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Civil Litigation - an Oxymoron?

by Richard A. Huver

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For those members who practice some form of civil litigation, do you ever wonder whether they should call it "uncivil litigation?" Yes, we all took an oath to zealously advocate on behalf of our clients, but I think some take this oath as a license to act as if they are at war, where winning at all costs trumps decent, professional behavior. Sure, there are times when all of us are pushed to our wits end -- I have been there in my career. There are some adversaries who do everything in their power to make our lives and our practices as miserable and painful as possible. We feel left with no alternative but to fight fire with fire.

However, I firmly believe we can conduct ourselves as zealous advocates for our clients without adding the hyperbole, the ad hominem attacks and the rhetoric. We can act professionally and politely while keeping our clients' best interests in mind. There is nothing wrong with agreeing to an extension of time to respond to discovery, even if you have responded timely. Working cooperatively with opposing attorneys can often lead to conciliation -- and many times, resolution is in our client's best interests. More importantly, it has been my experience that interacting with the court is more enjoyable when you bring genuine disputes for their consideration rather than relentless ex parte motions and disagreement for the sake of disagreeing. Who likes to listen to constant bickering and complaining? After all, don't we put our kids in a "time out" when they act that way?

This is not to say there aren't the occasional situations in which, despite our best efforts, it is going to be "one of those cases." But just like charity, cooperation and professionalism begin at home. Why feed the public's perception that attorneys are there to make life more difficult, complicate the situation and fight for the sake of fighting? We can prove their perception wrong.

Now, don't everyone run out and hug their opposing attorneys. But it would go a long way in our continuing effort to improve our image with the public if we did our part to bring more civility to civil litigation.