

Navigating Hostile Waters

Parting Thoughts on Professionalism and Civility



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The State Bar recently conducted its triennial member survey.¹ On a positive note, more than 72 percent of respondents are extremely satisfied or satisfied with the value they receive from their bar dues. However, the following two statistics are the focus of my final president's column: 57.1 percent of respondents reported being very or extremely concerned about civility in the legal profession, and only 52.3 percent were satisfied with their professional lives. These statistics are sad, and the trend is going in the wrong direction. In the category of civility, we are not alone; attorneys in the United Kingdom are experiencing a "sharp rise" in rude behavior.² But this misery doesn't love company.

Professional conduct is described as an underlying expectation of all attorneys in the Preamble of the Michigan Rules of Professional Conduct³ and specifically discussed in certain rules such as MRPC 3.4. Some survey participants commented that the State Bar should do something about unprofessional conduct. MRPC violations fall under the jurisdiction of the Attorney Grievance Commission and Attorney Discipline Board, however—not the State Bar. But the Bar can

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educate and remind its members of their responsibilities and help them return to the right path when the stress of the profession becomes insurmountable and leads to unprofessional or uncivilized behavior.⁴ Beyond that, I think it is more productive to talk about how to cope with unprofessional conduct rather than how to cure it, because we all have the power to control the former, not the latter.

Perhaps we should start by acknowledging that placing our own happiness in the hands of others is ceding control over our inalienable constitutional right to the pursuit of happiness. When someone behaves in a way we don't like, we need to remember that we are the captains of our own ships. We can remain positive and divest ourselves emotionally to avoid negative interaction, and limit our communications to those objectively required to complete a client's case or perform our job responsibilities. And we should remind ourselves and be grateful that no matter how others govern themselves, we are still advancing goals we probably set when we chose to become lawyers:

- Protecting the legal rights of our fellow human beings, no matter how unpopular or poor they may be;
- Advising people when and how to take responsibility for their actions, helping them learn and grow as productive citizens of the world;
- Serving as the conduit for decision-making that is based on facts and rules;
- Helping people solve problems;
- Keeping businesses out of debilitating trouble; and
- Making the world a better place by way of a more orderly, evolving society.

Unprofessional and uncivilized conduct should not make us want to abandon our goals and ideals. By refusing to get bogged down in shenanigans, we can complete the task at hand and move on to the next matter. When we internalize the bad behavior of others, we risk becoming depressed, abusive of alcohol or drugs, and even suicidal. The statistics on attorney substance abuse and suicide rates⁵ are alarming. Attorneys who fall victim to these problems put their livelihood, profession, and the public at risk.

Find ways to de-stress that work for you after experiencing uncivilized, unprofessional conduct. Critical to my own stress management is being outdoors, working out, practicing yoga, and hearing a good weekly homily. I find that during times when I am going outside my comfort zone on hikes, bike rides, and skiing, it is impossible to hold onto negativity. It also helps to get out and have fun with friends and family, whether it's on vacation or at a college football game.

There is no question in my mind that it's difficult to compartmentalize and keep negative thoughts about "the practice" from invading special moments in our lives. For me, it took a lot of training, and I am still working on it. I hope our younger lawyers reading this column will begin to develop the difficult skill of cultivating positivity—if they are not doing so already—so they might have lifelong, happy law practices unfettered by the conduct of others.

Back to educating lawyers on civility and professionalism: I asked a handful of attorneys and paralegals what types of conduct make them feel dissatisfied with their careers. We can all learn from their responses.

"When attorneys fail to maintain a healthy level of detachment and become too enmeshed in a client's case, they sometimes behave so aggressively as to cross

the line into uncivilized territory. It is easy to get carried away with the desire to protect the rights of our clients, particularly those who are unpopular, the subject of discrimination, or otherwise vulnerable. But advocating that one party is all good and the other party is all bad (refusing to acknowledge there are two sides to every story), begets a prisoner's dilemma mentality that never ends well."

Tip: Ponder what the world looks like from the other party's perspective and how the other party might feel about their situation.

"When counsel buries me with unnecessary, time-consuming work and fails to allow sufficient time to respond, I get frustrated. Refusing to share in Word format complaints, motions, and discovery requests so the whole document need not be retyped makes no sense."

Tip: Take advantage of technology to work cooperatively with opposing counsel to minimize the cost to society of legal work, and provide more time for opposing counsel to respond than the minimum set by the court rules.

"When counsel interrupts the other attorney in court or during mediation, it sets the wrong tone for resolving the case and makes that attorney look bad."

Tip: Take notes while the other attorney is talking to help quell the urge to interrupt. When it's your turn to speak, you will have had time to synthesize your thoughts and decide which statements, if any, truly need to be countered.

"When attorneys intrude on my personal time, it drains me of energy and makes me want to quit the practice of law. I have been served with lengthy, non-emergency motions the week between Christmas and New Year's Day when I am on break with my school-age children. This is unnecessary and uncivilized."

Tip: Karma doesn't forget—that's why it's called karma. Treat others the way you want to be treated. You cannot possibly want opposing counsel to require you to work on your vacation. If something is truly an emergency, call counsel's office and ask who

might help you. They will decide whether someone else can handle it or whether it is right to contact the attorney on personal time. Likewise, always have someone who can take those calls for you while you are out. Prepare your colleagues and staff before leaving the office so they are not blindsided in your absence. Don't leave opposing counsel or the court hanging because of your vacation.

"It offends me when opposing counsel engages in bullying behavior: sending condescending e-mails suggesting I am committing malpractice, threatening me with a grievance, promising to pummel my client with ceaseless litigation the client cannot afford, and so on."

Tip: Remember such conduct is a reflection of the bullying attorney, not you. Do not mirror this behavior or even acknowledge it. Set boundaries and ground rules for how and when you will interact. Avoid perseverating on the negative and do something good for yourself instead.

If I took more time, I'm sure I could gather many more examples of conduct attorneys find disheartening, frustrating, and unbecoming. But again, focusing on what others do is probably not as productive as managing how you respond. Grace is handling adversity with dignity. There has been no shortage of times when, during my own matrimonial law practice, I have said to myself, "God, grant me the grace to survive this case with my own dignity intact." This helps me feel like I'm not alone in a difficult time. Whether you have the Serenity Prayer⁶ taped to your desk or another positive way of dealing with stress, consider sharing it, especially with colleagues who are experiencing a difficult time because of unprofessional or uncivilized conduct. Give them moral support and encourage them not to abandon their goals as protectors of the public and the rule of law because of the untoward behavior of others.

As I mentioned, this is my final *Bar Journal* column. Please accept my deepest and most humble gratitude for the privilege and honor of being your State Bar president. As a bar, we have accomplished more this year than I could have imagined. To this, I owe the hard-working dedication of my

colleagues on the Board of Commissioners and Representative Assembly; the talented, innovative, tireless efforts of our Bar staff; the support of my law firm, Nichols, Sacks, Slank, Sendelbach & Buiteweg; and the understanding of my family: my husband, Tom, and our children, Michael and Joey.

I also want to thank all the attorneys with whom I have had cases this past year and the judges before whom I have appeared. Without fail, they have demonstrated the quintessential professional, civilized conduct we should expect from one another by providing me with the flexibility necessary to manage my Bar responsibilities and private practice. I personally believe the vast majority of our bar is professional and civilized, and the survey results reflect a troubling exception to the rule. The wonderful attorneys and judges I have met this year in my travels all over the country have proven to me that I chose the right career. I am prouder than ever to say I am an attorney, and I hope you are, too. ■

ENDNOTES

1. The survey results are being analyzed and compiled. A summary report will be available on the State Bar of Michigan website soon.
2. Gibb, *Rumpole-style rudeness returns as a court tactic*, *The Times* (June 21, 2016).
3. "A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process." MRPC Preamble: A Lawyer's Responsibility.
4. SBM, *Lawyers and Judges Assistance Program* <<http://www.michbar.org/generalinfo/ljap/home>> (accessed August 21, 2016).
5. Krill, Johnson & Albert, *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 *J Addict Med* 46 (February 2016) <http://journals.lww.com/journaladdictionmedicine/Fulltext/2016/02000/The_Prevalence_of_Substance_Use_and_Other_Mental.8.aspx> (accessed August 21, 2016).
6. "God, grant me the serenity to accept the things I cannot change, courage to change the things I can, and wisdom to know the difference." Original by Reinhold Niebuhr (1872-1971).