

Being Civil is Your Professional Responsibility



Timothy R. Engler

Within the profession, there is a growing trend involving the lack of professionalism and civility. This disturbing trend has manifested itself with an increase in animosity among colleagues. This behavior probably stems from the East and West Coasts and/or urban areas where lawyers do not personally know each other. Unfortunately, the unprofessional behavior is making its presence felt in the Midwest. Simply put, lawyers are no longer treating fellow colleagues with the respect they deserve, but instead are attacking others in a way that is both unprofessional and uncivil. The trend must be corrected and reversed.

Too often, counsel choose to focus the attack on opposing counsel rather than attacking the position taken. Too often the attack on the advocate rather than on the position is undertaken with unnecessary rhetoric and sharply worded criticism. Too often counsel resort to name calling, finger pointing, and raised voices.

Not only has some of the behavior turned negative, we are also experiencing an increase in the number of situations where opposing counsel engage in uncooperative behavior by refusing to stipulate to established facts, refusing to agree to requested continuances, and refusing to cooperate with discovery. It is becoming increasingly rare for lawyers to simply pick up the phone and discuss an issue. Instead, counsel polarize their position by engaging in a war of words contained in aggressively written letters and hastily drafted emails. The concept of a true “meet and confer” has all been lost.

My approach to addressing this issue is to begin with a very broad assessment of the seriousness of the problem and

how many lawyers are affected. In assessing Nebraska lawyers, my rule of thumb has always been that 10% of the lawyers in the state are basically terrific lawyers. I mean lawyers who are saints, not in the religious sense, but in the sense of how they treat opposing counsel. Next, I believe that 80% of the practicing attorneys in the state are very good to deal with. They exercise civility through common courtesy and healthy productive debate. Finally, in my estimation there are 10% of the practicing Bar that are or can be very difficult. These lawyers simply refuse to step up to the level of professionalism and civility that is required. So, my message is not to the 10% that are saints. These people do not need to be reminded of the ongoing need for professionalism and civility. At the same time, I recognize my message will likely be ignored by the 10% of the lawyers who simply do not understand nor appreciate the need for civility and professionalism. Rather, my message is to the remaining 80% of the practicing Bar because I am concerned that the growing trend I referenced above may mean the 80% group may be shrinking and the bottom 10% group may be growing.

To the 80% who are good practicing attorneys, my message is simple - stay the course. Do not be pulled into the gutter by the 10% whose conduct we disdain. Granted, when you encounter one of the 10% group, you must do things differently. You cannot simply pick up the phone, call, and talk through an issue. You cannot have a vigorously contested hearing or trial and then join opposing counsel for lunch, coffee or a beer. Those encounters are just not going to happen. Your client is going to have to be reminded and educated on the pitfalls of having to deal with opposing counsel. It is part of

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the hand you have been dealt, but it is your job to rise above this rhetoric.

As a profession, there is no question that we come in all shapes, sizes and colors in terms of our physical characteristics. On top of that, when you consider our varied personalities, the variety of shapes, sizes, and colors are even more pronounced. The fact that you may be outgoing or shy, loud or quiet, introverted or extraverted, does not mean that you should make any sacrifice in the professionalism and civility you exhibit.


Most of us will agree lawyers are by nature social animals. Despite my somewhat introverted personality, I enjoy attending Bar activities and socializing with other lawyers. I do so because most of the lawyers at these events have something in common; a love and respect for the law. One of the best of these social activities is the NSBA's Annual Meeting in October. If you have not gone recently, you need to make going a priority. There is no better place to enhance our civility and professionalism than by attending the breakfasts and lunches, taking a CLE course and/or enjoying the evening receptions. The Annual Meeting offers a unique opportunity to build relationships that make civil and professional behavior so much easier.

When I talk about professionalism and civility, what I am really talking about comes down to a few simple and common courtesies. Congratulating an opponent on a hard-fought victory after a trial by a simple phone call. Agreeing to requests for continuances when the request is based on a good faith need to have more time or the result of unplanned emergencies, new developments, or sometimes just the hectic pace of an active trial calendar. Accommodating all parties with reasonable requests for deadlines, meeting schedules, and responses

recognizing that most everyone has more than just one case or transaction with most lawyers having numerous balls in the air.

Professionalism and civility begins in the office by how you treat your staff, your partners, your associates and your clerks. Professionalism extends to the courtroom by how you address the court, court reporters, bailiffs, and jurors. Most importantly, professionalism extends to opposing counsel. Lawyers can respectfully agree to disagree without taking it personally. Lawyers can interpret the law differently. Lawyers can argue about the facts and the credibility of witnesses. However, lawyers do not have to attack each other. An effective civil and/or criminal justice system really needs to have cooperation among the Bar in order to be effective and efficient in the administration of justice. Judges will be the first to tell you that their dockets run so much better when counsel cooperate fully while still fiercely advocating for their clients.

So, before pushing send with that harsh email, signing that letter that attacks the opposing counsel, or starting to raise your voice on the phone, step back and ask yourself is this the type of professionalism and civility that you would want exhibited toward you?

Professionalism and civility in the law profession are nothing more than what is expressed in the Golden Rule: "Do unto others..." 



Timothy R. Engler, President
Phone: (402) 475-5100
Email: tengler@remboltlawfirm.com

2018 NSBA Election Notices

Nominations for NSBA President-Elect Designate

The nominee for President-Elect Designate for 2020-2021 will be selected from the members who reside in Douglas or Sarpy counties. If you are interested in serving, please send your name and a short statement of interest (300 words) to Liz Neeley, NSBA Executive Director, at Lneeley@nebar.com, no later than April 6, 2018. The Executive Council will meet in April to nominate one individual for the position of President-Elect Designate. When the nominee has been selected by the Executive Council, an announcement will be mailed to all active members of the NSBA. Any member from the designated counties may submit a petition (signed by 25 active bar members) to run against the nominee of the Executive Council. If no petition is filed within 30 days of the announcement of the nominee, he or she is declared as President-Elect Designate for 2020-2021. If a petition is filed, electronic ballots will be sent. The President-Elect Designate automatically succeeds to the position of President-elect, and then President.

NSBA Executive Council- 1st District

Notifications and petitions will be sent to the 1st Supreme Court District on April 27, 2018, for the Executive Council vacancy. The deadline for returning a petition will be May 30, 2018. Executive Council terms are four years.

Electronic Elections

In October of 2016, the NSBA's House of Delegates amended the NSBA By-Laws to allow for electronic elections. **The 2018 elections for President-Elect Designate and Executive Council will be conducted electronically.** Electronic ballots will be disseminated on July 2, 2018.