

The Value of Civility in the Legal Profession

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BY JUDGE HARRY MCCARTHY

Much has been written during the last decade about civility and professionalism in the practice of law. Numerous journal articles have been published concerning the importance of civility in the legal profession.¹ Has it been overdone? In my opinion, the answer is no. While we have become more aware of the need to honor the basic values of courtesy and respect, we still have a way to go before those values are again solidly integrated into the professional practice of law.

One does not have to look far to witness public uncivil behavior. We need only recall the recent obnoxious and startling shout of “You lie!” by a member of Congress during President Obama’s State of the Union address in 2010. As shocking as that outburst was, in many ways it was representative, albeit in an extreme form, of the quarrelsome, polarizing conduct by many of our elected officials who have seemed to have lost the importance of courteous discourse. When elected representatives behave in such an unprofessional way, the message is clear — courtesy is a sign of weakness that does not get results.

What has gotten us to this state when our elected representatives and many attorneys engage in such a rude, downward spiral of destructive, uncivil conduct? To be sure, we are speaking about a minority of attorneys who engage in

such unprofessional behavior; yet this boorish conduct has seeped into the practice of law with alarming frequency. Perhaps the sheer increase in the number of lawyers has had something to do with the decline in civility. There was a time where attorneys saw each other frequently. If one attorney betrayed a trust or reneged on an agreement, the legal community quickly knew about it. Now, in many cases, attorneys encounter opposing counsel only once or twice. This anonymity has required little investment in civility.



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Professionalism is the very essence of being a successful lawyer. With the proliferation of mega-law firms and the increased complexity of transactions, the law as a profession has become subordinate to the law as a business. The daily pressures of increased billings and the “bottom line” have become the paramount concerns. However, despite the unfortunate recent trend of uncivil behavior, a law office’s profitability is more likely to be enhanced by the habitual practice of civility. The civil, professional approach is not just politeness — it can be, and most often is, the best business practice.

Technological advances in law practice also have been a contributing factor in the decline of professional values. It is tempting for an attorney to respond instantly to a shrill email with an equally shrill one. Not long ago, before the technology boom, letters were the more common means of communication. Even a provocative letter allowed the recipient time to reflect before responding. That extra time often proved the difference

between a more thoughtful response than the more contemporary, reflexive act of hitting the “hot” email send button and perhaps regretting it later.

In a 1995 article, titled “Be Just to One Another: Preliminary Thoughts on Civility, Moral Character and Professionalism,” Mark Neal Ironstone noted: “Generally speaking, civility is important because it frames common expectations about trust and respect in seeking resolution through dialogue. Without such mutual confidence there cannot be an effective meeting of the minds as a way to

resolve social disputes and problems. Instead, individuals wind up talking past each other or sinking to the lowest common denominator to strike a short term advantage or to achieve a cheap gain.”²

Is a decline in attorney civility simply a byproduct of the adversary system? Probably not, since the adversary system has always been with us and has

never been an excuse for disrespectful behavior. The very best attorneys, well-versed in the traditions of civility, can conduct an important cross-examination, even one of a hostile witness, and do so in such a productive and respectful manner that the goals of the cross are met while simultaneously maintaining a high standard of professionalism.

More recently, the profession has responded to the concerns that we have lost our professional bearings in our dealings among ourselves and others. The adoption and wide dissemination of the WSBA Creed of Professionalism (see the inside back cover of this issue) has become an important reminder of the importance of the underlying values of respect and trust. The revival of the Inns of Court has also done much to renew our commitment to civility and inspire us in our daily professional lives. These are promising signs that a significant number of attorneys are again seeing civility and professionalism as crucial to a successful law practice. May their number increase and may civility be-

come routinely practiced as the profession honors its time-honored traditions of integrity, respect, and courtesy. [®]



Judge Harry J. McCarthy has served on the King County Superior Court since 2002. As chair of the WSBA Professionalism Committee in 2001, he was the primary author of the Creed of Professionalism. He wrote articles and traveled throughout the state to speak with lawyers and judges to obtain input on civility in general and the Creed in particular. He served for many years as an assistant United States attorney in the U.S. Attorney's Office in Seattle, the last four years as criminal division chief. Judge McCarthy has served as a mentor for many young attorneys during his career.

NOTES

- 1 . See, e.g., *WSBA Bar News*, Vol. 62, No.8.
- 2 . From the *St. Thomas Law Review*, Vol. 8, p. 113. Reprinted in an article titled "Civility in the Practice of Law" by Robert W. Ritchie in the July/August edition of *The Bench*, the magazine of the American Inns of Court, at p. 15.



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Sources: 2010 US Census; King County Crisis Clinic (2008-2010 comparison)

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