



## Ethics/Professionalism Assignment: Civility in Communication

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### Adversarial Correspondence

#### Tips

- Begin a letter simply with “I am writing to ...”
  - (For a short reply e-mail where some informality is called for, you might skip this.)
- Do multiple drafts.
- Write for the judge. (Assume the judge will read it.)
- Avoid invective.
- Cut out adverbs.
- Put what you need in writing.
- Show how cooperative you are.

## Beginning

I am writing to confirm agreements we reached in our meet-and-confer telephone conference earlier today.

I write to respond to your letter of October 23, 2015, in which you demanded that my client cease operating his lawn mowing business.

This way of beginning a letter is standard and practical. There is no need for creativity here.

## Do multiple drafts

- There is no single better tool for improving your writing than to revise and rewrite what you have already written.
- This is not a waste of time - words are the attorney's product. You should always aim for a quality product

## Write for the judge

- You are always writing for a judge.
- Sometimes a jury, too.
- You can't bully a recipient with harsh language.
  - Unless they are unsophisticated - in which case *maybe*.
  - But then you will pay a price in credibility with the judge.
- Don't try to get the recipient to see it your way ...
- Get them to see that the judge will see it your way.

## Avoid invective

- Invective is insulting language.
- Judges can see invective a mile away.
- It shows the judge that you are not trying your best to get along.
- That lessens your credibility with the judge.
- Besides, what are the chances invective will help you?

## Invective Example

Your letter fails to state any legal authority for your absurd claim that my client's fasteners are responsible for the porch collapse.

## Invective Example

~~Your~~ The letter ~~fails to state~~ does not provide any legal authority for the ~~your absurd~~ claim that my client's fasteners are responsible for the porch collapse.

## Invective Example

After re-writing:

The letter does not provide any legal authority for the claim that my client's fasteners are responsible for the porch collapse.

## Cut out adverbs

- Cutting out adverbs is one of the quickest ways to make your writing more powerful and less shrill.
- Whenever you can, put your writing aside, come back to it later, and try to cut out adverbs.
- Ask yourself, “Can I possibly do without this adverb?”
- If the answer is yes, cut it out.

## Adverbs Example

The requests seek highly unusual documents for a product defect case. ... Document request no. 13 seeks completely irrelevant documents, and the production of those documents would be unduly burdensome.

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The requests seek ~~highly~~ unusual documents for a product defect case. ... Document request no. 13 seeks ~~completely~~ irrelevant documents, and the production of those documents would be unduly burdensome.

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## Put what you need in writing

- When you write, you are creating evidence.
  - evidence of notice
  - evidence of diligence
  - evidence of agreement
- So, create the evidence you'll need later on.
- If you are not writing to create evidence, then maybe a phone call or face-to-face meeting would be better.

## Adversarial Correspondence

## Show how cooperative you are

- Judges are extremely alert to how cooperative, professional, and civil attorneys are.
- If you impress a judge in this way, and if the other party does not, you will reap rewards in a million little ways.
  - credibility in a dispute with the other party over discovery, deadlines, etc.
  - credibility in making arguments and motions

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## Keep in mind:

- Being civil is unlikely to harm you or your client.
- Being civil is likely to help your relations with opposing counsel in dealing with the dispute efficiently and expeditiously - something you probably both want
- You are likely to be happier at the end of the day and feel a greater sense of professional fulfillment if you maintain civility.
- Your opposing counsel one day is your co-counsel the next.
- All lawyers are "in this together" in the endeavor to create a more just society.

## Adversarial Correspondence

## Your goals for your assignment:

- Brevity: Be much, much more concise than the e-mail to which you are responding.
- Courtesy: Use courteous language.
- Restraint: Refrain from answering rancor and invective with the same.
- Accuracy: Be accurate in what you say about the law.
- Advocacy: Safeguard your clients' interests.