



Why Civility . . . And Why Now?

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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 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 reignited the debate regarding this important issue. Civility programs are now being offered across the country. ABOTA lawyers and supportive Judges put on hundreds of 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.