



CIVILITY INITIATIVES FOR CIVIL LITIGATION ALLERTON CONFERENCE 2008 QUESTIONNAIRE A

Please indicate your views on each of the following questions. The results from all participants will be tabulated and then reflected in the Final Report on the Conference. Please use the following symbols:

SA = Strongly Agree; A = Agree; NO = No Opinion; D = Disagree; SD = Strongly Disagree

CIVILITY IN CIVIL LITIGATION	SA	A	NO	D	SD
1. There has been a marked increase in instances of incivility/unprofessionalism in civil litigation in the last decade.	19%	43%	14%	20%	2%
2. Increased attorneys' alcoholism/alcohol abuse problems have prompted related increases in incivility/unprofessionalism in civil litigation in the last decade.	7	26	47	14	4
3. Increased attorneys' illegal drug use has prompted related increases in incivility/unprofessionalism in civil litigation in the last decade.	2	23	57	9	5
4. Increased attorneys' gambling problems have prompted related increases in incivility/unprofessionalism in civil litigation in the last decade.	2	15	68	7	5
5. Increased attorneys' billing and other financial (e.g., competition between law firms and among lawyers) demands have prompted related increases in incivility/unprofessionalism in civil litigation in the last decade.	40	48	10	1	0
6. The increasing diversification of the bar (e.g., sex, race) has prompted related increases in incivility/unprofessionalism in civil litigation in the last decade.	6	30	26	28	7
7. Increased "Rambo" tactics (i.e., zealous representation at all costs, without clear disciplinary norm violations) has prompted greater incivility/unprofessionalism in civil litigation in the last decade.	33	46	9	9	9
8. Acts of incivility/unprofessionalism are widespread during depositions in civil cases.	17	38	15	26	2
9. Acts of incivility/unprofessionalism are widespread during private (i.e., not court-supervised) settlement talks in civil cases.	4	23	26	42	4
10. Acts of incivility/unprofessionalism are widespread during trials in civil cases.	2	19	17	53	7
11. What is the single most significant cause for acts of incivility/unprofessionalism in civil litigation?					
	SA	A	NO	D	SD
WHO SHOULD SPEAK ON INCIVILITY?					
12. The Illinois Commission on Professionalism should exclusively or primarily direct any efforts to minimize incivility/unprofessionalism in civil litigation in Illinois state courts.	6%	19%	12%	38%	17%
13. Efforts to minimize incivility/unprofessionalism in civil litigation should be simultaneously and independently pursued by the Supreme Court, local courts, and bar associations.	33	42	2	14	1

14. Efforts to minimize incivility/unprofessionalism in civil litigation in Illinois state courts should be undertaken exclusively or primarily by local courts.	5	20	6	52	10
15. Efforts to minimize incivility/unprofessionalism in civil litigation in Illinois state courts should be undertaken exclusively or primarily by bar (state and local) associations.	9	17	2	53	10

HANDLING INCIVILITY IN CIVIL LITIGATION

16. Incivility/unprofessionalism in civil litigation would be significantly deterred if trial judges more frequently sanctioned civil litigation misconduct (as under Illinois Supreme Court Rule 137), though sanctionable acts are usually far more culpable than acts of incivility/unprofessionalism.	11%	56%	5%	15%	6%
17. Lawyers possessing unprivileged knowledge of opposing lawyers' civil litigation misconduct involving "dishonesty, fraud, deceit or misrepresentation" (Rule 8.4) often do not report (Rule 8.3) to the ARDC when the acts apparently were primarily caused by impairments arising primarily from illegal drug use or alcohol dependency or abuse.	6	25	48	14	0
18. Lawyers possessing unprivileged knowledge of opposing lawyers' civil litigation misconduct involving "dishonesty, fraud, deceit or misrepresentation" (Rule 8.4) often do not report (Rule 8.3) to the ARDC when the acts apparently were primarily caused by impairments arising from mental health issues (as depression, excessive stress, or dementia).	7	21	51	14	0
19. Lawyers possessing unprivileged knowledge of an affiliated lawyer's (e.g., copartner's or office associate's) civil litigation misconduct involving "dishonesty, fraud, deceit or misrepresentation" (Rule 8.4) often do not report (Rule 8.3) to the ARDC when the acts apparently were primarily caused by impairments arising from illegal drug use or alcohol dependency or abuse.	9	20	49	15	0
20. Lawyers possessing unprivileged knowledge of an affiliated lawyer's (e.g., copartner's or office associate's) civil litigation misconduct involving "dishonesty, fraud, deceit or misrepresentation" (Rule 8.4) often do not report (Rule 8.3) to the ARDC when the acts apparently were primarily caused by impairments arising from mental health issues (as depression, excessive stress or dementia).	10	21	44	17	0
21. The Illinois Lawyers' Assistance Program (LAP) should be expanded so that incivility/unprofessionalism in civil litigation could be addressed by LAP members (e.g., via interventions) even where there are no acts involving illegal drug use, alcohol dependency or abuse, or serious mental health problems (like depression, excessive stress or dementia).	4	27	9	40	14
22. Under the New York Code of Professional Responsibility a law firm "shall make reasonable efforts to ensure" its lawyers "conform to the disciplinary rules." Failure can lead to discipline of the firm. In Illinois the Rules of Professional Conduct should be amended to take a similar approach.	7	53	4	23	5
23. Law firms and comparable offices of lawyers, as well as individual lawyers, should be afforded more opportunities to pledge to take steps to promote greater civility/professionalism during civil cases.	17	53	7	12	2

LIMITS ON CIVILITY INITIATIVES

24. First Amendment Free Speech rights pose difficult challenges to those writing civility/professionalism guidelines or norms for lawyers.	17%	42%	1%	31%	1%
25. First Amendment Free Speech rights for lawyers and clients and the zealous advocacy interests of clients are so important in civil litigation that there should be no civility/professionalism guidelines for lawyers on pure speech in court rooms during civil cases.	5	12	9	47	20
26. Many lawyers are confused by the proliferation of civility/professionalism guidelines in Illinois originating in the high court, local courts and state and local bar associations.	7	17	17	47	2

27. Civility/professionalism guidelines promulgated by Illinois state courts should be hortatory or aspirational only (and thus have no formal enforcement schemes). 16 23 4 40 6

Please describe your current professional role. In analyzing the questionnaire results, no individual respondents will be identified personally.

My experience in the past 10 years is as (answer no more than 3):

- a judge sitting primarily or exclusively in Cook County.
- a lawyer practicing primarily or exclusively in Cook County.
- a judge sitting primarily or exclusively outside Cook County.
- a lawyer practicing primarily or exclusively outside of Cook County.
- a lawyer primarily representing plaintiffs in civil actions.
- a lawyer primarily representing defendants in civil actions.
- none of the above.

Please submit additional comments & recommendations on the issues addressed in this questionnaire.

(Use reverse side for additional remarks)

Please submit additional comments and suggestions regarding the Allerton Conference in general, including location, format, speakers, and materials.

(Use reverse side for additional remarks)

Responses to Questionnaire A were received from 82 Conference attendees, including the following numbers who indicated where they served exclusively in the past decade: 19 Cook County lawyers; 9 Cook County judges; 27 downstate lawyers; and 10 downstate judges. Obviously, some responding attendees did not indicate exclusive work in the last ten years. The percentages above reflect all respondents. Responses of all judges and all lawyers were tabulated separately, with some of these results reviewed in the report and with these tabulations available from the reporter. For questions where the total responses for all alternatives do not approximate 100%, not all attendees answered every question.

CIVILITY INITIATIVES FOR CIVIL LITIGATION ALLERTON CONFERENCE 2008 QUESTIONNAIRE B

Please indicate your views on each of the following statements. The results from all participants will be tabulated and then reflected in the Final Report on the Conference. Please use the following symbols:

SA = Strongly Agree; A = Agree; NO = No Opinion; D = Disagree; SD = Strongly Disagree

CIVILITY TRAINING IN LAW SCHOOLS	SA	A	NO	D	SD
1. Under Rule 799(c)(9), the Illinois Supreme Court should establish new required "skills training" programs (i.e., not courses) for upperclass law students in Illinois law schools in order to promote greater civility/professionalism.	12%	43%	15%	17%	8%
2. Under Rule 799(c)(9), the Illinois Supreme Court should expand the venues for supervised law student activities under Rule 711 (i.e., beyond legal aid, approved clinic, public defender, and state and local government offices) in order to enhance law school training on civility/professionalism.	23	52	8	9	3
3. Under Rule 799(c)(9), the Illinois Supreme Court should mandate that there be opportunities for all graduating law students in Illinois to take voluntary civility/professionalism pledges.	20	40	18	11	5
CIVILITY TRAINING FOR NEW LAWYERS					
4. Under Rule 793(c), the Illinois Supreme Court should expand the topics for the basic skills course required for all new Illinois lawyers to include a civility/professionalism component.	26%	55%	2%	9%	2%
5. Under Professional Conduct Rules, the Illinois Supreme Court should direct that law firms and other organizations employing lawyers in Illinois should themselves be held responsible for making reasonable efforts to insure their lawyers conform to the disciplinary rules and otherwise act professionally, and should be subject to discipline when they fail.	14	42	8	26	6

Please describe your current professional role. In analyzing the questionnaire results, no individual respondents will be identified personally.

My experience in the past 10 years is as (answer no more than 3):

- a judge sitting primarily or exclusively in Cook County.
- a lawyer practicing primarily or exclusively in Cook County.
- a judge sitting primarily or exclusively outside Cook County.
- a lawyer practicing primarily or exclusively outside of Cook County.
- a lawyer primarily representing plaintiffs in civil actions.
- a lawyer primarily representing defendants in civil actions.
- none of the above.

Please submit additional comments & recommendations on the issues addressed in this questionnaire.

(Use reverse side for additional remarks)

Please submit additional comments and suggestions regarding the Allerton Conference in general, including location, format, speakers, and materials.

(Use reverse side for additional remarks)

Responses to Questionnaire B were received from 65 Conference attendees, including the following numbers who indicated where they served exclusively in the past decade: 13 Cook County lawyers; 3 Cook County judges; 21 downstate lawyers; and 8 downstate judges. Obviously, some responding attendees did not indicate exclusive work in the last ten years. The percentages above reflect all respondents. Responses of all judges and all lawyers were tabulated separately, with some of these results reviewed in the report and with these tabulations available from the reporter. For questions where the total responses for all alternatives do not approximate 100%, not all attendees answered every question.

CIVILITY INITIATIVES FOR CIVIL LITIGATION ALLERTON CONFERENCE 2008 SUPPLEMENTAL QUESTIONNAIRE

Please indicate your views on each of the following statements. The results from all participants will be tabulated and then reflected in the Final Report on the Conference. Please use the following symbols:

SA = Strongly Agree; A = Agree; NO = No Opinion; D = Disagree; SD = Strongly Disagree

SA A NO D SD

CIVILITY IN CIVIL LITIGATION

1. Incivility often results from too much freedom in discovery.	8%	36%	14%	33%	9%
2. Lawyers often engage in incivility in order to gain a strategic or economic advantage.	33	55	5	8	0
3. Opposing lawyers should have more face-to-face discussions early in civil litigation in order to establish a good working relationship.	42	48	5	5	0
4. How would you define incivility (please give examples)? _____					

WHO SHOULD SPEAK ON INCIVILITY?

5. How should responsibilities for addressing civility issues be shared? Please rank 1-6 in order of importance – 1 means greatest responsibility.

_____ Supreme Court	_____ Commission on Professionalism
_____ State Bar	_____ Individual Judges
_____ Local Bar	_____ Individual Lawyers

6. The Illinois Supreme Court should adopt a rule allowing the sanctioning of lawyers who engage in multiple instances of unreasonable and vexatious conduct (perhaps modeled after 28 USC § 1927).	13%	41%	8%	20%	14
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HANDLING INCIVILITY IN CIVIL LITIGATION

7. The availability of a different intermediary, as in DuPage County, for family, criminal, and civil matters in large circuits would improve civility.	27%	48%	13%	11%	2%
8. An intermediary program would be appropriate for judges.	36	50	11	0	2
9. An intermediary program with a single intermediary is most appropriate to handle acts of lawyer incivility in smaller circuits.	14	53	22	11	0
10. The Illinois Supreme Court should limit depositions to a single form, as in federal civil actions, as this will improve civility.	22	17	20	28	13
11. Judges should receive more formal training on how to address incivility and lack of professionalism in civil cases.	41	52	3	3	2
12. There should be a formal, structured, supervised mentoring program for all new lawyers that would require tutelage by certified mentors.	20	44	9	20	6
13. Law firms and comparable offices of lawyers with more than 25 lawyers should be required to maintain mentoring programs to encourage greater civility and professionalism.	17	41	11	27	5
14. Instances of incivility by circuit judges should be handled by the chief judge.	31	48	8	11	0
15. Lawyers should be held more accountable by trial judges for their acts of incivility.	38	55	5	2	0

16. Gender discrimination often leads to incivility in civil cases.	22	34	19	23	2
17. Minority group status discrimination often leads to incivility in civil cases.	19	30	22	25	3
18. Age discrimination against the young often leads to incivility in civil cases.	20	44	17	17	2
19. Gender, minority and age discrimination all lead to many instances of incivility in civil cases.	23	31	16	27	3

LIMITS ON CIVILITY INITIATIVES

20. The image of lawyers has diminished over the last decade.	17%	44%	8%	31%	0%
21. A greater number of professionalism hours should be included in the minimum continuing legal education requirements.	14	33	6	39	8
22. Overly stringent standards on civility will unduly restrict zealous advocacy on behalf of clients.	9	38	6	39	6

Please describe your current professional role. In analyzing the questionnaire results, no individual respondents will be identified personally.

My experience in the past 10 years is as (answer no more than 3):

- _____ a judge sitting primarily or exclusively in Cook County.
- _____ a lawyer practicing primarily or exclusively in Cook County.
- _____ a judge sitting primarily or exclusively outside Cook County.
- _____ a lawyer practicing primarily or exclusively outside of Cook County.
- _____ a lawyer primarily representing plaintiffs in civil actions.
- _____ a lawyer primarily representing defendants in civil actions.
- _____ none of the above.

Please submit additional comments & recommendations on the issues addressed in this questionnaire.

(Use reverse side for additional remarks)

Please submit additional comments and suggestions regarding the Allerton Conference in general, including location, format, speakers, and materials.

(Use reverse side for additional remarks)

Responses to the Supplemental Questionnaire were received from 64 Conference attendees, including the following numbers who indicated where they served exclusively in the past decade: 13 Cook County lawyers; 3 Cook County judges; 23 downstate lawyers; and 7 downstate judges. The percentages above reflect all respondents. Responses of all judges and all lawyers were tabulated separately, with some of these results reviewed in the report and with these tabulations available from the reporter. Obviously, some responding attendees did not indicate exclusive work in the last ten years. For questions where the total responses for all alternatives do not approximate 100%, not all attendees answered every question.