

An Exploration of Civility within the Legal Industry

by Jeremy Bloom, Rachael Bosch, and Jennifer Mandery

A study by the NALP Foundation and Fringe Professional Development seeks not only to explore civility within law firms but also to identify policies and procedures for addressing incivility.

We've All Been There to One Degree or Another

Dread. Sheer dread. As I walked down the hall to Casey's office, my stomach churned. That familiar feeling of anxiety filled my entire body.

Casey, the partner for whom I did most of my work but whose name I've changed here for anonymity, had a well-earned reputation for belittling and yelling at associates, and I had been the object of that perhaps-too-smart mind's fury many times before. It had gotten to the point where that feeling of dread permeated my thoughts about my work every single day and sometimes even made me question being a lawyer altogether.

I was a second-year associate at this point. While Casey defined incompetence as anything less than perfect, Casey's social standing at the firm seemed strong. Perhaps it was just me — maybe I wasn't good enough? This was my first job out of law school, and I was proud to be an associate at this firm, not to mention the perks that came along with it. I told myself I would persevere. I was determined to make this job work.

Those moments of dread lengthened, consuming my entire morning commute. And then they became not just moments but days where I felt I needed to quit right away. I began looking for other jobs, which helped me daydream about other options. And sometimes I had the chance to work with other, more civil partners, and I even felt positive about my career choice at times.

But it just took one phone call, one email, one interaction for all those feelings to come back to life. Casey would yell and scream, make fun of people, and call them names — even in group settings and even to more senior associates. A group of us would leave Casey's office together and then never say anything about what we just experienced.

I knew Casey wasn't the only "screamer" at the firm. In fact, Casey seemed to be more the norm than the exception. I figured this treatment would help me become a great lawyer — after all, Casey was an exceptional lawyer and neither Casey's mind nor tongue was unique at the firm. This was just the way it was, and I needed to adapt to it and accept it.

I tried — and succeeded — for about three years to make things work. This success included getting one prescription for anxiety and then another for the first migraines of my life, which the specialist concluded were stress-induced. I continued to stay at the firm.

Eventually, I realized that clinging to something that was making me this unhealthy just wasn't worth it. I accepted another position and never told the firm why I left. I didn't ask to be reassigned from Casey or seek some other solution. Nothing seemed realistic or long-term. I just left. I didn't consider myself a casualty of uncivil behavior at the time, but in retrospect I realize that I was.

Why Incivility?

Experiences like the one above, as shared by a former Big Law associate, are all too common in the legal profession. The way we choose to communicate with each other has a very real connection to an attorney's productivity, engagement, and well-being. Uncivil treatment is harmful to mental health and a significant driver of attrition.¹ Difficult working relationships are one of the greatest causes of on-the-job stress,² which costs companies \$300 billion annually.³

In 2018, the NALP Foundation and Fringe Professional Development partnered to study incivility in the legal profession, including fielding a survey of law firm administrators. This article examines incivility and its impacts, and provides results from that survey.

How We Got Here

For decades the issue of civility has been discussed and debated in society at large. Early discussions focused on adhering to strict societal standards of politeness and purity.⁴ Within the legal industry, the initial focus was on interactions with opposing counsel because most lawyers had small or solo practices with a limited need for communication.

Over time, communication in our industry shifted. The hyper-focus on civility actually gave lawyers a free pass to be uncivil — their outrage on behalf of clients enabled them to argue to the fullest extent.⁵ The small legal practices of the nineteenth century also evolved into larger organizations, creating more opportunities for interaction within a firm. Today lawyers not only have opposing counsel to interact with, but also an ever-growing staff of associates, business professionals, and paralegals.

Passionately advocating for one's client is still excused, but this intense communication style has seeped into the inner workings of our legal organizations — often with serious

"I have left two law firms due to incivility from managing partners and am experiencing the same problem at my current firm. This has primarily been incivility by older men, but it has become increasingly common with women who are more senior than me (but not in management)."

— A white woman, mid-level associate, at a firm with 26-50 lawyers

"Concerns were swept under the carpet in each instance, because dealing with the offender might have cost the company money."

— A white woman, partner, at a firm with 251-500 lawyers

"They listened carefully and had me write down what happened. They proposed a course of action to stop the behavior. When I asked for a different course of action, they worked with me to accommodate my preferred approach. When that didn't work, they listened again and took action to protect me. I was close to the edge in terms of leaving the organization, thinking I couldn't take the situation, but the response of the firm's then leadership was so compassionate and caring I was able to stay the course and keep my career on track."

— A white woman, partner, at a firm with 101-250 lawyers

consequences. The legal industry has gone from Atticus Finch to Michael Avenatti and that cultural evolution has eroded our expectations of civility.

The meaning of the word “civility” has also evolved. Today it’s most often used to define behavior that’s similar to our own. Incivility, in contrast, is used to explain away anything that might offend the sensitivity of a group to which we belong. To put it more plainly: “If you act like me, then you are civil. If you don’t act like me, then you are uncivil.”

Think about how often you hear incivility bandied about today, particularly in the political landscape. Each side constantly accuses the other of acts of incivility, defining the term from its point of view and not from a place of neutrality. These modern interpretations and their frequent overuse have led to confusion over the terminology of civility and a jaded dismissal of the impact of uncivil behavior.

Yet there is a documented and dramatic impact of these behaviors and communications on our societies, relationships, and organizations. Exploring the holistic well-being of our industry’s attorney population requires consideration of the interactions that fill our days and billable hours — so much of our time is spent engaged in interpersonal communication. With the average number of uncivil encounters at work more than doubling since 2016,⁶ it is critical that we take a careful look at the impact that these communications have on engagement, productivity, and mental health in our field.

For this study, the NALP Foundation and Fringe define “civility” as productive communication (verbal and non-verbal) that encourages positive relationship-building and interpersonal connections. In contrast, incivility is engaging in behavior (knowingly or unknowingly) that is inconsistent with mutually accepted cultural standards and that thereby damages interpersonal connections. Note that we have refrained from tying these definitions to any form of politeness. We have also defined both words in a way that can remain malleable to the organizational standards of behavior that may apply. The critical piece of each definition is the relational one. Are you

building or deteriorating relationships? This should be how we define civil behavior.

Some uncivil conduct is obvious. Examples include:

- Swearing/verbally attacking
- Being condescending or belittling
- Interrupting others
- Being judgmental
- Using disrespectful language
- Spreading rumors
- Throwing temper tantrums

Other uncivil conduct is subtler, including:

- Imposing false deadlines
- Sending aggressive or too-frequent emails
- Showing disinterest in others’ opinions
- Excluding someone from emails or meetings
- Blaming others
- Avoiding responsibility
- Delegating difficult (or boring) tasks
- Taking too much credit
- Failing to share information

In 2017, the National Task Force on Lawyer Well-Being published a report that noted how incivility in the legal profession is on the rise: “[C]hronic incivility is corrosive. It depletes our energy and motivation, increases burnout, and inflicts emotional and physiological damage.”⁷

We are also more frequently seeing the outcomes of uncivil behavior. Incivility causes both intentional and unintentional disengagement, as well as increased attrition.⁸ For example, one study of 800 managers and employees from 17 industries identified the following outcomes for participants who had experienced incivility:

- 25% took their frustrations out on clients
- 38% decreased their work quality
- 47% decreased the amount of time they spent at work

- 58% left or thought about leaving their job
- 63% spent work hours worrying about or trying to avoid the offender
- 66% experienced a decrease in their performance
- 78% experienced a decreased commitment to their organization⁹

For the legal industry, it is critical to think not only of the economic toll on our organizations (lost revenue from attrition, lack of productivity, and healthcare costs) but also about the individual toll on our talent. We know that relationship difficulties are one of the greatest causes of stress and that managing stress is imperative for our organizations to remain healthy.¹⁰ We all know an attorney who interacts with colleagues in a way that creates or exacerbates a negative outcome, causing unnecessary strife and wasted energy.

This study's interest in civility is multifaceted. We aim to shed light on these behaviors in our industry and organizations not only to help increase well-being but also to increase inclusivity and belonging. The word civility comes from the Latin root *civilis*, meaning "befitting a citizen." And it is important that we consider the impact on all of our organizational citizens. It is a well-documented phenomenon that women experience more incivility than their male counterparts.¹¹ The NALP Foundation and Fringe PD hope to explore this as well as other demographic trends in our final phase of research, a lawyer survey intended to provide further details on this issue. We are seeking additional responses to that lawyer survey. Please contact the authors for additional information about participating in or promoting the ongoing lawyer survey, including for the link to the survey. Once complete, a report of the findings from the study will be available from The NALP Foundation and Fringe PD.

As we strive for healthy, productive, and inclusive organizations, the legal industry must consider the impact that our communication behaviors — civil or otherwise — have on all of us.

Introduction to the Study

The NALP Foundation and Fringe PD recently conducted a *Study of Civility within the Legal Industry* among law firm administrators to explore civility within law firms and to identify policies and procedures for reporting and addressing incivility. Our organizations took on this research in the hope of giving law firms a mechanism to identify and mitigate this type of interpersonal communication.

The study addresses the impact of workplace behaviors and communications in a way that is not always captured through traditional anti-harassment training and policy. It provides law firms with best practices for addressing uncivil behavior and for establishing policies to address this critical issue. The results of this study are highly valuable to law firms and can be used to help create and implement processes or adjust current policies, codes, and training.

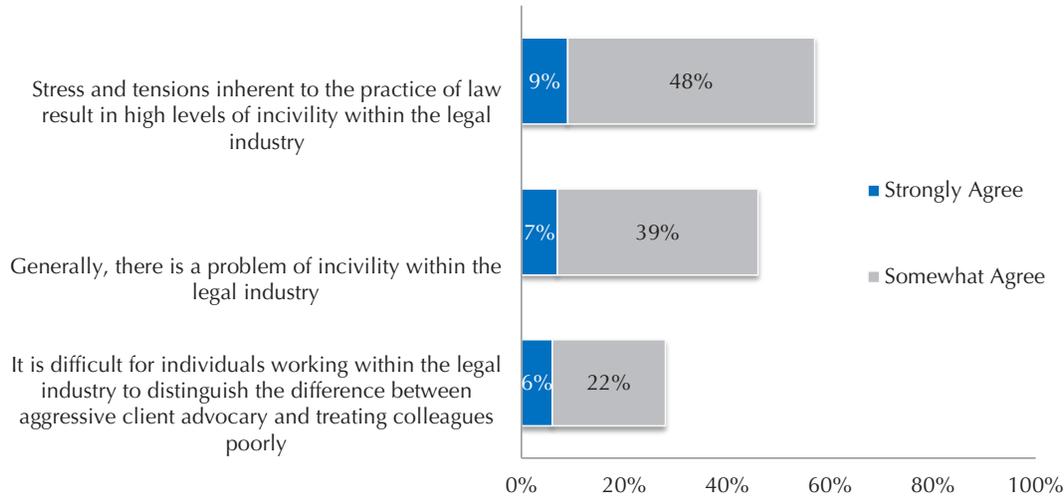
Methodology

In September 2018, a letter explaining the importance of the study was sent to law firm administrators within NALP's membership; it invited each person to participate in a survey.¹²

The NALP Foundation has a long history of working with law firms and law schools and of handling their sensitive data. The data and responses were kept confidential, and participants are not identified by firm name, responses, or outcomes. The information gathered included current policies or codes that address civility (outside of legally mandated anti-harassment policy), procedures for reporting complaints of uncivil behavior, and training programs.

A total of 57 law firm administrators participated, representing firms with 100 or fewer lawyers up to firms with more than 1,000 lawyers.

Figure 1. Level of Agreement with Statement — As reported by law firm administrators



Base: All firm administrators. On a 5-point scale where 5 equals “strongly agree” and 1 equals “strongly disagree.”

Data on Civility from the Firm Perspective

Using a five-point scale where 5 equals “strongly agree” and 1 equals “strongly disagree,” firm administrators rated their level of agreement on several statements related to general incivility within the legal industry. Administrators were asked to rate their level of agreement with a set of statements, including:

Rated Agreement with Three Statements:

1. “Generally, there is a problem of incivility within the legal industry.”
2. “Stress and tensions inherent to the practice of law result in high levels of incivility within the legal industry.”
3. “It is difficult for individuals working within the legal industry to distinguish the difference between aggressive client advocacy and treating colleagues poorly.”

On the whole, 57% of participating firm administrators agreed (either “strongly agree” or “somewhat agree”) with the state-

ment “stress and tensions inherent to the practice of law result in high levels of incivility within the legal industry,” while less than one-half (46%) agreed with the statement “generally, there is a problem of incivility within the legal industry,” and over one-quarter (28%) agreed with the statement “it is difficult for individuals working within the legal industry to distinguish the difference between aggressive client advocacy and treating colleagues poorly.” (See Figure 1.)

These results demonstrate the strong perception that incivility is inherent in the legal profession. The law firm administrator respondents view incivility as beyond the control of individuals or firms and as a natural consequence of being a lawyer. As discussed below, there are specific steps individuals and firms can take to change that perception.

The results by firm size revealed that law firm administrators from firms of 251–500 lawyers agreed more strongly with each statement, on average, compared with administrators from firms of other sizes. (See Table 1.)

Table 1. Level of Agreement with Statement (Average Score)* — Overall and by Firm Size

	All Firm Administrators	FIRM SIZE			
		100 and Fewer	101-250	251-500	More than 500
Stress and tensions inherent to the practice of law result in high levels of incivility within the legal industry.	3.4	3.1	3.7	4.0	3.6
Generally, there is a problem of incivility within the legal industry.	3.3	3.4	3.6	3.7	3.3
Generally, it is difficult for individuals working within the legal industry to distinguish the difference between aggressive client advocacy and treating colleagues poorly (e.g. bullying or rudeness).	2.7	2.4	2.8	3.2	2.8

Base: All firm administrators. Note: On a 5-point scale where 5 equals “strongly agree” and 1 equals “strongly disagree.”

Prevalence of Policies and Codes

Results also revealed that policies or codes on civility were not common within participating firms. Over three-quarters (76%) of administrators reported that their law firm did not have a current policy or code (outside of legally mandated anti-harassment policy) to address civility in the workplace. Among the small number of firms that did, the majority reported that this policy or code is effective, as demonstrated by their responses to open-ended follow-up questions:

“We make it clear to candidates from the get-go that we have a rule, and we recruit for candidates that fit our culture.

People who treat others in an unkind manner are spoken to quickly. The environment at my firm is very positive and people genuinely like each other.”

— Human Resource Director/Manager, firm of 101–250 lawyers

“Treating others well is part of our core values and is communicated and demonstrated from the top down. When someone steps outside the bounds, whether a partner or employee of the firm, an appropriate conversation is had.”

— Professional Development Department Director/Manager, firm of 251–500 lawyers

As detailed previously, firm administrators from firms with 251–500 lawyers reported higher levels of agreement, on average, for all of the statements about incivility within the legal industry. Interestingly, a higher percentage of respondents from this size firm also reported the existence of civility policy or code compared with firms of other sizes. (See Table 2.)

Table 2. Whether Firms Have Current Policy or Code That Addresses Civility — Overall and by Firm Size

As reported by firm administrators	All Firm Administrators	FIRM SIZE			
		100 and Fewer	101-250	251-500	More than 500
Yes	24%	14%	18%	29%	12%
No	76%	86%	82%	71%	88%

Base: All firm administrators. Percentages may not sum to 100% due to rounding.

In addition, the study explored whether firms include workplace communication in their anti-harassment policy. For the purpose of this study, we defined “workplace communication” as “the exchanging of ideas and information both verbally and non-verbally via email, in person, or through a chat function or video.”

Just over two-thirds (67%) of firm administrators reported their firm includes workplace communication in its anti-harassment policies. Results by firm size showed that a remarkably lower percentage of respondents from firms with 251–500 lawyers report having workplace communication in their firm’s anti-harassment policy as compared with firms of other sizes. This is consistent with the finding that a higher percentage of firms with 251–500 lawyers have stand-alone civility policies or codes. (See Table 3.)

Table 3. Whether Firm Includes Workplace Communication in Its Anti-Harassment Policy — Overall and by Firm Size

As reported by firm administrators	All Firm Administrators	FIRM SIZE			
		100 and Fewer	101-250	251-500	More than 500
Yes	67%	71%	82%	29%	75%
No	33%	29%	18%	71%	25%

Base: Firm administrators whose firm does not have current policy or code. Percentages may not sum to 100% due to rounding.

Reporting Uncivil Behavior

Forty-one percent of firm administrators reported that their firm has a standard procedure for reporting complaints of uncivil behavior. The most common places for filing formal complaints were human resources and practice group leaders. While formal assistance was not universally offered, the majority of respondents did report that their firm offers some type of assistance, including confidential resources within the firm, third-party coaching, and peer mentorship.

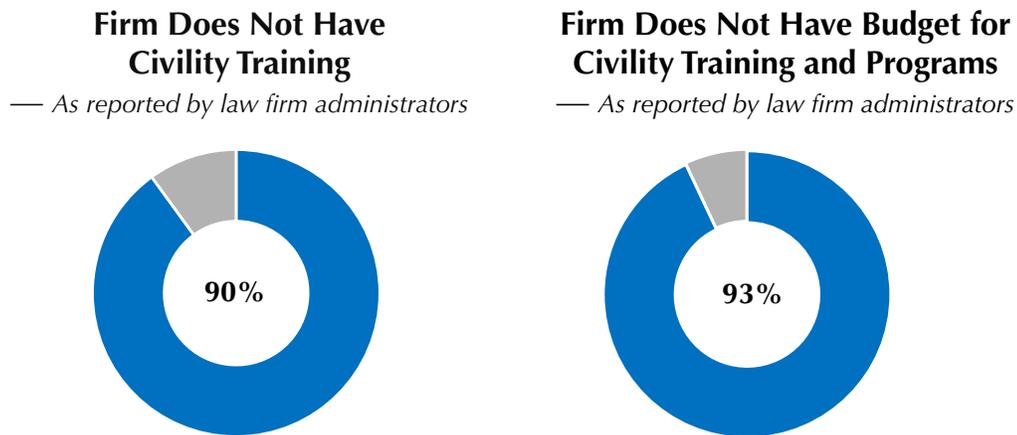
Additionally, law firm administrators were asked to indicate whether their firm has a department, working group, or individual who is dedicated to managing or overseeing uncivil behavior. In total, 72% of respondents said yes — often the same person or group that manages and oversees the firm’s harassment complaints. Only small percentages of administrators from firms with 251–500 lawyers (14%) and more than 500 lawyers (12%) reported that the person or group that manages incivility is separate from those who manage harassment, while none of the firms with 250 or fewer lawyers reported likewise. (See Table 4.)

Table 4. Whether Firm Has Department, Working Group, and/or Individual Dedicated to Managing and/or Overseeing Uncivil Behavior and Complaints — Overall and by Firm Size

As reported by firm administrators	All Firm Administrators	FIRM SIZE			
		100 and Fewer	101-250	251-500	More than 500
Yes, the SAME person or group that manages and/or oversees anti-harassment complaints	61%	71%	73%	57%	50%
Yes, a SEPARATE person or group that manages and/or oversees anti-harassment complaints	11%	0%	0%	14%	12%
No	28%	29%	27%	29%	38%

Base: All firm administrators. Percentages may not sum to 100% due to rounding.

Figure 2.



Civility Training and Budget

Few law firm administrators indicated that their firm dedicated time and dollars to civility training and programs. Specifically, 90% of law firm administrators reported their firm does not have a formal civility training program, and 93% of law firm administrators reported their firm does not have a dedicated budget toward civility training and/or programs at their firm. Among the small number of firms that reported they had a dedicated budget at the time of the survey, budgets ranged from \$5,000 to \$50,000 annually. (See Figure 2.)

Now What?

From the story recounted at the beginning of this article to our findings from the administrators managing our law firms, it is clear: Incivility is a problem in our organizations and a focus on increasing civility is critical to the development of healthy, engaged, and productive employees.

That said, what can we do about this overwhelming, seemingly insurmountable, challenge? As shown in the data above, very few firms provide training specifically on civility. Yet the majority do include workplace communication in their anti-

harassment policy. If firms are going to include communication standards in their policies, it is important to also define them and to integrate these expectations throughout the organization. We can't expect our colleagues to comply with a standard of behavior that we have not expressly defined for them. Here are a few ways to start tackling this challenge.

Be Loud and Clear in Your Expectations

Work with your management committee or other firm leaders to clearly define how employees should communicate with one another. While this may seem obvious at first, it will eliminate a lot of confusion later. Don't be afraid to be painstakingly specific. Bryan Cave, for example, has outlined a very clear Code of Civility for its employees. The firm lists ten specific "rules" that the firm as a whole agrees to as behavioral norms, ranging from "greet and acknowledge each other" to "respect each other's time commitments."¹³

The challenge is to not only create this list, which we expect will be different for every organization, but also to distribute it throughout the organization in a meaningful way. Consider the following opportunities to share your communication expectations.

- Add them to the homepage of your intranet or other common electronic meeting place.
- Ask practice group managers and department heads to share and lead a discussion at their next group meeting.
- Post them in open spaces at the firm.
- Create a video series where firm leaders discuss how they implement civility practices.

Create a Pathway for Those in Need

While it would be wonderful if well-articulated expectations were enough to remove incivility from our workplaces, this simply isn't the case. The truth is, there will always be people who act out — there will always be a “Casey” like the partner in the story above.

As leaders in our organizations, we have an imperative to create a process for confidential and effective disclosure of such behaviors for remediation. While over half of the firms we surveyed include uncivil communication in their anti-harassment policy, fewer than half have a standard procedure for reporting acts of uncivil behavior. We recommend investigating the options for reporting and disclosure in your firm by asking the following questions:

- What keeps people from reporting?
- How can we articulate the importance of reporting?
- What precautions can we put in place to maintain the confidentiality of the reporter?
- What consequences are we willing to impose on any perpetrators?

The challenge seen most frequently, even within the largest law firms, is that working groups tend to be quite small, creating a

fear of retaliation for those who experience incivility. The more public that your organization can be in setting expectations and creating a process for reporting, the more that this fear can be mitigated, even if it takes time to shift the cultural standard.

One final note on reporting: Upholding repercussions for violators is important. Studies have shown that the most likely pattern for uncivil communication is by supervisors to their subordinates. This creates a challenge similar to the one seen with sexual harassment, in that the perpetrator is often tied to the profitability of the firm. This means that firms have a difficult decision to make: Either confront the perpetrator and risk alienating that person or accept the behavior and risk a culture of silence. When the perpetrator is a rainmaker firms can be especially reluctant to address the issue. The alternative is that associates, like the one whose story opened this article, know that nothing will come of a claim, so they either need to accept incivility or leave.

Start Where You Are

It may seem daunting to create or modify a code of civility or a reporting process, and perhaps you lack the resources or influence to take on these tasks. But you can still help improve our industry's civility standards by starting where you are — often the most immediate and effective way to move the needle forward on any large-scale problem. This approach also makes it easier to see results, which can increase your motivation to continue.

Consider how many people you communicate with at work on a daily basis, whether verbal or non-verbal communication. What would happen if you increased your engagement and civility among this group? Ochsner, a healthcare company in Louisiana, implemented the highly effective “10-5 Rule” to improve their internal communications and engagement: If you are ten feet from someone, smile or acknowledge them in a positive way. When you are five feet from them, engage verbally by greeting them.¹⁴ Imagine a world without awkwardly silent elevator rides!

Talking to your team or work group about the concept of civility is another great way to start where you are. Whether your team has two or twenty employees, consider finding an opportunity to circulate an article on civility among them and to sit down, or even break bread, to discuss the concept in an open and supportive format. Here are some questions to kick off that conversation:

- What subtle behaviors do you consider uncivil or inconsiderate?
- How do you want people to communicate with you?
- What kind of communication could strengthen our team?
- When getting constructive feedback, what would help you better absorb and learn from the information?

This study certainly doesn't provide all the answers for addressing the challenge of incivility, but the tips above can help our industry move forward. By providing spaces where communication is handled with a mindset of growth and positivity instead of with abrasiveness and condescension, we can create law firms that are equipped to keep pace with the change demanded by society.

Endnotes

¹ C. Pearson and C. Porath, *The Cost of Bad Behavior: How Incivility Is Damaging Your Business and What to Do About It*, Portfolio Hardcover, 2009.

² "Highlights: Workplace Stress and Anxiety Disorders Survey," Anxiety and Depression Association of America website, 2006.

³ M. Leiter and C. Maslach, *Banishing Burnout*, Jossey-Bass, 2005.

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⁶ *Civility in America 2018: Civility at Work and in Our Public Squares*, Weber Shandwick, 2018.

⁷ [The Path to Lawyer Well-Being](#), National Task Force on Lawyer Well-Being, 2017.

⁸ C. Pearson and C. Porath, "The Price of Incivility," *Harvard Business Review*, January-February, 2013.

⁹ C. Pearson and C. Porath, *The Cost of Bad Behavior: How Incivility Is Damaging Your Business and What to Do About It*, Portfolio Hardcover, 2009.

¹⁰ "Highlights: Workplace Stress and Anxiety Disorders Survey," Anxiety and Depression Association of America website, 2006.

¹¹ L. Cortina, D. Kabat-Farr, E. Leskinen and M. Huerta, "Selective Incivility as Modern Discrimination in Organizations: Evidence and Impact," *Journal of Management*, September 2013.

¹² The list of law firms was derived from NALP's member list. The NALP Foundation and Fringe PD developed the survey instrument, along with input from an advisory board formed for the project. Several individuals within the legal industry volunteered their time and expertise and provided valuable input that was instrumental in shaping the survey instruments. Thank you to all who contributed to this study.

¹³ K. Haman, "One Firm's Approach Treats Colleagues like Clients," *Orange County Business Journal*, July 2015.

¹⁴ Kruse, "Can Civility in the Workplace Save You Time and Money?" *Forbes*, June 2017.

About the Authors



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She uses this experience, as well as a brain-based coaching certification through the NeuroLeadership Institute and a certificate of Women in Leadership from Cornell University, to develop and deliver training programs on the topics of executive presence, management and leadership, communication skills, and goal pursuit. By integrating her work inside some of the top global law firms with performance and coaching tools, Rachael has been able to identify strategic paths for success that can be used to advance teams and careers. Rachael is also certified to evaluate and train teams on the DiSC behavioral assessments. She can be contacted at rachael@fringePD.com.



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