

CIVILITY REPORT INTRODUCTION



Michael L. Mallow

We have all encountered incivility. And if we reflect honestly, most of us can think of a time when we were uncivil. What can we do about incivility? The answer is: a lot. But like many good things in life, civility begins at home.

Some years ago, I had a very important case for a very important client, and my behavior was less than a model of civility. I was outraged

that opposing counsel—call him Paul—berated two of my associates during a discovery conference. The next day, there was a conference call between our two teams, including both sides' associates. Going into the call, I had a full head of steam. I was going to be the protector and champion of my associates. I quickly lashed out at Paul for how he treated my team the day before. From that less-than-auspicious start, tempers escalated, and civility quickly diminished to a point where the crosstalk was so severe that neither Paul nor I could hear what the other said.

But although Paul and I weren't listening to each other, our associates were surely listening. For reasons I can't now explain, at some point during the call it hit me that I was acting horribly and that I was being anything but the role model I wanted to be. I asked Paul if he was willing to put the conference call on hold and speak directly with me on a private line, just the two of us, with no associate audience. During that private call, I shared my epiphany: Paul and I were being jerks, and we owed our associates far better than that. He agreed. We decided to get back on the conference call, apologize to each other's associates for our behavior, and have a "do-over" of the call—this time as professionals rather than as bickering children.

The litigation against Paul and his team lasted for another five years. During that time, there were many hard-fought issues, dozens of depositions, and numerous contentious

hearings, including class certification and summary judgment. But Paul and I never had a negative word to say to or about each other for the remainder of the litigation, and we would often have lunch or dinner together when we were on the road for depositions. It was a tough case, and Paul and I were tough adversaries for our clients' positions, but we kept the litigation in perspective—and we ended up becoming friends. It was one of the highlights of my career, not for the result, but for how Paul and I were able to conduct the litigation after that horrible conference call.

Civility is not about being soft, or giving in, or selling your client short. To the contrary, approaching the practice with civility is always in a client's, and in our own, best interest. Being civil is being able to listen, with intent and thoughtfulness; making an effort to understand the other side's point of view; and using what one learns to the client's best advantage. Being civil promotes efficiency and reduces cost because it obviates needless and wasteful arguments and disagreements. Being civil enhances the enjoyment of the profession for all because it reduces unnecessary adversity and enhances well-being. It allows us to focus on the issues that are the most important and material to our clients and the litigation.

Civility is much more than merely exchanging pleasantries. Nothing makes that clearer than this issue of the ABTL Report. The articles in this issue touch on the complexity and importance of civility. From what civility is, to what causes incivility, to ways of promoting civility and combating incivility, as Chair of the ABTL's Civility Committee, I hope that this issue of the ABTL Report can serve as a resource for enhancing professionalism in our profession.

Deep thanks go to the authors who dedicated substantial time and effort to the kaleidoscope of articles that makes up this special issue of the ABTL Report. And a very appreciative tip of the hat to our ABTL Report Editors—Robin Meadow, John Querio, and Jessica Stebbins Bina—whose vision, perseverance, and guidance made this issue a reality.

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