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Standards Of Civility — Take An Active Role

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LITIGATION CORNER

At the recent Speakers Forum sponsored by the Monroe County Bar Center for Education, Presiding Justice Eugene F. Pigott of the Appellate Division, Fourth Department referred to recent evidence that the level of civility among attorneys is not improving, and it may well have taken a turn for the worse. In light of those comments, I thought it would be appropriate to address the subject of civility and remind all of us that there are published *Standards of Civility* which should be provided more circulation among the members of our profession.

In 1997, the New York State Court System formed a committee chaired by Justice Samuel L. Green of the Appellate Division to draft a Code of Civility. The proposed standards were given wide circulation for public comment and were then adopted by the Administrative Board and became effective on Jan. 1, 1998.

Although the standards have been issued in a formal manner, they are not intended to be enforced by sanction or disciplinary action, nor are they intended to supplement or modify the Rules Governing Judicial Conduct, the Code of Professional Responsibility, and its Disciplinary Rules. They are simply a set of guidelines to encourage lawyers, judges, and court personnel to observe certain principles of civility and decorum.

The publication entitled *Standards of Civility* can be accessed by going to the website of the New York State Unified Court System at www.courts.state.ny.us/jipl/standardsofcivility.pdf.

Although 10 standards were adopted that are intended to apply to attorneys, I will focus on only six of them and those that appear to need the greatest reinforcement among all of us.

In the "Introduction" of the *Standards*, Chief Judge Judith Kaye reminds us of their importance when she states:

"The concepts in the *Standards* are not complicated. Indeed, they merely put on paper what lawyers overwhelmingly believe: that ours is an honorable profession, in which courtesy and civility should be observed as a matter



MICHAEL R. WOLFORD

of course. The issuance of the *Standards*, however, reminds us that critical self-examination is healthy for any institution, including the bar. Let's use these guidelines as the benchmark, to determine whether any of our practices fall short of our ideals — and in the process demonstrate to the public that ours is a profession well worthy of their trust and respect."

If we are able to achieve Judge Kaye's belief that the public image of the profession will be enhanced, then it is well worth the effort for us to be not only familiar with the *Standards*, but to make an effort to encourage our members to be conversant with them and to comply with them.

I. Lawyers should be courteous and civil in all professional dealings with other persons.

Although this statement seems self-evident, it is clear that at times it may be difficult to achieve, especially if confronted with an obnoxious-acting adversary.

I would simply suggest that rather than retaliating in the face of an ill-mannered individual, simply send your adversary a copy of the *Standards*, and highlight those that are particularly applicable to him/her. You might actually make a convert and, in the last analysis, what do you have to lose?

II. A lawyer should respect the schedule and commitments of opposing counsel, consistent with protection of the client's interests.

Among the various examples given by the committee under this principle is the suggestion that, "... the first request for an extension to respond to pleadings ordinarily should be granted as a matter of courtesy." Not only should it be granted as a matter of courtesy, but furthermore, you should not attempt to impose conditions on the extensions such as a waiver of jurisdictional defenses or other concessions.

III. A lawyer should promptly return telephone calls and answer correspondence reasonably requiring a response.

Although most attorneys comply with this *Standard* on a regular basis, there are always a few who simply ignore such communications. Again, it might be appropriate to

Continued ...

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Continued ...

send a copy of the *Standards* and highlight those particular provisions that apply. Perhaps that tactic will achieve its intended purpose.

IV. A lawyer should not use any aspect of the litigation process, including discovery and motion practice, as a means of harassment or for the purpose of unnecessarily prolonging litigation or increasing litigation expenses.

Even if a client is suggesting that the purpose of the litigation is to harass, the attorney should not adopt that strategy.

V. In depositions and other proceedings, and in negotiations, lawyers should conduct themselves with dignity and refrain from engaging in acts of rudeness and disrespect.

In Justice Pigott's comments referred to above, he noted that there seems to be an increase in the level of incivility, particularly at depositions. This *Standard* specifically states that "lawyers should not engage in any conduct during a deposition that would not be appropriate in the presence of a judge."

If we followed that guideline, it is evident that a considerable amount of attorney argument on the record would be curtailed and we would undoubtedly be better for it.

It is also stated under this *Standard* that, "a lawyer should not obstruct questioning during a deposition or object to deposition questions unless necessary."

Although it is important to protect the record, as we all know, all objections except as to form are typically reserved until the time of trial and, therefore, the basis for many objections is non-existent.

VI. Lawyers should be mindful of the need to protect the standing of the legal profession in the eyes of the pub-

LITIGATION CORNER



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lic. Accordingly, lawyers should bring the New York State *Standards of Civility* to the attention of other lawyers when appropriate.

We should, therefore, commit to not only bringing the *Standards* to the attention of other attorneys who we believe have violated them, but we should also make every effort to publicize these *Standards* to our associates, partners, friends and younger attorneys who are new to the profession. Although most of these *Standards* apply to litigators, they also are appropriate to all members of our profession.

When we discuss the *Standards of Civility*, we should all be reminded of Atticus Finch from *To Kill a Mockingbird* and the example of civility that he provided us.

The admiration readers have for Atticus Finch is not only because of his integrity, courage and principled devotion to the rule of law, but also for his civility in the face of adversity — from an unruly mob to the threatening behavior of Bob Ewell, the father of the alleged victim.

It is difficult to identify a trial lawyer in American fiction who rises to the level of Atticus Finch. In our pressure-filled society and ever-changing profession, the attempt to conform our standards of conduct to those of Atticus Finch would not only enhance our profession, but also would help engender a greater satisfaction in all of us with our daily work.

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