



CIVILITY AND THE LEGAL PROFESSION
A MODEL CLE PROGRAM FOR STATE AND LOCAL BAR
ASSOCIATIONS

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on behalf of the

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Promoting Civility within the Legal Profession

A Discussion Guide for State and Local Bar Associations

The American Bar Association House of Delegates has called upon all lawyers to take meaningful steps to improve the tone of discourse not only within the legal profession, but in society as well. This Discussion Guide, prepared by the ABA Section of Dispute Resolution, is intended to provoke discussion and dialogue with the hope that bar organizations will undertake concrete steps to make the House of Delegates Resolution a true call for action.

This Discussion Guide has two parts: “Civility within the Profession” and “Civility in the Public Sphere.” Each part is broken down into a number of specific topics and each topic has a related appendix with additional discussion questions, cases, article citations, and online resources to help facilitators prepare for and manage the discussion. This guide is intended to form the basis of a one hour Continuing Legal Education program.

Part 1: Civility within the Profession

These topics address the role of civil discourse between lawyers, clients, and judges inside the courtroom and during professional interactions. It is also meant to spur discussion as to how civil discourse should be approached in law schools, by bar associations, and in CLE.

Topic 1: What does civil discourse mean as it pertains to the practice of law? Is it important to act with civility toward one's adversaries? Why or why not?

Topic 2: Some state and local bar associations have adopted codes or standards that impose obligations on lawyers to be courteous to one another. Is that a good idea? How should such codes be enforced?

Topic 3: Many states have professionalism courses for new lawyers. Do these courses adequately address issues of civility? Do they work?

Topic 4: All law schools teach professionalism and legal ethics. Are law schools doing enough to educate law students about the importance of civility?

Part 2: Civility in the Public Sphere

These topics address the role of civil discourse between lawyers and their respective communities. It is meant to spur discussion about the role a lawyer can play during public debate and in the democratic process.

Topic 5: How would we characterize the civility of lawyers in our state (city)? Do we think improvement is needed?

Topic 6: Lawyers have a special obligation as community leaders to promote civility in resolving public conflicts. How can lawyers do this in our state (city)?

Topic 7: What is a lawyer's role in the democratic process? What is deliberative democracy, and how can a lawyer play a role in promoting this within their community?

Topic 8: What are simple and concrete actions a lawyer or firm can take to promote civil discourse within their community?

Conclusion

1. What is your main take away from this discussion?
2. Do you have a better understanding of the differences and similarities between civic discourse in the professional and public sphere? If so, can you explain?

Appendix A

Topic 1: What does civil discourse mean as it pertains to the practice of law? Is it important to act with civility toward one's adversaries? Why or why not?

Questions to Further Facilitate Discussion:

1. Is there anything inconsistent between being civil to one's adversaries and effectively representing one's clients?
2. Can you give examples from in and out of the courtroom of how civil discourse, or lack thereof, has affected the course of actions by involved parties?
3. Do you see a conflict between civil discourse and zealous defense of a client? Why or why not?
4. How accurate do you feel the claims are that civic discourse has declined?

Resources to Guide Discussion:

- For the purpose of discussion, use the definition of civic discourse set forth by Resolution 108, which defines civil public discourse as a “*means of civic engagement that encourages people of all political persuasions to vigorously but responsibly debate the choices that face our communities and our country today. Key elements include dialogue, respectful communication, and informed public decision-making.*” This definition is taken from the National Institute of Civil Public Discourse.
- Multiple organizations provide resources for lawyers who wish to learn more about the idea of civility in public discourse including the following:
 - [Institute for Civil Discourse and Democracy](#)
 - [National Institute for Civil Discourse](#)
 - [Project Civil Discourse](#)

Essays and Articles:

American Board of Trial Advocates, *Why Civility and Why Now?*, available at <https://www.abota.org/docDownload/109051>.

Stephen L. Pepper, *The Lawyer's Amoral Ethical Role: A Defense, a Problem, and Some Possibilities*, 11 AMER. BAR FOUNDATION RES. J. 613 (1986).

Case Studies:

[Christian v. Mattell, Inc.](#), 286 F.3d 1118 (9th Cir. 2002).

[Carroll v. The Jaques Admiralty Law Firm](#), 926 F. Supp. 1282 (E.D. Tex. 1996).

Appendix B

Topic 2: Some state and local bar associations have adopted codes or standards that impose obligations on lawyers to be courteous to one another. Is that a good idea? How should such codes be enforced?

Further Questions to Facilitate Discussion:

1. How does a code influence your behavior? Significantly? Not at all?
2. How seriously are courtesy or civility codes taken? Do you think they are an effective way to affect behavior?
3. How do co-workers, judges, and clients affect your ability to follow these codes?

Resources to Guide Discussion:

- The [American Bar Association](#) provides links to each state's professionalism codes for reference and cross-comparison during discussion.
- The [American Board of Trial Advocates](#) created a document called "Principles of Civility, Integrity, and Professionalism" to supplement their Code of Professionalism.
- The American Bar Association provides [Model Rules of Professional Conduct](#). This does not contain any explicit calls for civility but serves as the primary model for how lawyers should behave in both the professional and public sphere.
- The [National Conference of State Legislatures](#) recently passed a Civility Accord.

Essays and Articles:

Donald E. Campbell, *Raise Your Right Hand and Swear to Be Civil: Defining Civility as an Obligation of Professional Responsibility*, 47 GONZ. L. REV. 99 (2011)

Brent E. Dickson & Julia Bunton Jackson, *Renewing Lawyer Civility*, 28 VAL. U. L. REV. 531 (1994).

Appendix C

Topic 3: Many states have professionalism courses for new lawyers. Do these courses adequately address issues of civility? Do they work?

Further Questions to Facilitate Discussion:

1. What courses have you taken for CLE?
2. Have any of them specifically addressed civility?
3. In what terms was civility discussed? Civility toward other lawyers, toward judges, toward clients, or toward public debate?
4. What types of professional development courses do you prefer? Would you seek out one focusing on civility?
5. If you have taken a CLE course on this topic, what did you learn from it, and did it encourage you to change your actions?

Resources to Guide Discussion:

- To see what courses are offered in your area or if you want to provide lawyers with a list of options for future courses, please refer to the following list of resources. The CLE Center provides information on requirements for each state:
[ABA](#)
[Federal Bar Association](#)
[Practicing Law Institute](#)
[American Law Institute](#)
[The Center for American and International Law](#)
[The Institute of American and Talmudic Law](#)
[CLE Center](#)
[Baran CLE - Continuing Legal Education Blog](#)
[National Academy of Continuing Legal Education](#)
- Robert's Fund is a nonprofit working to increase civility through CLE and professional outreach. Their website includes articles and resources.
<http://www.robertsfund.org>

Essays and Articles:

The [American Bar Association](#) provides a comprehensive list of scholarly resources regarding general professionalism education. The following three provide a brief overview of professionalism and civility through CLE.

Joseph J. Ortego & Lindsay Maleson, *Incivility: An Insult to the Professional and the Profession*, available at <http://apps.americanbar.org/abapubs/lrc/pdfs/ortego.pdf>.

James A. George, *The "Rambo" Problem: Is Mandatory CLE the Way Back to Atticus?*, 62 LA. L. REV. 467 (2002).

Keith W. Rizzardi, *Defining Professionalism: I Know It When I See It*, 70 FL. BAR J. 38 (2005).

Appendix D

Topic 4: All law schools teach professionalism and legal ethics. Are law schools doing enough to educate law students about the importance of civility?

Further Questions to Facilitate Discussion:

1. What courses did you take in professionalism and legal ethics during your law program? What did you learn from these courses?
2. How did these courses contribute to your knowledge and actions in the professional sphere?
3. Do you think these courses effectively address civility? What do you think is the most effective way to educate a future lawyer about civil discourse?
4. Is it necessary to teach civility in these courses? Why or why not?

Resources to Guide Discussion:

- The [Democracy Imperative](#) has created a syllabi repository that includes course information regarding deliberative democracy, inclusive dialogue, public reasoning, conflict management and transformation, and social and political policy and decision making. This may serve as a useful resource for information on how civility is addressed outside of traditional professionalism and legal ethics courses.

Essays and Articles:

Robert Granfield & Thomas Koenig, “*It’s Hard to be a Human Being and a Lawyer*”: *Young Attorneys and the Confrontation with Ethical Ambiguity in Legal Practice*, 105 W. VA. L. REV. 495 (2002-2003).

Russell G. Pearce, *Teaching Ethics Seriously: Legal Ethics as the Most Important Subject in Law School*, 29 LOY. U. CHI. L. J. 719 (1997-1998).

Nancy L. Thomas, *Why It Is Imperative to Strengthen American Democracy Through Study, Dialogue, and Change in Higher Education*, 6 J. OF PUBLIC DELIBERATION 1 (2010).

Appendix E

Topic 5: How would we characterize the civility of lawyers in our state (city)? Do we think improvement is needed?

Further Questions to Facilitate Discussion:

1. Civility has been a hot topic in the news. Are there any incidents regarding civility or lack thereof that come to mind in your community?
2. What sort of improvement can actually be made? Setting an example? Mentorships? Change in culture? Do you think it is possible to improve civility? Why or why not?
3. How often is this idea discussed among co-workers or at work? Do you think civility has declined, remained the same, or increased during your time in the profession?

Resources to Guide Discussion:

- Multiple organizations address civility at the local, state, and national level. Most of these organizations advocate and work for increased civility in the public sphere. Looking at the resources and news updates from these organizations will be helpful in guiding a discussion about how communities are responding.

[CIVICUS](#)

[Institute for Civility in Government](#)

[National Institute for Civil Discourse](#)

Essays and Articles:

- Many news articles and editorials have focused on a perceived decline in civility. The following provide a starting point for a discussion on local communities.

“[Our Civility Deficit](#)” by Gregory Rodriguez in the *L.A. Times*.

“[Civility is Golden](#)” by Kathleen Parker in the *Washington Post*.

“[What Happened to Civility?](#)” by Steve Crosby and David Tebaldi in *The Boston Globe*.

Appendix F

Topic 6: Lawyers have a special obligation as community leaders to promote civility in resolving public conflicts. How can lawyers do this in our state (city)?

Further Questions to Facilitate Discussion:

1. What role can a lawyer take in conflicts over public policy? Have you taken a role before and what was your experience?
2. How do you think Americans feel about the state of civility in our country?
3. Have you seen examples where lawyers have played a significant role in resolving a conflict? Conversely, have you seen examples where lawyers have ignited a conflict?
4. What public conflicts are occurring in your community or state where you can play a role? Do you have an interest in participating? Why or why not?

Resources to Guide Discussion:

- The “[Civility in America](#)” poll released by Weber Shandwick revealed that 94% of Americans consider the general tone and level of civility in the country today a problem, and 65% of Americans believe civility is a “major” problem. Further, 91% believed that business leaders should set an example and be careful to always behave with civility. Also, 67% believe that there is a critical need for civility training in the workplace.
- To guide discussion, it may be helpful to refer to Resolution 108, which outlines a few key reasons why lawyers should promote civil discourse including the following:
 - Lawyers are leaders in society and often have gravitas and a platform to be heard.
 - Lawyers play many roles such as advocates for clients, as members of community boards, as judges, as elected officials, and as political advisors and media experts.

Essays and Articles:

Cheshire Calhoun, *The Virtue of Civility*, 29 *PHILOSOPHY & PUBLIC AFFAIRS* 251 (2000).

James Q. Whitman, *Enforcing Civility and Respect: Three Societies*, 109 *YALE L. J.* 1279 (2000).

Appendix G

Topic 7: What is a lawyer's role in the democratic process? What is deliberative democracy, and how can a lawyer play a role in promoting it within their community?

Further Questions to Facilitate Discussion:

1. What is your opinion on the current state of political debate? Do you think its current state enhances or obstructs the deliberative process?
2. Have you attended a public debate or town hall meeting? If so, what was your opinion on how people discussed issues?
3. What organizations or activities are you involved with outside of your law practice where deliberation takes place?

Resources to Guide Discussion:

- According to the Deliberative Democracy Consortium, deliberative democracy is “a strengthening of citizen voices in governance by including people of all races, classes, ages and geographies in deliberations that directly affect public decisions. As a result, citizens influence and can see the result of their influence on the policy and resource decisions that impact their daily lives and futures.”
- Multiple organizations provide resources for lawyers who wish to learn more about deliberative democracy. Many of these organizations provide guides and resources for how to conduct dialogue and deliberation including the following:

[America Speaks](#)
[Center for Deliberative Democracy](#)
[Conversations Cafe](#)
[Deliberative Democracy Consortium](#)
[Democracy Imperative](#)
[Everyday Democracy](#)
[The Institute for Local Government](#)
[League of Women Voters](#)
[National Coalition for Dialogue and Deliberation](#)
[Public Conversations Project](#)

Essays and Articles:

Baogang He, *A Deliberative Approach to the Tibet Autonomy Issue: Promoting Mutual Trust through Dialogue*, 50 ASIAN SURV. 709 (2010).

Colleen M Grogan & Michael K. Gusmano, *Deliberative Democracy in Theory and Practice: Connecticut's Medicaid Managed Care Council*, 5 ST. POL. & POL'Y Q. 126 (2005).

Lisa B. Bingham, *Collaborative Governance: Emerging Practices and the Incomplete Legal Framework for Citizen and Stakeholder Voice*, 2009 MO. J. OF DISP. RESOL. 269.

Appendix H

Topic 8: What are simple and concrete actions a lawyer or firm can take to promote civil discourse within their community?

Further Questions to Facilitate Discussion:

1. During our discussion, have you had any ideas regarding how you can promote civil discourse in your community? What are they?
2. What are ways you can promote this idea to fellow lawyers? Does your work atmosphere allow for promoting civic discourse?

Resources to Guide Discussion:

- To start this discussion, it may be helpful to give examples of what lawyers can do including the following:
 - Facilitate a dialogue in the community. [A Nuts and Bolts Guide](#) from Public Conversations Project is a good resource for providing an outline for community dialogue.
 - Serve as an example for roles in the public sphere such as participating on a board of a nonprofit, in a legal association, on the PTA, etc.
 - Be willing to integrate civility into professional life and with clients, and be conscious of interactions with community members when discussing political or heated topics.
 - Become involved with community centers that address this topic.
 - Hold panel discussions about civility at your local bar association.
 - Write an article addressing civility in public discourse for your community's newspaper.
 - Be willing to meet with groups who want to discuss the issue and provide resources for them such as guides and pamphlets that address deliberative dialogue and civility.