WITH ALL DO RESPECT

Civility and Professionalism in the Profession
AGENDA

• What does it mean to practice with civility?
• Why is civility important in the profession?
• What can we do to maintain, increase, and adhere to civility?
CIVILITY

The word “Civility" derives from the Latin “Civilis”
• Refers to the responsibility of a civilian to behave according to social mores.

Webster Dictionary defines civility as:
• Civilized Conduct; a polite act or expression

The Institute for Civility in Government defines civility as:
• Claiming and caring for one’s identity, needs and beliefs without degrading someone else's in the process.
WHAT DOES CIVILITY MEAN TO YOU?
TREATING OTHERS WITH DIGNITY, COURTESY, RESPECT, POLITENESS, AND CONSIDERATION.
CIVILITY IS NOT THE SAME AS

- Agreement
- The absence of criticism
- Liking someone

Should not be equated with politeness or manners alone.
INCIVILITY

• The quality or state of being uncivil
• A rude or discourteous act
INCIVILITY

• Rudeness
• Harassment
• Inequitable Treatment
• Discrimination
SURVEY ON PROFESSIONALISM

• Illinois Lawyers
  • 54% said they had experienced incivility within the last six months
    • A sarcastic or condescending attitude, reported by about 65% of those who experienced incivility in the last six months.
    • Misrepresenting or stretching the facts or negotiating in bad faith, reported by about 63%.
    • Inflammatory writings in correspondence, memos, briefs or motions, reported by about 51%.
    • Playing hardball, such as not agreeing to reasonable requests for extensions, reported by about 46%.
    • Indiscriminate or frivolous use of drafts, pleadings or motions, reported by about 46%.
    • Inappropriate interruptions of others, such as clients, colleagues, counsels, judges and witnesses, reported by about 41%.
    • Inappropriate language or comments in letters or email, reported by about 22%.
    • Swearing, verbal abuse of belittling language, reported by about 19%.
    • Inappropriate comments about age or experience, reported by about 17%.
    • Sexist comments, reported by about 12%.
    • Racially or culturally insensitive comments, reported by 6.5%
ETHICS CASES

- In Re Florida Bar v. Matoccie, 791 SO 1074 (2001)
- Disciplinary Counsel v. Skonic, 2018 Ohio-2990
- In re White, 391 S.C. 581 (2011)
- In re Charles Cohn, Commission No. 2018PR00109 (2020)
- In Re Blume, 309 Kan. 1313 (2019)
MONETARY SANCTIONS

- Martin v. Essrig, 277 P3d 857 (Colo App, 2011)
- In re First City Bancorporation of Tex, Inc, 282 F3d 864 (CA 5, 2002)
COMMON TYPES OF INCIVILITY REPORTED

• Rudeness – interruptions, sarcasms or condescension, inappropriate written language, verbal abuse, or belittling language.
• Strategic Incivility – indiscriminate or frivolous use of drafts, pleadings or motions, playing hardball, inflammatory writings, misrepresenting or stretching the facts or negotiating in bad faith.
• Prejudice – disparaging comments targeting age, experience, gender, sexual, orientation, race, etc.
UNDERREPRESENTED GROUPS
MICROAGGRESSIONS

Microaggression events refer to everyday derogations, slights, and invalidations that are often delivered to people of minority or marginalized backgrounds.

- Intentional or Unintentional
- Any minority group can experience microaggressions - This may be based on race, ethnicity, nationality, religion, gender, sexual orientation, socioeconomic status, or disability.
THREE CATEGORIES OF MICROAGGRESSIONS

• **Microassaults** - These conscious, deliberate, and explicit racist attacks—both verbal and nonverbal—are meant to denigrate or hurt the victim.

• **Microinsults** - While often unconscious and much more subtle, a microinsult demeans and belittles the victim through slights or comments that seem innocuous but are insulting.

• **Microinvalidations** - These comments and behaviors can exclude and invalidate people’s thoughts, feelings, or experiences in life.
NEGATIVE CONSEQUENCES
Emerging research suggests that microaggressions have negative impacts on the health of those on the receiving end.

Microaggressions can impact both:
- Physical Health – inflammation, gastrointestinal problems, hypertension
- Mental Health – anxiety, depression, post-traumatic stress disorder
NEGATIVE CONSEQUENCES OF INCIVILITY

- Public perception
- Not serving our clients needs
- Lack of diversity
- Decreased well-being
- Undermines the justice system
WHO GETS TO DECIDE WHAT’S CIVIL?
The legal profession is largely self-governing, with ultimate authority over the profession resting with the courts in nearly all states.
Preamble [10] - The legal profession is largely self-governing. Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement. This connection is manifested in the fact that ultimate authority over the legal profession is vested largely in the courts.

Preamble [12] - The legal profession's relative autonomy carries with it special responsibilities of self-government. The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar...
ATTORNEY REGULATION HISTORY

• The original 32 Canons of Professional Ethics were adopted by the American Bar Association in 1908. They were based principally on the Code of Ethics adopted by the Alabama State Bar Association in 1887, which was borrowed largely from the lectures of Judge George Sharswood, published in 1854 under the title of Professional Ethics, and from the fifty resolutions included in David Hoffman’s A Course of Legal Study (2d ed. 1836)

• The Model Code of Professional Responsibility was adopted by the House of Delegates of the American Bar Association on August 12, 1969, and the states began the process of incorporating the Code into their laws.
In 1967, the ABA empaneled a Special Committee on Evaluation of Disciplinary Enforcement, headed by former Attorney General and Supreme Court Justice Tom Clark. The Special Committee, which became known as the Clark Committee, spent three years studying the state of attorney discipline around the country, and in 1970 issued a landmark report called *Problems and Recommendations in Disciplinary Enforcement*, which has become known as the Clark Report.
Preamble [5] and [9]

• [5] A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.
RULES OF PROFESSIONAL CONDUCT

• Preamble [5] and [9]

• [9] In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest in remaining an ethical person while earning a satisfactory living. The Rules of Professional Conduct often prescribe terms for resolving such conflicts. Within the framework of these Rules, however, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules. These principles include the lawyer's obligation zealously to protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system.
Rule 1.2 Cmt. 1
A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to a lawyer, and take whatever lawful and ethical measures are required to vindicate a client’s cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client’s behalf.

Rule 1.2 Cmt. 1
A lawyer is not bound, however, to press for every advantage that might be realized for a client. . . . The lawyer’s duty to act with reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect.
RULES OF PROFESSIONAL CONDUCT

• 3.1 – Meritorious Claims and Contentions
• 3.3 – Candor Toward the Tribunal
• 3.4 – Fairness to Opposing Party and Counsel
• 4.1 – Truthfulness in Statements to Others
• 4.4 – Respect for Rights of Third Persons
• 8.4 -Maintaining the Integrity of the Profession: Misconduct
PILLARS OF PROFESSIONALISM

The pillars represent aspirational goals which Kansas Attorneys should strive to reach.

“Professionalism focuses on actions and attitudes. A professional lawyer behaves with civility, respect, fairness, learning and integrity toward clients, as an officer of the legal system, and as a public citizen with special responsibilities for the quality of justice.”
CHANGING BEHAVIORS
CONTROL

Yourself  Others
MAKE A PLAN

• Define your boundaries/limits:
  • “I will not ignore harmful comments or other microaggressions. I will assertively respond to all microaggressions when it is safe to do so.”
  • “I will support targets of microaggressions by taking anti-racist positions, opposing oppression, and by listening to and amplifying their interests, concerns, and accomplishments.”

• Decide on your response:
  • “I will calmly comment on the microaggression and state what behavior I would prefer.”
  • “I will calmly state that I find the microaggression offensive and state what behavior I would prefer instead.”

• Mentally rehearse your response:
  • “I notice your comments consistently refer to ______________. I would like you to treat me the same way you treat all the other directors.”
  • “I am uncomfortable with these comments about ______________. I would like us all to treat him/her/they the same way we treat one another.”

Source: https://www.manageangeraldaily.com/2021/10/microaggressions-at-work-trigger-anxiety/
GRAHAM’S HIERARCHY OF DISAGREEMENT

- Refuting the central point
  - Explicitly refutes the central point
- Refutation
  - Finds the mistake and explains why it’s mistaken using quotes
- Counterargument
  - Contradicts and then backs it up with reasoning and/or supporting evidence
- Contradiction
  - States the opposing case with little or no supporting evidence
- Responding to tone
  - Criticizes the tone of the writing without addressing the substance of the argument
- Ad hominem
  - Attacks the characteristics or authority of the writer without addressing the substance of the argument
- Name-calling
  - Sounds something like, “You are an ass hat.”
CHANGE YOUR BUT TO AN AND
PRACTICING WITH EMOTIONAL INTELLIGENCE
“EMOTIONAL INTELLIGENCE IS YOUR ABILITY TO RECOGNIZE AND UNDERSTAND EMOTIONS IN YOURSELF AND OTHERS, AND YOUR ABILITY TO USE THIS AWARENESS TO MANAGE YOUR BEHAVIOR AND RELATIONSHIPS.”

- Travis Bradberry, Emotional Intelligence 2.0
COMPONENTS OF EMOTIONAL INTELLIGENCE

- Self-Awareness
- Self-Management
- Social Awareness
- Relationship Management
<table>
<thead>
<tr>
<th>Personal Competence</th>
<th>Social Competence</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>How we manage ourselves</strong></td>
<td><strong>How we handle relationships with others</strong></td>
</tr>
<tr>
<td><strong>Self-Awareness</strong></td>
<td><strong>Empathy</strong></td>
</tr>
<tr>
<td>• Emotional awareness</td>
<td>• Understanding others</td>
</tr>
<tr>
<td>• Accurate self-assessment</td>
<td>• Developing others</td>
</tr>
<tr>
<td>• Self-confidence</td>
<td>• Service orientation</td>
</tr>
<tr>
<td><strong>Self-Regulation</strong></td>
<td>• Leveraging diversity</td>
</tr>
<tr>
<td>• Self-control</td>
<td>• Political awareness</td>
</tr>
<tr>
<td>• Trustworthiness</td>
<td></td>
</tr>
<tr>
<td>• Conscientiousness</td>
<td></td>
</tr>
<tr>
<td>• Adaptability</td>
<td></td>
</tr>
<tr>
<td>• Innovation</td>
<td></td>
</tr>
<tr>
<td><strong>Motivation</strong></td>
<td><strong>Social Skills</strong></td>
</tr>
<tr>
<td>• Achievement drive</td>
<td>• Influence</td>
</tr>
<tr>
<td>• Commitment</td>
<td>• Communication</td>
</tr>
<tr>
<td>• Initiative</td>
<td>• Conflict management</td>
</tr>
<tr>
<td>• Optimism</td>
<td>• Leadership</td>
</tr>
<tr>
<td></td>
<td>• Change catalyst</td>
</tr>
<tr>
<td></td>
<td>• Building bonds</td>
</tr>
<tr>
<td></td>
<td>• Collaboration and cooperation</td>
</tr>
<tr>
<td></td>
<td>• Team capabilities</td>
</tr>
</tbody>
</table>
FOUR BASIC ABILITIES

1. The ability to perceive and correctly express their emotions and other’s emotions.
2. The ability to use emotions in a way that facilitates and regulates thought.
3. The ability to understand emotions, emotional language, and emotional signals.
4. The ability to manage and regulate emotions and behavior to achieve goals.
EMOTIONS

• Emotions are psychological states that include subjective, physiological, and behavioral elements.
• Emotions are physical and instinctive, instantly prompting bodily reactions to threat, reward, and everything in between.
FIGHT OR FLIGHT RESPONSE
RESOLVING CONFLICT

To use emotional intelligence in conflict resolution, make calm statements of fact, ask questions, and listen.
ORGANIZATIONAL FOCUS FOR CIVILITY
ORGANIZATIONAL SOLUTIONS

• Demographics - hire, mentor, train and promote
• Human Resources - formal grievance system, director of workplace relations, open door policies
• Training - more than once a year and tailored to your organization, focus on more than legal liability and empower allies
• Leadership - model civility, coach others, mentors and mentees, everyone needs to attend the training, policies should reward civil behavior and not punish it
• Employee Relations - decrease isolation, team building activities, create a culture that values DEI and community, use inclusion strategies, have appropriate harassment polices and procedures, communicate from the top down
EMPLOYEE SATISFACTION AND RETENTION
ACTING WITH CIVILITY

The research conclusively bears out:
1. civil lawyers are more effective and achieve better outcomes;
2. civil lawyers build better reputations;
3. civility breeds job satisfaction; and
4. incivility may invite attorney discipline.