



PRESIDENT'S PAGE

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Civility in the Time of Pandemic

Just as Florentino Ariza and Fermina Daza, the main characters in Gabriel García Márquez' *Love in the Time of Cholera*, unexpectedly found love while quarantined (on a boat, no less) during a cholera pandemic, so too have many lawyers found civility while quarantined during the COVID-19 pandemic. And although García Márquez' main characters feared what the end of the quarantine would mean to their newfound love, I am hopeful that our newfound civility will not vanish when our courts reopen and our quarantines end. Civility is important, and not just in the Time of Pandemic.

Law students learn in law school, and are tested by the Bar, about their ethical obligations under the Rules of Professional Conduct and other legal ethics standards. Once they begin practicing, they are obligated to follow those ethical rules at the peril of their law license. What is not always taught in law school or enforced by the State Bar is professionalism and civility. Yet, in many ways, that is just as important to our profession.

Four years ago, under the leadership of then-OCBA President Todd Friedland, I had the honor of co-chairing a civility task force with Justice Richard Fybel. One of the outcomes of that task force was the OCBA Civility Guidelines. See http://www.ocbar.org/Portals/0/pdf/docs/civility_guidelines.pdf. This year, Mr. Friedland returned the favor, agreeing to co-chair (with Judge James DiCesare) a new civility task force—Civility Task Force 2.0. One of their goals is to get the courts and lawyers to even more fully embrace the Civility Guidelines, and otherwise to practice civility and professionalism.

Having written and spoken on civility, I am often asked what the advantages are of being civil and, indeed, whether it is an advantage at all. Some tell me they have seen uncivil and even obnoxious lawyers get the better of a more polite attorney. But that need not be the case and, in my experience, generally is not. On the contrary, a lawyer can provide all the courtesies and civility our profession requires, and still zealously and even aggressively represent her client's interests. One can fight tooth and nail to prevent the disclosure of a document that arguably is protected by the attorney-client privilege without calling opposing counsel names, accusing them of heinous crimes, or refusing to grant a non-prejudicial courtesy or extension.

And for any client who says he wants to hire an aggressive "bulldog" who will not be civil to opposing counsel, I say this: Among the many risks of that strategy, there is one guarantee. Your legal bill will be higher. When lawyers are forced to fight about whose deposition proceeds first, and whether the deposition starts at 9:00 or 10:00, the client usually ends up paying for those fights without having any substantive gains to show for them.

One other inherent advantage of being civil is your own sanity and happiness. There is very little in this profession more exhausting

and frustrating than having to deal with an unreasonable and uncivil opposing counsel. But when a lawyer acts uncivilly, she practically begs her opposing counsel to act similarly—thereby almost guaranteeing unnecessary, costly, and tiring fights. There definitely is something to the saying, "you catch more flies with honey than with vinegar."

And never forget how small the world is—particularly the Orange County legal community. The lawyer you oppose in one case could be your co-counsel in the next. The lawyer you accuse of deceitful conduct in August could be the lawyer interviewing you for a new job in January. On the other hand, the adverse lawyer with whom you get along, while both of you are zealously representing your clients, could end up referring a matter to you in the future. Trust me. It happens.

The COVID-19 pandemic has amplified the opportunities to practice civility. Brought together by a crisis, lawyers for the most part have risen to the occasion, avoiding unnecessary conflicts in order to relieve the stress on clients and the courts. Even lawyers who in simpler times might be loathe to give an opposing counsel even the slightest courtesy have granted indefinite extensions and generous accommodations as we all grappled with common obstacles to business as usual—including limited access to our offices, our clients' businesses being temporarily shuttered, or the challenges of home-schooling young children.

Sadly, not all lawyers have risen to the occasion this way. Many of us have experienced the exception—that is, the lawyer who uses COVID-19 as a sword to gain an advantage. This includes the lawyer who insists on all discovery being completed in advance of a trial date that everyone knows will be moved because courts are closed. But, at least in my experience, these types of lawyers truly have been the exception during the last few challenging months.

My hope is that, when this crisis passes, and things return to something resembling "normal," those lawyers who discovered civility will not lose it. That we all will remember the need to treat each other with respect—for the benefit of the legal system, the reputation of our profession, our clients' wallets, and our own sanity. And just as Florentino Ariza answered "forever" when asked by the boat captain at the end of the novel, "And how long do you think we can keep up this goddamn coming and going?" I hope we can keep our recent embrace of civility going forever.



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