

CIVILITY AND PROFESSIONALISM: A VIEW FROM THE BENCH
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Utah Standards of Professionalism and Civility

Preamble

A lawyer's conduct should be characterized at all times by personal courtesy and professional integrity in the fullest sense of those terms. In fulfilling a duty to represent a client vigorously as lawyers, we must be mindful of our obligations to the administration of justice, which is a truth seeking process designed to resolve human and societal problems in a rational, peaceful, and efficient manner. We just remain committed to the rule of law as the foundation for a just and peaceful society.

"[t]he dignity, decorum and courtesy that have traditionally characterized the courts and legal profession of civilized nations are not empty formalities. They are essential to an atmosphere that promotes justice and to an attorney's responsibility for the fair and impartial administration of justice."
Cal. Attorney Guidelines of Civility & Professionalism §1

On the 8th of December 1941, the government of the United Kingdom declared war on the Empire of Japan. The text of Prime Minister Winston Churchill's letter to the Japanese ambassador was as follows:

Sir,

On the evening of December 7th, His Majesty's Government in the United Kingdom learned that Japanese forces without previous warning either in the form of a declaration of war or of an ultimatum with a conditional declaration of war had attempted a landing on the coast of Malaya and bombed Singapore and Hong Kong.

In view of these wanton acts of unprovoked aggression committed in flagrant violation of International Law and particularly of Article I of the Third Hague Convention relative to the opening of hostilities, to which both Japan and the United Kingdom are parties, His Majesty's Ambassador at Tokyo has been instructed to inform the Imperial Japanese Government in the name of His Majesty's Government in the United Kingdom that a state of war exists between our two countries.

I have the honour to be, with high consideration,

Sir,

Your obedient servant,
Winston S. Churchill

Of the letter, Churchill later wrote: "Some people did not like this ceremonial style. But after all when you have to kill a man it costs nothing to be polite." Churchill, Winston S., Memoirs of the Second World War, Boston, Houghton Mifflin, 1959.

What is civility?

The Utah Supreme Court has stated that civility is personal courtesy and professional integrity in terms of ethics, adherence to agreements and honesty to each other and the court.

Think of civility as the art of disagreeing without being disagreeable; of being able to advocate a position without making the argument a personal attack on the other side.

A Few Thoughts on Civility in the Courtroom

1. **Your reputation is everything.** Judges actually talk to each other. Your reputation for integrity to the court, fair dealing with opposing counsel, and preparation matter. Once lost, your reputation is very hard to regain.
2. **Be prepared.** You will always know the facts of your case, and hopefully the applicable law, better than the judge. The judge and jury rely on you to provide a complete and honest recitation of the case. If there are unique issues of law, be prepared to educate the court. Do not assume that the judge can pull out the appropriate statute or case at the drop of a hat. Try to do so in a way that avoids suggesting that the judge is a complete idiot. Judges appreciate attorneys who can assist us in making legally sound and intelligent decisions.
3. **Be confident without being arrogant.** You always want to convey a sense of belief in your case and arguments but do not suggest by your attitude that the opposing side has nothing of worth to offer. A friend of mine was the foreman of a jury in a homicide case several years ago. She commented that the jurors were offended by the prosecutors in the case who seemed to believe the case was open and shut, appeared to just be going through the motions, and conveyed a sense of disrespect to the opposing side, jurors and the court by their attitude.
4. **Theatrics get tiresome. Maintain you emotional self-control.** Although media has created a certain need to entertain, theatrics in a courtroom become old very quickly. Slamming papers on table, sighing heavily, making faces, inappropriate gestures, inflammatory language quickly backfire. These tactics suggest that you have nothing substantive to offer. The judge expects you to help maintain the dignity and decorum of the court proceedings. The ABA Model Rule 3.5 states that a lawyer shall not engage in conduct intended to disrupt a tribunal.
5. **Accept the ruling of the judge and pursue your legal remedies.** You are permitted to argue your position, but in the face of an adverse ruling, you may not resist the ruling or insult the court. Your remedy is to pursue and appeal (or other remedies available in law). *See Sacher v. United States*, 343 US 1, 9 (1952). Prosecutors rarely have the right to appeal but threats of appeal are generally

meaningless. Any judge who has been on the bench for any length of time has been appealed, and most of us will be reversed at some point. My response to threats of appeal is to make a special effort to issue a ruling that will stand up on appeal. Similarly, don't make the judge or the jury the heavy if the decision goes against you. Don't make statements about how the victim has not received justice, or the defendant is getting away with whatever it is. Sometimes we get it wrong, but we are trying our best. You generally don't come off looking good in statements to the press about how the judge or jury got it wrong.

6. **Show respect to the court.** Over the years I have heard, and even been guilty of, suggesting that certain judges do not know the law, are not quite bright, etc. Whether your feelings are true or not, as an officer of the court, you have a duty to uphold the integrity of the courts. ABA Standards for Criminal Justice Courtroom Professionalism state that as officers of the court, criminal lawyers "should support the authority of the court and the dignity of the trial courtroom by strict adherence to codes of professionalism, and by manifesting a professional attitude toward the judge, opposing counsel, witnesses, defendants, jurors, and others in the courtroom." ABA Standard 3-5.2 for prosecutors and Standard 4-7.1 for defense attorneys.
7. **Respect the court's time.** Sometimes courts run late. Certain cases take longer to resolve than others. However, attorneys contribute to this problem by not showing up on time, failing to talk to their clients prior to court, and not speaking to opposing counsel prior to court. If you tell the court that you need additional time to resolve the issue, then try to resolve the issue before you come back to court rather than waiting until the next court date to ever talk about the case again.
8. **At trial, object only when it is meaningful.** There are numerous opportunities to object in every trial. Many of those objections have little bearing on the outcome of the trial and seem to be made merely to rattle the other side. Preserve your objections for the record, but don't feel the need to object to things that don't really matter.
9. **Don't whine.** Don't be like Hamilton Burger in the old Perry Mason TV series, "But Your Honor...". State your objections clearly with appropriate argument, but if the ruling goes against you, sit down.
10. **Treat *pro se* defendants the same as you would a represented defendant.** Plea offers should be based on the merits of the case, not whether a person is represented or not. Similarly, don't penalize a defendant because he is represented by counsel you don't like.

"There is no better guide to professional courtesy than the [G]olden [R]ule: [Y]ou should treat opposing counsel the way you yourself would like to be treated." *Peterson v. BMI Refractories*, 124 F.3d, 1386, 1396 (11th Cir. 1997)

