Civility Is Good Business

BY MARK G. HONEYWELL

Most lawyers are in the legal profession to earn a living and should be zealous advocates. Equally as important, however, is the goal to serve justice and save your clients as much money as possible without compromising their realistic objectives and expectations. To that end, civility towards your opponent should be a primary goal in your practice. Some clients may erroneously believe that they need a "junk-yard dog" for a lawyer, and that a spirit of cooperation and professionalism is a sign of weakness. Lawyers should educate those clients that applying the golden rule of litigation is not equivalent to weakness, and can, in fact, be more effective. If the client instructs you to behave otherwise, you may need to re-evaluate your continued representation.

First impressions, good or bad, usually permeate your dealings with everyone, particularly adversaries. Make sure your first and all communications, written or oral, are positive ones. Being candid and forthright usually encourages similar behavior.

What Goes Around Comes Around. At the outset, basic courtesy in inquiring about available dates for depositions or motions or allowing extra time for discovery response will almost always result in reciprocal behavior. Virtually everyone needs a "break" now and then, be it a missed deadline or the need to change a scheduled hearing or deposition. If you have been cordial and professional with your opponent from the outset, these bumps in the road should not present a particular problem. If you have not, these problems will arise and they will cost you and your client money — either engaging in contentious arguments or filing otherwise needless motions.

Trivial Disputes Cost Money. Probably the most wasteful and thus needlessly costly disputes involve discovery or scheduling. Very rarely will you face a truly unsolvable dispute, but most often these disputes are driven by stubbornness or hubris. Pick your battles carefully. Major substantive motions need to be argued, but do not engage in trivial disputes with your opponent; seek compromise. There is no shame in backing down or being the first to suggest a compromise. If you have created a cordial relationship with your opponent, you will find that offering compromise in a discovery or scheduling dispute will come easily to you, and almost always will be successful.

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Judges Are Human Too. Judges detest discovery motions and bristle at *ad hominem* attacks. Avoid both at all costs. Judges recognize discourteous behavior, and they are influenced by it. Judges can usually tell which lawyer is being civil by written correspondence, discovery responses, and deposition transcripts of attorney conduct. You want to win close calls for your client, and particularly ones in which the edge might be influenced by the judge's subconscious impression. And certainly the most difficult result to explain to a client is an award of attorney's fees against you or your client. Make certain that all your communications are courteous — they do not need to be friendly, just professional.

Good Litigators Should Also Be Good Problem-Solvers. Effective litigators are effective innovators. Always look for ways to achieve the best results for the least expense to your client, even if this effort results in earning less of a fee. Cases that go to trial or settle on the courthouse steps, but could have been resolved much earlier by a sum less than the total amount spent on all attorneys' fees are those which give our profession a bad reputation. An attempt at early resolution and cost saving will be made more difficult if you have, or are trying to maintain, a reputation as a junk-yard dog.

Sophisticated users of legal services know when their attorney is saving them money by a careful and early search for dispute resolution even at the expense of larger attorney's fees. Those clients will be responsible for your repeat business and your best referrals.

Let Your Bats Do the Talking (baseball metaphor). Trash talking rarely reaps benefits. You do not need to prove how tough you are before you walk into court for the first time. Being very well-prepared, thorough, and cordial is the most intimidating persona you can present to an opponent. Avoid *ad hominem* attacks in pleadings, correspondence, or verbal exchanges.

Never try to bully or intimidate your opponent with threats or ultimatums. They rarely, if ever, reap financial benefits. To the contrary, such an approach simply encourages your opponent to work harder to defeat you (and likewise your client). Creating a "driven" opponent is never good for business: it is likely to cost your client money even in a successful outcome.

From start to finish in litigation, your commitment to professionalism and civility will reap financial benefits to you and your client, and will not diminish your stature in the eyes of your opponent or the court. Your professional conduct is good for business and good for the legal profession.

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