

NEW YORK STATE UNIFIED COURT SYSTEM

STANDARDS *of* CIVILITY

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OCTOBER 1997

How Do We Make the Standards of Civility Work?*

By Judith S. Kaye

The announcement that the New York State court system would adopt Standards of Civility for lawyers, judges and court personnel added mountains to my mail this summer. The mail, by the way, concerned only the guidelines pertaining to lawyers—even though the Standards apply as well to judges and court personnel. From members of the public it ran 100 percent in favor of the guidelines. Lawyers, not surprisingly, divided.

Among the messages that stand out was one from a lawyer-friend upstate who, though overwhelmingly supportive of the Standards, couldn't resist concluding: "Having said all that, I confess to my own transgressions of incivility. It is just that there is something terribly satisfying in seeing my tire marks on my opponent's chest."

I know exactly what he means. Although I have now been privileged to serve as a Judge for 14 years, still I savor those rare but delicious moments from my days as a litigator when I succeeded in trouncing the opposition. They are absolutely unforgettable—even when one gets to be the Chief Judge. I disagree with my lawyer-friend, however, that those prized moments were the product of incivility. The merits, unquestionably. Skill, I hope. Luck, probably. But incivility? Those truly satisfying, long-remembered tire marks on an opponent's chest are never earned by shouting, bullying or sharp practice.

I believe that is the predominant view today, as it has been during my own 35 years as a lawyer. But at the same time it is also undeniable that with our exploding numbers and increased bottom line pressures, the practice of law has grown tougher and meaner, eroding a core tradition of courtesy and civility. That we have in addition suffered a great loss in public trust and confidence is no secret. Now it is for us to do something about the situation.

With those thoughts in mind, the Administrative Board of the court system named a group of 16 lawyers and judges—the Craco Committee—to identify the sources of the problem and show us how to address it. In its report, the Craco Committee, as I do, put the emphasis on the positive, recognizing the enormous contribution the legal profession makes to the strength and vitality of our State and nation. The Committee concluded, however, there are also considerable negatives about modern-day practice, and it submitted numerous recommendations to overcome them. Among the recommendations was a code of civility "that will reorient the bar and bench toward the observance of courtesies that long have enhanced the quality of professionalism in New York. Aspirational in content, such a code will form a frame of reference to assist both bench and bar in discerning the bounds of civility among other things."

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The court system then formed a second lawyer-judge committee, chaired by Appellate Division Justice Samuel L. Green, to draft such a code. Like the Craco Committee itself, the Green Committee was representative of the profession throughout the State. And like the Craco Committee, it did its work well, consulting several of the 88 or more jurisdictions—a remarkable number—that already have such codes (see, e.g., Interim Report of the Committee on Civility of the Seventh Federal Judicial Circuit, 143 FRD 371). The proposed Standards were then widely circulated for public comment before adoption by the Administrative Board. They will go into effect January 1, 1998.

To my mind, the Standards of Civility present a difficult question.

The question is not whether we really need a civility code. I believe the need has been amply established by what we ourselves see on a daily basis, by the dozens of jurisdictions that have adopted civility codes, and by the numerous bar association studies, surveys and reports—several of them in New York—identifying lack of common courtesy as a pervasive problem today. Nor do I believe that we should be asking whether civility standards can really make any significant difference, given the absence of penalties and enforcement mechanisms. The intention was to upgrade and assure everyday professional behavior, not create another arena for contention and litigation.

The difficult question I hope we will all ask—and answer thoughtfully and constructively—is exactly what steps we might take to assure that these standards actually fulfill their purpose.

Clearly as a starting point we need to disseminate the standards as widely as possible, especially to organizations like law schools, law firms and bar associations. We need to be certain that the newest lawyers learn good habits early on, both from internalizing the succinct principles articulated in the Standards of Civility, and from observing the more seasoned among us give life to those principles in our own daily practice.

And we should use the issuance of the Standards as an opportunity for further discussion about the state of our profession. Does the local legal culture in fact reflect these basic tenets of behavior? How does the public regard our work? Can we restore the sense of collegiality?

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 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.

STANDARDS *of* CIVILITY

Preamble

The New York State Standards of Civility for the legal profession set forth principles of behavior to which the bar, the bench and court employees should aspire. They are not intended as rules 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, or any other applicable rule or requirement governing conduct. Instead they are a set of guidelines intended to encourage lawyers, judges and court personnel to observe principles of civility and decorum, and to confirm the legal profession's rightful status as an honorable and respected profession where courtesy and civility are observed as a matter of course. The Standards are divided into four parts: lawyers' duties to other lawyers, litigants and witnesses; lawyers' duties to the court and court personnel; judges' duties to lawyers, parties and witnesses; and court personnel's duties to lawyers and litigants.

As lawyers, judges and court employees, we are all essential participants in the judicial process. That process cannot work effectively to serve the public unless we first treat each other with courtesy, respect and civility.

Lawyers' Duties to Other Lawyers, Litigants and Witnesses

- I. Lawyers should be courteous and civil in all professional dealings with other persons.**
 - A. Lawyers should act in a civil manner regardless of the ill feelings that their clients may have toward others.
 - B. Lawyers can disagree without being disagreeable. Effective representation does not require antagonistic or acrimonious behavior. Whether orally or in writing, lawyers should avoid vulgar

language, disparaging personal remarks or acrimony toward other counsel, parties or witnesses.

- C. Lawyers should require that persons under their supervision conduct themselves with courtesy and civility.

II. When consistent with their clients' interests, lawyers should cooperate with opposing counsel in an effort to avoid litigation and to resolve litigation that has already commenced.

- A. Lawyers should avoid unnecessary motion practice or other judicial intervention by negotiating and agreeing with other counsel whenever it is practicable to do so.
- B. Lawyers should allow themselves sufficient time to resolve any dispute or disagreement by communicating with one another and imposing reasonable and meaningful deadlines in light of the nature and status of the case.

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

- A. In the absence of a court order, a lawyer should agree to reasonable requests for extensions of time or for waiver of procedural formalities when the legitimate interests of the client will not be adversely affected.
- B. Upon request coupled with the simple representation by counsel that more time is required, the first request for an extension to respond to pleadings ordinarily should be granted as a matter of courtesy.
- C. A lawyer should not attach unfair or extraneous conditions to extensions of time. A lawyer is entitled to impose conditions appropriate to preserve rights that an extension might otherwise jeopardize, and may request, but should not unreasonably insist on, reciprocal scheduling concessions.
- D. A lawyer should endeavor to consult with other counsel regarding scheduling matters in a good faith effort to avoid scheduling conflicts. A lawyer should likewise cooperate with opposing counsel when scheduling changes are requested, provided the interests of his or her client will not be jeopardized.
- E. A lawyer should notify other counsel and, if appropriate, the court or other persons at the earliest possible time when hearings, depositions, meetings or conferences are to be canceled or postponed.

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

V. The timing and manner of service of papers should not be designed to cause disadvantage to the party receiving the papers.

- A. Papers should not be served in a manner designed to take advantage of an opponent's known absence from the office.
- B. Papers should not be served at a time or in a manner designed to inconvenience an adversary.
- C. Unless specifically authorized by law or rule, a lawyer should not submit papers to the court without serving copies of all such papers upon opposing counsel in such a manner that opposing counsel will receive them before or contemporaneously with the submission to the court.

VI. 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.

- A. A lawyer should avoid discovery that is not necessary to obtain facts or perpetuate testimony or that is designed to place an undue burden or expense on a party.
- B. A lawyer should respond to discovery requests reasonably and not strain to interpret the request so as to avoid disclosure of relevant and non-privileged information.

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

- A. Lawyers should not engage in any conduct during a deposition that would not be appropriate in the presence of a judge.
- B. Lawyers should advise their clients and witnesses of the proper conduct expected of them in court, at depositions and at conferences, and, to the best of their ability, prevent clients and witnesses from causing disorder or disruption.
- C. A lawyer should not obstruct questioning during a deposition or object to deposition questions unless necessary.
- D. Lawyers should ask only those questions they reasonably believe are necessary for the prosecution or defense of an action. Lawyers should refrain from asking repetitive or argumentative questions and from making self-serving statements.

VIII. A lawyer should adhere to all express promises and agreements with other counsel, whether oral or in writing, and to agreements implied by the circumstances or by local customs.

IX. Lawyers should not mislead other persons involved in the litigation process.

- A. A lawyer should not falsely hold out the possibility of settlement as a means for adjourning discovery or delaying trial.
- B. A lawyer should not ascribe a position to another counsel that counsel has not taken or otherwise seek to create an unjustified inference based on counsel's statements or conduct.
- C. In preparing written versions of agreements and court orders, a lawyer should attempt to correctly reflect the agreement of the parties or the direction of the court.

X. Lawyers should be mindful of the need to protect the standing of the legal profession in the eyes of the public. Accordingly, lawyers should bring the New York State Standards of Civility to the attention of other lawyers when appropriate.

Lawyers' Duties to the Court and Court Personnel

I. A lawyer is both an officer of the court and an advocate. As such, the lawyer should always strive to uphold the honor and dignity of the profession, avoid disorder and disruption in the courtroom, and maintain a respectful attitude toward the court.

- A. Lawyers should speak and write civilly and respectfully in all communications with the court and court personnel.
- B. Lawyers should use their best efforts to dissuade clients and witnesses from causing disorder or disruption in the courtroom.
- C. Lawyers should not engage in conduct intended primarily to harass or humiliate witnesses.
- D. Lawyers should be punctual and prepared for all court appearances; if delayed, the lawyer should notify the court and counsel whenever possible.

II. Court personnel are an integral part of the justice system and should be treated with courtesy and respect at all times.

Judges' Duties to Lawyers, Parties and Witnesses

- I. A judge should be patient, courteous and civil to lawyers, parties and witnesses.
- A. A judge should maintain control over the proceedings and insure that they are conducted in a civil manner.
- B. Judges should not employ hostile, demeaning or humiliating words in opinions or in written or oral communications with lawyers, parties or witnesses
- C. Judges should, to the extent consistent with the efficient conduct of litigation and other demands on the court, be considerate of the schedules of lawyers, parties and witnesses when scheduling hearings, meetings or conferences.
- D. Judges should be punctual in convening all trials, hearings, meetings and conferences; if delayed, they should notify counsel when possible.
- E. Judges should make all reasonable efforts to decide promptly all matters presented to them for decision.
- F. Judges should use their best efforts to insure that court personnel under their direction act civilly toward lawyers, parties and witnesses.

Duties of Court Personnel to the Court, Lawyers and Litigants

- I. Court personnel should be courteous, patient and respectful while providing prompt, efficient and helpful service to all persons having business with the courts.
- A. Court employees should respond promptly and helpfully to requests for assistance or information.
- B. Court employees should respect the judge's directions concerning the procedures and atmosphere that the judge wishes to maintain in his or her courtroom.

