

Incivility in the legal profession: an intractable problem in need of new solutions

By Victor E. Bianchini

Incivility in the legal profession, while often discussed in theory, remains an enduring problem, deeply embedded within the system itself. Though much of this incivility escapes the eyes of the court, it festers behind the scenes, primarily during discovery, negotiations, and other pre-trial communications. The adversarial nature of legal practice inevitably breeds conflict, but the line between vigorous advocacy and outright hostility is blurred far too often. Despite repeated attempts to address the issue through sanctions and other traditional remedies, these efforts have yielded minimal success.

Incivility manifests in a variety of ways—rude emails, overly aggressive language in filings, obstructionist behavior during depositions, and toxic “meet and confers” where attorneys are supposed to iron out disputes. While these behaviors have long been regarded as “part of the game,” their corrosive effects on the profession are undeniable. Attorneys, especially those representing opposing parties, are increasingly finding themselves entangled in needless confrontations that escalate tensions and draw out the litigation process. Ultimately, clients, and the integrity of the legal system itself, bear the burden of this dysfunction.

Ineffectiveness of sanctions and traditional approaches

Various measures have been proposed and implemented to combat



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incivility, the most common being the imposition of sanctions on offending attorneys. While fines or adverse rulings may occasionally provide a deterrent, they do not address the root of the problem. Lawyers often see such measures as part of the cost of doing business—collateral damage in a larger, high-stakes battle. For some, the risk of incivility is worth the potential gain if it weakens the opponent or forces a favorable settlement.

Judges and arbitrators, too, have the authority to intervene and punish inappropriate behavior, but many are reluctant to wade into what can feel like petty squabbles. The result is that bad behavior goes

unchecked, breeding an environment where incivility thrives. Judges, and yes, even arbitrators need to suck it up and when they see it, address it effectively.

A mental health and personality disorder approach

It may be time to approach incivility as more than a breach of professional ethics and instead view it through the lens of mental health or personality disorders. Persistent incivility could be symptomatic of deeper psychological issues—narcissism, passive-aggression, or even pathological competitiveness. Attorneys who regularly engage in uncivil behavior may be

displaying traits that hinder their ability to function appropriately in high-stress environments.

In this light, the State Bar could be empowered to take a more therapeutic approach, ordering investigations into whether habitual offenders suffer from psychological conditions that may impede their professional judgment. If incivility were treated not just as an ethical violation but as a potential mental health issue, the Bar could order mandatory psychological evaluations and treatment plans. For repeat offenders, the threat of losing their license pending a mental health evaluation could serve as a stronger deterrent than a fine.

Gendered incivility

One of the most disturbing aspects of legal incivility is its gendered dimension. Female attorneys, in particular, often find themselves subjected to disrespectful and even hostile behavior from their male counterparts. Some male attorneys may resort to bullying tactics, questioning their female opponents' competence, or resorting to condescension, while some female attorneys have reported unhelpful behaviors from their female colleagues, adding to the complexity of the issue. These patterns reflect larger societal problems of sexism and gender bias, which persist in the legal profession despite efforts toward gender equality.

The legal community must recognize that gendered incivility is

not just an interpersonal issue but a systemic problem. A cultural shift is necessary, one that acknowledges the unique challenges female attorneys face and works to address them.

Moving forward: Changing the legal culture

Addressing the root causes of incivility requires more than simply implementing harsher penalties. A cultural shift is needed—one that starts in law schools and continues through professional development. Training programs that emphasize emotional intelligence, conflict resolution, and stress management could help future attorneys develop the tools they need to handle the pressures of the legal profession without resorting to hostility.

The judiciary also has a role to play. Judges and arbitrators must take a more active role in curbing incivility, particularly in cases where one attorney is clearly engaging in bullying tactics. This could involve stricter enforcement of rules of professional conduct, more frequent issuance of sanctions, or even setting a tone of civility from the bench that permeates the proceedings.

In the end, addressing incivility in the legal profession may require a more holistic approach, one that goes beyond punishment and looks at the underlying causes of such behavior. By incorporating mental health considerations and addressing gender-based disparities, the legal community can begin to create a more civil, respectful, and functional system for all participants.

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