

What's Your EQ? Be a More Professional, Civil, Effective and Satisfied Lawyer.

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| | | |
|----|--|----|
| i. | Definitions | ii |
| 1. | Utah Standards of Professionalism and Civility (handout) | |
| | a. Brief History of Utah Standards of Professionalism and Civility | 1 |
| | b. <i>Enforcing the Standards of Professionalism and Civility</i> | 2 |
| | c. Utah Supreme Court Standing Order No. 7 | 4 |
| | d. <i>The Power of Civility</i> | 5 |
| | e. <i>The Creative Lawyer: A Practical Guide to Authentic Professional Satisfaction</i> | 6 |
| 2. | Substance-Related and Mood / Anxiety Disorders [Diagnostic and Statistical Manual of Mental Disorders (4 th Ed.1994)] | 8 |
| 3. | Mini EQ Test (handout) | |
| 4. | Emotional Intelligence defined | 10 |
| 5. | I Message | 11 |
| 6. | <i>Emotional Intelligence 2.0.</i> (Bradberry, Travis and Jean Greaves. TalentSmart. California. 2009.) | |
| | a. Self-Awareness skill and 15 strategies | |
| | b. Self-Management skill and 17 strategies | |
| | c. Social Awareness skill and 17 strategies | |
| | d. Relationship Management skill and 17 strategies | |
| 7. | Emotional Intelligence Skills and Maslow's Hierarchy of Fundamental Human Needs | 12 |
| 8. | Basic Brain Structures Involved with Emotional Response | |
| | a. Amygdala - Home of the Fight-or-Flight Response | 13 |
| | b. Pre-Frontal Cortex - Growing into the Unique Ability Reason | 14 |
| | c. Uncinate Fasciculus - Bridging the Gap | 15 |
| 8. | Diaphragmatic Breathing: How to Prime Yourself to be Professional and Civil When It's Tough | |
| 16 | a. When Your Breath Just Stops | |
| | b. Respiratory Alkalosis | 17 |
| | Bibliography / References | |

Definitions

civility . . . 1 *archaic*: training in the humanities 2 a : COURTESY, POLITENESS b : a polite act or expression

professional . . . 1 . . . c : characterized by or conforming to the technical or ethical standards of a profession

professionalism . . . 1 : the conduct, aims, or qualities that characterize or mark a profession of a professional person . . .

Webster's New Collegiate Dictionary. G. & C. Merriam Co. Springfield, Massachusetts, U.S.A. 1975.

934. COURTESY

NOUNS 1. **courtesy**, courteousness, **politeness**, **civility**, amenity, urbanity, comity, affability; **graciousness**, gracefulness; complaisance, complacency; respect, respectfulness, deference.

6. a **courtesy**, **civility**, amenity, urbanity, attention, polite act, act of courtesy or politeness; favor 936.7.

Roget's International Thesaurus, Third edition. Thomas Y. Crowell Company, Inc. New York. 1962.

Neither *civility* nor *professionalism* are specifically defined in *Black's Law Dictionary* 4th Ed. West Publishing Co. St. Paul, Minn. 1951.

there was a problem with professionalism in Utah.

Nearly all attorneys surveyed came back saying they felt there was a “significant problem.”

In response, the Utah Supreme Court adopted twenty (20) new and unique rules that make up the Utah Standards of Professionalism and Civility.

Utah Standards of Professionalism and Civility are considered “casual rules” meant to advise lawyers on how the courts expect them to behave.

In a *Deseret News* article one lawyer commented, “Simply passing more rules won’t stop the conduct that it’s seeking to proscribe. My biggest beef is that these rules will never be enforced” by judges.

A lawyer on the 2003 Utah Supreme Court’s Advisory Committee on Professionalism replied, “The committee is not so naïve as to believe that the court’s formularization of a code of civility will, by itself, halt the decline in civility among lawyers.”

Geoffrey Fattah *Deseret Morning News* “Lawyers decry lack of civility”.
Deseret News. Salt Lake City. www.FindArticles.com. 22 Nov, 2010.

1

Enforcing the Standards of Professionalism and Civility

by Donald J. Winder and Dennis Flynn

Utah Bar Journal / Posted by [BlogStaff](#) on March 7, 2007 4:10 AM

. . .With all deference, I submit that lawyers who know how to think but have not learned

how to behave are a menace and a liability, not an asset, to the administration of justice.

Warren E. Burger, *The Necessity For Civility*, 52 F.R.D. 211 (1971).

Justice Sandra Day O'Connor said membership in a profession "entails an ethical obligation to temper one's selfish pursuit of economic success by adhering to standards of conduct that could not be enforced either by legal fiat or through the discipline of the market." *Shapiro v. Kentucky Bar Ass'n.*, 486 U.S. 466, 488-89 (1988)(O'Connor, J., dissenting).

In *B.A.M. Dev., L.L.C. v. Salt Lake County*, 87 P.3d 710 (Utah Ct. App. 2004),

Judge Orme stated:

While I appreciate a zealous advocate as much as anyone, such techniques, which really amount to a written form of shouting, are simply inappropriate in an appellate brief. It is counterproductive for counsel to litter his brief with burdensome material such as "WRONG! WRONG ANALYSIS! WRONG RESULT! WRONG! WRONG! WRONG!" It is also at odds with Rule 24(j) of the Utah Rules of Appellate Procedure. *Id.* at 734 (Orme, J., dissenting); see *in re L.M.*, 68 P.3d 276, 278 (Utah Ct. App. 2003)(Assertions that trial court's conclusions were "ridiculous" and that its chronology was "bizarre" are "entirely irrelevant and inappropriate to these proceedings."). Rule 24(j) permits the court to disregard or strike noncomplying briefs, or assess attorney fees against the offending lawyer. Utah R. App. P. 24(j).

2

More recently the Utah Court of Appeals commented on "the unprofessional and inappropriate language" used in a party's brief, commenting that both Landlord and Tenant "ought to be ashamed of themselves," for repeatedly referring to opposing counsel's arguments as "revolting," "disingenuous," "nonsensical," "insulting to the intelligence of the Court," "ridiculous," and "reprehensible." *Advanced Restoration*,

L.L.C. v. Priskos, 126 P.3d 786, 797 (Utah Ct. App. 2005). The Court then went on to say, "Derogatory references to others or inappropriate language of any kind has no place in an appellate brief and is of no assistance to this court in attempting to resolve any legitimate issues presented on appeal." *Id.* (quoting *State v. Cook*, 714 P.2d 296, 297 (Utah 1986) (per curiam)).

The *Advanced Restoration* opinion also cited to the Rules of Professional Conduct, which require lawyers to maintain the decorum of the tribunal, and that "[r]efraining from abusive or obstreperous conduct is a corollary of the advocate's right to speak on behalf of litigants." Comment to Utah R. Professional Conduct 3.5. The Standards of Professionalism and Civility urges lawyers to "avoid hostile, demeaning, or humiliating words in written and oral communications with adversaries." Utah Standards of Professionalism and Civility, Standard 3.

Utah Supreme Court Standing Order No. 7

Effective April 1, 2008, the Utah Supreme Court created the first program in the country of professionalism counseling for members of the Utah Bar. A board of five counselors, appointed by the Utah Supreme Court, generally counsel and educate members of the Bar concerning the Standards of Professionalism and Civility (Standards).

The court counselors serve a four-fold purpose:

- (1) To counsel members of the Bar in response to complaints by other lawyers or referrals from judges;

- (2) To provide counseling to members of the Bar who request advice on their own obligations under the Standards of Professionalism and Civility;
- (3) To provide CLE on the Standards; and
- (4) To publish advice and information relating to the work of the counselors.

Of these functions, it is the counseling function which is most critical to the notion of enforcing civility in the profession.

The goal is to provide a method by which incidents of incivility or unprofessional conduct could be reported and addressed. The focus, however, would not be punitive in nature, but rather, educational. In responding to a complaint from a fellow attorney or judge, the counselors may issue a written advisory to the offending lawyer, or may simply counsel with the lawyer in a personal meeting, with the goal of educating the offending lawyer as to alternative modes of practice in harmony with the Standards. In conjunction with this direct contact with the offending attorney, the counselors would publish an annual report concerning the Standards it has interpreted, as well as periodically publishing selected portions of its advisories in the *Utah Bar Journal* for the benefit of practicing lawyers.

Winder, Donald J. and Jerald V. Hale. "Enforcing Civility in an Uncivilized World" *Utah Bar Journal*. http://www.Utahbar.org/barjournal/2009/05/enforcing_civility_in_an_uncivilized_world.html

4

The Power of Civility

Keith A. Call

Utah Bar Journal, Vol 23 No. 6, Nov/Dec 2010, page 41

• • •

Lawyers often struggle to be zealous advocates for their clients while at the same time maintaining a professional and civil, even friendly, decorum. Let's face it. Litigation is tough, and our adversarial system is just that -- adversarial. Even transactional and other types of legal work can involve tough negotiations and other situations.

. . .

As I contemplate my own experiences, it occurs to me that I have been a much happier human being overall during those times when I have been most successful at being both zealous and civil. Life is just better in general. Perhaps what is even more remarkable is that I think I have also been a better, more effective lawyer when I have succeeded at being more civil with my opponents. It is also striking that, at least in my view, the most successful lawyers in our community also have reputations for civility and professionalism. I doubt this is a coincidence. I suspect they have learned that civility and professionalism not only result in more effective legal advocacy, but also in more referrals.

All of this leads to the conclusion that lawyers who make civility and professionalism a priority are more effective as advocates, are more likely to obtain better books of business, and are generally more happy and pleasant people.

5

**The Creative Lawyer:
A Practical Guide to Authentic Professional Satisfaction**

by Michael Melcher
Reviewed by Teresa L. Welch
Utah Bar Journal, No. 23 No 6, pages 42-45, Nov/Dec 2010

. . .

Melcher aptly points out that we are often our own worst enemies in achieving job satisfaction. . . He states:

“Issue-spotting” is identifying potential problems, inconsistencies, and unresolved conflicts. When we spot issues -- when we “think like a lawyer” -- we take things apart, look for flaws, compare possibilities

against evidence, contemplate problems, see cracks in arguments, and contemplate risks. . . Issue spotting is an important legal skill. However, it's deadly when it comes to the process of creating the life you want [and relationships with those who matter most - V.Lee].... When attorneys apply this kind of thinking to questions of their own careers [and relationships with those who matter most - V.Lee], they tend to: analyze rather than explore, identify flaws and potential problems, look for clear precedents, require solutions of general applicability (“What would work for lawyers”) rather than specific applicability (“What would work for me?”), demand logical explanations, be skeptical about possibilities, defer action in situations of uncertainty [and] avoid taking risks.

Emotional Intelligence

“Emotional intelligence” refers to being intelligent about our emotional life: more self-aware, better able to handle disturbing emotions, more sensitive to the emotions of others -- and able to put all that together to create effective, nourishing interactions. Some people are far better than others at these fundamental human skills, but the good news is that all these abilities are learned -- and learnable.

Daniel Goleman. Foreword to *Emotional Awareness: A Conversation between The Dalai Lama and Paul Eckman, Ph.D.* Times Books. Henry Holt and Company. New York. 2008.

Substance-Related and Mood / Anxiety Disorders
Diagnostic and Statistical Manual of Mental Disorders
(4th Ed.1994)

| <u>Adult disorder*</u> | <u>Non-medical usage percentage prevalence in general population</u> | |
|---|--|--------------------------------------|
| <i>Substance-Related Disorders</i> | | |
| Alcohol Dependence / Abuse | 14 7 | % lifetime (1990-91) % past year |
| Amphetamine Dependence / Abuse | 2 - 7 | % lifetime (1991) 1.3 % past year |
| Cannabis-Related Disorders | 33 10 | % lifetime (1991) % past year |
| Cocaine-Related Disorders | 12 3 | % lifetime (1991) % past year |
| Hallucinogens / PCP | 8 | % lifetime (1991) |
| Nicotine-Related Disorders | 20 | % lifetime |
| Opioid-Related Disorders | 7.3 | % lifetime |

| | | |
|---|-----|-------------------|
| | 2.5 | % past year |
| Sedative, Hypnotic, or Anxiolytic Use Disorders | 4 | % lifetime (1991) |
| | 2 | % past year |

* Does not include Childhood, Cognitive, Medical-Related, Psychotic, Somatoform, Factitious, Dissociative, Gender Identity, Eating, Sleep, Impulse-Control, Adjustment, Personality or Miscellaneous Disorders

8

Mood / Anxiety Disorders

| | | |
|-------------------------------|-----------|---------------------|
| Major Depressive Disorder | 5 - 9 | % lifetime-f (1991) |
| | 2 - 3 | % lifetime-m |
| Dysthymic Disorder | 6 | % lifetime |
| Bipolar I Disorder | 4 - 1.6 | % lifetime |
| Bipolar II Disorder | .5 | % lifetime |
| Cyclothymic Disorder | 3 - 5 | % lifetime |
| Panic Disorder | 1.5 - 3.5 | % lifetime |
| | 1 - 2 | % past year |
| Phobias | 10 - 11.3 | % lifetime |
| | 9 | % past year |
| Obsessive-Compulsive Disorder | 2.5 | % lifetime |
| | 1.5 - 2.1 | % past year |

Post-Traumatic Stress Disorder

1 - 14 %

Generalized Anxiety Disorder

5 % lifetime
3 % past year

9

Emotional Intelligence Skills and Maslow's Hierarchy of Fundamental Human Needs

In 1943, Abraham Maslow proposed a theory of psychology entitled *A Theory of Human Motivation*. His theories parallel many other theories of human developmental psychology, all of which focus on describing the stages of growth in human.

The five levels of progressive fundamental human needs are often depicted in an ascending pyramid in which each higher need is built upon substantial fulfillment of the need below it. On this page, the levels are presented in descending table form alongside the four emotional intelligence skills -- self-awareness, self-management, social awareness, and relationship management. This author hypothesizes meeting each ascending need builds upon mastering the emotional skill and strategies associated with the preceding need.

Maslow's Hierarchy

Emotional Intelligence Skill

Self-Actualization - becoming the best you can be, leaving a legacy,

Esteem - respect, self-respect, acceptance, strength,

Love and belonging - friendship,

Relationship management

Social awareness

acceptance, trust, family

Safety needs - security, predictability, order, fairness, consistency, protection, financial stability, health and well-being

Self-Management

Physiological needs - breathing, food, sleep, homeostasis, exercise

Self-awareness

10

I Message

1. I feel / I am / I'm _____,

[*angry*, exhausted, confused, ecstatic, guilty, suspicious, hysterical, frustrated, sad, content, embarrassed, happy, mischievous, disgusted, frightened, enraged, ashamed, cautions, smug, depressed, overwhelmed, hopeful, lonely, lovestruck, jealous, bored, surprised, anxious, shocked, shy . . .]

2. when [a person] _____
_____.

[describe operative facts of the problem related to the feeling(s) described without using the word "you"]

3. because _____
_____.

[describe the effect / impact upon you]

4. I need _____
_____.

[identify the specific need(s) from Maslow's Hierarchy]

An "I Message" can be used to describe a problem or to give praise. (4:1 ratio)

Example (praise): I feel happy when I am able to help lawyers understand how learning emotional intelligence skills can improve their practice of law and relationships that matter most.

Example (problem): I am troubled when I encounter a lawyer who attempts to intimidate or threaten me, because it diverts energy and resources from creatively working together to solve our clients' legal problem. I need to trust and respect opposing counsel.

The format of an "Message" can be used to "decode" a problem another person may be having a hard time expressing:

You feel _____,
When (“you” is good here) _____,
because _____.
You need _____.

11

The Amygdala

The amygdala is a brain structure that is essential for decoding emotions, and in particular stimuli that are threatening to the organism. As a result of evolution, many of our body’s alarm circuits are grouped together in the amygdala.

. . .

The amygdala also receives numerous connections from the hippocampus. Since the hippocampus is involved in storing and retrieving explicit memories, its connections to the amygdala may be the origin of strong emotions triggered by particular memories.

The hippocampus also specializes in processing sets of stimuli . . . the context of a situation. Hence it is because of the hippocampus and its close connections with the amygdala that the entire context associated with a traumatic event can provoke anxiety.

Major connections to the amygdala also come from the medial prefrontal cortex. These connections appear to be involved in the process of extinction, whereby a stimulus that triggers a conditioned gear gradually loses this effect.

The prefrontal cortex also seems to be involved in the final phase of confronting a danger, where, after the initial automatic, emotional reaction, we are forced to react and choose the course of action that can best get us out of danger. . .

. . . The connections from the prefrontal cortex to the amygdala also enable us to exercise a certain conscious control over our anxiety. . .

The Amygdala and Its Allies. The Brain from Top to Bottom.
http://thebrain.mcgill.ca/flash/l/l/04_cr/l_04_cr_peu.html

Pre-frontal Cortex

. . . The frontal lobes, and particularly the prefrontal cortex, are one of the last areas of the brain to develop. Researchers now believe that the prefrontal cortex -- responsible for things like organizing plans and ideas, forming strategies, and controlling impulses -- is not fully developed until the later 20s. Dopamine levels are also not yet at optimal levels during adolescence. Dopamine is the chemical messenger that allows us to do constant triage in day-to-day life, so we can figure out what to pay attention to and what is background noise. Without adequate level, life can be a disaster. . .

. . .

. . . Moreover, the teens and adults use different areas of the brain to process what they were feeling. Teens rely much more on the amygdala, a small almond-shaped region in the medial and temporal lobes that processes memory and emotions, while adults rely more on the frontal cortex, which governs reason and forethought.

Judith Newman, *What's Really Going On Inside Your Teen's Head?*, *Parade*, November 28, 2010, pages 4-6

The Uncinate Fasciculus

... (R)ecent studies suggest that the prefrontal cortex of the brain normally “gets a grip” on excessive anxiety by moderating the activity of a more primitive regions know as the amygdala. When this prefrontal-amygdala connection is weak, excessive anxiety can be the result.

The latest study was reported in the Sept. 16 issue of the *Journal of Neuroscience* by Dartmouth College researchers Justin Kim and Paul Whalen. . .

The scientists found that when 20 healthy subjects watched standard test images of “fearful” faces, brain activity increased on fMRI scans. The increases seemed to map a nerve-fiber bundle known as the uncinate fasciculus (UF) -- a major connection between the temporal lobe, which houses the amygdala, and the frontal cortex.

The researchers also found that the thickness of this fiber tract varied inversely with the subjects’ scores on a standard psychological test of inherent anxiety, known as trait anxiety. “So if the two area are strongly connected, you tend to show lower levels of [the] trait anxiety, and if the connections aren’t as heavy, you tend to be more anxious,” Whalen says.

The findings add to a growing body of evidence explaining the underlying connections of the brain in anxiety. Previous experiments using fMRI alone, for instance, showed that people with high trait anxiety scores tend to have amygdalae that are less coordinated, or “coupled,” with the prefrontal cortex. In other words, higher amygdala activity corresponds to lower prefrontal activity, and vice versa.

A recent neurogenetics study also concluded that people with a genetic variation affecting the serotonin neurotransmitter system tend to have a thinner UF. “These happen to be the same individuals who show increased amygdala reactivity and decreased coupling between the amygdala and medial prefrontal cortex,” Hariri notes.

A good next step, he says, would be to perform imaging experiments in a relatively large sample of subjects to see whether differences in UF structure can usefully predict the degree of amygdala-prefrontal coupling and train anxiety.

Schnable, Jim. Prefrontal Connection May be Key in Controlling Anxiety.
<http://www.dana.org/news/features/detail.aspx?id=23960>

When Your Breath Just Stops

...

“Under stress, our breath just stops, so you’re only breathing with the upper third of your lungs, and the breath literally doesn’t get down and fill up the lungs,” [Dennis M. Warren, a health care lawyer in Sacramento, California] says. “If you can open up and breathe deeply, it changes the blood chemistry.”

According to Warren, associates tend to blame the stress they feel during trial on judges, partners and opposing counsel. Instead, he advises young lawyers to look deeper.

“Those aren’t the real issues; they’re just circumstances,” he adds. “The real issue is how you’re relating it to it. If what you have in an anxious, fearful perspective, that’s what you’re going to get.”

Ward, Stephanie Francis. *Wound Up? Wind Down*. ABA JOURNAL. August 2005, page 32.

15

Respiratory Alkalosis

...

Background: Respiratory alkalosis is a clinical disturbance due to alveolar hyperventilation. . . Hypocapnia develops when the lungs remove more carbon dioxide than is produced in the tissues. Respiratory alkalosis can be acute or chronic. . .

History: . . . The hyperventilation syndrome can mimic many conditions that are more serious. Symptoms may include paresthesias, circumoral numbness, chest pain or tightness, dyspnea, and tetany.

Acute onset of hypomania can cause cerebral vasoconstriction. Therefore, an acute decrease in PaCO₂ reduces cerebral blood flow and can cause neurologic symptoms, including dizziness, mental confusion, syncope, and seizures.

Physical: . . . Many persons with hyperventilation syndrome appear anxious, and tachycardia is frequently present. Understandably, tachypnea is a frequent finding.

Causes: . . . Hyperventilation syndrome
Anxiety

Medical Care: . . . Respiratory alkalosis itself is rarely life threatening; therefore, emergent treatment is usually not indicated unless the pH is greater than 7.5. Because respiratory alkalosis usually occurs in response to some stimulus, treatment is usually unsuccessful unless the stimulus is controlled.

In hyperventilation syndrome, patients benefit from reassurance, rebreathing into a paper bag during acute episodes, and treatment for underlying psychological stress. . .

Prognosis: Patients with hyperventilation syndrome as the etiology of their respiratory alkalosis may particularly benefit from patient education. . . (p)atients should be instructed in breathing techniques that may be used to relieve the hyperventilation. Reassurance is key for these patients.

Jackie A. Hayes, MD, FCCP, *Respiratory Alkalosis*, emedicine topic2009;
attach: nojavascript&WT.js=No&descry=page%3DRespiratory
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