

Catching Flies with Honey

By Adam J. Sheppard
CBA Editorial Board

As borne out by studies conducted by the Illinois Supreme Court's Committee on Professionalism, a majority of lawyers have encountered incivility in the profession. One of the highlights of last year's CLE Programming was "The Case for Civility." Four distinguished panelists led the seminar: Justice Michael Hyman (Illinois Appellate Court and past CBA President), Judge Claire McWilliams (Circuit Court of Cook County, Law Division), past President Aurora Abella-Austriaco (Austriaco & Associates, and Thomas Prindable (Cogan & Power). Timothy Tomasik (Tomasik, Kotin, Kasserman) moderated the program. This seminar focused on how to confront civility and how to improve the public's perception of lawyers.

Depositions

The panelists reviewed a series of real life examples of incivility depicted in video/audio clips. Depositions were a common venue for incivility. Justice Hyman explained that lawyers should make objections at a deposition in the same manner as they would in court. Judge Williams disapproved of "speaking objections" in depositions and in court. She cautioned that jurors can pick up on such misbehavior.

The panelists agreed that the best way to confront incivility in a deposition is to request to speak to opposing counsel outside of the presence of the clients. If the incivility becomes intolerable, end the deposition. If the incivility is particularly egregious, bring it to the judge's attention.

Email Communication

Email communication is an area that is also ripe for incivility. Abella-Austriaco advised that when drafting an email, particularly on a controversial issue, draft the content of the email but leave the recipient box blank; review the email at a later time and then decide whether to send it.

All of the panelists emphasized the need for clearer communication between opposing counsels. Justice Hyman suggested occasionally using the "phone" component of a "smart phone," as opposed to only emailing or texting opposing counsel. Opposing counsels can better discern each other's tone in a telephone conversation.

"Playing Hardball" Does Not Work

The panelists severely criticized "playing hardball" with opposing counsel—i.e., strategic incivility designed to intimidate opposing counsel or diminish the other side's resources. The panelists condemned opposing reasonable requests for extensions of time. "Playing hardball" is not cost-effective for the client. Judges also frown on litigation over trivial matters. The panelists opined that reducing the level of strategic incivility will improve the public's perception of lawyers.

Solutions

Potential actions to combat incivility include, but are not limited to, a law firm's discipline of their own lawyers who act uncivil, more training to judges on how to deal with incivility, and more bar association involvement and CLEs on this issue. See http://www.2civility.org/wpcontent/uploads/2013/12/surveyonprofessionalism_final.pdf at 16-17. ■

L.E.A.D. Series—Part 4: Developing A Coveted Expertise

Thursday, April 7, 12:00–1:15 pm

Location: K&L Gates LLP, 2nd Floor Conference Center, 70 West Madison, Chicago, IL

Presented by: YLS Executive Council

MCLE Credit: 1.00 IL MCLE Credit. Register at www.chicagobar.org/CLE

In the fourth of the new Young Lawyers Section speaker series, a panel of counsel from diverse practice areas at large firms will address "Developing a Coveted Expertise." It is becoming increasingly important for attorneys to become experts in specialized areas to stand out from the competition. In this panel discussion, we will examine how to develop an expertise in a niche practice area, and how to effectively market your expertise. The discussion will apply broadly to various practice areas and panelists will pull from their experience to provide advice to all attorneys trying to define their career path.

Participants: Jonathan Amarilio, Civil Appellate Litigation Practice Group, Taft Stettinius & Hollister LLP; Hillary Levun, White Collar & Investigations Practice Group, Perkins Coie; Aaron Morrow, IP Procurement and Portfolio Management Practice Group, K&L Gates LLP; and Rue Toland, Banking & Finance and Restructuring, Bankruptcy & Insolvency Practice Group Mayer Brown.