

Beyond Civility: Compassionate Courtesy

By Pamela J.P. Donison, J.D.

It seems that civility has become a quaint old notion that has been largely kicked to the curb by a reality-TV type of advocacy, sort of like your kind and proper aunt getting shoved under the bus by a thug in leather and chains. Not only are we seeing it in society at large – reports of workplace bullying are epidemic – but we are also experiencing this attitude in the legal community to an alarming extent. The idea that we can not only create *civility*, but *something even more* seems like reaching for stars.

When I talk about a lack of civility, I'm referring to the spectrum from sharp words that are sometimes exchanged between counsel in the heat of negotiation or debate all the way to the scorched earth mentality that some of our peers have adopted as a way of life. When you encounter this type of behavior, it can be unsettling and sometimes traumatic.

I will hereby confess in the interest of full disclosure that I've not always acted in the most courteous way with some of my colleagues, which has caused me a fair amount of shame and regret in hindsight. I could give you a list of excuses as to why (she pushed my buttons, he was arrogant and patronizing, I had a really bad day), but when it comes right down to it, none of my reasons (or yours) are sufficient. There's just not a good rationale for demeaning our profession, increasing conflict in an already angry and dangerous world, and contributing to the atmosphere of mistrust in our legal system.

War Stories

Having experienced this first-hand (and who hasn't?), I'll share a couple of war wounds.

Attorney A wrote a nasty letter wherein he gave me a sharply-worded instruction in the law and my responsibilities, including a mandate that I get my facts straight. What Mr. A had apparently not been informed of was that our respective staff had made an agreement regarding delivery of documents that Mr. A had not complied with. While it was clear that Mr. A was out of line and that I was "in the right," it didn't soothe the sting of his words.

Attorney B came out of the gate with guns a'blazing. She and I had never worked together prior to the case at hand, so I had no preconceived notions about her or her client. Ms. B, on the other hand, apparently has a "strategy" for dealing with her colleagues that includes interrupting and talking in a very loud voice which, to an outsider, might sound like shouting. Some of her other techniques involve making accusations of incompetence and/or unethical behavior, arguing vehemently over issues she refuses to explain, and engaging in these behaviors in the presence of clients to good chest-thumping effect.

Finally, Attorney C and I had worked together in a professional manner right up to the time of trial. The issues were narrowed down to one and, in anticipation of the hearing the next day, we verbally agreed that we were going to bring only the one remaining issue before the judge and read the rest of the agreements into the record. I was gob-smacked when Mr. C handed me a stack of exhibits and informed the judge that I had wasted his client's precious resources by talking to him all the previous day with no agreements made. He's the Sandbagging type of attorney – never to be trusted and always to be feared.

Inns of Court Breed Civility

Do any of these sound familiar? Maybe you've even employed some of these strategies yourself? While many uncivilized behaviors may not cross over into downright unethical acts (although some do), they are nonetheless contrary to our Rules of Professional Conduct (Rules of the Supreme Court, Rule 42). Attorneys are to "conduct themselves honorably. . . . [and] demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials."

Let's face it. The legal profession is a difficult career path and most attorneys work like dogs to do right by their clients. Unfortunately, not enough of them work as diligently on doing right by their peers. So how do we get from nasty to nice? "The Mission of the American Inns of Court is to foster excellence in professionalism, ethics, civility, and legal skills," according to the Inns' website. As a member of the Inns of Court for over a decade, I try very, very hard to embody that mission in my practice. This is not only for my own sake (it's easier to sleep at night), but for my clients (warring attorneys cost too much money!) and the community as a whole (which badly needs a dose of compassionate courtesy).

At the Lorna Lockwood Inn of Court, we dedicate our monthly meetings to breaking bread with our peers and colleagues, along with an hour of CLE (usually ethics). Together over dinner, judges, lawyers from all practices and at all levels of experience, and students get to know one another as people. It's much less likely that you will attack a person you dined with last week and will see again next month.

Compassionate Courtesy

Wikipedia says, "compassion (from Latin: "co-suffering") is a virtue —one in which the emotional capacities of empathy and sympathy are regarded as a part of love itself, and a cornerstone of greater social interconnectedness and humanism —foundational to the highest principles in philosophy, society, and personhood."

We all have those moments when we wish we could reel back the last five minutes of what just came tumbling out. Absent a do-over, apologies and forgiveness are an amazing balm to a wounded relationship. I will never forget that gesture, from an opposing counsel who had been uncharacteristically belligerent in a phone conversation. I hung up feeling angry, confused, and with my heart rate a bit too high. About an hour later, she called back and, although I was reluctant to take the call, I did. To my surprise, the woman who had earlier been demeaning and sarcastic was now humble and contrite. She apologized. Instead of kicking her in this moment, I offered compassionate courtesy. We commiserated, made a plan, promised to do better. Poof. Bad feelings gone, good feelings surge in.

Extending compassionate courtesy (civility, but with an additional dollop of authentic feeling) may not tame the worst offenders in our profession (their pathology runs too deep), but it can bring collegial trust and an aura of "we're in this together" to most of our professional relationships. So the next time someone is rude, bullying, mean-spirited, nasty or just plain old wrong, smack 'em up side the head with compassionate courtesy and see what happens.

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<http://www.innsocourt.org/Default.aspx>

About Pamela Donison:

Following a 15-year career in journalism and book publishing, Pamela attended the University of Arizona James E. Rogers College of Law, graduating in 1999. After a few too many high conflict litigation cases, Pamela created Donison Law Firm, PLLC in 2005, with an emphasis on out-of-court solutions, including arbitration, mediation, collaborative law, and negotiated settlements. Pamela has an undergraduate degree in Business Management which she uses to assist clients in Double Divorce.

Pamela is a Judge Pro Tem and Mediator for Maricopa County Superior Court. She is founder of Arizona Collaborative Colleagues, president of the Arizona Women Lawyers Association, on the board of directors for the Arizona Chapter of the Association for Conflict Resolution, arbitrator for the State Bar and the State of Arizona Personnel Board, and is an active member of a number of other professional organizations.

When she's not changing the world, Pamela is a wife and mother, an award-winning photographer, active blogger, and mentor to other women entrepreneurs.

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