



**TYSON &
MENDES**

EMBRACING CIVILITY IN AN UNCIVILIZED WORLD

May 20, 2021



JENN CRITTENDON



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WHY BE CIVIL?

“Smile on your brother; let's get together,
try to love one another right now.”

**LEGAL BASIS
FOR CIVILITY**

**CIVILITY IN
PRACTICE**

**ECONOMIC
BENEFITS**

**PERSONALIZE
THE CORPORATE
DEFENDANT**

**WHEN CIVILITY
GOES OUT THE
WINDOW**

ARE WE **REQUIRED** TO BE CIVIL?

POLL:

- YES
- NO

LEGAL BASIS FOR CIVILITY



CALIFORNIA

California Civil Procedure section 583.130: “It is the policy of the state that a plaintiff shall proceed with reasonable diligence in the prosecution of an action but that **all parties shall cooperate** in bringing the action to trial or other disposition.” That is not complicated language. No jury instruction defining any of its terms would be necessary if we were submitting it to a panel of nonlawyers. The policy of the state is that the parties to a lawsuit ‘shall cooperate.’ Period. Full stop.

LEGAL BASIS FOR CIVILITY

CALIFORNIA



- **California Rule of Court 9.7:** “As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy, and integrity.”
- **Rules of Professional Conduct 3.1 (a)(1):** “A lawyer shall not bring or continue an action, conduct a defense, assert a position in litigation, or take an appeal, without probable cause and for the purpose of harassing or maliciously injuring any person.”
- **Rules of Professional Conduct 3.3:** “A lawyer shall not offer false statements, or withhold legal authority directly adverse to the position of the client and not disclosed by opposing counsel, or offer false evidence.”

APPELLATE OPINIONS REGARDING CIVILITY



CALIFORNIA

- **Lossing v. Superior Court (1989) 207 Cal.App.3rd 635**
- **DeRose v. Heurlin (2002) 100 Cal.App.4th 158**
- **Kim v. Westmoore Partners, Inc. (2011) 201 Cal.App.4th 267**
- **Lasalle v. Vogel (2019) 36 Cal.App.5th 127**



WHAT IS THE LEGAL BASIS FOR CIVILITY OUTSIDE OF CALIFORNIA?

LEGAL BASIS FOR CIVILITY



FLORIDA

Bedoya v. Aventura Limousine & Transp. Serv., Inc.: 861 F.Supp.2d 1346

- Plaintiff's counsel violated professional conduct rules
 - Berated defense counsel
 - Played the game "Angry Birds" during deposition

LEGAL BASIS FOR CIVILITY



NEW YORK

- **New York State Standards of Civility:**
 - "The New York State Standards of Civility for the legal professions... are a set of guidelines intended to encourage lawyers, judges, and court personnel to observe **principles of civility and decorum**, and to confirm the legal profession's right as an **honorable and respected profession** where courtesy and civility are observed as a matter of course.

LEGAL BASIS FOR CIVILITY



TEXAS

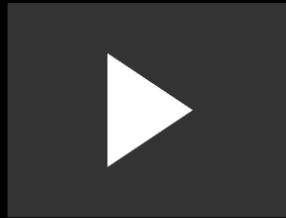
Texas Rule of Civil Procedure (TRCP) 191.2

- Expressly states the obligation of parties and their attorneys to **cooperate** in conducting discovery and to make agreements for efficient disposition of the case. Tex. R. Civ. P. 191.2

Dondi Properties v. Commerce Sav. & Loan Ass'n.: 121 F.R.D. 284

- With alarming frequency, we find that valuable judicial and attorney time is consumed in resolving unnecessary contention and sharp practices between lawyers.

WHAT NOT TO DO...

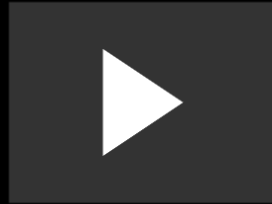


HOW CAN YOU BE MORE CIVIL?

- Starting Out Correctly
- Actually Talking to Each Other
- Being Civil Cannot Hurt
- Exchange of Information
- Discovery Disputes
- Bad Apples Still Exist

- “**Shut up** you crooks. Eat a bowl of **shit**.” (Declaration of Peter H. Klee, Ex. 1, p. 5)
- “I’m going to let the **big stick** of the law **beat** Allstate for all of us.” (*Id.*, p. 7)
- “Hey Klee you **bastard** the demand is now 302 million. Pay up **bastard**” (*Id.*, p. 8)
- “Peter when you are done **beating** your copy boy tell Allstate the demand is now 305 million.” (*Id.*, p. 9)
- “[Other Sheppard Mullin attorneys] may not be too smart but at least they have some **decent** dignity and honor unlike you two **impudent** mother **fuckers**” (*Id.*, p. 10)

CIVILITY IN THE COURTROOM?



ARE THERE ANY ECONOMIC BENEFITS TO CIVILITY?

- Saves Money!
- More Cooperation From Plaintiff's Counsel
 - Easier to **Resolve and Close Files**
- Cooperation and Civility on Both Sides
 - Can Achieve a **More Favorable Result**

PERSONALIZING THE CORPORATE DEFENDANT

PERSONALIZE THE CORPORATE CLIENT

- What do people typically know – or they think know – about a corporation?
 - Greedy
 - Deep pockets
 - They hurt someone



PERSONALIZE THE CORPORATE CLIENT

- The corporate representative will be present and a part of litigation in trial
- This witness may testify:
 - Their personal story of working with defendant
 - Origin story
 - Years in business



WHEN CIVILITY GOES OUT THE WINDOW

Do not let the jury know!

- Deflect! Opposing counsel will provide enough material!
- Kill them with kindness!

THE TAKEAWAY

“Do as adversaries do in law, strive mightily; but eat and drink as friends.”



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