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Civility in a Time of Uncertainty

by Keith A. Call

As I write this from my home study on March 23, 2020, our community and world are in the midst of turmoil caused by the rapidly spreading coronavirus. Home offices have sprung up everywhere as we are being encouraged to stay home and avoid gatherings of more than ten people. Hearings, depositions, and mediations are being canceled. Court operations are being scaled back to only the most essential functions. We have all seen store shelves emptied of food and supplies, especially toilet paper, as people prepare to hunker down. And before we had any opportunity to get used to any of these ideas, people along the Wasatch Front were rattled by a moderately-sized earthquake.

It is an experience unprecedented in our lifetimes. As a community, there is a sense that we all hope things quickly improve, but we fear it may be worse before it gets better. By the time this article is published in early May, there is little doubt that things will have changed dramatically, either for better or worse, from what they are at the time of this writing.

What do the Utah Standards of Professionalism and Civility teach us for times like this? I dusted off a copy, read through it, and here are a few ideas.

Preamble and Standard No. 1 – Be Nice and Watch Out for Each Other

The Preamble includes the following (emphasis added):

A lawyer's conduct should be characterized by **personal courtesy and professional integrity in the fullest sense of all those terms**. In fulfilling a duty to represent a client vigorously as lawyers, we must 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. We must remain committed to the rule of law as the foundation for a just and peaceful society. . .

Lawyers should exhibit courtesy, candor and

cooperation in dealing with the public and participating in the legal system.

Utah Jud. Admin. Rule 14-301.

Standard No. 1 teaches that we should “treat all other counsel, parties, judges, witnesses, and other participants in all proceedings in a courteous and dignified manner.” *Id.*

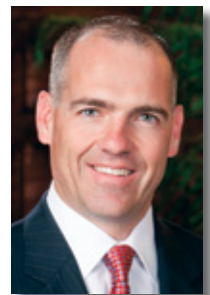
In the context of our day, the words “personal courtesy and professional integrity in the fullest sense of those terms” suggest to me that we should all pause for a moment, look past the disputes that divide us and our clients, and make sure that we, especially as fellow lawyers, are doing okay. Civility and personal courtesy should never be viewed as signs of weakness. *See id.* (Standard No. 2).

While continuing to zealously represent our clients, now is a good time to connect with our colleagues, including opposing counsel, to offer words of concern, hope, and encouragement. There is no doubt that *everyone* has felt and will continue to feel the effects of these unprecedented times, and many will feel them in profound ways. Let us demonstrate personal courtesy and professional integrity in the fullest sense of those terms by offering kind words and gestures to all within our profession.

Standard 13 – Don't Take Advantage of the Situation

A few days ago I saw many empty shelves in our neighborhood grocery store. Notably, there were no potatoes in the produce section, something my wife and I specifically wanted to buy. As

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we left the store parking lot, we saw some people selling bags of potatoes out of a trailer. I could not help but wonder if they bought all the potatoes in the store and were selling them for a premium. Later that night, I heard a news story of someone doing just that with toilet paper!

As lawyers, we should never take unfair advantage of a world or community crisis. For example, Standard No. 13 states, “Lawyers shall not knowingly file or serve motions, pleadings or other papers at a time calculated to unfairly limit other counsel’s opportunity to respond or to take unfair advantage of an opponent, or in a manner intended to take advantage of another lawyer’s unavailability.” Utah Jud. Admin. Rule 14-301.

Any effort to take unfair advantage of our world crisis should be frowned upon. Don’t do it!

Standards 14 and 15 – Scheduling with Civility

Lawyers should teach their clients that the lawyer reserves the right to determine whether to grant accommodations to others in all matters not directly affecting the merits of a cause or prejudicing a client’s rights. This includes extensions of time and continuances. *See id.* (Standard No. 14). Lawyers should also consult with other counsel so that depositions, hearings, and conferences are scheduled at mutually convenient times, and they should cooperate in making reasonable adjustments. *See id.* (Standard No. 15). Lawyers should not request extensions solely for the purposes of delay or tactical advantage. *See id.* (Standard No. 14).

These Standards may be some of the most difficult ones to apply

during these times. Many continuances and extensions of time have occurred and will necessarily occur because of coronavirus. The line between a courteous extension and prejudice to a client’s rights is not a bright one. Making these determinations will require “professional integrity in the fullest sense of those terms.”

Counsel should endeavor to accommodate each other as much as possible, while continuing to zealously advocate their clients’ legitimate rights. This may require all of us to learn to effectively use alternate means of continuing our work such as remote depositions and hearings. In every instance, even when counsel cannot agree on scheduling matters, civility and courtesy should remain paramount.

Conclusion

These worst of times can bring out the best in each of us. As lawyers, we can help set the tone for how our community and the world respond to current events, making it a spring of hope instead of a winter of despair, a season of light instead of darkness. *See* Charles Dickens, *A TALE OF TWO CITIES*, p. 1, (1859). We must find ways to continue to zealously advocate justice for our clients, while at the same time looking for solutions to societal problems in a rational, peaceful, and efficient manner. Let us all practice professional integrity in the fullest sense of those terms for the betterment of our clients and our society during these trying times.

Every case is different. This article should not be construed to state enforceable legal standards or to provide guidance for any particular case. The views expressed in this article are solely those of the author.