

Collegiality



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Cutler Law Firm PC

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Who we are

- Civil Litigation
- Workers Compensation
- Business Litigation
- Bankruptcy
- Construction



Why is this so important?

- Adversarial business
- Personal stress
- What goes around, comes around
- Better results for your clients



Why is this so important?

- At some point in every case:
 - Extension
 - Candid insight from opposing counsel
 - Work out an issue that requires mutual trust

ISBA Standards of Professional Conduct: Lawyers Duties to Other Lawyers (Cliff's Notes)

- Our role is to advance the legitimate interests of justice.
- No abusive or offensive conduct, disparaging remarks.
- No attributing bad motives without good cause.
- No sanctions without reasonable investigation, and unless fully justified, and necessary to protect client.
- Don't misrepresent opposing counsel's position.
- Cooperate in good faith to facilitate each other's discovery.
- Cooperate in good faith on scheduling, deadlines, extensions, etc.



Rules of Practice

Communication Generally

- It should never be personal
- Opposing counsel is your opponent – not your enemy
- Your job is to take the high road. If you don't, your opponent wins.
- Acting outraged/bullying rarely works, and usually hurts.
- *Kind, but firm.*

Rules of Practice

Making your Case to Opposing Counsel

- Mean what you say.
- Put your best argument forward, but don't reduce your credibility.
- Know when to assert your case, and when not to.
- Make an honest effort to understand your opposing counsel's position. Don't drink your own Kool-Aid.

Rules of Practice

Winning and Losing

- Be humble in victory, and gracious in defeat.
- Usually **facts** - not lawyers – win or lose cases.
- If you lose, congratulate opponent.

Rules of Practice

- Relationships matter – take time to build them.

Rules of Practice

- Reputation is priceless – and can be ruined quickly.

Rules of Practice

- Be yourself – don't “act like a lawyer.”

Rules of Practice

Disputes

- Don't fight for fighting's sake.
- Retaliation not required.
- Think before refusing to cut opposing counsel a break. (are you prejudiced?)
- Kind but firm.

Rules of Practice

Sanctions

- Might be burning bridge.
- Facts should be clean and rock solid.
- Should make every effort to resolve before sanctions:
 - Clearly communicate violation, give opportunity to fix.

How to get along with opposing counsels...

... even if they are
complete pains in
the a**

The Keyboard Warrior

- Nasty emails/letters
- Equal response not required!
- Pick up the phone/in-person

The Keyboard Warrior

- Is paper trail needed?
 - Your exhibits should look more professional, and to the point.
 - Propose plan of action.
 - If a lawyer is creating a paper trail, assume any nasty/unprofessional emails from you will be in that paper trail.
 - Put yourself in the Judge's shoes.
 - Put ball in opponent's court

Absentee

- Doesn't respond to calls, emails, misses deadlines, etc.
- Do your best to get on their calendar.
- Paper trail of inactivity?
- Motions to Compel in civil manner.
- Think hard before opposing extensions.
- Don't underestimate these lawyers.

Bully

- Aggressive lawyering not necessarily good lawyering.
- Don't be afraid to call out professionally.
- Again, pick up the phone, or get coffee!
- If you're young, ask for backup from older lawyers.
- Trust yourself – you know how to work up your case better than your opponent does.
- Never wrestle with a pig.

Liar

- Misrepresents what you say/do
- Paper trail may be much more important
- Consider limiting agreements to writing.

Questions?

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