

Professionalism/Civility Task Force

H. Kent Aguillard

H. Kent Aguillard Attorney at Law; Eunice, La.

Paul N. DeBaillon

DeBaillon & Miley; Lafayette, La.

Hon. Douglas D. Dodd

U.S. Bankruptcy Court (M.D. La.); Baton Rouge

David W. Houston, IV

Burr & Forman LLP; Nashville, Tenn.

Hon. Jeffrey P. Norman

U.S. Bankruptcy Court (W.D. La.); Shreveport

Patricia A. Redmond

Stearns, Weaver, Miller, Weissler, Alhadeff & Sitterson, PA; Miami



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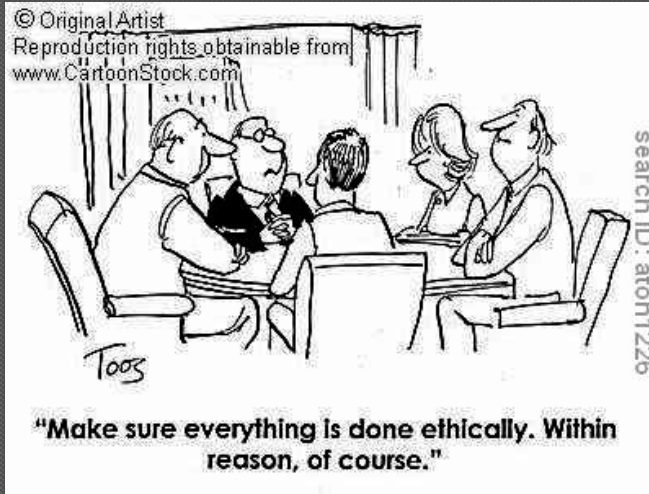
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Professionalism Standards in Bankruptcy



Jessica D. Gabel
Georgia State
University
College of Law

The Civility Task Force: An Overview

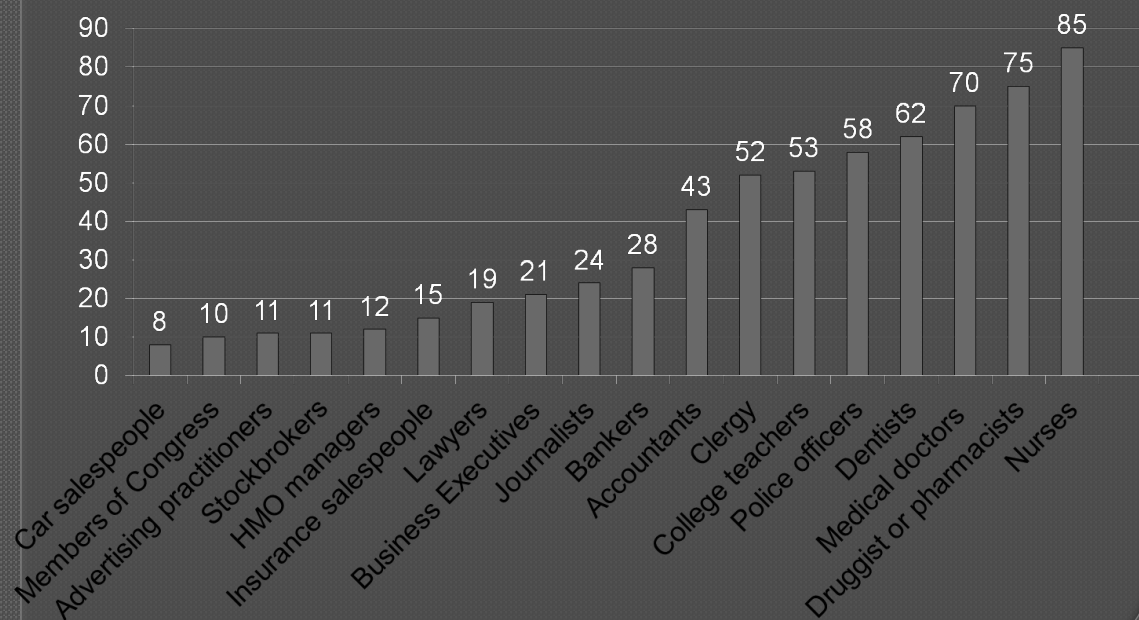
"Every lawyer at least once in every case feels himself crossing a line that he doesn't really mean to cross, it happens and if you cross it enough times it disappears forever. And then you're nothing but another lawyer joke. Just another shark in the dirty water."

-The Rainmaker

Civility—A Judicial Perspective



Gallup Poll's Honesty & Ethics in Professions 2012





An Ethical person often chooses to do more than the law requires and less than the law allows;

there is a big difference between what you have a right to do and what is right to do.

Justice Potter Stewart

Ethics vs. Civility

- The Ethics Rules regulating us are the *minimum* standard or the *floor* that supports our status as a lawyer in good standing.
- Rules of ethics mandate required behavior.

What is incivility?

- Rudeness—unnecessary rudeness
- Unsupported imputation of improper motives



Costs of Incivility



Costs of Being Unprofessional

- ◉ Damage to your reputation, your credibility and your livelihood.
- ◉ Increases stress and leads to greater dissatisfaction with your practice of law.
- ◉ Sanctions by court and bar.

California: who should serve as counsel for the unsecured creditors?

I will not dignify your rant and babble with a response other than if I think it is necessary to hurt a relationship with a member of a Committee to stop a bad deal with an unprofessional slimeball like yourself I will do that. We all know your goal is to find a position in the case so you can sue everyone and rip off this estate as you have done so often in the past. That will not happen on my watch.

I try to do my best for my clients.

Please do not refer to me as a "slimeball." It's not nice.

while you are a slimeball, I guess you agree with my reference to you as unprofessional.

CROSSING THE LINE

- Zealousness v. misconduct
- Aspirational language leads to apathy?



Civility

- ◉ Courtesy
- ◉ Manners
- ◉ Constructive interpersonal interaction
- ◉ Humility
- ◉ Collegiality

Responses to Incivility

- ◉ The role of the judge
 - Handle on-the-spot
 - Sanctions
 - Disciplinary referral
- ◉ The role of other lawyers
 - Informal mechanisms/peer pressure
 - Seek sanctions
 - Disciplinary referral

Broader Examination of Civility

- ◉ State bars
- ◉ Individual courts (Bank. E.D.N.Y.)
- ◉ Committees on professionalism

Thinking About Incivility

- ◉ Context is important.
- ◉ Perspectives on civility/incivility are culturally driven.

Bankruptcy Standards for Professionals?

- ◉ Lawyers' duties
- ◉ Judges' duties
- ◉ Professionals' duties

Highlights

- ◉ Not reflect ill feelings of our clients.
- ◉ Not attribute bad motives w/o good cause.
- ◉ Adhere to express promises and agreements, oral or written.
- ◉ Stipulate to undisputed, relevant matters.
- ◉ Not manipulate timing of filing or service for delay or tactical advantage.

Highlights

- ◉ Consult on scheduling to avoid conflicts.
- ◉ Accommodate previously scheduled conflicts, including vacations.
- ◉ Agree to reasonable requests for extensions of time.

Enforcement?

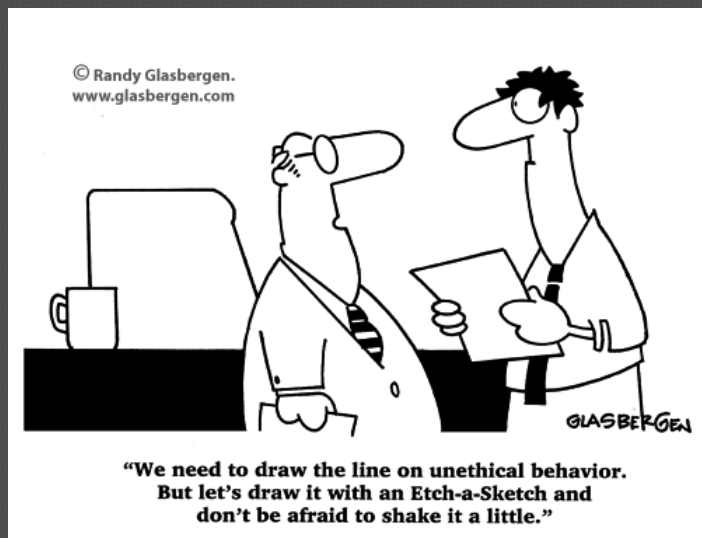
- ◉ “These standards shall not be used as a basis for litigation or for sanctions or penalties.”

Take away

- “Civility is not a sign of weakness”

-John F. Kennedy

Scenarios



Discussion Scenario 1

- ◉ Hotly disputed adversary proceeding
- ◉ Litigator makes repeated comments that she will “make dog meat” out of the other side and “show the local lawyers who’s boss.”
- ◉ Judge orders mediation.

Scenario 2—Document Dump

- ◉ Debtor’s counsel responds to requests for production.
- ◉ Gives creditor’s counsel every document (most of which are non-responsive).

Scenario 3—hostile work environment

- ◉ Senior partner brings junior associate to deposition
- ◉ Junior associate failed to pre-mark exhibits
- ◉ Partner berates the associate for several minutes in front of client and opposing counsel

Scenario 4: Metadata

- ◉ Lawyer emails Word document to opposing counsel
- ◉ Receiving lawyer “mines” document for metadata
- ◉ Locates comments inserted by opposing side.

What it looks like

January 5, 2005, Defendant was operating a motor vehicle
of North Meridian Street in Indianapolis, Indiana and
ction of North Meridian Street and 38th Street in
disregard of a traffic light that was red in the direction of
ian Street
the intersection of North Meridian Street and 38th Street,
left, front door of Plaintiff's vehicle. Plaintiff had entered
ian Street and 38th Street traveling eastbound on 38th
intersection of North Meridian Street and 38th Street was

Comment [u1]: Page: 1

I didn't really see the light. I assume it was red for Roe, but it could have been green.

Comment [u2]: Page: 1

It was more like the pillar between the front and back door. Both doors were damaged, the rear door a bit more than the front door.

Scenario 5—divulging privileged information

- Rule 2004 examination in a fraudulent transfer case.
 - Junior lawyer is defending the debtor in the deposition.
 - Senior lawyer represents the creditor
- Creditor's lawyer asks the debtor: "Did you speak with your lawyer about this transfer?"

Scenario 6—Client instructions

- ◉ Lawyer emails opposing counsel an email requesting a response ASAP.
- ◉ Opposing counsel's client instructs lawyer to "let them stew for a few days."

Scenario 7—Client instructions

- ◉ Lawyer A is about to leave for vacation and asks Lawyer B for an extra 5 days to respond to a document request (which is currently due the day she returns from vacation).
- ◉ Client instructs Lawyer B not to make any accommodations and states: "if you can't make it difficult for them, I'll find someone who can."

Scenario 8: Other accommodation issues

- Lawyer A knows on Monday that lawyer B is going out of town Friday night.
- Lawyer A deliberately waits to send an email to Lawyer B at 4:45pm on Friday that requires an immediate response.

Where do we go from here?
