

Are Professionalism and Civility a Thing of the Past?

Observations on the changing practice of law and how firms are challenging lawyers to maintain civility in their interactions with other counsel.

WRITTEN BY MORGAN BIRD, JAZMINE FORD, AND RACHEL WALL

We hear daily about how society is witnessing an increase in uncivil behavior. It is almost as though individuals have “lost [] the ability to have a productive dialogue about our differences.”¹

The decline in civility and decorum unfortunately rings true in the legal profession. The practice of civility in the legal profession is increasingly an afterthought for many, and more often, an absent thought for others. Trial attorneys (on both sides of the bar) with whom we discussed the concept of “civility”—especially attorneys who have practiced law for over a decade—raised concerns about the erosion of civility in the legal profession. When asked whether the concept of civility in this profession has changed, a board-certified trial attorney in his 44th year of practice unequivocally answered, “No doubt.” He recalled early in his career when “the concept of lawyers treating each other poorly in discovery, in conversation, or trial, didn’t really exist as a feature of the practice of law.” When discussing the topic of civility, multiple attorneys referenced a lack of accountability in the practice of law for unprofessional behavior. One lawyer explained, “As the world in general has become less restrained, cooperative, and courteous, so have the lawyers.” The skill of argument has shifted away from merit and intellect and, unfortunately, as our colleague who is a seasoned trial attorney explained it, has instead become about “accus[ing] those with whom you have a disagreement of being ignorant and/or incompetent.” One attorney even mentioned an increase in seeking or threatening sanctions as a “cottage industry” to intimidate and harass opposing counsel rather than focus on the merits of the case.

An article from 2023 details the history of lawyer’s oaths across the country. The article, authored by Lauren E. Bartlett of St. Louis University School of Law, explains how incivility has long been a concern of this profession and that “[o]ver the years, a total of thirteen states have amended their lawyer’s oaths to add pledges of civility.”² Texas is one of those 13



states that prioritizes the importance of civility in this profession and requires it. Civil behavior is not only a core element of attorney professionalism, but also is a duty we, as attorneys in the state of Texas, swore under oath to embody in practicing law. Whether just a few weeks ago or decades past, each of us stood before a judicial body, right hand raised, and took an oath to “conduct [ourselves] with integrity and civility in dealing and communicating with the court and all parties.”³

Furthermore, the preamble to the Texas Rules of Professional Conduct requires that lawyers “use the law’s procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and those who serve it, including judges, lawyers, and public officials.”⁴

Additionally, Section IV of the Texas Lawyer’s Creed mandates, among other things, that “[l]awyers and judges owe each other respect, diligence, candor, punctuality, and protection against unjust and improper criticism and attack.”⁵ The creed further requires that lawyers agree they will “treat counsel, opposing parties, the Court and members of the Court staff with courtesy and civility.”⁶

WHAT HAS CHANGED?

So, why does civility in the legal profession seem to be a thing of the past? Across the board, attorneys we spoke with attribute any decrease in civility to the fact that the practice of law has largely transitioned to email communications and virtual proceedings. A 2021 article detailing the effects of working remotely noted that “[i]n an online environment, it’s even easier to act uncivilly: Physical distance makes us feel separated from one another, and there are few consequences for bad actors.”⁷ One person explained that “[a]ttorneys feel disconnected from the legal community and therefore feel no accountability for their actions.” The importance of establishing positive relationships with opposing counsel and

colleagues seems to have diminished in the post-COVID-19 era, and the practice of law has entered this “eat or be eaten” mentality.

Additionally, unprofessional behavior is often excused under the guise of “zealous advocacy.” Yet, when asked, every attorney we spoke with agreed that civility and zealous advocacy are not mutually exclusive. In fact, the two concepts complement one another and work together for the greater good. The Institute for Civility in Government takes a broad view of “civility” and defines it as “claiming and caring for one’s identity, needs and beliefs without degrading someone else’s in the process.” Career trial attorney Jeff Steidley explained it perfectly when he stated, “I cannot think of a single instance in which the zealousness of advocacy is advanced by being rude, insensitive, impolite, churlish, or cranky.” A Dallas-area mediator was spot on when he pointed out that the “practice of law is hard enough without experiencing unprofessional conduct from other lawyers.”

Zealously advocating for our clients does not have to come at the expense of professionalism, civility, and common courtesy. Not only is it unnecessary, but the constant gamesmanship and lack of decorum interferes with the function of the practice of law. While advocacy—even vigorous advocacy—is a foundation of the practice of law, civility ensures that the process remains fair, respectful, and about the merits of the case. By adhering to the standards of civility and practicing professionalism, we can remain passionate about the practice of law and still advocate zealously without disrespecting our colleagues. Doing so will preserve the dignity of this profession and maintain the “focus on the merits of the case rather than personal animosity.”⁸

WHERE DO WE GO FROM HERE?

In our conversations with attorneys who have more recently become licensed and proudly joined the State Bar of Texas, it was disheartening to learn that their perception of “civility” in our profession is outdated and no longer an integral part of the practice of law. So, where do we go from here?

Former State Bar President Frank Stevenson once said, “We bear a precious privilege—namely, the opportunity to practice law as Texas lawyers. We thus have obligations to the lawyers who preceded and will succeed us and obligations to our profession, clients, principles, and ourselves. Without civility, every one of those obligations goes unmet.”⁹ One attorney advised: “As more tasks are handled online, it’s important to be just as civil in emails and Zoom calls since it’s more difficult to understand the tone and intention behind these communications as compared to being face to face.” Another person recommended we should get in the practice of humanizing our opposing counsel and finding common ground with them. We should work to hold ourselves, our colleagues, and each other accountable. As the late U.S. Supreme Court Justice Sandra Day O’Connor said, “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.”

In that spirit, we close out this article with one challenge: Do better and be the example for the next group of attorneys

entering this profession. Pause before sending that email. Pick up the phone and have a conversation. Change that deposition to in person. And remember, regardless of your practice area, we all stood before that judicial body, right hand raised, and promised to conduct ourselves with integrity and civility. **TBJ**

NOTES

1. Steven Mintz, *It’s Time to Get Serious About Civility*, Ethics Sages (Aug. 22, 2018), <https://www.ethicsage.com/2018/08/civility-and-civil-discourse.html>.
2. See Lauren E. Bartlett, *Human Rights and Lawyer’s Oaths*, 36 Geo. J. Legal Ethics 411* 429-30.
3. See the State Bar Texas New Lawyer Oath, https://www.texasbar.com/AM/Template.cfm?Section=Common_Lawyer_Requests1&Template=/CM/ContentDisplay.cfm&ContentID=29062.
4. Texas Disciplinary Rules of Professional Conduct (Including Amendments Effective January 31, 2022), Preamble: A Lawyer’s Responsibilities.
5. See The Texas Lawyers Creed—A Mandate for Professionalism, Section IV.
6. *Id.* at 3.
7. Dana Kabat-Farr and Remi Labelle-Deraspe, *5 Ways to Reduce Rudeness in the Remote Workplace*, Harvard Business Review (Aug. 19, 2021), <https://hbr.org/2021/08/5-ways-to-reduce-rudeness-in-the-remote-workplace>.
8. Minh Nguyen, *The importance of civility in the practice of law* (July 2023), <https://www.advocatemagazine.com/article/2023-july/the-importance-of-civility-in-the-practice-of-law>.
9. Frank Stevenson, *Arguments for Civility*, State Bar of Texas, May 18, 2017.



MORGAN BIRD

is an associate attorney with Nistico, Crouch & Kessler, where her practice focuses primarily on representing insurers in property disputes involving complex coverage matters, arson, property damage claims, and storm claims. She received a J.D. from South Texas College of Law in 2018.



JAZMINE FORD

is an associate attorney with Nistico, Crouch & Kessler, where her practice focuses primarily on representing insurers in property disputes involving complex coverage matters, arson, property damage claims, and storm claims. She graduated cum laude and received a J.D. from South Texas College of Law in 2018.



RACHEL WALL

is an attorney with Nistico, Crouch & Kessler, where her practice focuses primarily on representing insurers in property disputes involving complex coverage matters, arson, property damage claims, and storm claims. She graduated from the University of Houston Law Center in 2007. Wall manages the firm’s Dallas/Fort Worth area office and handles cases in all of North Texas as well as the Southern District of Texas.

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