

You Don't Have To Be a Jerk: The Case for Civility in the Profession

By Wendy R.S. O'Connor

The tales of bad behavior abound. The lawyer who never responds to phone messages and then demands an instantaneous response to his own. The advocate who criticizes your advocacy in front of your client. The opponent who calls his adversary an “a**hole” (or worse). These are all examples from my own practice, and they aren't even the worst.

Anyone who has been a litigator for more than a week probably has more than a few war stories about another lawyer who was a real jerk, and some of us are so used to such behavior that after a while, we stop noticing. The following quote from Mark A. Drummond seems to sum up the reality of being a litigation attorney:

“You signed up for this duty. No one put a gun to your head and forced you to pick trial work....Once you accept the fact that you have picked an area of law that possibly contains the greatest concentration of jerks, you'll be in a much better frame of mind. Jerks come with the territory. Confrontation is like oxygen to some attorneys. Live with it.”

<http://blog.nita.org/2013/07/dealing-with-jerks-what-goes-around-comes-around>.

In other words, a lack of civility is the reality of a litigation practice, and if you're going to survive, you'd better develop a pretty thick skin — quickly.

The thing is, it doesn't have to be this way. We don't have to act like jerks, and we generally feel better when we don't. But since most of us will come

across a jerk or two in the course of our careers, let's explore the hows and whys of jerk-dom and whether there might not be a better way to litigate.

Why Are We Jerks?

Theories abound as to why some lawyers are arrogant, rude or abusive. Poor behavior may be an attempt to mask inexperience or a lack of confidence. It could be an effort to intimidate or make the litigation process so unpleasant that the opposition folds out of sheer frustration and fatigue. As well, attorneys are taught, both in law school and once they enter the practice, to be cynical and to expect the worst of our fellow man. Next, litigation is inherently adversarial, and every dispute is seen as an opportunity to gain a strategic advantage. Factor in the toxicity of certain types of work environments, where the pressure to bill hours or produce results can push the most civil of advocates to behave badly. Put it all together and what you often end up with is...lawyers acting like jerks.

While such behavior is nothing new, the way most of us practice nowadays has exacerbated the problem. Unlike our predecessors, few of us limit our practices to a single county where a tightly-knit bar helped foster cordiality among adversaries. Similarly, many of us do not live in the communities in which we practice, where word of mouth or the likelihood of running into an opponent in the grocery store can be a powerful deterrent to jerk behavior.

Then there's email and its ability to transform otherwise judicious

professionals into deranged lunatics. The immediacy of email transmissions forecloses the reflection and judgment that would prevent us from expressing the same content in more formal correspondence, and we end up sending invective-laden screeds that we probably shouldn't. Whatever the reason, attorney bad behavior is rampant, as evidenced by the fact that many of us are choosing to leave the profession because we're sick of all the jerks.



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Am I a Jerk?

Many of us are so dismayed by our colleagues' conduct that we forget to look in the mirror and ask ourselves whether we might be part of the problem, but it's important that we do. To paraphrase Jeff Foxworthy, you might be a jerk if you:

- Raise your voice, use poor language, interrupt or hang up on a colleague
- Engage in personal attacks or disparage the knowledge or strategy of your adversary or
- Refuse to grant reasonable extensions or continuances
- Fail to timely return messages or correspondence
- Are consistently late
- Allow your personal feelings to interfere with common courtesies

I could go on, but suffice it to say that if you wouldn't want an adversary

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to do it to you, then it's probably "jerk" behavior which should be avoided.

Being a Jerk Hurts Everyone

Most of us recognize the value of maintaining a reputation for credibility and professionalism and understand that the behaviors described above tend to detract from that perception. Some believe that jerk behavior enhances their reputation, but the opposite is actually true. People tend to have a greater level of trust and respect for those who behave politely and professionally.

Being a jerk wastes time, while a cordial relationship with opposing counsel can promote mutual cooperation and decreases the need for court. Being a jerk can be an impediment to the efficient resolution of a matter if advocates become too deeply entrenched in their positions due to personal animus. In contrast, a friendly relationship between counsel often fosters a more productive environment in which to resolve a case. On a more global level, jerk behavior tends to put everyone in a bad mood, including the person who's

dishing it out. Moreover, when lawyers act like jerks, they confirm the prevailing public opinion of our profession, which is already fairly grim. At its most extreme, jerk-lawyer behavior can lead to self destructive, unethical or even illegal behaviors. In short, jerk behavior serves no one.

How Not to Be a Jerk

You can avoid being a jerk simply by observing common courtesy and manners such as saying "please" and "thank you," not interrupting and being respectful, candid, and cordial.

A few other suggestions:

When in doubt as to your adversary's meaning, don't shoot out an email and do pick up the phone to clarify what's going on.

When asked for a continuance or other accommodation, always say yes.

Resist the urge to meet insult for insult or to retaliate with bad behavior of your own — you will almost always regret it.

Try to ignore the behavior unless the

conduct is truly disruptive and/or issues of personal safety are involved (which is more common than you might think.) Trying to correct jerk behavior is usually unproductive and a waste of time.

Be friendly and pleasant with your opponent — it may actually elicit some modicum of reciprocity.

Allow for the possibility that you may be wrong.

Remember that it's just a case, and focus on your client's goals.

Know what pushes your buttons and plan in advance how to respond when those buttons get pushed.

We all can make some adjustments to the way we comport ourselves professionally. Being committed to civility may not have a huge impact on your bottom line (although it probably will, and for the better), but it will almost certainly make you feel better about yourself and the work you do, and it will make going to work far more enjoyable. Make a pledge to make that adjustment, and you might just find your outlook and perspective permanently changed.

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Take Action Now to Defeat a Sales Tax on Legal Services

The Pennsylvania Senate may soon vote on bill to eliminate school property taxes by raising various taxes, including a sales tax on most legal services. The PBA has continued to lobby directly against this legislation and is part of a coalition of organizations taking collective action as well. Please contact your state senator now to help defeat legislation that would harm you and your clients. Go to www.pabar.org [Legislative Action Center](#) for all the tools you need!

