A Changing Legal Profession Calls for Civility

by Dan Ballbach

Civility is beyond surface politeness; it is not avoidance of conflict or abandonment of self-interest. Rather, civility requires courage, humility, and engagement in respectful dialogue and problem-solving. The demands of today’s changing profession call for increased civility. Clients are demanding more for less. Firms can’t afford incivility — it sucks energy and time from law firm production. Most managing partners would say that “people problems” are the most time-consuming and frustrating part of the job.

Incivility is a direct threat to effective thinking. Over and over, I am struck by how we lawyers can sometimes be uncivil, disrespectful, and unable to engage effectively with our colleagues on tough internal topics. I had a “losing my civility” experience when a colleague said, “Dan, I understand that sometimes you need to use a two-by-four to get our attention, but does it need to have a nail in it?” When there is a “nail” in a communication from one partner to another, what happens to the dialogue? Analysis stalls and issues fester as we make the same points again and again, louder and louder, with clever stinging words.

Weak internal civility has another dimension. I was working on strategic planning with a law firm that had the reputation of working on tough internal topics. I had a “losing my civility” experience when a colleague said, “Dan, I understand that sometimes you need to use a two-by-four to get our attention, but does it need to have a nail in it?” When there is a “nail” in a communication from one partner to another, what happens to the dialogue? Analysis stalls and issues fester as we make the same points again and again, louder and louder, with clever stinging words.

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Firms talk about how “collegial” they are and use the term as a substitute for “civility.” The real question is how broad and deep is the collegiality or civility. Ultimately, civility connotes the level of respect and trust between individuals engaged in a common enterprise. Professional services, general business, and organizational thinking call for focused attention on civility. A deep and cultivated culture of civility can sustain a law firm, enable better decision-making, and strengthen the professional and business components of the firm.

Here are a few ideas to increase civility.

- Start at a personal level. Ask yourself if you are using a “nail.”
- Understand the firm culture. Incivility is often symptomatic, triggered by declining practice, compensation concerns, generational tension, risk aversion, pending retirement, conflict between intuitive and analytical ways of thinking, and other uncertainties and drivers of behavior. Even if the incivility comes from one or a few partners, it tends to be paralyzing and the firm is likely to tread water until it deals with the incivility. It takes time, empathy, reflection, listening, patience, self-reflection, and energy to understand the underlying sources of incivility. But when we are conscious of the context, we can explore creative ways to address the barriers. You must know your culture to change your culture.
- Try a specific initiative relevant to current pressures and intended to test civility. For example, look at profitability since profit margin is becoming more and more of a challenge. Or analyze a specific area of practice for its susceptibility to commoditization. Deal with incivility immediately. It is easier to hold each other accountable for incivility when the context is one of “we don’t have time for Bill and Jane to be tossing grenades at each other.” Building a culture of expected behavior takes practice in small, specific instances.

- Absent a specific action-oriented initiative, use education about pressures on the profession and how firms are making changes to meet those pressures. Analytical personalities employ facts to see the wisdom of change. You can thus defuse some of the incivility founded upon uncertainty and threats to existing ways of practicing. Move the conversation toward the implications of many new forms of legal services delivery being discussed and implemented.

- Define and develop leadership. What leadership is needed to initiate, manage, and nurture a different culture? Build a critical mass or coalition of lawyers who are most likely to see the serious implications of changes in the profession. Spend time energizing that group and develop leadership within that group.

The task is difficult, but the imperatives for civility are grounded in theory, research, and practice across multiple disciplines. Whether the times require change in your firm or not, civility is a necessary lubricant for change deliberation and decision-making. For professional, business, societal, and personal reasons, we should relentlessly cultivate our own and our firm’s civility.

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