



MESSAGE FROM THE PRESIDENT

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CIVILITY IN THE LEGAL PROFESSION

Back in 2014, the State Bar of Nevada's Civility Taskforce polled active Nevada attorneys to see if they had ever experienced uncivil behavior in their profession.

As a 40-year veteran of the legal profession in this state, I'm saddened to say that of the 1,407 attorneys who responded to the survey, 1,038 – 95 percent – said that they had experienced incivility in the course of their career. The survey received responses from attorneys ranging from 35 years of age up to 65 and older.

A closer look at the survey offers some interesting insight. In the month leading up to the survey, 42 percent said they'd experienced situations in which opposing counsel had misrepresented or stretched the facts, 35 percent had been subjected to sarcastic or condescending attitudes, and 33 percent said they had witnessed uncivil behavior. Only 4 percent – the lowest number of respondents – had experienced racially or culturally insensitive comments.

A deeper look at the survey shows results similar to my own experiences. I've seen most of the uncivil behavior take place outside of the courtroom setting, in particular, during pretrial discovery, when moderate conflicts often continue through various parts of the process. These difficulties often escalate because in those settings, lawyers don't have an independent third party monitoring their behavior.

A lot of the behavioral problems in our profession stem from a "win at all costs" mentality, where finishing second is just not an option. It's the nature of the beast that when you constantly take an adversarial posture, people tend to become uncivil. Attorneys also want to do everything they can to help their clients achieve a desirable outcome.

Survey results also back up my observation: 66 percent of respondents say the "win at all costs" mentality leads to a lot of the incivility in the profession. Family demands – 63 percent – and pressures of the profession – 40 percent – also have a great deal of influence on behavior.

I was quite disappointed to see that 53 percent of respondents said the cause of the bad behavior is poor morals or ethics — something the legal community needs to continue to address. The good news is that 67 percent of those surveyed disapprove of incivility under any circumstances, so maybe the tide is turning on this growing problem.

I know we'll never fully eliminate incivility in the legal profession. This attitude of winning at all costs is pervasive and realistically will continue in some form in the future. However, we can educate attorneys how they should behave. This should help until there is a mechanism in place to sanction or fine misbehavior. Those who responded to the survey feel the same: 55 percent of them want to increase impositions of court sanctions, and 51 percent believe firms should discipline their own lawyers when they act unprofessionally.

The survey also shows that 33 percent think increased law school training on civility and professionalism will help, while 27 percent would like to see written guidelines on standards of civility.

To that end, the State Bar of Nevada filed a petition with the Nevada Supreme Court to adopt SCR 73, revising the attorney's oath upon admission to the bar. For those who haven't seen the revised oath, it reads:

*I do solemnly swear, or affirm that:
I will support the Constitution and government
of the United States and of the State of Nevada;
I will maintain the respect due to courts of
justice and judicial officers;
I will support, abide by and follow the Rules
of Professional Conduct as are now or may
hereafter be adopted by the Supreme Court;
I will conduct myself in a civil and professional
manner, whether dealing with clients,
opposing parties and counsel, judicial officers
or the general public, and will promote the
administration of justice; and
I will faithfully and honestly discharge the
duties of an attorney at law to the best of my
knowledge and ability.*

Of course, there are still no sanctions for bad behavior, but this is a good step toward restoring civility within the legal profession, and I remain hopeful that some will abide by the oath. Unfortunately, there will still be many who don't. If you have experienced uncivil behavior from another attorney, remember to take the high road and don't stoop to their level; in these cases, the best thing you can do is lead by example. **NL**