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ARTICLES

A Lesson in Civility

DAVID A. GRENARDO*

ABSTRACT

The inherent importance of civility in the legal profession necessitates teaching civility by law schools. This Article demonstrates how civility applies to advocacy and the practice of law, the efficiency of our justice system, lawyer well-being, obtaining a job and professional identity formation, and public confidence in the legal system. The Article can assist courts, attorneys, and professors in understanding civility and its significance. Most critically, this Article provides a turnkey lesson plan for law schools on civility that professors can employ in a variety of classes including, among others, Professional Responsibility, Civil Procedure, and Constitutional Law. Teaching law students the importance of how to interact civilly with others, particularly opposing counsel, can help a law student enjoy a long and satisfying legal career while avoiding the negative consequences of incivility, which can inhibit and stain an attorney's career.

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INTRODUCTION

The landscape of legal education continues to shift dramatically. The American Bar Association mandated several years ago that law students take at least six credits of experiential learning where they can develop the practice skills necessary to serve as effective lawyers.¹ The two most “well-known ways to meet [those] requirements [include] law clinics and field placements [i.e., externships and internships].”² Law clinics sometimes involve law students working with clients to help prepare their cases or even appearing in court with a student bar card under the supervision of a lawyer.³ Externships and internships often consist of opportunities to work at law firms, the district attorney’s office, the public defender’s office, other government agencies, or with a judge. Law schools understand that experiential learning helps students to acquire the skills necessary to serve clients and function properly in the legal profession.

This Article contends that, in the expansion of experiential education, law schools need to prepare students in more than the traditional ways (e.g., legal research and writing). In particular, law schools must ensure that students are aware of the key role of civility in the legal profession. By using methods, questions, and teaching techniques set forth in this Article, students in externships and internships will be equipped to observe and ultimately make their own assessments of how civility has significant implications for the legal system, lawyers, and clients. Students will also learn the importance of civility in the practice of law.

To prepare students to succeed in clinics and field placements, as well as the practice of law, law schools must teach law students about civility. Former Chief Justice Warren Burger agreed. Over forty years ago, he noted that law professors should teach law students “that good manners, disciplined behavior and civility

1. AMERICAN BAR ASSOCIATION, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 16–18 (2016).

2. *Id.*

3. *Clinical Program*, ST. MARY’S UNIV. SCH. OF LAW, <https://law.stmarytx.edu/academics/special-programs/center-legal-social-justice/clinical-program/#civiljustice> [<https://perma.cc/CK5Y-5ZGD>].

—by whatever name—are the lubricants that prevent lawsuits from turning into combat.”⁴ Chief Justice Burger gave the following response to law school professors who believed that they only needed to teach law students how to think: “[L]awyers who know how to think but have not learned how to behave are [a] menace and a liability, not an asset, to the administration of justice.”⁵

Civility, which generally means treating others with courtesy, dignity, and respect, comprises an essential trait of a successful lawyer. The importance of civility in practice cannot be overstated. Former United States Supreme Court Justice Sandra Day O’Connor stated that greater civility increases a lawyer’s enjoyment of practice and the effectiveness of the justice system, while also improving the public’s perception of attorneys.⁶ Civility also makes a lawyer a more effective advocate for a number of reasons, including that decision-makers, such as judges, “are more likely to be impressed by an advocate who is courteous and respectful to the decision-maker, opposing counsel, the litigants, and the legal process.”⁷

The consequences of incivility remain significant as well. Incivility may result in serious consequences to the careers of those law school graduates believing that the best approach to the practice of law includes incivility. The costs of incivility include losing a client’s case, ostracism from the legal community, increasing the costs of a case for a client, and promulgating the public’s negative perceptions of lawyers.⁸ Thus, teaching law students how to interact with others in the legal system, including externship supervisors, opposing counsel, clients, support personnel in both law offices and in courts, should be as integral to legal education and preparing law students for the practice of law as is teaching Contract law.⁹ The ABA agrees.

ABA Standard 302(c) mandates that law schools establish learning outcomes that include competency in, among other things, “the exercise of proper professional and ethical responsibilities to clients and the legal system.”¹⁰ Civility

4. *Excerpts From the Chief Justice’s Speech on the Need for Civility*, N.Y. TIMES, May 19, 1971, at 28.

5. *Id.*

6. Sandra Day O’Connor, *Professionalism*, 76 WASH. U. L.Q. 5, 8 (1998).

7. Kevin Dubose & Jonathan E. Smaby, *The Power of Professionalism: Civility as a Strategy for Effective Advocacy*, 79 TEX. B.J. 432, 433 (2016).

8. Judith D. Fischer, *Incivility in Lawyers’ Writing: Judicial Handling of Rambo Run Amok*, 50 WASHBURN L.J. 365, 369 (2011) (citations omitted) (stating incivility can lead to lawyers losing cases for clients); *see, e.g.*, *Redwood v. Dobson*, 476 F.3d 462, 466–67, 470 (7th Cir. 2007) (censuring one lawyer and admonishing another for bringing frivolous motions); Patrick E. Longan, *Teaching Professionalism*, 60 MERCER L. REV. 659, 672 (2009) (stating that incivility increases costs for the client, slows down the judicial system, and makes some lawyers miserable); E-mail from Lamont A. Jefferson, Member, Am. Inns of Court and the Am. Coll. of Trial Lawyers, to author (August 3, 2018) (Mr. Jefferson believes that continuous incivility and unprofessionalism can lead to attorneys being ostracized in San Antonio).

9. Fischer, *supra* note 8, at 366–67; *see also* Debra Moss Curtis, *The Codification of Professionalism: Can You Sanction Lawyers Into Being Nice?*, 40 J. LEGAL PROF. 49, 51 (2015) (describing the need for professionalism in the legal curriculum).

10. AMERICAN BAR ASSOCIATION, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 15 (2016).

touches on pieces of a lawyer's professional responsibilities (such as honesty to the court and fairness to opposing counsel), which are covered in Professional Responsibility classes, but the concept and importance of civility go beyond the rules of professional conduct. In addition, a professor could teach the rules of professional conduct without even mentioning, let alone focusing on, the various important aspects of civility and being civil, which are discussed *infra* (Section I, Part A). As a result, many legal educators have called for incorporating civility into the law school curriculum.¹¹

Poor attorney behavior appears in many places. For example, each of the following constitutes uncivil conduct: name-calling¹²; “unreasonably withholding consent” to continue a hearing or trial¹³; failing to honor commitments, such as cancelling a deposition when opposing counsel is en route to that deposition¹⁴; and using “any form of discovery, or the scheduling of discovery, as a means of harassing opposing counsel or counsel’s client.”¹⁵ Denigrating opposing counsel in a brief or motion also constitutes a lack of civility.¹⁶

The worst of such attorney behavior is what is typically reported or discussed in cases or in the media. The ABA Journal, by way of example, included a story about a lawyer who was suspended by his firm for opposing a pregnant lawyer’s

11. See, e.g., Peter C. Alexander, *Leadership in Legal Education Issue XIII: Law School Deans and “The New Normal”*, 46 U. TOL. L. REV. 251, 256–58 (2015) (recommending that deans of law schools adopt “the new normal” which encourages them to change how classes are taught, tailoring them to student needs, and to implement a system that adopts civility as a requirement in the legal curriculum); Bronson D. Bills, *To Be or Not To Be: Civility and the Young Lawyer*, 5 CONN. PUB. INT. L.J. 31, 39–40 (2005) (explaining that learning civility as a young attorney is instrumental to success, and teaching civility in law school would be advantageous); Nicola A. Boothe-Perry, *Standard Lawyer Behavior? Professionalism as an Essential Standard for ABA Accreditation*, 42 N.M. L. REV. 33, 37–38 (2012) (arguing that professionalism is a character trait not emphasized enough in law schools and recommending that law schools incorporate a movement toward more professionalism allowing students to develop professional traits that include civility); Raymond M. Ripple, *Learning Outside the Fire: The Need for Civility Instruction in Law School*, 15 NOTRE DAME J.L. ETHICS & PUB. POL’Y 359, 359 (2001) (defining civility as “the act of treating other people with courtesy, dignity, and kindness”); Sophie M. Sparrow, *Practicing Civility in the Legal Writing Course: Helping Law Students Learn Professionalism*, 13 J. LEGAL WRITING INST. 113, 119 (2007) (describing civility as “behavior in public which demonstrates respect for others and which entails curtailing one’s own immediate self-interest when appropriate” and stressing the importance of implementing professionalism across the curriculum and enforcing it with students, staff, and administration).

12. Staci Zaretsky, *Benchslap of the Day: Rude, Crude, and a Bad Attitude*, ABOVE THE LAW (May 5, 2012, 3:13 PM), <http://abovethelaw.com/2012/05/benchslap-of-the-day-rude-crude-and-a-bad-attitude/> [https://perma.cc/MK77-S4CQ] (citing *In re Ziman*, No. PDJ-2011-9067, 2012 WL 5286921 (Ariz. April 30, 2012), <https://www.azcourts.gov/Portals/101/FILED%204-30-2012%20REPORT%20AND%20ORDER%20IMPOSING%20SANCTIONS.pdf?ver=2014-06-26-184417-297> [https://perma.cc/JDC7-VKU4]) (involving an attorney who called a hospital attorney, who was faxing files, a “slut”).

13. See *Dondi Props. Corp. v. Commerce Savs. & Loan Ass’n*, 121 F.R.D. 284, 288 (N.D. Tex. 1988) (per curiam).

14. See, e.g., *Chevron Chem. Co. v. Deloitte & Touche*, 501 N.W.2d 15, 16–17, 21 (Wis. 1993) (resulting in sanctions against the culpable attorneys).

15. See *Dondi*, 121 F.R.D. at 288.

16. *In re First City Bancorporation of Tex., Inc.*, 270 B.R. 807, 810 (N.D. Tex. 2001) (describing how the sanctioned attorney referred to other attorneys’ work in the case as “garbage”).

request for a continuance because the latter's "due date coincided with a trial date."¹⁷

Particularly egregious uncivil attorney conduct seems to flourish in email exchanges. One such exchange includes one male lawyer calling another male lawyer a "p*ssy" and threatening, "If you want to be a man, any time, any place."¹⁸ Another email, which the American Board of Trial Advocates ("ABOTA") uses for its national presentations on civility, includes the following:

While I am sorry to hear about your disabled child; that sort of thing is to be expected when a retard reproduces, it is a crap shoot sometimes retards can produce normal kids, sometimes they produce F***ed up kids. Do not hate me, hate your genetics. However, I would look at the bright side, at least you definitely know the kid is yours.¹⁹

Deplorable uncivil behavior is not limited to litigation. In one transactional deal, lawyers left a scathing voicemail for opposing counsel that included criticizing opposing counsel's work as "sloppy" and "sh*tty," while also stating that opposing counsel should just "be a monkey f***ing scribe."²⁰

Despite episodes of incivility in varying degrees in the legal profession,²¹ the professional norm remains civility.²² Moreover, lawyers should serve as exemplars of civility. Lawyers function as "guardians of the Constitution," the rule of law, and justice.²³ Former ABA president, Linda A. Klein, asserted that lawyers, "[a] leaders in society, must ensure that civility once again becomes a quality

17. Debra Cassens Weiss, *Shook Hardy Lawyer in the Spotlight for Opposing Pregnant Lawyer's Continuance Request*, ABA JOURNAL, (July 26, 2018, 6:00 AM), http://www.abajournal.com/news/article/shook_hardy_lawyer_in_the_spotlight_for_opposing_pregnant_lawyers_continuan/?utm_source=maestro&utm_medium=email&utm_campaign=weekly_email [https://perma.cc/FVR5-LVJK].

18. See *infra* Appendix I; Plaintiff's Motion for Sanctions at 5–6, *Buxton Arlington Pet, LLC v. Pete & Mac's Arlington, LLC*, 2013 WL 2170885 (Tex. Dist. Ct. April 15, 2013) (No. 348-256203-11).

19. See *infra* Appendix J; Justice William W. Bedsworth et al., *Civility Matters: Beyond Kim v. Westmoore Partners*, AM. BD. OF TRIAL ADVOCATES (Sept. 3, 2015), <http://ibc.chapman.edu/Mediasite/Play/d4d6da60b9ad422e93fc961412efa8431d> [https://perma.cc/Q4VB-ZBTB].

20. See Bedsworth et al., *supra* note 19. This recording is also on file with the author, and a transcription of this recording can be found in Appendix K of this Article.

21. Even jurists manifest incivility on occasion. Judge J. Frederic Voros, Jr., *Civility in a Time of Incivility*, UTAH B.J., July–Aug. 2017, at 22, 22–24. For example, a former United States Supreme Court Justice called the majority opinion in a case "pretentious and egotistic," while also calling another justice's argument "goobledy-gook." *Id.* at 23. In another instance, during a Fifth Circuit Court hearing, one judge told another judge in open court, "I want you to shut up long enough for me to suggest that perhaps. . . you should give some other judge a chance to ask a question." *Id.* at 24. Judge Voros, Jr. also recounts a Wisconsin Supreme Court judge allegedly calling the Chief Justice a "b*tch" and threatening to "'destroy' her." *Id.* In a separate incident, that same Wisconsin Supreme Court justice allegedly choked another Wisconsin Supreme Court Justice. *Id.*

22. See, e.g., Bruce A. Green, *Teaching Lawyers Ethics*, 51 ST. LOUIS U. L.J. 1091, 1095 n.18 (2007) (quoting N.Y. COMP. CODES R. & REGS. tit. 22 §1500.2(c)) (mentioning that there are "norms relating to civility"); Sidney Ayabe, *Courtesy and Civility: Taking the High Road*, HAW. B.J., July 1995, at 4, 4 (stating that civility "represent[s an] accepted norm[] of professional behavior").

23. Tom Vick, *Civility and Professionalism Matter*, TEX. B.J., Apr. 2017, at 214.

that defines us.”²⁴ Former Chief Justice Warren Burger similarly stated that lawyers “are the living exemplars—and thus teachers—every day in every case, and in every court.”²⁵ He reminded lawyers that their “worst conduct will be emulated perhaps more readily than your best. When you flout the standards of professional conduct once, your conduct will be echoed in multiples and for years to come and long after you leave the scene.”²⁶

Some law students come to law school with the preconceived notion that effective lawyers must be arrogant, obnoxious or rude, and engage in “Rambo” tactics, i.e., win at all costs viewing opposing counsel as combatants who can be trampled and destroyed without regard for collateral damage (such as one’s own reputation) or how combatants are treated.²⁷ Law schools must teach law students that civility makes a lawyer a better advocate, not a weak one.²⁸

Civility plays a role in a lawyer’s advocacy and society’s view of the justice system, and it also affects how employers view lawyers.²⁹ The doctrine of professional identity formation involves educating law students and lawyers about what characteristics employers want, as well as how law students and lawyers must develop certain traits to be successful lawyers.³⁰ Civility represents one of those traits central to professional identity formation, as employers want lawyers who can interact respectfully with others, and civility enhances a lawyer’s ability to advocate effectively.³¹ Many law schools understand the importance of professional identity formation as evinced by the fact that twenty-one law schools including Indiana, Florida, Michigan State, Wake Forest, and Tennessee, among others, require that their 1L students take a professional formation and development class, while two other law schools offer such a class as an elective (George Washington and UC Hastings).³²

24. Linda A. Klein, *One Word: Civility*, A.B.A. J., Feb. 2017, at 8.

25. *Excerpts From the Chief Justice’s Speech on the Need for Civility*, N.Y. TIMES, May 19, 1971, at 28.

26. *Id.*

27. See, e.g., Fischer, *supra* note 8, at 365–67 (discussing several factors that may contribute to incivility in the legal profession).

28. Mercer Law School, for example, through its Center for Legal Ethics and Professionalism, created and implemented a required professionalism class for its first-year law students that includes a section on civility. *First Year Course on Professionalism and Professional Identity*, MERCER UNIV. SCH. OF LAW, <https://law.mercer.edu/academics/centers/clep/education.cfm> [<https://perma.cc/M5UA-D7N3>].

29. See Martin J. Katz, *Teaching Professional Identity in Law School*, 42 COLO. LAW. 45, 47 (2013) (“[E]mployers often note that students who have had substantial experiential learning opportunities are more thoughtful, more flexible, and better adapted to the complexities of law practice. Early indications are that this type of education creates lawyers who are both better suited for practice and more thoughtful about their roles.”).

30. See *id.* at 45 (“Professional identity is the way a lawyer understands his or her role relative to all of the stakeholders in the legal system, including clients, courts, opposing parties and counsel, the firm, and even the legal system itself (or society as a whole) Professional identity goes beyond [ethical rules and precepts of professionalism] to encompass the ideals each of us holds regarding our professional roles, and how we apply those ideals to the complex situations we encounter in our professional lives.”).

31. See Dubose & Smaby, *supra* note 7, at 432–33.

32. *Professional Development Resources Database*, UNIV. OF ST. THOMAS, <https://www.stthomas.edu/hollorancenter/resourcesforlegaleducators/professionaldevelopmentdatabase> [<https://perma.cc/7MMS-GCYN>]. In nearly all cases, this course is distinct from and in addition to, the professional responsibility class

This Article, which summarizes civility in the legal profession, can assist courts, attorneys, and professors in understanding civility and its significance. This Article also provides a turnkey lesson plan for law schools on civility that professors can employ in several different classes. Section I of the Article, *Civility in the Legal Profession*, provides much of the substantive information that professors will need to know to teach the lesson. Part A of Section I includes the definition and examples of civility, while also discussing incivility and its significant costs. Part B discusses civility in the legal profession, including efforts to increase civility, as well as the relationship between civility and the professional identity formation movement in legal education.

Section II of this Article, *Materials, Methods, and Approaches to Teaching Civility in Law Schools*, provides teaching materials to facilitate a lesson on civility including questions, cases, and problems that professors can use in a variety of law classes to draw upon to teach civility. Part A of Section II includes discussion questions that will create, enrich, and guide the conversation with students on the topic of civility. Part B provides four case studies that serve as excellent examples of the application of civility to the legal profession and issues relating to civility. This part also discusses how law students can respond to incivility as lawyers. Part C includes two problems—one taken from a common, real-world scenario and the other from an actual case—that allow the class to apply and discuss civility, namely how law students can and should approach these situations as attorneys who embody civility. Finally, Part D briefly addresses the learning objective and assessment for the topic of civility.

This lesson on civility relates most closely to the ABA-required course of Professional Responsibility as it deals with the propriety of conduct by attorneys. Many schools now include Professionalism classes where this lesson would also fit perfectly.³³ Civility can also be taught in Legal Research and Writing classes, as well as clinical courses, where practical skills are taught.³⁴ Civility also permeates litigation, including how attorneys treat each other during a lawsuit. As a

required by the ABA. See, e.g., *Professionalism and the Work of Lawyers Course Syllabus*, UNIV. OF ARK., LITTLE ROCK, <https://www.stthomas.edu/media/hollorancenter/pdf/ArkansasLittleRock.pdf> [<https://perma.cc/LU2S-W77H>]; *Foundations of Justice Course Syllabus*, UNIV. OF ST. THOMAS, <https://www.stthomas.edu/media/hollorancenter/pdf/St.Thomas.pdf> [<https://perma.cc/5YAK-ZAJK>]; *The Legal Profession Course Syllabus*, UNIV. OF THE PACIFIC, <https://www.stthomas.edu/media/hollorancenter/pdf/McGeorge.pdf> [<https://perma.cc/9EZZ-AL9Q>].

33. See *Professional Development*, *supra* note 32 (showing that eight schools require courses with one hour credits, four schools require courses with between two and three hour credits, and three schools require courses with between four and eight hour credits—for example, Mercer University's School of Law requires a three-credit course, Indiana University's School of Law requires a four-credit course, whereas Wake Forest University's School of Law requires a one credit course).

34. See Alison Donahue Kehner & Mary Ann Robinson, *Mission: Impossible, Mission: Accomplished or Mission: Underway? A Survey and Analysis of Current Trends in Professionalism Education in American Law Schools*, 38 U. DAYTON L. REV. 57, 85–87 (2012); Donna C. Chin et al., *One Response to the Decline of Civility in the Legal Profession: Teaching Professionalism in Legal Research and Writing*, 51 RUTGERS L. REV. 889 (1999).

result, this lesson plan can easily be incorporated into any federal or state civil procedure class. This civility lesson or parts thereof also fit nicely into a Constitutional Law class, as First and Fourteenth Amendment issues of free speech by attorneys and due process and arise when enforcing civility, as a handful of jurisdictions do.³⁵

The lesson is engaging and provides critical education on something that will promote and enrich each law student's practice—civility. Teaching law students the importance of how to interact civilly with others, particularly opposing counsel, can help a law student enjoy a long and satisfying legal career while avoiding the negative consequences of incivility, which can inhibit and stain an attorney's career.

I. CIVILITY IN THE LEGAL PROFESSION

This section provides most of the substantive background information that the professor needs to teach a lesson on civility. Part A defines civility and incivility, while Part B discusses civility efforts in the legal profession, as well as civility's relationship with professional identity formation.

A. THE IMPORTANCE OF BEING CIVIL

In the 2017 *Civility in America* annual survey, which asks Americans several questions about the state of civility in this country (and is discussed *infra*), the study provided the following definition: “[b]y civility, we mean polite and respectful conduct and expression.”³⁶ Professor Donald A. Campbell conducted a comprehensive study of over 140 civility codes from state and local bar associations.³⁷ He distilled those codes to arrive at the following common concepts of civility in the legal world, which involve treating others, including opposing counsel, parties, judges, court staff, colleagues, and co-workers with courtesy, dignity, and respect; civility also includes cooperation, restraint, and honesty³⁸:

- (1) recognize the importance of keeping commitments and of seeking agreement and accommodation with regard to scheduling and extensions;
- (2) be respectful and act in a courteous, cordial, and civil manner;
- (3) be prompt, punctual, and prepared;
- (4) maintain honesty and personal integrity;
- (5) communicate with opposing counsel;
- (6) avoid actions taken merely to delay or harass;
- (7) ensure proper conduct before the court;
- (8) act with dignity and cooperation in pre-trial proceedings;
- (9) act as a role model to the client and

35. Mari C. Haley, *Enforcing Civility*, 2017 TXCLE OIL AND GAS DISPUTES COURSE 12.X (2017) (listing Florida, Arizona, and South Carolina, among others, as jurisdictions that require civility from its lawyers).

36. WEBER SHANDWICK, CIVILITY IN AMERICA VII: THE STATE OF CIVILITY (2017), https://www.webershandwick.com/uploads/news/files/Civility_in_America_the_State_of_Civility.pdf [https://perma.cc/BY2M-YXPZ].

37. Donald E. Campbell, *Raise Your Right Hand and Swear to Be Civil: Defining Civility as an Obligation of Professional Responsibility*, 47 GONZ. L. REV. 99, 141–42 (2011).

38. *Id.* at 109.

public and as a mentor to young lawyers; and (10) utilize the court system in an efficient and fair manner.³⁹

The ethics rules provide the baseline of behavior necessary for attorneys to avoid sanctions,⁴⁰ while professionalism and civility reflect behavior that typically reaches well beyond what the professional conduct (or ethics) rules require.⁴¹ Civility, though, sometimes overlaps with ethics rules as both deal with attorney conduct.⁴² The ethics rules (i.e., the rules of professional conduct) require honesty and a duty of candor to the court (Model Rule 3.3) and fairness to opposing counsel (Model Rule 3.4).⁴³ Similarly, civility requires honesty and utilizing the legal system in a fair and efficient manner.⁴⁴ Notably of how civility is classified, failing to act civilly has serious negative repercussions. Regardless professionalism and civility are sometimes used synonymously in the legal profession.⁴⁵

Incivility involves treating others with disrespect and acting in a manner that evokes scorn. “Texas Style Deposition,” an infamous YouTube clip starring the late Joe Jamail, provides a prime example of incivility.⁴⁶ In the video, the former Texas-based and highly volatile attorney Jamail swears at opposing counsel and calls him “fat boy.” Mr. Jamail also calls the witness he is deposing an a**hole and a dumb son-of-a-b*tch prior to threatening to fight the witness.⁴⁷ The other attorneys at the deposition also fail to display courtesy, dignity, and respect towards one another.⁴⁸ This clip demonstrates incivility, needless posturing, and the wasted time and energy that result from insulting one another when the parties, instead, should be conducting depositions by focusing on the evidence and testimony that the parties seek from the witness.

Another story helps illuminate incivility, as well as its negative consequences. In Florida, after scheduling depositions at a noisy Dunkin Donuts over the objection of opposing counsel, an attorney proceeded to do the following during the

39. *Id.*

40. *Id.* at 142.

41. *Id.*

42. See Jayne R. Reardon, *Civility as the Core of Professionalism*, ABA BUS. L. TODAY, http://www.americanbar.org/publications/blt/2014/09/02_reardon.html [<https://perma.cc/MU34-LLCQ>].

43. MODEL RULES OF PROF'L CONDUCT R. 3.3, 3.4 (2016) [hereinafter MODEL RULES].

44. Campbell, *supra* note 37, at 109.

45. *Id.*

46. Iowapublicdefender, *Texas Style Deposition*, YOUTUBE (June 27, 2007), <https://www.youtube.com/watch?v=ZIxmrVbMeKc> [<https://perma.cc/VEC3-5NM7>] (audiovisual excerpt from a Joe Jamail deposition). Professors can best capture the attention of students during the first few minutes of class, and this deposition clip will certainly help in doing so. See James M. Lang, *Small Changes in Teaching: The First 5 Minutes of Class*, CHRONICLE OF HIGHER EDUC. (Jan. 11, 2016), <http://www.chronicle.com/article/Small-Changes-in-Teaching-The/234869> [<https://perma.cc/LWW3-AQL6>] (stating that the “opening five minutes [of class] offer a rich opportunity to capture the attention of students and prepare them for learning”).

47. Iowapublicdefender, *Texas Style Deposition*, YOUTUBE (June 27, 2007), <https://www.youtube.com/watch?v=ZIxmrVbMeKc> [<https://perma.cc/VEC3-5NM7>] (audiovisual excerpt from a Joe Jamail deposition).

48. *Id.*

depositions: wear shorts and t-shirts, play the video game “Angry Birds,” and draw male genitalia.⁴⁹ The attorney’s purported defense for his actions, which is typical for this type of behavior, was zealous advocacy.⁵⁰ The court disagreed and disqualified the lawyer and the law firm from the case for, among other things, the consistent disrespectful, unprofessional conduct.⁵¹ As a result of the attorney’s uncivil conduct, the client lost the counsel of its choice. The disqualified attorney and his firm lost the opportunity to represent that client during the remainder of that case, and they lost profits from being unable to complete that case for the client. The attorney and the firm, however, gained national recognition for their outlandish behavior, which likely did not enhance the image of the legal profession for those who read that story.

The significance of civility can be best understood by looking at the damaging consequences of incivility.⁵² Six major consequences exist. First, a lawyer may lose a case due to incivility.⁵³ “In a close case, civility may tip the scales toward a lawyer with a reputation for integrity, causing the uncivil lawyer’s client to lose the case.”⁵⁴ As in the Dunkin Donuts case, a lawyer may also lose a client if uncivil behavior leads to removal from a case.⁵⁵

Second, uncivil behavior can result in higher litigation costs for the client via needless arguing about discovery, unnecessary motions to compel, and hearings on those motions that could have been avoided if the parties acted reasonably.⁵⁶ These situations must be distinguished from instances where the parties genuinely believe that resisting discovery, because of privilege, privacy, or harassment, is warranted, and motions to compel and hearings possess merit.⁵⁷ Third, gratuitous fighting about discovery or other resolvable issues leads to the depletion and waste of judicial resources, as courts must address and hear argument on needless motions.⁵⁸ Fourth, incivility amongst attorneys increases the stress lawyers must deal with, when the legal profession already suffers from the inherent stress created by client expectations and the numerous deadlines present in any case.⁵⁹ Obstreperous opposing counsel simply increases the stress encountered by

49. *Bedoya v. Aventura Limousine & Transp. Serv.*, 861 F. Supp. 2d 1346, 1370 (S.D. Fla. 2012).

50. *Id.* at 1369.

51. *Id.* at 1371–73.

52. *See, e.g., Sandra Day O’Connor, Professionalism*, 76 WASH. U. L.Q. 5, 8 (1998).

53. *See, e.g., Bedoya*, 861 F. Supp. 2d at 1347.

54. Fischer, *supra* note 8, at 369 (internal citations omitted).

55. *Bedoya*, 861 F. Supp. 2d at 1347.

56. *Redwood v. Dobson*, 476 F.3d 462, 466–67, 470 (7th Cir. 2007) (censuring one lawyer and admonishing another for bringing frivolous motions).

57. *See* FED. R. CIV. P. 26(b).

58. *Galle v. Orleans Parish Sch. Bd.*, 623 So. 2d 692 (La. Ct. App. 1993).

59. Dr. Rebecca Nerison, *Lawyers: Find Freedom from Anger, Anxiety and Stress*, STATE BAR OF N.M., <http://www.nmbar.org/NmbarDocs/formembers/JLAP/FreedomfromAngerandStress.pdf> [<https://perma.cc/MKS7-HUCP>].

lawyers in practice.⁶⁰ When opposing counsel is civil, on the other hand, and the attorneys maintain a good working relationship, then lawyers can more easily enjoy and focus on their jobs rather than dealing with a screaming, obnoxious, or rude attorney.⁶¹ Fifth, attorneys who act in an uncivil manner can harm their reputation, which can harm their livelihood as a lawyer.⁶² Moreover, an attorney may ostracize himself from the legal community if that community expects civility and the lawyer fails to treat others with dignity and respect.⁶³ Finally, incivility by attorneys helps perpetuate negative perceptions and stereotypes about lawyers and the legal system—namely that lawyers are arrogant, rude, obstreperous, and obnoxious jerks, and the client with the most abhorrent lawyer in the case will prevail.⁶⁴

Law students must understand that the antithesis of passionate advocacy is not civility; those concepts can and should coexist.⁶⁵ The ABA Model Rules of Professional Conduct recognize that civility and zealous advocacy can and should co-exist harmoniously. For example, the preamble of the Model Rules provides that a lawyer has an “obligation zealously to protect and pursue a client’s legitimate interests, within the bounds of the law, while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system.”⁶⁶ Moreover, comment 1 to Model Rule 1.3 regarding diligence reinforces the notion of civility, stating, “The lawyer’s duty to act with reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect.”⁶⁷ Zealous advocacy involves fighting aggressively for one’s client in an adversarial manner while remaining civil.⁶⁸

Civility and zealous advocacy translate into actual practice when an attorney argues vigorously for her client and attacks the opposition’s arguments, not the

60. John J. Jurczyk Jr., *Honor the Law!*, 77 J. KAN. BAR ASS’N 22 (2008), <https://www.regonline.com/custImages/260000/269600/Day1coursematerials.pdf> [<https://perma.cc/6C85-4DU4>].

61. *Id.*

62. See *Lawyer Bullies, Incivility: On Policing Lawyer Manners*, AM. BAR ASS’N (Oct. 2015), <http://www.americanbar.org/publications/youraba/2015/october-2015/the-civility-conundrum.html> [<https://perma.cc/QGP6-28T5>] (stating that respondents in the legal profession agreed that incivility makes it difficult to solve matters, makes the practice of law less satisfying, harms public confidence in the judicial system, and leads to increased litigation costs).

63. Interview with Lamont A. Jefferson, Member, Am. Inns of Court, in San Antonio, Tex. (May 20, 2014); Thomas E. Humphrey, “*Civil*” Practice in Maine, 20 ME. B.J. 6 (2005) (finding that “Maine is not unlike a small community, you are each apt to have your own short-list of colleagues who you regard as uncivil and unprofessional”).

64. See *Lawyer Bullies, Incivility: On Policing Lawyer Manners*, AM. BAR ASS’N, *supra* note 62.

65. Benjamin H. Barton, *The ABA, the Rules, and Professionalism: The Mechanics of Self-Defeat and a Call for a Return to the Ethical, Moral, and Practical Approach of the Canons*, 83 N.C. L. REV. 411, 421 n.38 (2005).

66. MODEL RULES pmb1.

67. MODEL RULES R. 1.3 cmt. 1.

68. Campbell, *supra* note 37, at 107.

opposition itself or opposing counsel.⁶⁹ A lawyer must steadfastly argue on behalf of her client each and every opportunity she gets until a judge makes a ruling or a jury renders a verdict while refraining from personal attacks on opposing counsel.⁷⁰ Also, decision-makers, such as judges, respond positively to professionalism, meaning zealous advocacy should include civility.⁷¹ In particular, decision-makers respond positively to civility because “decision-makers see themselves as participants in a dignified process of resolving disputes in a civilized way[.]” Overworked and underpaid judges do not want to waste their time “reading insults and personal attacks” when they could be reading about the “merits of the case[.]” Unprofessional behavior “damages credibility,” and incivility, which is unpleasant, creates “discomfort in the decision-maker [and] is not conducive to a favorable outcome.”⁷²

Regardless of whether society or politics become (or remain) highly uncivil, lawyers should attempt to maintain civility in all of their interactions. A study published in 2017 on civility in America revealed the following findings: by December 2016, 93% of Americans felt civility is a problem in this country; 69% of Americans believed that the “United States has a major civility problem;” and 75% of Americans responded that incivility had reached a crisis level.⁷³ The incivility demonstrated in the 2016 presidential election included personal insults, bullying, and name-calling, but incivility has existed throughout the political history of this country.⁷⁴ Political opponents of Abraham Lincoln and the press labeled him as an “ignoramus,” “perjurer,” “buffoon,” and a “devil.”⁷⁵ Despite what occurs in the larger society and politics, law schools must teach its students the professional norms of being a lawyer, which include civility.⁷⁶

After defining and discussing civility and incivility, the professor can illuminate the class on civility’s prominence and importance in the legal profession.

69. ANTONIN SCALIA & BRYAN A. GARNER, *MAKING YOUR CASE, THE ART OF PERSUADING JUDGES* 34–35 (2008) (advocating that attorneys should “[c]ultivate a tone of civility” and avoid attacking opposing counsel as it “undercuts the persuasive force of any legal argument”) (quoting Morey L. Sear, *Briefing in the United States District Court for the Eastern District of Louisiana*, 70 TUL. L.REV. 207, 224 (1995)).

70. J. F. Rydstrom, Annotation, *Propriety and Effect of Attack on Opposing Counsel During Trial of a Criminal Case*, 99 A.L.R.2d 508 (1965) (listing cases in which counsel has personally attacked opposing counsel during trial).

71. Dubose & Smaby, *supra* note 7, at 433; SCALIA & GARNER, *supra* note 69, at 34–35.

72. Dubose & Smaby, *supra* note 7, at 433.

73. See WEBER SHANDWICK, *supra* note 36, at 2–3; Nicole Spector, *Incivility in the U.S Is So Intense, Americans Feel Safest at Work*, NBC NEWS (June 21, 2017), <https://www.nbcnews.com/business/consumer/incivility-u-s-so-intense-americans-feel-safest-work-n775211> [https://perma.cc/P8MM-P67Z].

74. See Voros, *supra* note 21, at 22.

75. *Id.*

76. See, e.g., Green, *supra* note 22, at 1095 n.18 (mentioning that there are “norms relating to civility”); Ayabe, *supra* note 22, at 4 (stating that civility “represent[s an] accepted norm[] of professional behavior”).

B. PROMOTING CIVILITY IN THE LEGAL PROFESSION

Efforts to increase civility and combat incivility grew based on the apparent decline of civility in the legal profession over the past few decades. This section discusses those various efforts, including civility codes, civility oaths, organizational efforts, and mandatory civility. This section also discusses how civility relates to the professional identity formation movement in legal education.

1. CIVILITY CODES

Civility codes “provide guidance to lawyers regarding how to conduct themselves in dealings with opposing counsel, clients, courts and third parties.”⁷⁷ They do not serve as a basis to sanction attorneys. Their purpose, according to Professor Campbell’s extensive research on civility codes, mentioned above, “is also to ensure that the image of the legal process is preserved and respected by the public, and to ensure that disputes are resolved in a timely, efficient, and co-operative manner.”⁷⁸

Civility codes outline conduct “‘above and beyond the minimum requirements’ of ethical rules” and summarize “best practices” or “values” for practitioners.⁷⁹ The following are exemplars of rules found in a civility code:

- A lawyer owes, to opposing counsel, a duty of courtesy.⁸⁰
- Lawyers should treat each other, the opposing party, the court, and members of the court staff with courtesy and civility.⁸¹
- A client has no right to demand that counsel abuse the opposite party or indulge in offensive conduct.⁸²
- Ill feeling should not influence a lawyer’s conduct, attitude, or demeanor towards opposing lawyers.⁸³

Civility codes serve as one method for local and state bars to increase civility and decrease incivility; adding civility into attorney oaths is another.

77. Campbell, *supra* note 37, at 142.

78. *Id.*; see also *In re Anonymous Member of the S.C. Bar*, 709 S.E.2d 633, 636 (S.C. 2011) (citation omitted) (stating that “[w]hen a lawyer fails to conduct himself appropriately, he brings into question the integrity of the judicial system, and, as well, disserves his client”).

79. Campbell, *supra* note 37, at 106–107; see also Josh O’Hara, *Creating Civility: Using Reference Group Theory to Improve Inter-Lawyer Relations*, 31 VT. L. REV. 965, 972 (2007) (arguing that civility codes, unlike the *Model Rules of Professional Conduct*, do more than outline the minimum standards of professional conduct, but also instruct attorneys on how to conduct themselves among other professionals).

80. *Dallas Bar Association Guidelines of Professional Courtesy*, DALLAS BAR ASS’N, <http://www2.dallasbar.org/documents/DBA%20ProfGLsCourtesy.pdf> [<https://perma.cc/8AJR-M9AE>].

81. *Id.*

82. *Id.*

83. *Id.*

2. CIVILITY OATHS

Twenty-one states, thus far, have added civility into their attorneys' oaths.⁸⁴ Those states include Alaska, Arizona, Arkansas, California, Colorado, Delaware, Florida, Hawaii, Louisiana, Michigan, Minnesota, Montana, Nevada, New Mexico, Ohio, Oregon, South Carolina, Texas, Utah, Virginia, and Washington.⁸⁵

In 2015, Texas added civility into its oath with the following language: Attorneys will conduct themselves "with integrity and civility in dealing with and communicating with the court and all parties."⁸⁶ Previously-licensed attorneys are not required to take the oath again that now includes the civility language.⁸⁷ Nevertheless, the civility oath demonstrates Texas' commitment to civility in the legal profession.⁸⁸ Also, passage of the law that added civility into the oath explicitly excluded any language that allowed sanctions based on the oath. In other words, Texas legislatures ensured that adding civility into the oath did not create a mechanism to penalize or sanction attorneys due to uncivil behavior. Nevertheless, even in states with civility oaths that do not necessarily mandate civility, as well as states without civility oaths, courts still find ways to punish lawyers for their incivility.⁸⁹

South Carolina, as opposed to Texas, not only allowed for the enforcement of civility through its attorney's oath,⁹⁰ but it also required every attorney licensed in South Carolina to re-take the civility oath.⁹¹ In October 2003, South Carolina added civility to its oath and made civility mandatory using the following: "To

84. *Attorney Oaths by State*, AM. BD. OF TRIAL ADVOCATES, <https://www.abota.org/index.cfm?pg=CivilityMattersOaths> [https://perma.cc/A3PW-ARSR].

85. *Id.*

86. *Oath Form*, TEXAS BAR ASS'N, https://www.texasbar.com/AM/Template.cfm?Section=New_Lawyer_Forms_and_Fees1&Template=/CM/ContentDisplay.cfm&ContentID=29062 [https://perma.cc/HZV9-JT59].

87. See Joe Hyde, *State Bar of Texas Invites Lawyers to Take Civility Oath at Austin Ceremony*, SAN ANGELO LIVE (Oct. 20, 2015) <http://sanangelolive.com/news/texas/2015-10-20/state-bar-texas-invites-lawyers-take-civility-oath-austin-ceremony> [https://perma.cc/L5K7-ZHC4].

88. *See id.*

89. *See, e.g., Kohlmyer v. Nat'l R.R. Passenger Corp.*, 124 F. Supp. 2d 877, 879, 883 (D.N.J. 2000) (denying attorney's application for *pro hac vice* admission based on previous uncivil behavior by attorney); *Chevron Chemical Co. v. Deloitte & Touche*, 501 N.W.2d 15, 16–17, 21 (Wis. 1993) (sanctioning attorney for incivility based on, among other things, lawyer's efforts to obstruct discovery); *City of Jackson v. Estate of Stewart*, 939 So. 2d 758, 759 (Miss. 2005) ("[f]inding the lawyers' conduct to be unprofessional and rising to the level of incivility," the court "direct[ed] that the motion for rehearing be stricken from the files"); *In re Hillis*, 858 A.2d 325, 327–28 (Del. 2004) (imposing sanctions for incivility by a lawyer based on the inherent power of the court).

90. *See In re Anonymous Member of the S.C. Bar*, 709 S.E.2d 633, 637–638 (S.C. 2011).

91. *See Attorney Oaths by State*, AM. BD. OF TRIAL ADVOCATES, *supra* note 84 (showing that South Carolina added civility to its oath on October 22, 2003); RE: Amendment to Rule 402, SCACR, 2003-10-22-03 (S.C. Oct. 22, 2013) available at <https://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2003-10-22-03> [https://perma.cc/6DZB-E77R] (stating that "all attorneys in the State [of South Carolina] will be expected to take the amended oath," which is dated October 22, 2003 and includes the added civility clause).

opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications.”⁹²

The Supreme Court of Florida added civility to its attorney oath in September 2011 because of incivility amongst its members and in recognition of “[t]he necessity for civility in the inherently contentious setting of the adversary process.”⁹³ The oath includes the following, “To opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications.”⁹⁴

Entities such as ABOTA, which was instrumental in the addition of civility into attorneys’ oaths across the country, play a major role in civility in the legal profession.

3. ORGANIZATIONAL EFFORTS TO INCREASE CIVILITY

ABOTA, which consists of plaintiff and defense counsel, as well as judges, from across the nation, promotes civility in several prominent ways.⁹⁵ First, ABOTA seeks the addition of civility to attorney oaths in states across the nation.⁹⁶ Second, ABOTA created an educational program titled *Civility Matters* that it presents in various settings nationwide including bar events, law schools, and ABOTA’s own activities.⁹⁷ Finally, ABOTA drafted its own civility code, “ABOTA’s Principles of Civility, Integrity and Professionalism,” that consists of nearly forty rules of civility.⁹⁸

American Inns of Court (“AIC”) represent another national entity committed to increasing civility in the legal profession. Former Chief Justice Warren Burger of the United States Supreme Court advocated for the creation of the English model of apprenticeship through Inns to combat the “diminishing standards of work product and the decline of civility at the American bar.”⁹⁹ The first American Inn began in 1980 in Utah, and now over 360 Inns exist across the country with more than 29,000 individuals participating.¹⁰⁰ Each Inn consists of approximately 80 members who are divided into groups that include judges,

92. S.C. APP. CT. R. 402(h).

93. *In re* Oath of Adm’n to the Fla. Bar, 73 So. 3d 149, 150 (Fla. 2011).

94. *Id.*

95. AM. BD. OF TRIAL ADVOCATES, <https://www.abota.org/index.cfm>. [<https://perma.cc/RN6P-4U9Q>].

96. See William B. Smith, *Civility, Setting the Tone for Respect*, in CIVILITY MATTERS 8, 11 (Am. Bd. of Trial Advocates ed.), <http://home.innsocourt.org/media/12354/civilitymattersmagazine.pdf> [<https://perma.cc/2BJA-JD4C>].

97. *Professionalism Ethics and Civility*, AM. BD. OF TRIAL ADVOCATES, <https://www.abota.org/index.cfm?pg=ProfEthicsCivility> [<https://perma.cc/L7WG-GSRV>].

98. *Id.*

99. Justice Donald Lemons, *Return to Civility: How the American Inns of Court Foundation Is Promoting Professionalism and Ethics Through Mentoring*, 76 TEX. B.J. 207, 207 (2013), <https://www.texasbar.com/Content/NavigationMenu/AboutUs/StateBarPresident/TransitiontoPractice/ReturnToCivility.pdf> [<https://perma.cc/R23D-EYTT>].

100. *Id.* at 208.

lawyers, law professors, and law students.¹⁰¹ Inns meet monthly to discuss a topic and, typically, share a meal.¹⁰²

The AIC focus on “professionalism, civility, ethics, and excellent legal skills at the American bench and bar.”¹⁰³ In particular, the AIC “are dedicated to the honorable goal of recovering civility in the legal profession—a goal much more likely to be achieved when the values and practices that serve this end are demonstrated personally by other members of the profession.”¹⁰⁴ The AIC believe that this goal is best accomplished through “committed mentoring programs.”¹⁰⁵ Although several local, state, and national entities support civility, only a handful of jurisdictions require civility from their lawyers, and those jurisdictions are discussed in the following part.¹⁰⁶

4. MANDATORY CIVILITY

A handful of jurisdictions, such as South Carolina and the Northern District of Texas, made civility mandatory for its attorneys.¹⁰⁷ Each jurisdiction enforces civility through sanctions.¹⁰⁸ Two cases from South Carolina that rely on the oath as a means for sanctioning attorneys form part of the basis of the reading for this lesson on civility, and those cases (along with two others) are discussed below. Prior to discussing those cases, this Article discusses the relationship between civility and professional identity formation, and it also provides questions on mandatory civility and professional identity formation and civility.

5. CIVILITY’S RELATIONSHIP WITH PROFESSIONAL IDENTITY FORMATION

Several law schools focus on the professional identity formation of their students. The leading scholar on this topic, Professor and Director of the Holloran Center for Ethical Leadership in the Professions Neil Hamilton, describes the importance of professional identity formation as “foster[ing] each student’s internalization of (1) their responsibility to others (particularly the client), and (2) their responsibility to proactively develop toward excellence in all the professional

101. *Id.*

102. *Id.*

103. *Id.* at 207–08.

104. *Id.* at 207.

105. *Id.*

106. *See In re Oath of Admission to the Fla. Bar*, 73 So. 3d 149, 150 (Fla. 2011) (recognizing “[t]he necessity for civility in the inherently contentious setting of the adversary process”); UTAH RULES OF PROF’L CONDUCT pmbl.; S.C. APP. CT. R. 402(h); N.M. RULES GOVERNING ADMISSION TO THE BAR R. 15-304.

107. *Haley*, *supra* note 35 (listing Florida, Arizona, and Michigan as the other jurisdictions requiring civility from its attorneys); *see, e.g., In re Anonymous Member of the S.C. Bar*, 709 S.E.2d 633 (S.C. 2011) (analyzing South Carolina’s civility oath mandating civility); *Dondi Prop. Corp. v. Commerce Sav. & Loan Ass’n*, 121 F.R.D. 284 (N.D. Tex. 1988) (en banc) (making civility mandatory).

108. *See, e.g., In re Anonymous Member of the S.C. Bar*, 709 S.E.2d 634-5.

competencies needed to serve others well.”¹⁰⁹ Director Hamilton asserts that developing the competencies and traits that comprise a successful lawyer “increases [a law student’s] value to clients, legal employers, the profession, and society.” He argues that enhancing one’s professional identity formation gives law students a better chance of obtaining meaningful employment while improving the law school’s employment data because students will have a better chance of finding a job.¹¹⁰

Director Hamilton identifies six core competencies that law students should develop to become better attorneys.¹¹¹ He determined that employers want law students who exhibit these core competencies, and firms ranked the core competencies based on importance.¹¹² Hamilton surveyed large law firms, small law firms, the county attorney, and a legal aid office to determine which core competencies those entities considered the most important in a candidate they were considering hiring.¹¹³ The synthesis of those surveys ranks the attributes or competencies that employers seek in hiring a new lawyer.¹¹⁴ What becomes abundantly clear from the competencies and their rankings are the overlaps between the core competencies and civility and the importance of civility in hiring a new lawyer.¹¹⁵

For instance, the synthesis shows that integrity, trustworthiness, and honesty rank number one for hiring; maintaining honesty and personal integrity comprise one of the core common concepts of civility (as seen in the study by Campbell that analyzed 140 civility codes).¹¹⁶ The competencies of dedication/responsive to clients and project management, including high quality, efficiency, and timeliness, correlate to the civility concept of being prompt, punctual, and prepared.¹¹⁷ Other correlations also exist.¹¹⁸ The overlap demonstrates that acting civil can also help a law student obtain a job.¹¹⁹

109. Neil Hamilton & Sarah Schaefer, *What Legal Education Can Learn from Medical Education About Competency-Based Learning Outcomes Including Those Related to Professional Formation and Professionalism*, 29 GEO. J. LEGAL ETHICS 399, 403 (2016).

110. *Id.*

111. *Id.* at 409.

112. *Id.* at 434 n.135.

113. Neil W. Hamilton, *Changing Markets Create Opportunities: Emphasizing the Competencies Legal Employers Use in Hiring New Lawyers (Including Professional Formation/Professionalism)*, 65 S.C. L. REV. 547, 551–57 (2014).

114. *Id.*

115. *Id.* at 557.

116. *Id.*; see Campbell, *supra* note 37.

117. Hamilton, *supra* note 112, at 557.

118. The core competency of “effective written/oral communication skills” relates to the civility concept of communicating with opposing counsel; the competency of “initiates and maintains strong work and team relationships” relates to the civility concept of acting with dignity and cooperation in pre-trial proceedings and being respectful and acting in a courteous, cordial, and civil manner; and “delegation/supervision/mentoring” relates to the civility concept of acting as a mentor to young lawyers. Neil W. Hamilton, *Changing Markets Create Opportunities: Emphasizing the Competencies Legal Employers Use in Hiring New Lawyers (Including Professional Formation/Professionalism)*, 65 S.C. L. REV. 547, 557–58 (2014).

119. *Id.* at 571.

A comprehensive study by *Educating Tomorrow's Lawyers* reinforces the conclusion that new lawyers must act with civility to be successful.¹²⁰ The survey asked over 24,000 lawyers from across the country to “[i]dentify the foundations entry-level lawyers need to launch successful careers in the legal profession.”¹²¹ The study concluded that “[n]ew lawyers need some legal skills and require intelligence, but they are successful when they come to the job with a much broader blend of legal skills, professional competencies, and characteristics that comprise the *whole lawyer*.”¹²²

The survey asked respondents to answer questions in fifteen major categories, and it broke each of those categories into smaller topics.¹²³ Under emotional and interpersonal intelligence, “[r]espondents viewed the ability to treat others with courtesy and respect as the most important foundation for success right out of law school by a fairly wide margin. . . .”¹²⁴ In fact, nearly 92% of respondents answered that “[t]reat[ing] others with courtesy and respect,” which is the definition of civility, was “necessary in the short term” (or immediately) for the success of a new lawyer.¹²⁵

In addition, integrity and trustworthiness, which also describe a major category of civility, scored the highest (92.3%) under the category of qualities and talents that are necessary immediately for success.¹²⁶ Similarly, professionalism was its own category.¹²⁷ Professionalism and civility are synonymous in the legal profession, and many of the subcategories in professionalism were viewed by over 90% of respondents as immediately necessary for success, including “[a]rrive on time for meetings, appointments, and hearings” (95.4%), and honor commitments (93.7%).¹²⁸ This corresponds directly to some of the common concepts of civility, such as “seeking agreement and accommodation with regard to scheduling and extensions” and “be[ing] prompt, punctual, and prepared.”¹²⁹

The value of civility remains essential not just because clients and employers expect and seek it from lawyers, but also because civility remains consistent with the profession's values and one's own individual values such that lawyers should internalize and use civility to guide their actions.¹³⁰ The next section discusses the materials and methods necessary to teach this lesson on civility.

120. Alli Gerkman & Logan Cornett, *Foundation for Practice: The Whole Lawyer and the Character Quotient*, EDUCATING TOMORROW'S LAWYERS (July 2016), http://iaals.du.edu/sites/default/files/reports/foundations_for_practice_whole_lawyer_character_quotient.pdf [<https://perma.cc/FB33-3DZG>].

121. *Id.*

122. *Id.* at 2.

123. *Id.* at 6.

124. *Id.* at 9.

125. *Id.*

126. *Id.* at 16, 26, 33.

127. *Id.* at 15.

128. *Id.*

129. Campbell, *supra* note 37, at 109 (finding ten common concepts of civility among lawyers).

130. Larry O. Natt Gantt, II & Benjamin V. Madison III, *Teaching Knowledge, Skills, and Values of Professional Identity Formation*, in BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD 253, 253–54 (Deborah Maranville et al. eds., 2015).

II. MATERIALS, METHODS, AND APPROACHES TO TEACHING CIVILITY IN LAW SCHOOLS

This section provides tools to professors who plan to teach civility in law school, including cases, problems, and discussion questions for use in a lesson on civility. As an initial matter, law professors should model what they are teaching. Modeling civility, in fact, may be one of the most effective means to teach law students civility.¹³¹ Law professors sometimes represent the first lawyers whom law students interact with and encounter on a regular basis.¹³² If law students see and hear law professors treating colleagues, staff, and law students with courtesy, dignity, and respect, then law students may be more likely to adopt like behavior because they might believe that is how lawyers should act.¹³³ On the other hand, if law professors treat others rudely in front of law students or the law students themselves, then some law students might consider that behavior by those instructing them as appropriate or acceptable for lawyers.¹³⁴ For example, one Evidence professor reportedly told a student in a class of about 150 students, “If you ever say that to a judge, I hope he tells you to shut the f**ck up and sit down.”¹³⁵ Another professor, whom one student describes as “rude as hell,” told a student in her 40s, “[M]iddle aged women have no business in law school, they all should be home taking care of their families.”¹³⁶ Law professors must recognize their unique role in molding future lawyers, and law professors should serve as models of civility and professionalism.

Immediately following the discussion questions, case studies, problems, and suggestions for learning objectives and assessment found in this section, are Appendices “A” through “D,” which include a corresponding teaching outline for the various sections discussed *supra* – The Importance of Being Civil, Promoting Civility in the Legal Profession, Case Studies, and Problems. The teaching outlines include a list of the topics and areas that the professor can cover under each section, which correspond to the substantive material in this Article, as well as suggestions on which material to use to create PowerPoint slides, overheads, or handouts. The suggested material for PowerPoint slides, overheads, and handouts are also separately included as Appendices “E” through “H.” Appendices “I” through “L” provide additional audio and visual of egregious and horrendous acts

131. See Barry Sullivan & Ellen S. Podgor, *Respect, Responsibility, and the Virtue of Introspection: An Essay on Professionalism in the Law School Environment*, 15 NOTRE DAME J.L. ETHICS & PUB. POL’Y 117, 136 (2001).

132. Ripple, *supra* note 11, at 377, 379 (providing that “law professors have the unique role of being the first members of the legal profession to interact with law students on a professional basis”).

133. See *id.* at 379, 381.

134. See *id.* at 379–81.

135. Lisa G. Lerman, *First Do No Harm: Law Professor Misconduct Toward Law Students*, 56 J. LEGAL EDUC. 86, 91 (2006).

136. *Id.* at 90.

of incivility that a professor can use in this lesson.¹³⁷

Thus, a professor need only read the body of this Article for the substantive content, use the teaching outlines to review and take into class, and adopt the suggested teaching materials to create PowerPoint slides, overheads, or handouts if desired. The only assigned reading necessary for the students includes the four cases discussed in Section II of this Article.¹³⁸

The professor can start class by showing “Texas Style Deposition,” which is the YouTube clip (described *supra*) starring the late Joe Jamail.¹³⁹ The professor can then discuss the Angry Birds/Dunkin Donuts case (also discussed *supra*).¹⁴⁰ Next, the professor must define and explain civility and incivility, and give examples of each. The following part includes discussion questions for the class for use at the beginning or end of different substantive parts of the lesson.

A. DISCUSSION QUESTIONS

After a discussion of the Section I material, or even at the beginning depending on the professor’s preference, the professor may ask the following questions to guide the classroom discussion. Answers to help guide the discussion follow each question. Below are the topics followed by the questions and answers.

Topic: The Importance of Being Civil

Discussion Questions

1. What kind of attorneys do you think clients want? Some students will say clients want “bulldogs,” i.e., aggressive attorneys who will fight for their clients and not back down to opposing counsel. Some students might posit that clients want the types of attorneys portrayed on television or in the movies, which are typically ruthless, arrogant, and rude. What is critical at this point to impress upon law students is that a client’s main goal typically is to win, and a lawyer who demonstrates civility, integrity, and honesty will likely provide the client with the best chance to win. Indeed, an uncivil attorney can offend a judge or jury, which can cost a client a case. A client may need to be counseled that attorneys who are civil can be more effective, credible, and likeable to a judge or jury than uncivil lawyers, which can increase the civil lawyers’ chances of winning the case.

137. See Bedsworth, *supra* note 19.

138. Westlaw’s version of these cases total 26 pages when one selects the option to print without the headnotes.

139. Iowapublicdefender, *Texas Style Deposition*, YOUTUBE (June 27, 2007), <https://www.youtube.com/watch?v=ZIxmrVbMeKc> [<https://perma.cc/VEC3-5NM7>] (audiovisual excerpt from a Joe Jamail deposition). Professors can best capture the attention of students during the first few minutes of class and this deposition clip will certainly help in doing so. See James M. Lang, *Small Changes in Teaching: The First 5 Minutes of Class*, CHRON. HIGHER EDUC. (Jan. 11, 2016), <http://www.chronicle.com/article/Small-Changes-in-Teaching-The/234869> [<https://perma.cc/LWW3-AQL6>] (stating the “opening five minutes [of class] offer a rich opportunity to capture the attention of students and prepare them for learning”).

140. *Bedoya v. Aventura Limousine & Transp. Serv., Inc.*, 861 F. Supp. 2d 1346 (S.D. Fla. 2012).

2. What kind of attorneys do you want you to be? Students might say they want to be attorneys that are respected by judges and juries. Other students might say that they want to be successful attorneys who win most of their cases. The key here again is to stress that successful attorneys and civil behavior can and should co-exist.
3. What kind of attorneys do you want to face on the opposing side? Most students will say they want an opposing counsel that will be reasonable. Students and lawyers do not want an opposing counsel who is obstreperous, needlessly combative, rude, or unwilling to compromise. When opposing counsel is uncivil, the costs to clients on both sides increase as the parties needlessly fight over every single issue.¹⁴¹ Litigation, which includes discovery, settlement negotiations, and alternative dispute resolution mechanisms (such as mediation), involves a great deal of cooperation and interaction with opposing counsel, which most law students may not know or realize.

Topic: Promoting Civility in the Legal Profession

Discussion Questions:

1. Can states regulate attorney behavior? State bars can regulate attorney behavior.¹⁴² The practice of law is a privilege, not a right, and state bars determine the standard of behavior and conduct that its members must exhibit.¹⁴³
2. Should civility be mandatory for attorneys? Some students will argue that civility is too vague a concept to enforce, and state bars should not and cannot make lawyers conform to one type of behavior. Other students will argue that attorneys should be held to a higher standard of conduct as representatives of the legal system and that higher standard of conduct requires attorneys act professionally and treat others with general decency and respect.
3. Will acting civilly make you a more desirable candidate for a legal job or a more effective lawyer? Yes, there are overlaps between what core competencies employers seek and the common concepts of civility, such as honesty, integrity, and trustworthiness, treating others with dignity and respect, and being punctual, prompt, prepared.

The next part looks at four cases, including two from South Carolina, which mandates civility from its attorneys through its attorney oath. This part also includes suggested ways law students can respond to incivility when they practice law. Part B concludes with discussion questions to prompt discussion.

141. *Marcangelo v. Boardwalk Regency*, 47 F.3d 88, 90 (3d Cir. 1995) (“The extension of normal courtesies and exercise of civility expedite litigation and are of substantial benefit to the administration of justice.”).

142. MARGARET RAYMOND & EMILY HUGHES, *THE LAW AND ETHICS OF LAW PRACTICE* 11–19 (2d ed. 2009); *see, e.g.*, R. Regulating the Fla. Bar 3–3.1 (describing the Florida Bar’s jurisdiction and powers).

143. *In re Evans*, 169 P.3d 1083, 1090 (Kan. 2007) (“A license to practice law is a privilege not a right.”); *see Florida’s Standards for Imposing Lawyer Sanctions*, FLA. BAR ASS’N §§ 2.1–2.8, 4.4 (May 2015), <https://www.floridabar.org/wp-content/uploads/2017/04/standards-for-lawyer-sanctions.pdf> [https://perma.cc/J4C2-YBZY].

B. CASE STUDIES

As stated above, the professor need only assign the following four cases, which total 26 pages, for the entire lesson. Each of these cases provides some understanding of civility in different contexts. For instance, the first case, *Dondi Prop. Corp v. Commerce Sav. & Loan Ass'n*, sets forth several civility rules and discusses civility's importance in the legal profession. The second case, *In re Anonymous Member of S.C. Bar*,¹⁴⁴ covers the major arguments against mandatory civility, which include overbreadth and vagueness.¹⁴⁵ All of the cases in this section illustrate incivility in action and provide insight into the importance of civility.

1. DONDI PROP. CORP V. COMMERCE SAV. & LOAN ASS'N

The seminal opinion of *Dondi* established “standards of litigation conduct” for civil actions in the Northern District of Texas.¹⁴⁶ The court reasoned that incivility and unnecessary obstructionist behavior “threaten[] to delay the administration of justice and [] place litigation beyond the financial reach of litigants.”¹⁴⁷ Judges and attorneys waste time and valuable resources dealing with “unnecessary contention and sharp practices between lawyers.”¹⁴⁸ Thus, the court in *Dondi*, based on its authority via the rules of civil procedure and its various (including inherent) powers as a court, adopted a number of standards of litigation conduct to combat incivility that included, but was not limited to, the following:

- A lawyer owes, to opposing counsel, a duty of courtesy and cooperation, the observance of which is necessary for the efficient administration of our system of justice and the respect of the public it serves.
- Lawyers should treat each other, the opposing party, the court, and members of the court staff with courtesy and civility and conduct themselves in a professional manner at all times.
- A lawyer should not use any form of discovery, or the scheduling of discovery, as a means of harassing opposing counsel or counsel's client.
- Lawyers will be punctual in communications with others and in honoring scheduled appearances, and will recognize that neglect and tardiness are demeaning to the lawyer and to the judicial system.
- If a fellow member of the Bar makes a just request for cooperation, or seeks scheduling accommodation, a lawyer will not arbitrarily or unreasonably withhold consent.¹⁴⁹

144. 709 S.E.2d 633 (S.C. 2011).

145. *Id.* at 634–35.

146. *Dondi Properties Corp. v. Commerce Sav. & Loan Ass'n*, 121 F.R.D. 284, 287–88 (N.D. Tex. 1988) (per curiam) (applying the standards of conduct to two cases, *Dondi's* and *Knight's*, which involved various fraud and deceptive trade practice claims, respectively).

147. *Id.* at 286.

148. *Id.*

149. *Id.* at 287–88.

The court made clear that “[t]hose litigators who persist in viewing themselves solely as combatants, or who perceive that they are retained to win at all costs without regard to fundamental principles of justice, will find that their conduct does not square with the practices we expect of them.”¹⁵⁰

The *Dondi* case serves as a wonderful learning tool because it provides several of the practical reasons why civility is so valuable to lawyers and courts in litigation. Namely, civility enables the parties to focus on the issues in a case that matter rather than focusing on petty disputes or arguments centered on personal animosity between the parties and lawyers. Also, civility promotes efficiency and cooperation between opposing counsel where clients’ interests are not prejudiced. The case helps students understand the importance of treating others with courtesy and respect while maintaining honesty and candor based on the rules outlined by the court as they relate to the efficient functioning of the court and the administration of justice.

This case ties in well into any federal or state civil procedure class because it derives from litigation and discovery. It also fits in squarely with professional responsibility as it sets forth rules that deal with attorney misconduct.

2. IN RE ANONYMOUS MEMBER OF S.C. BAR

In the case of *In re Anonymous Member of S.C. Bar*, the South Carolina Supreme Court upheld the state bar’s mandatory civility oath as constitutional despite challenges based on the First and Fourteenth Amendments.¹⁵¹ In *Anonymous*, a lawyer sent opposing counsel the following email in a disputed domestic relations matter where the lawyers represented the mother and father, respectively:¹⁵²

I have a client who is a drug dealer on . . . Street down town [sic]. He informed me that your daughter, [redacted] was detained for buying cocaine and heroine [sic]. She is, or was, a teenager, right? This happened at night in a known high crime/drug area, where alos [sic] many shootings take place. Lucky for her and the two other teens, they weren’t charged. Does this make you and [redacted] bad parents? This incident is far worse than the allegations your client is making. I just thought it was ironic. You claim that this case is so serious and complicated. There is nothing more complicated and serious than having a child grow up in a high class white family with parents who are highly educated and financially successful and their child turning out buying drugs from a crack head at night on or near . . .Street. Think about it. Am I right?¹⁵³

The daughter of opposing counsel, whom the lawyer referenced in the email, was not a part of the case in any manner.¹⁵⁴ The opposing counsel’s spouse, also

150. *Id.* at 288.

151. *In re Anonymous Member of the S.C. Bar*, 709 S.E.2d 633, 638 (S.C. 2011).

152. *Id.* at 637.

153. *Id.* at 636.

154. *Id.*

an attorney, made the complaint to the State Bar against the lawyer for incivility.¹⁵⁵

The South Carolina oath reads, in relevant part, “To opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications. . . .”¹⁵⁶ The lawyer accused of incivility sought to invalidate the South Carolina oath mandating civility based on two grounds: (1) lack of due process (i.e., fair notice and fair hearing) under the Fourteenth Amendment; and (2) First Amendment grounds. As for the first argument, as it typically goes, the lawyer argued that he should not be sanctioned because he lacked fair notice about what type of conduct constitutes incivility in violation of the oath because the term civility is too vague.¹⁵⁷ The court rejected this argument because his conduct, attacking the child-rearing abilities of the opposing counsel, fell well beyond any line of behavior wavering on civil and uncivil. In particular, the court noted that “even a casual reading of the attorney’s oath would put a person on notice that the type of language used in Respondent’s ‘Drug Dealer’ e-mail violates the civility clause.”¹⁵⁸

As for the First Amendment argument, the lawyer believed that he should be able to say what he pleases to advocate zealously for his client, but the mandatory civility oath chilled his free speech.¹⁵⁹ The court rejected this argument as well.¹⁶⁰ After balancing the lawyer’s interest in his caustic speech against the state’s interests of administering justice and maintaining the “integrity of the lawyer-client relationship,” the court found that personal attacks on a fellow lawyer “compromises the integrity of the judicial process” and “undermines a lawyer’s ability to objectively represent his or her client.”¹⁶¹ Without substantial protected speech involved in the case, the state’s interest in regulating attorney conduct prevailed.¹⁶²

Thus, the court upheld the mandatory civility oath and reprimanded the attorney using a “private Letter of Caution with a finding of minor misconduct”—i.e., a private reprimand—for his despicable email.¹⁶³ The court found that the attorney showed sincere remorse and acknowledged his deplorable conduct.¹⁶⁴

The constitutional law arguments found in this case allow a Constitutional Law professor to incorporate this lesson on civility, or parts of it, into her class. This lesson also ties in extremely well with Professional Responsibility because civility and professional responsibility focus on acceptable and unacceptable

155. *Id.*

156. *In re Anonymous Member of the S.C. Bar*, 709 S.E.2d 633, 637 (S.C. 2011).

157. *Id.*

158. *Id.*

159. *Id.*

160. *Id.*

161. *In re Anonymous Member of the S.C. Bar*, 709 S.E.2d 633, 636–38 (S.C. 2011).

162. *Id.*

163. *Id.* at 638.

164. *Id.*

attorney conduct. The personal email attack by the lawyer in this case demonstrates repugnant behavior that all attorneys should avoid.

Interestingly, this case involved an email between counsel that was not necessarily a part of discovery; it was simply a communication between the attorneys that was still subject to the civility oath.¹⁶⁵ Thus, professors can emphasize that civility reaches beyond discovery and the courtroom, and it includes all communications between opposing counsel.

3. IN RE WHITE

*In re White*¹⁶⁶ involved a zoning dispute between the Atlantic Beach Christian Methodist Episcopal Church (the “Church”) and the Town of Atlantic Beach (the “Town”).¹⁶⁷ The original dispute included a legal action that the Church filed against the Town that resulted in a settlement between the parties.¹⁶⁸ The settlement involved a dismissal of the Church’s action, the Town paying damages to the Church, and the Church agreeing to comply with the Town’s zoning requirements.¹⁶⁹

Two years after the settlement, the new Town Manager sent a notice to the Church’s property owners regarding compliance with the zoning requirements.¹⁷⁰ Attorney Gary White, counsel for the Church, wrote a letter to the Church’s leaders regarding the Town Manager’s notice, and Mr. White copied the Town Manager and the Town’s attorney.¹⁷¹ The letter questioned whether the Town Manager had a “soul,” stating also that the Town Manager had “no brain.”¹⁷² The letter also called the “leadership of the Town pagans,” “insane,” and pig-headed.¹⁷³ The court found that these comments violated, among other things, the civility oath.¹⁷⁴ The court determined that the proper sanction for this attorney included a ninety-day (90) suspension and completion of the “Legal Ethics and Practice Program administered by the South Carolina Bar within six months of reinstatement.”¹⁷⁵

This case fits nicely into any class as it relates to communications between opposing counsel and a letter to the client. It demonstrates that even one angry letter and name-calling can result in serious consequences—here, a 90-day suspension where the lawyer cannot practice. The case also highlights how attorneys should maintain civility during any dispute, even when those disputes are not

165. *Id.*

166. 707 S.E.2d 411 (S.C. 2011).

167. *Id.* at 413.

168. *Id.*

169. *Id.*

170. *Id.*

171. *Id.*

172. *In re White*, 707 S.E.2d 411, 413 (S.C. 2011).

173. *Id.*

174. *Id.* at 416.

175. *Id.*

pending before the court in some form of litigation. This instance of incivility involved a dispute regarding the topic of zoning from a previously settled case. The opinion again illustrates how counsel should strive to treat others with dignity and respect at all times, not just during litigation or when they are inside the courtroom in front of a judge or jury.

4. PEOPLE V. SCOTT

In *People v. Scott*, the defendant filed a motion to dismiss for lack of prosecution by the Assistant Attorney General, Zuleyma Chapman (“Chapman”).¹⁷⁶ In response to that motion, Chapman’s opposition brief included the following statements:

- Defense Counsel is irresponsible in the premature filing of its Motion to Dismiss[.]
- [Defense Counsel] is seeking to perpetuate a sham on the Court by filing the Motion which is without merit in law or fact.
- The Motion [to Dismiss] is nonsensical and a waste of both the Court’s time for entertaining the Motion and the People’s time for having to respond to a frivolous and irresponsible assertion by the Defense.¹⁷⁷

The Defense Counsel sought sanctions against Chapman for these personal attacks in Chapman’s brief regarding Defense Counsel’s “character, intelligence, and integrity.”¹⁷⁸

The court found that the words chosen by Chapman in her brief did not rise to the level of egregious conduct that warranted sanctions based on the court’s inherent power.¹⁷⁹ The court, though, thoroughly condemned Chapman’s conduct as “unprofessional,” “unwarranted,” and “wholly unacceptable.”¹⁸⁰

The court quoted the “Preamble to the Federal Bar Association Professional Ethics Committee’s Standards for Civility in Professional Conduct,” pointing out several key aspects of civility.¹⁸¹ One, “[c]ivility in professional conduct is the responsibility of every lawyer practicing in the federal system.”¹⁸² Two, incivility to anyone in the legal process, such as opposing counsel, adverse parties, judges, and court personnel, “demeans the legal profession, undermines the administration of justice, and diminishes respect for both the legal process and the results of our system of justice.”¹⁸³ Three, “[u]ncivil conduct of lawyers or judges impedes the fundamental goal of resolving disputes rationally, peacefully, and efficiently.

176. *People v. Scott*, No. SX-09-CR-709, 2010 WL 11452083, at *1 (V.I. Super. Oct. 27, 2010).

177. *Id.*

178. *Id.*

179. *Id.* at *2.

180. *Id.* at *2-3.

181. *Id.*

182. *People v. Scott*, No. SX-09-CR-709, 2010 WL 11452083, at *2 (V.I. Super. Oct. 27, 2010).

183. *Id.*

Such conduct may delay or deny justice and diminish the respect for law, which is a cornerstone of our society and our profession.”¹⁸⁴ The court admonished both lawyers that any further unprofessional conduct would be sanctioned.¹⁸⁵

This case includes a variety of takeaways for students. First, the case illustrates that simply because a lawyer avoids sanctions for incivility does not mean the lawyer’s conduct was acceptable. A lawyer’s uncivil conduct, even if it does not result in sanctions by the court, can still demean the legal profession, waste the court’s resources, and prevent the efficient resolution of a case. Second, this case also provides an illustration of incivility within a brief, which further demonstrates that the words lawyers use in speech and writing should always be civil and professional. Finally, the *Scott* case shines a light on uncivil advocacy that attacks opposing counsel personally instead of attacking the merits of opposing counsel’s arguments. This case fits well into a Legal Research & Writing class and Civil Procedure because it deals with briefs. It also coincides with Professional Responsibility as it involves attorney misconduct.

C. RESPONDING TO INCIVILITY

This is a good point in class to discuss how to respond to incivility. The natural response to incivility from opposing counsel, for instance, might be responding in kind with one’s own uncivil act to, among other things, avoid looking weak in front of one’s client.¹⁸⁶ This response, though, perpetuates incivility and might lead to sanctions for the responding attorney.¹⁸⁷ In general, one must “maintain a reputation of a ‘firm and fair, honest, no-nonsense, professional and courteous’ attorney.”¹⁸⁸ One approach to incivility includes ignoring it.¹⁸⁹ Another approach, based on the author’s personal experience, involves responding with civil and professional behavior, which sometimes results in the uncivil lawyers changing their behavior, and sometimes it does not. In addition, sometimes trying to interact in a more personal way with uncivil attorneys through face-to-face meetings or telephone calls can help “change their demeanor and soften their approach.”¹⁹⁰

As far as particular circumstances, if the uncivil behavior takes the form of a nasty email or letter, then one should wait until after sleeping on the matter to respond.¹⁹¹ If not, then one’s response email could wind up serving as the uncivil lawyer’s exhibit in a motion for sanctions against the responding lawyer.¹⁹² If the

184. *Id.* at *3.

185. *Id.*

186. A. Darby Dickerson, *The Law and Ethics of Civil Depositions*, 57 MD. L. REV. 273, 374–75 (1998).

187. *Id.* at 375.

188. Haley, *supra* note 35, at Part VIII.

189. Dickerson, *supra* note 186, at 375.

190. Professionalism, Ethics and Civility Committee of ABOTA, *If Incivility Strikes . . . How Should You Respond With Civility In These Situations?*, http://www.texasbarcle.com/Materials/Events/11381/149185_01.pdf [https://perma.cc/96X5-AKGF] (last visited Feb. 21, 2018).

191. *Id.*

192. *Id.*

uncivil behavior occurs during a deposition, then the innocent lawyer can make a record of the uncivil behavior as grounds for terminating the deposition, obtaining more time to continue the deposition, or seeking sanctions against the uncivil lawyer.¹⁹³ Responding to incivility requires, above all other things, “strong self-control,”¹⁹⁴ which can be very difficult, particularly in stressful and high-pressure situations that are inherent in the practice of law.

Discussion Questions:

- a. How would attorneys in your state react to civility rules? How would they react to a mandatory civility oath?
- b. What could the lawyers have done differently in each of these cases?
- c. How can you respond to uncivil behavior as a lawyer?

The next part consists of two problems and their answers. The professor can pose each problem to the class and analyze each in turn.

A. Problems

The following problems—one hypothetical and the other based on an actual case—create an opportunity to discuss situations that a law student might face as an attorney and how an attorney can and should handle these situations.

Problem 1:

You represent a client in a case scheduled for trial on Monday.¹⁹⁵ Opposing counsel calls you on the Thursday before trial, and she requests that you agree to move the trial date because her father just passed away.¹⁹⁶ You speak to your client about the requested continuance, and your client wants to “play hardball.”¹⁹⁷ The client says, “Let’s not move the date. It may rattle opposing counsel if we proceed with the trial, or the other side may want to settle if it realizes it is forced to begin the trial without its lead counsel.”¹⁹⁸ Opposing counsel indicates that she will file the motion to continue trial with or without you, but she strongly prefers you stipulate to the continuance and sign off on a joint motion to continue the trial.¹⁹⁹

Assuming the client will not suffer any prejudice if the trial is continued, should you oppose the motion to continue trial as your client currently wishes or should you go back to your client to argue why it should agree to a joint motion?²⁰⁰

193. Dickerson, *supra* note 186, at 376–77.

194. Daniel R. Coquillette et al., Massachusetts Continuing Legal Education, Inc., PROFESSIONALISM AND CIVILITY IN THE PRACTICE OF LAW, PPRM MA-CLE 1-1, § 2 (2014).

195. *See, e.g.*, RAYMOND & HUGHES, *supra* note 142, at 150.

196. *See, e.g., id.*

197. *See, e.g., id.*

198. *See, e.g., id.*

199. *See, e.g., id.*

200. *See, e.g., id.*

Answer:

You know that the client is right about the potential negative effects for the opposing party by proceeding to trial without its lead counsel or forcing settlement negotiations that could be favorable for your client, but you also know that a court will likely grant this request for continuance given the circumstances whether your client supports the continuance or not.²⁰¹ Moreover, if your client does decide to oppose the motion, then it will cost the client money to pay you to file an opposition, prepare for the hearing, and then argue at the hearing on the motion for a continuance. In addition, the judge, who may be the trier of fact as well, will likely hold you and your client in a negative light for opposing such a motion given your lack of empathy and compassion for another person. Furthermore, the Court will also waste resources because it will be required to review the opposing briefs and potentially hold a hearing.²⁰²

Students must understand that these types of situations, which involve attorneys asking for a continuance of a hearing or deposition or for an extension of time to respond to discovery, happen quite often in practice. Talking to your client about agreeing to the continuance serves as the best option. If you speak to your client and obtain permission to agree to the continuance, then it will save your client money, keep you and your client in good graces with the court, and it will avoid wasting judicial resources.²⁰³ Finally, if you ever need a similar courtesy from opposing counsel in this case or the next, opposing counsel will be more likely to grant you that courtesy if you treat her the way you would want to be treated. You never know when you might need a continuance for a hearing or trial, or when you might need an extension to respond to discovery based on unexpected events that may arise in your personal life or practice or your client's life or business.

Civility includes cooperation,²⁰⁴ and failing to cooperate with opposing counsel throughout litigation would result in unnecessary motions and disputes that would completely congest the courts. At the same time, civility does not mean acquiescing or agreeing to whatever accommodations opposing counsel requests without regard to one's own client.²⁰⁵ For example, if the client's investors and management want and need the trial to commence as soon as possible on a bet-the-company case because they need to know (and plan for) whether the company will continue to exist, then the lawyer should reject a request for an extension by opposing counsel since it would prejudice the client's interest. The lawyer must always keep in mind what is best for the client, and civility and cooperation often benefit the client as shown in the first paragraph of this answer.

201. See, e.g., *id.*

202. See, e.g., *id.*

203. See, e.g., *id.*

204. See Eli Wald & Russell G. Pearce, *Being Good Lawyers: A Relational Approach to Law Practice*, 29 GEO. J. LEGAL ETHICS 601, 625 (2016) (discussing the importance of cooperation within civility).

205. See Rob Atkinson, *A Dissenter's Commentary on the Professionalism Crusade*, 74 TEX. L. REV. 259, 302 (1995) (arguing that civility could constrain advocacy).

Problem 2:

Lawyer personally attacks opposing counsel and lawyers involved in the case, both in writing and verbally, in a case pending in federal court.²⁰⁶ Among other things, Lawyer insults the other lawyers with names and phrases including “‘stooges,’ ‘puppet,’ ‘weak p*ssyfooting “deadhead”’ who ‘had been ‘dead’ mentally for ten years.’”²⁰⁷ Lawyer describes the work of the other attorneys as “‘garbage,’ demonstrating ‘legal incompetence,’ and involving ‘ludicrous additional time and expenses.’”²⁰⁸

The court sanctions the lawyer \$25,000 for his uncivil conduct.²⁰⁹ Lawyer appeals the sanctions. In the moving papers for the appeal, Lawyer insults opposing counsel again, this time denigrating the opposing counsel’s school, mentioning that its low rank is below that of his own alma mater, and noting opposing counsel was once fired from a law firm.²¹⁰

Was Lawyer’s conduct improper at any stage of the proceedings? If Lawyer practices in a jurisdiction that requires civility, should the court sanction Lawyer? If the court does decide to sanction Lawyer, what should the sanction be?

Answer:

The facts of this problem are taken directly from the case of *In re First City Bancorporation of Tex., Inc.*²¹¹ In that case, the bankruptcy court, after several warnings to the attorney, Harvey Greenfield, fined Mr. Greenfield \$25,000.²¹² Both the district court and the Fifth Circuit affirmed the bankruptcy court’s hefty sanction.²¹³ The court, citing *Dondi Prop. Corp. v. Commerce Sav. & Loan Ass’n*, rejected the notion that lawyers must be rude or offensive to serve as zealous advocates.²¹⁴ Greenfield should have focused on attacking the merits of any opposing arguments rather than personally attacking the other attorneys in the case.

The next part briefly discusses how a professor might frame civility as a course learning objective. It also includes ways to assess civility.

D. LEARNING OBJECTIVES AND ASSESSMENT

Law professors may state the following as the course learning objective for civility:

206. *In re First City Bancorporation of Tex., Inc.*, 270 B.R. 807, 809 (N.D. Tex. 2001), *aff’d sub nom. In re First City Bancorporation of Tex. Inc.*, 282 F.3d 864 (5th Cir. 2002).

207. *Id.* at 810.

208. *Id.*

209. *Id.* at 813.

210. *Id.*

211. *In re First City Bancorporation of Tex., Inc.*, 270 B.R. 807, 807 (N.D. Tex. 2001), *aff’d sub nom. In re First City Bancorporation of Tex. Inc.*, 282 F.3d 864 (5th Cir. 2002).

212. *Id.* at 809.

213. *Id.* at 814.

214. *Id.* at 812, (citing *Dondi Prop. Corp. v. Commerce Sav. & Loan Ass’n*, 121 F.R.D. 284, 288 (N.D. Tex. 1988) (*en banc*)).

By the conclusion of this class, each student will be able to do the following:

Understand the meaning and importance of civility, the costs of incivility, the role of civility in the legal profession, and apply the concept of civility to situations a law student may face as a practicing lawyer.²¹⁵

Law professors can assess law students on the topic of civility by using a multiple choice question regarding civility on an exam, requiring a paper on civility of four or five pages (or longer depending on the importance placed on the topic and the class in which the professor is teaching) using the discussion questions as prompts,²¹⁶ or using peer assessments of civility if the students work in groups at any point in the class.²¹⁷ Regardless of how a professor assesses civility, it remains a vital topic for law students to learn.

CONCLUSION

Law schools must prepare their students not only for clinics, internships, and externships, but also for the practice of law. One of the most critical aspects of practicing law includes dealing with opposing counsel, clients, and third parties in a respectful manner. Law students need to know how to interact effectively and cooperate with everyone in the legal profession, particularly opposing counsel. Devoting time in the law school curriculum to civility, along with professors modeling civility, will help law students understand the importance of civility in the practice of law and the administration of justice.

215. This Course Learning Objective supports the required learning objective of ABA Standard 302—"the exercise of professional and ethical responsibilities to clients and the legal system." ABA, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2016-2017 § 302(c). Thus, the proposed civility lesson in this Article could form the basis to show a law school is meeting Standard 302(c).

216. See, e.g., Susan Swaim Daicoff, *Lawyer, Form Thyself: Professional Identity Formation Strategies in Legal Education Through "Soft Skills" Training, Ethics, and Experiential Courses*, 27 REGENT U. L. REV. 205, 211-12 (2015); Benjamin V. Madison, III & Larry O. Natt Gantt, II, *The Emperor Has No Clothes, But Does Anyone Really Care? How Law Schools Are Failing to Develop Students' Professional Identity and Practical Judgment*, 27 REGENT U. L. REV. 339, 401-02 (2014-2015).

217. Alison Donahue Kehner & Mary Ann Robinson, *Mission: Impossible, Mission: Accomplished or Mission: Underway? A Survey and Analysis of Current Trends in Professionalism Education in American Law Schools*, 38 U. DAYTON L. REV. 57, 94-95 (2012); Paula Schaefer, *A Primer on Professionalism for Doctrinal Professors*, 81 TENN. L. REV. 277, 301-04 (2014); Sophie Sparrow, *Practicing Civility in the Legal Writing Course: Helping Law Students Learn Professionalism*, 13 J. LEG. WRITING 113, 151-55 (2007) (discussing whether a law professor should grade civility and, if so, how).

APPENDIX A

The Importance of Being Civil

- Show the “Texas Style Deposition” YouTube Clip.
- Discuss the Dunkin Donuts/Angry Birds Depositions Case.
- Define Civility – treating others with courtesy, dignity and respect, as well as demonstrating cooperation, honesty, and restraint.
- Show a PowerPoint slide(s) (see Appendix E) that includes Sandra Day O’Connor’s quote on civility, as well as the ten common core aspects of civility.
- Discuss briefly the relationship between civility, professionalism, and ethics.
- Show a PowerPoint slide(s) on the costs of incivility (see Appendix E).
- Stress that the most successful attorneys are zealous advocates while remaining civil.
- Answer the Discussion Questions with the class using a PowerPoint slide if desired (see Appendix E).

APPENDIX B

Promoting Civility in the Legal Profession

- Discuss civility codes, including showing several exemplar rules (see Appendix F).
- Discuss civility being added into attorneys' oaths, and show South Carolina's oath (see Appendix F).
- Discuss ABOTA's and the American Inns of Court's efforts regarding civility.
- Discuss mandatory civility jurisdictions, including the rationale for it and the methods of enforcing it, including South Carolina through its attorney oath.
- Discuss the relationship between civility and professional identity formation.
- Answer the Discussion Questions with the class using a PowerPoint slide if desired (see Appendix F).

APPENDIX C

Case Studies

- Discuss each of the four cases in Section II of the Article.
- Answer the Discussion Questions with the class using a PowerPoint slide if desired (see Appendix G).

APPENDIX D

Problems

- Go through Problem 1 (see Appendix H for the Problem) and the Answer, and discuss how common requests for continuances and extensions are.
- Go through Problem 2 (see Appendix H for the Problem), and discuss the Answer. Talk about how briefs and oral argument should focus on the merits (or lack thereof) of the opposing side's arguments, rather than shortcomings of opposing counsel or the opposing party personally.

APPENDIX E

PowerPoint Slide(s) Material Regarding The Importance of Being Civil

- Civility means treating others with courtesy, dignity and respect, as well as demonstrating cooperation, honesty, and restraint.
- “More civility and greater professionalism can only enhance the pleasure lawyers find in practice, increase the effectiveness of our system of justice, and improve the public’s perception of lawyers.”— Former United States Supreme Court Justice Sandra Day O’Connor
- Ten common core aspects of civility:
 - (1) keep commitments and seek agreement and accommodation with regard to scheduling and extensions;
 - (2) be respectful and act in a courteous, cordial, and civil manner;
 - (3) be prompt, punctual, and prepared;
 - (4) maintain honesty and personal integrity;
 - (5) communicate with opposing counsel;
 - (6) avoid actions taken merely to delay or harass;
 - (7) ensure proper conduct before the court;
 - (8) act with dignity and cooperation in pre-trial proceedings;
 - (9) act as a role model to the client and public and as a mentor to young lawyers; and
 - (10) utilize the court system in an efficient and fair manner.
- Major costs of incivility:
 - (1) losing a case;
 - (2) increasing costs for clients;
 - (3) wasting judicial resources;
 - (4) increasing stress for attorneys;
 - (5) the attorney suffers professional harm; and
 - (6) perpetuating negative perceptions and stereotypes about lawyers and the legal system.

Discussion Questions:

1. What kind of attorneys do you think clients want?
2. What kind of attorneys do you want you to be?
3. What kind of attorneys do you want to face on the opposing side?

APPENDIX F

PowerPoint Slide(s) Material Regarding Promoting Civility in the Legal Profession

- Examples of rules found in civility codes:
 - (a) A lawyer owes, to opposing counsel, a duty of courtesy.²¹⁸
 - (b) Lawyers should treat each other, the opposing party, the court, and members of the court staff with courtesy and civility.²¹⁹
 - (c) A client has no right to demand that counsel abuse the opposite party or indulge in offensive conduct.²²⁰
- South Carolina's civility language in its attorney oath:
"To opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications."
- Educating Tomorrow's Lawyer Study regarding Professional Identity Formation competencies: Nearly 92% of lawyers answered that "[t]reat others with courtesy and respect," which is the definition of civility, was necessary in the short term (or immediately) for the success of a new lawyer.²²¹

Discussion Questions:

1. Can states regulate attorney behavior?
2. Should civility be mandatory for attorneys?
3. Will acting civilly make you a more desirable candidate for a legal job or a more effective lawyer?

218. *Dallas Bar Association Guidelines of Professional Courtesy*, DALLAS BAR ASS'N, http://www.dallasbar.org/sites/default/files/dba_guidelines_of_professional_conduct_0.pdf [<https://perma.cc/8AJR-M9AE>].

219. *Id.*

220. *Id.*

221. Alli Gerkman & Logan Cornett, *Foundations for Practice: The Whole Lawyer and the Character Quotient*, EDUCATING TOMORROW'S LAWYERS, (July 2016), http://iaals.du.edu/sites/default/files/reports/foundations_for_practice_whole_lawyer_character_quotient.pdf [<https://perma.cc/FB33-3DZG>].

APPENDIX G

PowerPoint Slide(s) Material Regarding Case Studies

Drug Dealer Email:

I have a client who is a drug dealer on . . . Street down town [sic]. He informed me that your daughter, [redacted] was detained for buying cocaine and heroine [sic]. She is, or was, a teenager, right? This happened at night in a known high crime/drug area, where alos [sic] many shootings take place. Lucky for her and the two other teens, they weren't charged. Does this make you and [redacted] bad parents? This incident is far worse than the allegations your client is making. I just thought it was ironic. You claim that this case is so serious and complicated. There is nothing more complicated and serious than having a child grow up in a high class white family with parents who are highly educated and financially successful and their child turning out buying drugs from a crack head at night on or near . . . Street. Think about it. Am I right?²²²

Discussion Questions:

1. How would attorneys in your state react to a mandatory civility oath?
2. What could the lawyers have done differently in each of these cases?
3. How will you respond to uncivil behavior as a lawyer?

222. *In re* Anonymous Member of the S.C. Bar, 709 S.E.2d 633, 636 (S.C. 2011).

APPENDIX H

PowerPoint Slide(s) Material Regarding Problems

Problem 1:

You represent a client in a case scheduled for trial on Monday.²²³ Opposing counsel calls you on the Thursday before trial, and she requests that you agree to move the trial date because her father just passed away.²²⁴ You speak to your client about the requested continuance, and your client wants to play “hardball.”²²⁵ The client says, “Let’s not move the date. It may rattle opposing counsel if we proceed with the trial, or the other side may want to settle if it realizes it is forced to begin the trial without its lead counsel.”²²⁶ Opposing counsel indicates that she will file the motion to continue trial with or without you, but she strongly prefers you stipulate to the continuance and sign off on a joint motion to continue the trial.²²⁷

Assuming the client will not suffer any prejudice if the trial is continued, should you oppose the motion to continue trial as your client currently wishes or should you go back to your client to argue why it should agree to a joint motion?²²⁸

Problem 2:

Lawyer personally attacks opposing counsel and lawyers involved in the case, both in writing and verbally, in a case pending in federal court.²²⁹ Among other things, Lawyer insults the other lawyers with names and phrases including “‘stooges,’ ‘puppet,’ ‘weak p*ssyfooting ‘deadhead’ who ‘had been ‘dead’ mentally for ten years.’”²³⁰ Lawyer describes the work of the other attorneys as “‘garbage,’ demonstrating ‘legal incompetence,’ and involving ‘ludicrous additional time and expenses.’”²³¹

The court sanctions the lawyer \$25,000 for his uncivil conduct.²³² Lawyer appeals the sanctions. In the moving papers for the appeal, Lawyer insults opposing counsel again, this time denigrating the opposing counsel’s school,

223. See e.g., MARGARET RAYMOND & EMILY HUGHES, *THE LAW AND ETHICS OF LAW PRACTICE*, 150 (2d ed. 2009).

224. *Id.*

225. *Id.*

226. *Id.*

227. *Id.*

228. *Id.*

229. *In re First City Bancorporation of Tex., Inc.*, 270 B.R. 807, 809 (N.D. Tex. 2001), *aff’d sub nom. In re First City Bancorporation of Tex. Inc.*, 282 F.3d 864 (5th Cir. 2002).

230. *Id.* at 810.

231. *Id.*

232. *Id.* at 809.

mentioning that its low rank is below that of his own alma mater, and noting opposing counsel was once fired from a law firm.²³³

Was Lawyer's conduct improper at any stage of the proceedings? If Lawyer practices in a jurisdiction that requires civility, should the court sanction Lawyer? If the court does decide to sanction Lawyer, what should the sanction be?

233. *Id.* at 813.

APPENDIX I

Mallory A. Beagles

From: Sweeny, Martin [MSweeny@cozen.com]
Sent: Friday, March 02, 2012 9:09 AM
To: Sweeny, Martin
Cc: Chad Arnette; Bill Warren; Mallory A. Beagles
Subject: Re: Buxton lawsuit: Deposition of Rock Foster

Chad, you'd better call my cell below. No excuses.

Martin J. Sweeney
Cozen O'Connor
1717 Main Street
Suite 3400
Dallas, Texas 75201
P: 214-462-3024
F: 1-866-451-7976
C: 214-507-4190

On Mar 2, 2012, at 12:26 AM, "Sweeney, Martin"
<MSweeny@cozen.com> wrote:

> You are a liar and a coward Chad. My motion will prove that.

>

> If you want to be a man, any time, any place.

>

> Otherwise we will allow Judge Womack to sort it out because you are
gutless.

>

> Martin J. Sweeney
> Cozen O'Connor
> 1717 Main Street
> Suite 3400
> Dallas, Texas 75201
> P: 214-462-3024
> F: 1-866-451-7976
> C: 214-507-4190

>

> On Mar 1, 2012, at 11:01 PM, "Sweeney, Martin"
<MSweeny@cozen.com> wrote:

>

>> And you are a p*ssy.

>>

>> Martin J. Sweeney

>> Cozen O'Connor

>> 1717 Main Street

>> Suite 3400

>> Dallas, Texas 75201

>> P: 214-462-3024

>> F: 1-866-451-7976

>> C: 214-507-4190

>>

>> On Mar 1, 2012, at 11:00 PM, "Sweeney, Martin"

<MSweeney@cozen.com> wrote:

>>

>>> I'm threatening only your unprofessional behavior Chad.

>>>

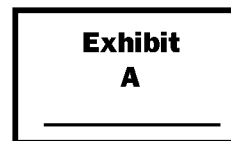
>>> And, I will prove that. To demand artificial deadlines on these depositions is sanctionable when I told you that I would produce all three in March, when you whined about traveling in a Sunday, I accommodated that, as well. I have to line up three witnesses, and a local counsel, and I agreed there would be no need another subpoena p*ssy.

>>>

>>> Martin J. Sweeney

>>> Cozen O'Connor

>>> 1717 Main Street



APPENDIX J

From:

Sent: Thursday, October 09, 2008 2:59 PM

To:

Cc:

Subject: RE: BROWNELL V VW

Three things Corky:

- (1) While I am sorry to hear about your disabled child; that sort of thing is to be expected when a retard reproduces, it is a crap shoot sometimes retards can produce normal kids, sometimes they produce F***ed up kids. Do not hate me, hate your genetics. However, I would look at the bright side, at least you definitely know the kid is yours.
- (2) You are confusing realities again the retard love story you describe taking place in a pinto and trailer is your story. You remember the other lifetime movie about your life: "Special Love" the Corky and Marie story; a heart-warming tale of a retard fighting for his love, children, pinto and trailer and hoping to prove to the world that a retard can live a normal life (well kinda).
- (3) Finally, I am done communicating with you: your language skills, wit and overall skill level is at a level my nine-year could successfully combat; so for me it is like taking candy from well a retard and I am now bored. So run along and resume your normal activity of attempting to put a square peg into a round hole and come back when science progresses to a level that it can successfully add 50, 75, or 100 points to your I.Q.

APPENDIX K

Voicemail:

We got your last message. Uh. I'll tell you very bluntly, uh, if you are tending in any way to, uh, send these emails for any purpose whatsoever, other than to vent, uh, my response to you is very simply going to be, uh, save your f***ing breath. And if you have any issue you want to speak with McShade or myself about, call us and discuss them. If you send one more f***ing email like this again, I can assure you your life on this deal is going to be very unpleasant because I'm going to get my client involved and we are going to make it very clear that you are not cooperating. So, our changes are necessary, the change was addressed in a global comment to you was to insert our client's address. You made a change without our authorization, whether you consider it material or not, again, I don't give a flying f***. Make the f***ing change, be the middle man monkey, or give us the job to do and we'll take care of it and we will do it properly. Your mortgage document was sloppy and sh**ty, alright. We limited our comments and we made very specific comments. If you can't be a monkey f***ing scribe then, you know what, let us do it. We will get one of our secretaries to handle it.

APPENDIX L

Deposition:

Answer: Don't nail me on that.

Question: Did you obtain prior approval from the association for that change.

Answer: Actually, I'm assuming you people have gone through the files; the building files, and all the other necessary files. If you haven't, you're a fool. Uh, actually, it was an accommodation, uh, that we spoke about and we did never made a . . . It was an accommodation and we never made a formal application about it. And if you take exception to it, I'll put it back where it was, which is right on the [inaudible] line. You want me to do that?! I'll be glad to! Today, tomorrow, or next week! That's where it was! It was on the survey, it was on the survey! And I gently removed it! Am I going to be punished for it?! Good, I'll put it back!

Question: Was that a yes or a no?

Answer: It was a f*** you! . . . What's your question?