

**Civility in the Legal Profession:
How legal professionals can combat
incivility, bias, discrimination, and
harassment within our profession**

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How legal professionals can combat incivility, bias, discrimination, and harassment within our profession

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Outline

- What's the Problem?
- What Rules Apply?
- Beyond the Rules, What are the Benefits of Civility and Inclusivity?
- How Do We Work Toward Civility and Inclusivity in the Iowa Legal Profession?

What's the Problem?

What is Incivility?

- Sarcastic, condescending attitude
- Negotiating in bad faith
- Inflammatory writings in correspondence, memos, briefs, or motions
- Playing hardball without reason
- Indiscriminate or frivolous use of pleadings or motions
- Inappropriate interruptions of others
- Inappropriate language or comments in letters or email
- Swearing, verbal abuse, or belittling language
- Inappropriate comments about a lawyer's age or experience
- Sexist comments
- Racially or culturally insensitive comments

Common Contributors to Incivility

- "Win at all costs" mentality
- Poor morals or ethics
- Stress and pressure of the legal profession
- Client demands
- Poor mentoring/training of young attorneys
- Adversarial system
- Rise in profit orientation of legal profession
- Overburdened trial judges
- Lack of preparation

Incivility is most likely to occur in situations where a lawyer believes the behavior will not be detected by third parties.

Emails and written correspondence are the leading sources of uncivil behavior.

Gender Harassment, Discrimination, and Bias: The Hard Numbers

In the past five years, have you experienced or witnessed behavior that you felt demonstrated harassment or discrimination on the basis of gender, or other forms of gender bias, in the practice of law?

Answered: 303 Skipped: 0

ANSWER CHOICES	RESPONSES
Yes	74.6% 227
No	25.38% 76
TOTAL	303

Men respondents:

- Yes: 25
- No: 47
- (35% answered "yes")

Women respondents:

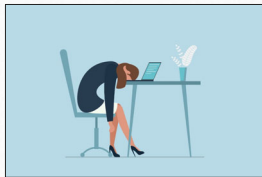
- Yes: 190
- No: 37
- (84% answered "yes")

Examples of Problematic Conduct

- ❖ Assuming roles based on sex/gender/race
- ❖ Using informal language for women and formal language for men
- ❖ Using demeaning nicknames
- ❖ Interrupting women more frequently than men
- ❖ Ignoring women and/or taking credit for women's ideas or work
- ❖ Inequitable distribution of work and opportunities
- ❖ Expecting women to serve as note-taker in a room full of equals
- ❖ Commenting on women's attire or physical appearance

Consequences of Incivility and other Problematic Conduct

- Taxes everyone's patience
- Prolongs pretrial discovery and negotiations
- Leads to an increase in litigation costs
- Harms public and client confidence in the legal profession
- Leads to burnout
- Shifts the focus from the merits of the case to the uncivil behavior



“The **costs** associated with **adversarial conduct** in pre-trial discovery have become a serious burden to the American judicial system. This burden rises significantly in discovery of electronically stored information (“ESI”).”

“Lawyers have **twin duties of loyalty**: While they are retained to be **zealous advocates** for their clients, they bear a **professional obligation** to conduct discovery in a **diligent** and **candid** manner.”

Copyright 2008, The Sedona Conference, available at <http://www.ned.uscourts.gov/attorney/continuing-legal-education/archived-course-material>.

What Rules Apply?

In the legal profession, lawyers and judges should demonstrate civility to _____?

**Iowa Rules of Court, Chapter 33
Standards for Professional Conduct**

Rule 33.1, Preamble

33.1(1) 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 our duty to represent a client vigorously as lawyers, we will 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.

Standards for Professional Conduct cont'd

- Rule 33.1(2) A **judge's** conduct should be characterized at all times by **courtesy** and **patience** toward all participants. As judges we owe to all participants in a legal proceeding respect, diligence, punctuality and protection against unjust and improper criticism or attack.
- Rule 33.1(3) Conduct that may be characterized as uncivil, abrasive, abusive, hostile or obstructive impedes the fundamental goal of resolving disputes rationally, peacefully and efficiently. Such conduct tends to delay and often to deny justice.

Standards for Professional Conduct cont'd

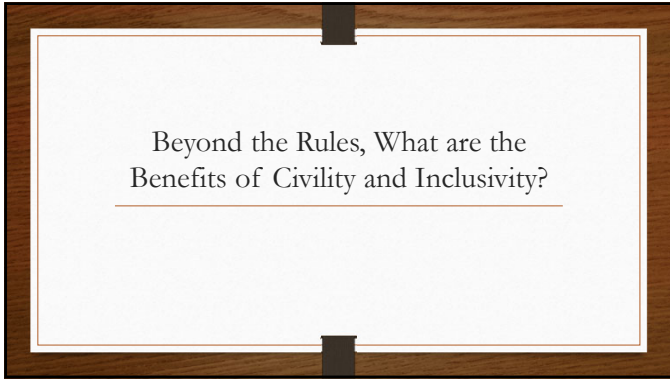
- Rule 33.2: **Lawyers' duties to other counsel.**
Thirty-two subsections
- Rule 33.3: **Lawyers' duties to the court.**
Eight subsections
- Rule 33.4: **Courts' duties to lawyers.**
Twelve subsections
- Rule 33.5: **Judges' duties to each other.**
Three subsections

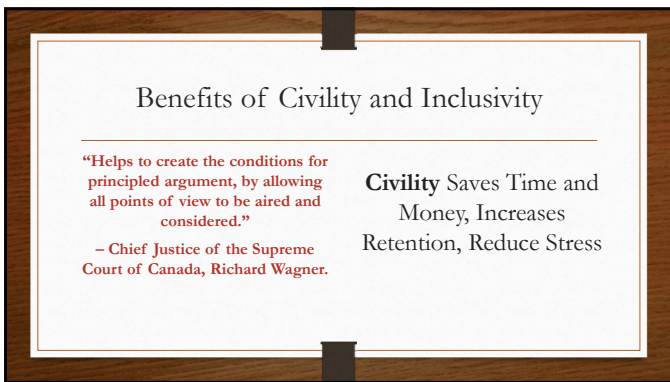
Iowa Rules of Court, Chapter 32 Iowa Rules of Professional Conduct

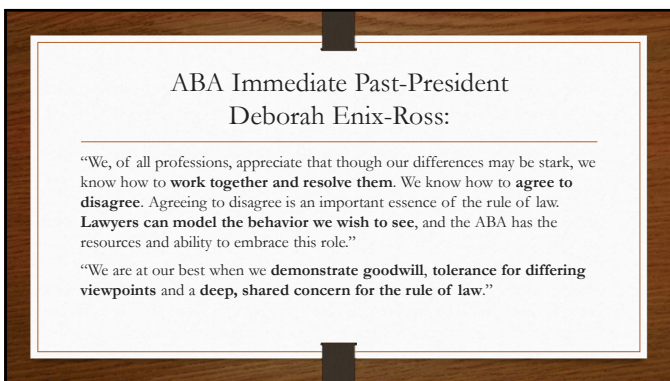
- Rule 32:8.4: Misconduct:
It is professional misconduct for a lawyer to:
 - (a) violate or attempt to violate the Iowa Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
 - ...
 - (d) engage in conduct that is prejudicial to the administration of justice;
 - ...
 - (g) engage in sexual harassment or other unlawful discrimination in the practice of law or knowingly permit staff or agents subject to the lawyer's direction and control to do so.

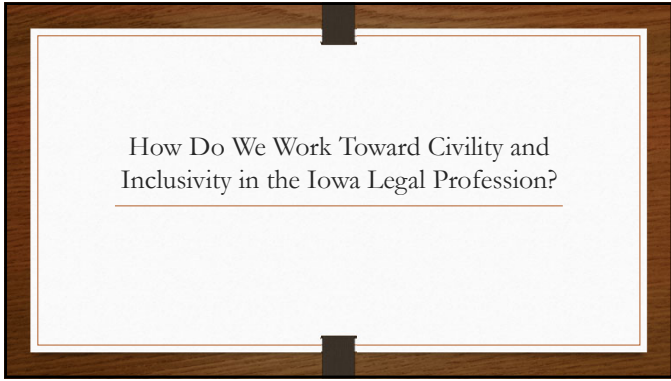
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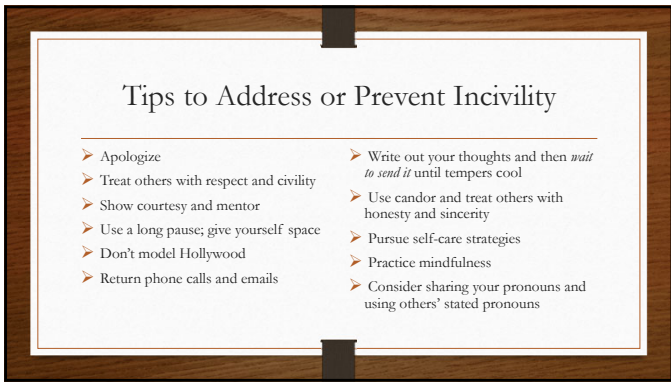
- Rule 32:8.4: Misconduct:
It is professional misconduct for a lawyer to: ... (d) engage in conduct that is prejudicial to the administration of justice;
- Rule 32:8.4: Misconduct – Comment [3]:
A lawyer who, in the course of representing a client, knowingly manifests, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, violates paragraph (d) when such actions are prejudicial to the administration of justice. Legitimate advocacy respecting the foregoing factors does not violate paragraph (d). A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this rule. For another reference to discrimination as professional misconduct, see paragraph (g).

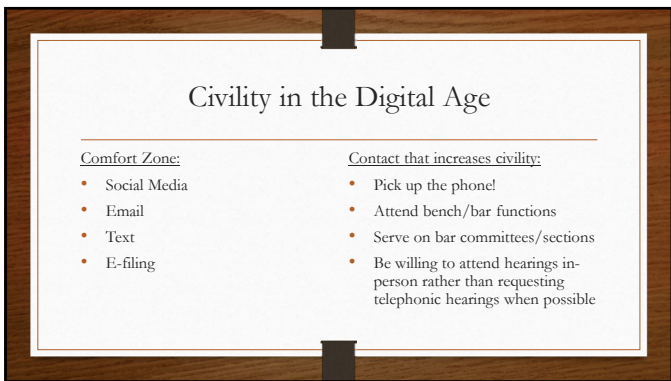












Cross-Generational Mentoring

- Millennials will soon be the largest percentage of attorneys in the profession, when compared to other generations, and Gen-Z is starting to join the profession.
- Cross-generational mentoring is crucial to ensure the civility-focused practices of past generations take hold with the newer generations of attorneys.

Cross-Gender Mentoring

- The Billy Graham Rule: Men avoid spending time alone with women to whom they are not married.
- LeanIn's #MentorHer initiative focuses on cross-gender mentoring and ways in which it can be done effectively and appropriately following the #metoo backlash and the increasing use of the Billy Graham Rule.
- What should men do?
 - Be a champion for the women in your office and in the legal community
 - Give actionable advice to your mentee
 - Give skills-based feedback to help them improve their performance

Create a New Culture

- Interrupt interrupters
- Educate leadership, supervisors, and human resources
- Encourage your workplace to participate in diversity & inclusion initiatives
 - <https://www.unitedwaydm.org/equity-challenge>
 - https://www.americanbar.org/groups/labor_law/membership/equal_opportunity/?fbclid=IwAR2uLSO7a-f3pRdShiOG8iVqXdip-Q7G9SfqrUzy5-Fzzzj5Z4G0D1hWiE
- Institute more inclusive legal-social activities

Report Inappropriate Conduct + Collect Data

- Data collection and reporting
- Empower the person who experienced the inappropriate conduct
- Consider the timing of reporting the conduct or taking other action
- Practice your response in advance
 - 50 Ways to Fight Bias, available at: <https://homin.org/gender-bias-ways>

Questions?

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Resources

- ❖ Report: Lawyers Are Behaving Better, Particularly During Depositions – Esquire Depositions Solutions, Jan. 18, 2022, available at: <https://www.idsupra.com/legalnews/report-lawyers-are-behaving-better-8442411/>
- ❖ Why collegiality in the legal profession is important for lawyers, judges – and the law, Zena Olinyk, June 18, 2021, available at: <https://www.canadianlawyeromag.com/resources/practice-management/why-collegiality-in-the-legal-profession-is-important-for-lawyers-judges-and-the-law/337334>
- ❖ Managing the stress of incivility, Elizabeth Aspinall, April 20, 2022, available at: <https://nationalmagazine.ca/en-ca/articles/law/ethics/2022/managing-the-stress-of-incivility>
- ❖ Ginsburg-Scalia fellowship wants to train lawyers to get along, Karen Sloan, June 17, 2022, available at: <https://www.reuters.com/legal/legalindustry/ginsburg-scalia-fellowship-wants-train-lawyers-get-along-2022-06-17/>

Resources

- ❖ *How Lawyers Are Working to Change Their Industry's Diversity Problem*, McGirt, available at: <http://fortune.com/2017/08/30/the-Mansfield-rule-lawyers-diversity/>
- ❖ Mary Pat Gunderson, *Gender and the Language of Judicial Opinion Writing*, 21 Geo. J. Gender & L. 1, Fall 2019.
- ❖ Stephen R. Eckley, *I Have Been Warned Not to Write This Letter*, Iowa Lawyer, April 2018, pp. 4-5.
- ❖ Leslie Behaunek, Tim Hill, Andrea Jaeger, and Lindsay Vaught, *Gender Matters: An Ongoing Search for Practical Solutions to Address and Eliminate Bias, Harassment, Discrimination in the Iowa Legal Profession*, Iowa Lawyer, November 2018, pp. 16-18.

Resources

- ❖ Leslie Behaunek, *Gender Matters: How Practitioners and Judges Can Address and Eliminate Bias, Harassment, and Discrimination in the Iowa Legal Profession*, Iowa Lawyer, February 2020, pp. 18-19.
- ❖ #MentorHer Initiative, available at <https://leanin.org/mentor-her/>
- ❖ *Men's Mentorship of Women at Odds with 'Pence Rule'*, Smith, available at <https://www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/male-mentorship-women-pence-rule.aspx>
- ❖ *The Men Who Mentor Women*, Valerio and Sawyer, available at <https://hbr.org/2016/12/the-men-who-mentor-women>

Resources

- ❖ *How Women Can Build Their Professional Networks*, Wall Street Journal, May 20, 2018, available at <https://www.wsj.com/articles/how-women-can-build-their-professional-networks-1526868480>
- ❖ *Zero Tolerance: Best Practices for Combating Sex-Based Harassment in the Legal Profession*, available to download pdf at <https://www.americanbar.org/groups/diversity/women/initiatives/awards/the-zero-tolerance-program-toolkit/>
- ❖ Melissa Higgins, *Babies at Work: Attorney parents look for creative solutions to achieve better work-life balance*, Iowa Lawyer, December 2019/January 2020, pp. 7-8.
- ❖ Torey Cuellar, *The Parental Leave Taskforce*, Iowa Lawyer, December 2019/January 2020, pp. 9-13.
