

# Dinsmore



## CIVILITY OR INCIVILITY?

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### Addressing Behavior in the Legal Industry

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## PANELISTS

- **JESSICA NOLAN:** SVP, General Counsel of PLZ Aerospace Corp.
- **Honorable MIKE PANTER (Ret.):** ADR
- **NICOLE DANIEL:** Partner, Dinsmore
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## MODERATOR

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# CIVILITY AND THE LEGAL INDUSTRY

- **Our behavior is fundamental to professionalism**
  - Need to apply principles of civility to everyday behavior
- **Disturbing rise in incivility**
  - Not limited to the legal industry
- **Inflammatory legal writing, sarcastic, condescending communications**

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- **Disagreement ≠ incivility**
- **Zealous advocacy ≠ disrespect, personal attacks**
- **Civility = decency**

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# CAN'T WE ALL JUST GET ALONG?

## STATE OF THE INDUSTRY

- **Triggers for incivility**
- **Social media**
  - Less personal interaction
  - Misinterpretation of intent
- **Political climate**
- **Need to win above all else**
- **Deflecting responsibilities**
- **Bullying**
- **Pressure to succeed**


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# THE CAUSES?

- A. MORE LAWYERS PER CAPITA**
  - 1. INCREASED PRESSURE FOR CLIENTS AND CASES**
  - 2. STRESS AND SHORT TEMPER**
  - 3. NO MORE "GOES AROUND, COMES AROUND"**
  
- B. "THE LAW IS A BUSINESS"**
  
- C. MORE NON-LAWYERS PERFORMING LEGAL WORK = INCREASED COMPETITION**
  
- D. E-MAIL, SOCIAL MEDIA = LACK OF "CYBER RESTRAINT" AND "ONLINE DISINHIBITION RESTRAINT"**
  
- E. FEW SANCTIONS – EMBOLDENS LAWYER INCIVILITY**

A cosmic scene featuring Earth, the Moon, and Mars against a starry background with nebulae. Earth is on the left, the Moon is in the center, and Mars is on the right. The background is a deep blue space with a bright blue nebula on the left and a red nebula on the right.

**“WHAT PLANET  
ARE YOU FROM?”**



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**“I’M FROM PLANET CIVILITY...  
YOU SHOULD HOP IN YOUR  
ROCKETSHIP AND COME VISIT  
SOMETIME... MAYBE YOU’LL  
LEARN SOMETHING!”**

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# CIVILITY AND THE LEGAL INDUSTRY

- **Avoid battles, get to end point**
  - Be smart, not loud
  - Don't sweat small stuff
    - Fight when it matters
      - Determine factors/objectives important to opposing side
  - How “chummy” do you want to get with opposing counsel?
  - Distinction between litigation and transactional matters



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# IMPACT OF INCIVILITY

- **Views from the Bench!**
  - Impact on judges
  - Future rulings
  - Juries, mediators, arbitrators
  - Results, negotiations
  - Time/cost efficiencies
- **Increased time/fees - inefficiencies**
- **Personal health**
  - Addictions
- **Decreased job satisfaction**
- **Destroys reputation**
- **Attorney discipline**

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# STATEMENT OF PROFESSIONAL ASPIRATIONS

- 1. We will be courteous**
- 2. We will be cooperative**
- 3. We will be responsive and timely**
- 4. We will keep our word**
- 5. We will use fair tactics**
- 6. We will represent our professional ideals**
- 7. We will strive to improve the legal profession**
- 8. We will strive to serve our community**

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# ILLINOIS SUPREME COURT COMMISSION ON PROFESSIONALISM RULES OF PROFESSIONAL CONDUCT – CIVILITY

- **Rule 799 (a) instructs us to “promote among the lawyers and judges of Illinois principles of integrity, professionalism and civility.”**
- **1.3, Comment 1: “...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.”**
- **1.4 (a)(5): “A lawyer shall... consult with the client about any relevant limitation on the lawyer’s conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.”**

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## **COOK COUNTY – 13.11 CIVILITY** - (paraphrased)

- **Treat court, opposing counsel and witnesses in a civil and courteous manner in court and in written and oral communications**
- **Lawyer shall not, even when called upon by client to do so, engage in offensive conduct or contribute to hostility**
- **Lawyer shall not exceed bounds of zealous advocacy**
- **Lawyer shall not misquote, mischaracterize, misrepresent, miscite facts**
- **Lawyer shall not interrupt the court or opposing counsel**
- **Lawyer shall not engage in deliberately disruptive conduct**

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## TAKEAWAYS

- **Communicate expectations regarding civility with counsel**
- **Dealing with difficult people:**
  - Be prepared for difficult communications. Don't react!
  - Ignore opposing side's conduct and don't respond in-kind
    - Tips to diffuse situation
- **Document inappropriate behavior – calls, letters, witnesses**
- **Attempt to resolve differences before involving court (meet and confer)**
- **Evaluate all points of view**
  - Understand opposing party's objectives

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# TAKEAWAYS

Continued

- **Weigh the pros and cons of concession, accepting “no” for an answer**
- **When to hold your ground**
- **Discuss alternative proposals to reach a collaborative result**
- **Be a role model and mentor for young lawyers**
  - Build lawyer credibility. Build your brand!
  - What goes around, comes around
    - Establish and maintain credibility – future matters
- **Report incivility when appropriate**
- **Stay focused on end goal**
  - Deal with facts, ignore lies

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