

Bullies & Bad Actors: How to Deal with Lawyers Who are Technically Ethical



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Gallup Poll's Honesty & Ethics in Professions 2016

	Very high/High %	Very low/Low %	Average %
Nurses	84	3	13
Pharmacists	67	8	26
Medical doctors	65	7	29
Engineers	65	5	29
Dentists	59	7	34
Police officers	58	13	29
College teachers	47	18	32
Clergy	44	13	39
Chiropractors	38	13	45
Psychiatrists	38	12	45
Bankers	24	30	46
Journalists	23	41	34
Lawyers	18	37	45
State governors	18	35	45
Business executives	17	32	50
HMO managers	12	31	48
Senators	12	50	37
Stockbrokers	12	39	46
Advertising practitioners	11	40	46
Insurance salespeople	11	38	51
Car salespeople	9	46	45
Members of Congress	8	59	31

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“Every lawyer at least once in every case feels himself crossing a line that he doesn’t really mean to cross, it happens and if you cross it enough times it disappears forever. And then you’re nothing but another lawyer joke. Just another shark in the dirty water.”

-The Rainmaker



Ethics vs. Civility

- The Ethics Rules regulating us are the *minimum* standard or the *floor* that supports our status as a lawyer in good standing.
- Rules of ethics mandate required behavior.

An Ethical person often chooses to do
more than the law requires
and less than the law allows;

there is a big difference between what
you have a right to do
and what is right to do.

Justice Potter Stewart

What is incivility?

- Rudeness—unnecessary rudeness
- Unsupported imputation of improper motives



Civility—A Judicial Perspective



Costs of Incivility



Costs of Being Unprofessional

- **Damage to your reputation, your credibility and your livelihood.**
- **Increases stress and leads to greater dissatisfaction with your practice of law.**
- **Sanctions by court and bar.**

CROSSING THE LINE

- Zealousness v. misconduct
- Aspirational language leads to apathy?



Responses to Incivility

- The role of the judge
 - Handle on-the-spot
 - Sanctions
 - Disciplinary referral
- The role of other lawyers
 - Informal mechanisms/peer pressure
 - Seek sanctions
 - Disciplinary referral

Broader Examination of Civility

- State bars
- Individual courts (Bank. E.D.N.Y.)
- *Dondi Properties Corp. v. Commerce Savs. & Loan Ass'n*, 121 F.R.D.284 (N.D. Tex. 1988) (en banc).
- Committees on professionalism

Thinking About Incivility

- Context is important.
- Perspectives on civility/incivility are culturally driven.

Highlights

- Not reflect ill feelings of our clients.
- Not attribute bad motives w/o good cause.
- Adhere to express promises and agreements, oral or written.
- Stipulate to undisputed, relevant matters.
- Not manipulate timing of filing or service for delay or tactical advantage.

Highlights

- Consult on scheduling to avoid conflicts.
- Accommodate previously scheduled conflicts, including vacations.
- Agree to reasonable requests for extensions of time.

Enforcement?

- “These standards shall not be used as a basis for litigation or for sanctions or penalties.”

Take away

- “Civility is not a sign of weakness”

-John F. Kennedy

Scenarios

