Nov. 11, 2013

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Section of Legal Education and Admissions to the Bar
American Bar Association
321 N. Clark Street, 21st Floor
Chicago, IL 60654-7958

Re:  Proposal to include "Civility Matters" curriculum in all law schools

Dear ABA Standards Review Committee Members:

This letter is submitted on behalf of the American Board of Trial Advocates (ABOTA). ABOTA is a national organization comprised of more than 7,000 civil jury trial lawyers dedicated to preservation of the 7th Amendment and civility in the practice of law.

ABOTA requests your support and assistance to create a mandatory civility component as part of the legal education in this country. Civility is most naturally taught during the existing Professional Responsibility courses and ABOTA is proposing to offer the “Civility Matters” program annually at every law school, at no charge.

ABOTA has dedicated more than 10 years of effort to development of a civility training program. This effort was deemed necessary to respond to the disheartening decline in civility nationwide. Focused on civil litigation, ABOTA lawyers have uniformly observed an ever-widening spiral of uncivil behavior, often developed in the absence of quality mentoring.

It is no secret that incivility in the legal profession has been a growing problem. ABOTA has long been concerned that many lawyers have lost sight of the fact that first and foremost, the practice of law is a profession and not just a business. It is now often a subject of public discussion. For example, the cover story for the January 2013 ABA Journal was “Keeping it Civil.” On January 28, 2013, The Wall Street Journal similarly recognized this crisis in our profession on the front page with an article entitled: “Lawyers Behaving Badly Get A Dressing Down From Civility Cops: Adversarial System Grows Obscenely Nasty; Get More Results With Sugar.” There can be no doubt that incivility is a major problem.

To respond to these growing concerns, ABOTA’s Professionalism, Ethics and Civility Committee undertook the daunting task of researching and attempting to identify the root cause of the problem. The committee then produced a series of recommendations, followed by actions focused on promoting civility in the practice of law.

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In this long process, we have learned that uncivil behavior is often a product of large and growing legal communities; a feeling that there will be no accountability; and a concomitant reluctance on the part of the judiciary to enforce concepts of civility. Only in very small communities where everyone knows everyone else is incivility kept more or less in check.

Faced with these realities, ABOTA researched and presented a variety of proposals, ultimately settling upon the fact that young, aspiring lawyers are the key. If these impressionable young advocates-to-be can be trained regarding the importance of professionalism and civility, it makes a remarkable difference when they later encounter incivility in the real world.

To test this concept, our committee members developed programs for presentation in the law schools. They also did market research by talking about the issues with law students, lawyers, psychologists and judges. Ultimately, considerable time and effort was spent to develop a DVD entitled, “Civility Matters,” designed to train law students regarding the importance of civility in the practice of law.

The DVD presents television and movie depictions of lawyers, together with sound bites of from prominent national trial lawyers and judges, including several Supreme Court justices. The format is entertaining while touching on a wide range of incivility issues.

This DVD was endorsed by the American Inns of Court and sponsored by the National Center for State Courts; the JAMS Foundation; the American Association for Justice; the Defense Research Institute; the Federal Bar Association; the Federation of Defense & Corporate Counsel; the Association of Defense Trial Attorneys; Primerus, and an ever growing list of bench and bar organizations.

ABOTA also published a magazine entitled, Civility Matters: Why Civility and Why Now? to promote the use of the video and related programs to teach civility across the country. ABOTA enlisted the aid of its local chapters to help. Since creation of the video, ABOTA panels, generally consisting of two ABOTA lawyers and a judge or justice, have presented “Civility Matters” programs in more than 1,000 law school classrooms and bench and bar presentations around the country.

In short, ABOTA is committed to eradication of avoidable incivility.

In furtherance of this goal, ABOTA lawyers have also pressed this cause to the Supreme Courts and legislatures around the country. The idea was to encourage the addition of a “civility” requirement in the oaths of practice administered to new lawyers. Not only will this elevate the importance of civility in the practice of law, it will reassure judges and justices that civility can be and must be preserved on a daily basis.

To date, our efforts have assisted in the development and passage of numerous amendments to the oaths being administered around the country. There are now 14 states administering an oath of practice that includes a promise of civility. An ABOTA map showing the growing list of states is attached for your review. We are advised that California will soon join that list.

Ultimately, the most valuable civility training a lawyer can receive will come from his or her law school. It is at that moment in their careers when they are most impressionable
and have not yet been molded by an uncivil practitioner. All too often young lawyers are convinced that so long as conduct is persuasive and not illegal, it is somehow desirable. Thus, they develop the impression that use of uncivil tactics will motivate their opposition to settle less favorably or withdraw from inevitable and unpleasant confrontations.

Not only is this unsound advice, it promotes a departure from every important principle embedded within our noble profession. Litigators are officers of the Court and sworn to uphold the Constitution. Uncivil litigation tactics neither advance the goals of the judicial system, the needs of their clients, nor promote a positive public impression of lawyers. The results of our systemic decline in this regard are the subject of countless lawyer jokes.

To reverse this trend, in 2013 ABOTA lawyers attended the Annual Meeting of the Association of American Law Schools to enlist the aid of law schools in teaching civility. We met with the deans and professors of law schools around the country to present “Civility Matters” to offer to teach civility to their students at no charge. We are pleased to report that many law schools accepted our offer.

However, we realized that as valuable and important as this process has been, there would always be students who graduate law school and will be sworn into practice with no training of any kind concerning the importance of civility in the practice of law. This is because as hard as we have tried, we have yet to reach the right individuals in many law schools. This means that all of the students from those schools will graduate every year without any appreciation for the pitfalls of incivility or the importance of incorporating civility into their emerging practices.

It is for this reason that we seek the considerable assistance of the American Bar Association’s Standards Review Committee. It is our hope that the committee will appreciate the importance of civility and the amazing opportunity that rests with you to create an enduring national training standard to promote civility in the practice of law.

Historically, bar leaders have by word and deed promoted civility with great success. In the 1950’s, 60’s and even into the 1970’s, young lawyers in the largest communities in the country were schooled in the importance of professionalism and civility by their mentors. But, as those great lawyers left the practice and civility became an increasingly virulent influence, it has become nearly impossible for any one group of lawyers in a community to stem the tide of incivility.

That’s why we have focused on law schools. We are convinced by our experience and efforts thus far that a single session, less than two hours of time, can change the course of history. Students who are inoculated with the civility vaccine, are far less likely to contract the incivility virus. The single presentation of a “Civility Matters” program plants the seed, which is needed.

It is for this reason that ABOTA urgently requests your support and assistance to create a mandatory civility component as part of the legal education in this country. It is our belief that civility is most naturally taught during the existing Professional Responsibility courses. Obviously, we are proud of our “Civility Matters” programs, and remain willing and able to offer a “Civility Matters” program annually at every law school, at no charge.
But, regardless whether it is an ABOTA “Civility Matters” program or some other equally thoughtful approach, there is a pressing need to include such training in law schools. We believe the subject is best taught during the students third year, when they have greater appreciation for the complex legal and ethical issues that can arise.

Accordingly, we are submitting this letter of request for your review and consideration. We are most certainly available for comment after you have reviewed the materials we have generated.

We thank you in advance for your consideration.

Very truly yours,

William R. Sieben
President
ABOTA Foundation

Michael T. Callahan
President
American Board of Trial Advocates

Enclosures: “Civility Matters” Presentations/State Civility Oaths U.S. map

Civility Matters: Why Civility and Why Now?

cc: American Association for Justice
    American Inns of Court
    Association of Defense Trial Attorneys
    David B. Casselman, Co-Chair Professionalism, Ethics & Civility Committee
    Defense Research Institute
    Federal Bar Association
    Federation of Defense & Corporate Counsel
    JAMS Foundation
    National Center for State Courts
    Primerus
    William B. Smith, Co-Chair Professionalism, Ethics & Civility Committee
    Donald J. Winder, Co-Chair Professionalism, Ethics & Civility Committee