

Is Professional Courtesy Dead?

A FEW MONTHS AGO, I completed a case that did not go as well as my client had hoped. We believed in our client's position and felt that the facts supported the action and the desired outcome. Unfortunately for my client, the trier of fact did not agree.

Litigating the case to its completion included several motions and hearings, both on various factual and legal issues. Throughout the process, I maintained a professional distance, arguing zealously for my client's position but not taking the issues too personally. It seemed that opposing counsel could not so easily separate himself from the fray.

Upon receiving one of the other side's early pleadings, I was surprised to find that opposing counsel had personally attacked me. He argued not only the facts of the matter and the various points of law but he felt it necessary to impugn my character and integrity, making the matter much more personal than it should have been. By the time the last document was filed, shortly before the end of the matter, I was, unfortunately, no longer surprised by those attacks.

As a young attorney, I worked for a firm that handled various business matters and some collections. We also represented businesses that were creditors in various bankruptcies and so I appeared in federal court several times on those matters. Although some might argue that the matters I was handling were less contentious than many litigation matters, there were highly contested issues (both legal and

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factual) in some of those cases. Yet, despite the vigorously argued points, when the doors to the courtroom closed behind us as we exited, I could easily converse with counsel on more topics than the weather and the fact that the judge had been twenty minutes late taking the bench. Perhaps federal court is different but there seemed to be a general camaraderie amongst counsel that is lacking in many of today's courtrooms.

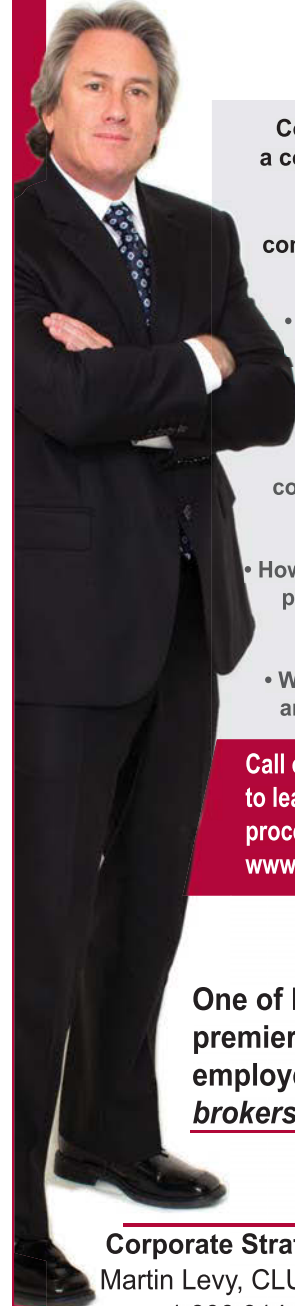
Another example of the interesting relationships between counsel occurred a few years ago when I took on a case in Bakersfield. Because the case involved a suit against a city agency, the county's counsel was involved. During an initial conversation, in which we discussed a recent filing I had submitted, he called me out for what he felt was a personal attack on him. We discussed it and after resolving that minor issue, were able to work together to get the matter resolved, even though we represented opposing parties.

Perhaps the sometimes hostile attitudes of counsel stem from the clients' wishes to attack and to vigorously pursue their claims. We get calls on a regular basis in which a potential client indicates that they want a "shark" or a "pit bull." In those cases, it is often difficult to navigate the fine line of respecting your client's wishes and trying to work with opposing counsel to achieve a desired result.

In another recent case, opposing counsel would often share anecdotes and make polite conversation. During a deposition, he attempted to engage

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my client in such conversation. Having sometimes done the same thing myself to relieve tension in the room, I saw nothing wrong in the exchange. Unfortunately, my client did. Several weeks later, in fact, the client was still fuming that opposing counsel would act in such a manner. The client also questioned a response of mine to counsel, in which I thanked counsel for his cooperation, and apparently took offense to my being courteous.

I explained to that client that I appreciated their emotional position with respect to the case, and that they were absolutely entitled to their opinion of opposing counsel and how he handled the case. However, I also explained that the likelihood existed that I would encounter opposing counsel again in another matter and wanted to maintain a good professional relationship. It is my belief that attorneys should remain professional


and courteous to one another, regardless of how the other side is acting.

Going back to my first example, I tried to continue to be courteous and professional to opposing counsel. I did not stoop to his level and return the personal attacks, although I did attempt to clarify some of the more glaring misstatements to the court, although I doubt the court spent much time considering those sideline issues.

I have to assume that he took on some of his client's apparent righteous indignation at having to defend a lawsuit and chose to litigate the matter that way, rather than considering other options of resolution, or ways to handle the case. Regardless, I was left wondering why the attorney would choose such an aggressive and personally directed tactic, particularly in a business related matter in which he was not personally invested.

I'm sure we have all had those clients who want to scorch the earth and leave the other side in ashes. For some, the temptation may be great to do just that and to obliterate the other side (both the party and counsel). At the same time, we should remember to temper our personal reactions to the cases. It is not for us to become emotionally involved in our clients' matters, although in some cases, I can certainly recognize that it might be difficult not to.

At the end of the day, we are advocates for our clients' positions. But when the dust settles and the clients go their respective ways, we are left to continue to wander the Halls of Justice. If we burn too many bridges with our opposing counsel, how can we expect courtesy in return on another case or at a later time? If we treat each other with respect now, odds are better that they will remember how we treated them when we need something (an extension of time to respond or a stipulation to continue a hearing or trial date) and they might be more willing to grant it.

Consider that the next time you find yourself getting emotionally involved in a case and remember that a little courtesy and respect goes a long way. 



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