

PROFESSIONAL COURTESY BEGINS AT HOME

By Stephen R. Marsh

Stephen R. Marsh is an Attorney practicing in Texas.

Most recent reported appearances before the U.S. Supreme Court stress that the justices are becoming more and more ill-tempered, rude and inconsiderate of both each other and of the attorneys appearing before them. The stories are replete with sharp remarks, brutal interruptions and conduct that the general public sees only as abusive. Any U.S. Supreme Court justice who sharply cuts off and abuses attorneys in that Court needs to consider just what professional conduct means and just who needs to practice it.

Reflect on which of the messages sent by the Court speaks loudest, is deepest felt, is the most clearly seen. Is it the Court's actions from day to day or is it the occasional harangue given by members of the Court to the legal profession? Does one give credence or disbelief to the words of a person who in one issue of The National Law Journal appears in a story focusing on their sharp and caustic remarks and the way they shredded an attorney for a mis-step, and in the next issue appears to encourage civility and manners between litigants and their attorneys?

The matter does not end with the face-to-face conduct of some courts. Consider just how often a written opinion gives way to a vicious "tag line" (a conclusion or comment that sounds good but often has only a vague connection with the topic) -- and yet how often a check of the appropriate documents (such as the 5th Circuit Court of Appeals summaries of cases about to be argued or the briefs in United States Supreme Court cases) will show that the facts had to be "stretched" (or even created) in order to allow the tag line to fit with the case.

Does anyone in the real world think that this sort of conduct is really expected to encourage lawyers to respect the Court and, based on what the Court says and does, go forth and act with increased civility and manners?

Not that I am perfect. As an editorialist I have been guilty of "tag line" commentary. However, I have since realized that like everyone else who may slip in their professional courtesy and demeanor, to the extent that I use tag lines, I need to grow up.

The effect of a gap between "do what I say and not what I do" is true not only for parents but for every judge and justice who sits on a bench. Judicial conduct, demeanor and attitude sets a tone and a standard of conduct that affects (or afflicts) all of the attorneys that practice in that court.

SMALLER COUNTIES -- MORE COURTESY

The control that a judge has by his or her demeanor has been brought home to me in watching local judges and magistrates in trials over the past year. For example, our local federal judge, while made of iron, acts with extremely balanced civility and good grace. I have watched attorneys who despise each other change in his presence. At least in his court, the attorneys find themselves cultivating manners and a collegial tone. The personality of the judge completely dominates the attitudes and thinking of the attorneys in the court.

Our local federal magistrate has made the same impact on attorneys -- and does so consciously as the result

of a decision he intentionally made years ago. When I have his permission, I will share the story. Until then, feel free to ask any attorney who practices in Wichita County about the professionalism of the attorney who is also our local federal magistrate.

Luckily our local State bench is the same (or frankly, I would never have released this commentary for publication). It seems the general rule that in smaller counties, where the voters know who they are voting for, the courts are generally civil and polite and the local bars reflect that same personality. When you consider any halfway collegial bar, you will find that the local judges, regardless of national trends, are key actors in setting that collegial mood.

Together with the attorneys in the local bar association, these judges and magistrates teach young attorneys what civility is, what professional courtesy means, and what constitutes appropriate behavior in a legal setting.

LESSONS LEARNED FROM THE BAR

I mention the local bar, together with judges, because older attorneys also have a powerful input on younger attorneys -- by their words and deeds the older attorneys teach the newcomers what is acceptable and what is appropriate. As the trial bar becomes a "pre-trial" bar (with litigation evolving into discovery and pleadings rather than the practice of jury trials), attorney to attorney contact supplants many of the areas of socialization that used to be dominated and controlled solely by the behavior of the local bench.

This indirect mentoring and teaching of behavior starts with the first contacts law students have with law firms. While many attorneys mistakenly feel that "law is law and business is business" -- with hiring a part of the business side -- no learning attorney feels that way. While many older attorneys feel that hiring practices are somehow divorced from the constraints and requirements of professional courtesy, this is another area where actions speak louder than words to younger members of the bar.

The way that younger lawyers are treated in the hiring process is often their first taste of professional courtesy outside of a law school class room (surely you remember how kind your law professors were). The hiring process is often the first contact a young lawyer has with a firm -- and it creates and sets attitudes and beliefs that will last a lifetime. This was brought home forcefully to me during a recent stint as a co-counsel to another attorney.

Since I practice in a small bar, I routinely agree to extensions when asked. The attorney I was co-counseling had been reasonable and easy to work with in prior cases (which is why I had agreed to work with him again). But suddenly, in the instant case, he was adamant -- no extensions regardless of the reason or the situation.

It turned out that years before, he had interviewed with the other side's law firm. They had promised him an answer on the job for which he interviewed "in 10 days to a couple weeks." Everyone reading this commentary knows what happened.

The firm never called or wrote. They just hired someone else and went on with business. While not as dramatic a situation as when a firm says "yes" to too many law students -- and then has to unhire some, or as common as the situation where a law student has said yes to too many prospective employers -- and then winnows them down later, the fact that anyone and everyone knows what happened does reflect an unfortunate practice, and a solid example of what is often a new lawyer's routine first exposure to "professional courtesy."

You may say to yourself, "But that doesn't count." In three or four sentences, explain why it is OK not to call or fulfill a promise when a person's professional career is on the line, but it is perfectly proper to expect to have normal telephone calls returned and written confirmations signed (on extensions of time and all the

other TRCP Rule 11 matters that now plague us).

BEYOND SERMONS

The truth of the matter is that if the legal profession wants to get beyond sermons and conduct codes, if the profession wants to get on to making real changes and improvements in the practice of law, if it wants to make changes that will directly affect the attitudes and conduct of lawyers in a profession that seems to be disintegrating into increasingly isolated and hostile factions, then professional courtesy and civility must begin in the courts and be extended to all in the process, regardless of their level or place in the hierarchy of law. Greater power and authority bring greater responsibility -- not less.

Our conduct and actions plant seeds. It is when those seeds ripen that we realize what we have done. If those who lead the Bar desire to see a harvest of professional courtesy and a return to civility, then they need to be the ones who plant the proper seeds -- instead of demanding change and then constructing excuses and reasons for why they should be excluded from proper conduct. (If a tag line is really necessary, you can add your own about current methods only adding the seed of hypocrisy to an already vicious situation).

We need to all put away the temptation to take the temporary satisfaction offered by cheap shots from protected positions (such as the federal bench, an editorial's pages or merely being the last person to send paper out the door) and change for the better. If we want professionalism, let us practice it and thereby put into execution the one change that can work. [bx]

[\[index of essays\]](#)

Stephen R. Marsh Home Page	Web Links // adrr.com
E-Mail to Stephen R. Marsh	Search the Site

Copyright 1998 Stephen R. Marsh