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Main Menu		Help		Sources	
Results List	Return to Search	Previous Document	Next Document	Full View	KWIC View

Document 60 of 72.

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HEADLINE: Civility, professionalism and common courtesy

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BODY:

During the past few years, there have been significant concerns about professionalism, **civility**, and even the lack of common courtesy among members of the bench and bar. The consensus of opinion is that we have lost the ability to relate to one another with respect. Our professional transactions have been affected to the extent that nearly every attorney and judge has had some occasion to be dissatisfied. I, assuredly, can be counted in those numbers, but I often wonder whether we have been able to focus on the real problem and whether there are any real solutions?

It is often difficult to decide how to categorize the offensive behaviors. Many times the assortments overlap. Sometimes, it appears that basic professional ethics are involved, on other occasions, just plain rudeness is the culprit. I have come to understand that figuring out how to handle these delicate situations may be tricky and complicated, particularly for the judiciary. What actions, if any, should one take to deal with the problems?

I have asked myself some basic questions in order to approach a better definition of ordinary discourtesy v. ethical violations: (1) Have we as a profession failed to educate and encourage incoming lawyers and judges to value both courteous conduct and ethical behavior in their professional relationships. (2) What part does individual personality and temperament play? (3) Don't cases still belong to the clients? (4) Is it competition for clients? (5) Are judges competing against one another for recognition among peers? (6) Why does it appear that respect for the judiciary has diminished? (7) Why don't judges use chambers and side bar conferences to speak to attorneys about conduct more often? (8) Why is the court asked to intervene in minor disputes between attorneys? (9) Why isn't the adherence to the rules and other procedural disciplines an important part of trial preparation? (10) Is the idea of winning "by any means necessary" all that counts anymore? (11) Isn't it still important to the parties that they will meet on another day, on another case?

*ethics
professionalism
civility
and quotes*

From my vantage point, I have dealt with all of the above mentioned problems during my nine years as judge. Of course, these transgressions do not occur every day, or are they even a part of the majority of cases that come through the court. However, each time issues of civility, unethical conduct, or unprofessionalism by attorneys or judges become apparent to me, I have been embarrassed by them. I think it expresses something about how we value our profession and our public image.

A change in our behavior has become imperative if we are to continue to be relied on by our citizens to be the last resort in dispute resolution. Our system of justice, imperfect as it is, is the best example of participatory citizenship in the world. Civilized society requires proficient advocates and judges to resolve human conflict without violence to the participants. Many, many times the advice of a lawyer or a ruling by a judge is the only thing that keeps an individual from taking desperate action. The ability to intercede in disputes and to bring order and unanimity where conflict and disruption previously existed is an extraordinary vocation; one to be honored and treasured. A legal career should not be an occupation that brings constant criticism and disdain from our citizenry.

I have come to the conclusion we have neither lost our understanding of the rules governing cooperative, calm conduct or respectful and courteous interplay, nor have our institutions been deficient in ethics training. We all know the rules reasonably well. Whether we are young lawyers or inexperienced members of the judiciary, we certainly know the differences between right and wrong. Acceptable social comportment training begins early and ethical precepts are fully ingrained by puberty.

The present-day importance in our business relationships has become excessive with regard to winning. The "winning isn't everything, it's the only thing" state of mind has become, it seems, the posture "du jour." Rivalry for clients and jockeying for judicial peer recognition may be part of our civility amnesia. Job anxiety, however, is not the exclusive fuel to this fire of forgetfulness.

Winning is the outcome that we all desire. We don't set out to fail on purpose, and, of course, we revere victory as the part of the American dream. It is a material ingredient in the prophesied American way of life. But shouldn't at least part of the central focus of our rules of conduct and dynamic interplay also be on how we accomplish that goal? Winning appears to have replaced other long-treasured values. The measure of proficiency for an individual, that previously represented achievement both in and out of the courtroom, was always accompanied by good character and congeniality. Now that vital combination and dual celebrity emerges as barely impressive. The expectations and the desires by some to defeat their opponent over and above everything else, seems to have surpassed the objective of fair play and gracious accommodation. The problem with this new attitude, of course, is that bad conduct by our members pervades public opinion and leads to the social derogation of our profession. It has made us increasingly ineffective as counselors and referees. It has clearly diminished the public trust in our pursuits.

As I reflect on the questions posed in this essay, review my personal experiences and recount specific incidents of discourteous behavior, I can relate nearly all of them to the desire to win. It may have been to win the case or just to win the current argument. It could have been to simply appear superior by just having the last word. It was rarely related to inferior legal skills or lack of social training. In any event, I am nearly convinced that attempting to teach ethics and civility to attorneys and judges, at this stage of the game, misses the point by a mile.

Unethical and unprofessional behavior, when cited and proven, deserves expeditious punishment. When evaluating other types of conduct, the emphasis should shift to an assessment of our egotistic motives. We may have replaced, without realizing it, our fundamental purpose paradigm. If it is courteous, cooperative conduct without sacrificing the ability to put on the best fight or to be the best advocate and judge possible

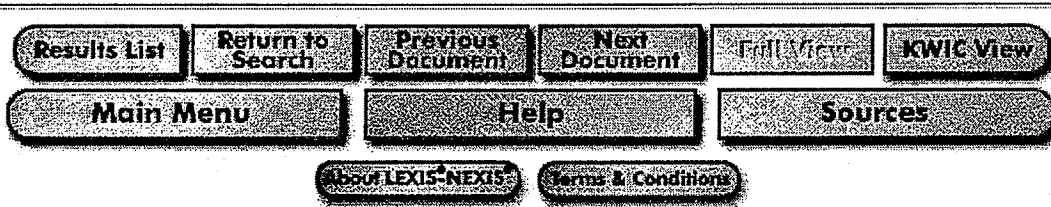
that we truly value and need to preserve, then we must become more self-aware.

Common courtesy and cooperative interaction are still essential elements of the vigilance kept for the honor of the profession and the premium advantages of individual success. To paraphrase "Pogo" in the vintage comic strip, "we have all seen the enemy, and it just may be us!"

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