

Focus On

HON. PAUL M. WARNER

Ten Tips on Civility and Professionalism

- 1. It's a long road without a turn in it. Put another way, what goes around, comes around.** This is the best reason for civility. Everyone needs a little extra consideration from opposing counsel occasionally. If it doesn't prejudice your case or client, do it.
- 2. Don't be so concerned with winning the battle that you lose the war. In other words, sometimes lawyers can't see the forest for the trees.** Just because the other side wants something doesn't mean your automatic response should be to oppose it. Sometimes, it can be a win-win situation, especially for settlement purposes. This is especially true in civil discovery disputes.
- 3. Civil practitioners treat each other in a criminal manner, and criminal practitioners treat each other in a civil manner.** The criminal bar is small, and the lawyers know they will deal with one another many times. This familiarity leads to courtesy and civility. Civil practitioners may deal with opposing counsel only one time in their careers. Be civil anyway; your reputation depends on it.
- 4. Never mistake reasonableness for weakness.** The really good lawyers can be as tough as nails on the issues and zealous in their advocacy and yet always remain civil and courteous. Strive to be one.
- 5. When laws are not enforced, it creates contempt for the law. When rules are not enforced, it has the same effect.** The rules of civil procedure and local court rules are not advisory. They need to be followed. They give order and predictability to the system, and they should be enforced by the courts.
- 6. Waste not, want not.** Lack of civility and the behavior that follows almost always result in wasted resources of time and money—the lawyer's time, the client's money, and both time and money for the courts. Lawyers responsible for such waste should pay for it—personally!
- 7. Know the difference between an adversary and an enemy.** The lawyer on the other side is not your enemy. The clients may be "enemies," but the opposing counsel should not be. Opposing counsel may even be your friend, or, if treated with civility and professionalism during the conduct of the case, may well become one.
- 8. If you don't write it or say it, you don't have to explain it.** There is power in the written word. "Poison pen" e-mails and letters feel good to write but rarely should be sent. Outrageous language and accusations in briefs and memorandums are the functional equivalent of shouting in court. Don't dignify such boorish behavior by responding to them.
- 9. Always forgive your enemies, but never forget their names.** Don't make the case personal between you and opposing counsel. Never make the mistake of getting opposing counsel's "attention" through shoddy behavior or cheap shots. Your opponents will work nights and weekends to beat you. They are not in this business because they lack ego.
- 10. The Golden Rule, with a twist.** We all know the Golden Rule. "Do unto others. ..." I propose a new Golden Rule of Civility. "Be courteous to everyone, even to those who are rude. Not because they are ladies or gentlemen, but because you are one." It's not about an eye for an eye and a tooth for a tooth. It's not even about you. It is about doing what's best for your client.

In conclusion, civility is the mark of a real professional—and a true lawyer. The issue is not about quid pro quo. It is about having self-respect, respect for others, and the self-confidence to not respond in kind, and in the process, continuing to build your own character, credibility, and reputation. **TFL**

Hon. Paul M. Warner is a U.S. magistrate judge in the District of Utah. He presented these tips at the Ron Boyce Litigation Seminar in November 2008.