

# Why Can't We Be Friends?

## Overcoming Incivility in the Legal Practice

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# Presenters

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# Agenda and Learning Objectives

- 1 **The Problem of Incivility:** Impacts on the Legal System
- 2 **Navigating Incivility in Practice:** Strategies for Handling Incivility from Opposing Counsel and the Court
- 3 **Recent Efforts to Address Incivility:** Understanding New Initiatives to Address the Problem
- 4 **In-House Counsel's Role:** What In-House Counsel Can Do to Help Address the Problem

# **The Problem of Incivility: Impacts on the Legal System**

# The Problem of Incivility

“Incivility manifests in a variety of ways—rude emails, overly aggressive language in filings, obstructionist behavior during depositions, and toxic ‘meet and confers’ where attorneys are supposed to iron out disputes. While these behaviors have long been regarded as ‘part of the game,’ their corrosive effects on the profession are undeniable. Attorneys, especially those representing opposing parties, are increasingly finding themselves entangled in needless confrontations that escalate tensions and draw out the litigation process. Ultimately, clients, and the integrity of the legal system itself, bear the burden of this dysfunction.”

Hon. Victor E. Bianchini (Ret.), *Incivility in the Legal Profession: An Intractable Problem in Need of New Solutions*, Daily J., Oct. 4, 2024

## The Problem of Incivility (Litigation)

Incivility can have profound impacts on our legal system, including by:

- **Undermining** the administration of justice
- **Eroding** public confidence in the system
- **Disengaging** judges
- **Creating** hostile work environments
- **Hindering** client outcomes

# The Problem of Incivility (Transactional)

Incivility can have profound impacts on our legal system, including by:

- **Undermining** credibility
- **Eroding** client confidence
- **Deterring** current and potential partners
- **Creating** hostile work environments
- **Hindering** client outcomes

# The Problem of Incivility

**Incivility**



**Zealous  
Advocacy**

# **Navigating Incivility in Practice: Strategies for Handling Incivility from Opposing Counsel and the Court**

## Navigating Incivility in Practice (Litigation)

Practical strategies when navigating incivility from opposing counsel:

- **Act** with courtesy and respect
- **Consider** all arguments
- **Suggest** compromises
- **De-escalate** when necessary
- **Judiciously file** motions regarding uncivil behavior
- **Refuse** to give in – continue zealous advocacy
- **Document** everything

# Navigating Incivility in Practice (Transactional)

Practical strategies when navigating incivility from opposing counsel:

- **Act** with courtesy and respect
- **Consider** the parties involved, all arguments, and stage/posture of the deal
- **Confer** with client to understand what really matters and what is a less important point
- **Suggest** compromises
- **De-escalate** when necessary

# Navigating Incivility in Practice: “The Judge Judy Effect”

## What to do if incivility comes from the Court?

“She is a disgrace to the profession. She does things I don’t think a judge should do. She tells people to shut up. She’s rude. She’s arrogant. She demeans people. If she does this on purpose, then that’s even worse. Judges need to observe certain standards of conduct. She just doesn’t do it and I resent that. The public is apt to gain the impression that this is how actual judges conduct themselves. It says ‘judge’ on the nameplate on the bench and she’s wearing a robe.”

- Judge Wapner on Judge Judy

# **Recent Efforts to Address Incivility: Understanding New Initiatives to Address the Problem**

## Recent Efforts to Address Incivility

The traditional tools for curbing incivility have not worked:

- Monetary sanctions are **infrequently sought** and **rarely granted**
- Written rebukes are **seldom issued** by the court and then they are, they are general in nature and without teeth
- Reports to the state bar are **risky**

## Recent Efforts to Address Incivility

Judges and professional organizations have begun efforts to set guidelines:

### California Civility Task Force (CCTF)



### New York State Standards of Civility



### South Carolina State Bar



# **In-House Counsel's Role: What In-House Counsel Can Do to Help Address the Problem**

## How In-House Counsel Can Help

In-house counsel's approach to civility can have great impacts. In-house counsel can help:

- **Set expectations early** for the litigation process
- **Discourage unnecessary gamesmanship**
- **Reward civility** and not just results
- **Model** behavior for outside counsel
- **Support** civility training and initiatives

# Recapping What We Discussed

- The **problem of incivility** and the impacts it can have on our legal system
- How to **deal with incivility in practice**, including practical strategies when navigating incivility from opposing counsel and the Court
- Learn about recent **efforts to address incivility** and the implications for practicing attorneys
- How **in-house counsel's approach** to civility can have great impacts in the legal practice

**Questions?**