Trial Advocates

**Code of Professionalism**

As a member of the American Board of Trial Advocates, I shall

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Always remember that the practice of law is first and foremost a profession.

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Encourage respect for the law, the courts, and the right to trial by jury.

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Always remember that my word is my bond and honor my responsibilities to serve as an officer of the court and protector of individual rights.

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Contribute time and resources to public service, public education, charitable and pro bono activities in my community.

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Work with the other members of the bar, including judges, opposing counsel, and those whose practices are different from mine, to make our system of justice more accessible and responsive.

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Resolve matters and disputes expeditiously, without unnecessary expense, and through negotiation whenever possible.

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Keep my clients well-informed and involved in making decisions affecting them.

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Achieve and maintain proficiency in my practice and continue to expand my knowledge of the law.

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Be respectful in my conduct toward my adversaries.

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Honor the spirit and intent, as well as the requirements of applicable rules or codes of professional conduct, and shall encourage others to do so.