



A. Charles Dell'Ario

*We've been talking* about lack of lawyer civility for years, but is anything getting better? Judging from recent events, Congress certainly has not learned anything. The president of the ABA, Stephen N. Zack, recently addressed the association at the annual convention. Too often today, he said, the approach people take to political discussion and debate is characterized by an attitude that, as he described it, "*I disagree with you, and not only that, but you're a bum, and I'm going to yell so loud I can't hear what you're saying.*"

The courtroom isn't much better.

In my world of appellate practice, it's hard to tell because the appellate courts seem to be a bastion of civility. Appellate judges are less tolerant of unseemly behavior, perhaps. So I was surprised to receive a letter that could only be described as vituperative from a 30-year trial lawyer responding to a courtesy copy of a notice of appeal I sent her. It was spiced with threats of sanction (in a situation where none were available) and punctuated with **underscored words and bold-faced type**. I would have thought the letter silly, but for the antagonistic attack on me as well as on our position.

I suppose I should have been happy that my correspondence with my opponent did not descend to the depths traveled by two Florida lawyers who blasted

each other through email. One wrote that the other should look in the mirror to see signs of a disability. "Then check your children (if they are even yours. . . . Better check the garbage man that comes by your trailer to make sure they don't look like him)." The attorney stated, after learning the former's son suffers from a birth defect: "While I am sorry to hear about your disabled child, that sort of thing is to be expected when a retard

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reproduces." The Florida bar appropriately imposed disciplinary sanctions against them both.

Many reasons are advanced for the phenomenon of declining civility: technological innovations which intensify the pace and stress of practice; competition for clients; expansion of law firms, courts, and numbers of judges, thus reducing the incentive to maintain cordial relationships with other counsel because the lawyers may not meet again; the mushrooming of discovery, perhaps fostering discovery abuse and sanctions; the decline of men-

toring and apprenticeships in which older lawyers passed down a tradition of civility to younger lawyers; the inordinate pressure to bill hours, particularly in large firms; and the judge's tolerance of uncivil behavior. Whatever the cause, incivility can make the practice of law seem intolerable.

A lawyer's relationship with opposing counsel can set the tone for the case. For instance, when your first interaction with opposing counsel is civil, the case tends to go more smoothly for everyone, e.g., extensions are not unreasonably withheld, scheduling orders are stipulated, telephone calls and correspondence are promptly returned, etc. As a result, civil counsel save their clients time and money, and earn appreciation and respect from opposing counsel. However aggrieved we may feel, the better course is to always follow the high ground. A good rule of thumb is to never put in a letter or email something you would not want to see in your opponent's declaration. Save your adjectives for that blockbuster novel you're writing. ♦

— Chuck Dell'Ario graduated from Stanford and Hastings, where he founded the *Hastings Constitutional Law Quarterly*. He's practiced law in Oakland since 1974 and has been a certified appellate specialist since 1997. His resume includes million-dollar jury verdicts.