

SSAGE, cont'd



CIVILITY – IS IT LIKE THE WEATHER!

To paraphrase Mark Twain, civility is much like the weather; everybody talks about it, but nobody does much about it. The Professionalism Committee of the BAMC is attempting to change this perception, and is taking active steps to ensure that civility is not just a cocktail party topic of conversation, but rather is incorporated into our members' day-to-day practice.

As part of this effort, the Committee has solicited input from the Circuit Court Judges and Masters, as well as members of the Bar, with an eye towards obtaining recommendations and comments regarding perceived issues of professionalism and civility, particularly with respect to matters involving litigation. At the outset, it is reassuring to report that, although specific instances of incivility and/or lack of professionalism abound, it is generally believed that the Montgomery County Bar is privileged to have a consistently high level of professionalism and civility demonstrated by its members. Furthermore, there is a perception that, on the whole, our members truly recognize the importance of civility and professionalism in their interaction with the Bench and other members of the Bar. Although there is probably much truth to the adage that 5% of the practitioners are causing 95% of the problems, there are clearly areas of concern which cannot be attributed solely to a handful of unprofessional practitioners. Accordingly, we have listed below five issues which have arisen as areas of concern. Please note that these comments and suggestions do not purport to constitute a policy statement from the Bench, but rather are intended to simply identify recurring issues.

1. COURTROOM CIVILITY BEGINS WITH ONE'S PLEADINGS AND PAPERS.

Somewhat surprisingly, it is perceived that there is an increasing number of motions and/or papers which contain insulting, derogatory,

unnecessarily accusatory and/or other unprofessional content. Indeed, criticism of, and allegations against, opposing counsel which would never be presented orally at a hearing, are often included in counsel's written submissions, much to the displeasure of the Court. This is particularly troublesome, as one would presume that the drafter dictates, edits and then proofreads the filings - i.e. possesses multiple opportunities to "count to ten" and reconsider any vitriol which may have initially been included due to anger or frustration. Suffice it to say, the Bench is rarely, if ever, impressed by one's talent with the poison pen. It is also troubling when the practitioners of this written warfare then attempt to present a facade of civility when the hearing is conducted. It would be foolhardy to believe that the Court is impressed by the appearance of civility during a personal Court appearance, when a trail of uncivil writings has preceded the hearing.

2. DISCOVERY DISPUTES AND THE MARYLAND RULE 2-431 CERTIFICATE REQUIREMENT.

"Dear Opposing Counsel:

Your Answers to Interrogatories were due on December 15, 2000. It is now December 18, 2000. If I do not receive your Answers to Interrogatories by December 26, 2000, I will have no choice but to file a Motion for Sanctions, including costs and attorney's fees. Happy holidays."

It is respectfully contended that letters such as the above example fail to comply with the requirements of Maryland Rule 2-431 for two reasons: 1) it is difficult to equate a unilateral demand and deadline with a "good faith attempt," and 2) the Rule specifically requires, at the very least, an attempt to discuss the resolution of the dispute with opposing counsel. The discussion requirement is obviously intended to promote the possibility of a civil and professional conversation, wherein the reasons for any delays regarding discovery, and an agreement as to an acceptable

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timetable for the delivery of the responses, can be addressed. The Court will obviously look with greater favor upon a discovery dispute motion which is preceded by reasonable, good faith measures to resolve this dispute without premature attempts to seek Court intervention. Conversely, Maryland Rule 2-431 empowers the Court to deny or strike any discovery motion wherein a good faith discussion (as opposed to an exchange of nasty letters) has not preceded the motion. Please keep in mind that, as noted by one of our Judges, there is only one thing that Judges dislike more than discovery disputes, but they haven't decided what that thing is yet.

3. CIVILITY SHOULD BE EXTENDED TO ALL OF THE PROFESSIONALS IN OUR PRACTICE.

Amazingly, many attorneys whose courtroom demeanor presents an image of civility are insulting and/or demeaning to the law clerks, bailiffs, secretaries and other members of the Courthouse and/or opposing counsel's office. To this conduct, we provide a simple refrain: "Are you crazy?!?" Practitioners of this particular form of unprofessional conduct should not delude themselves into believing that this behavior does not ultimately make its way back to the Bench and the Bar. While it may surprise many of us to discover that the opportunity to interact with litigation attorneys on a daily basis is not necessarily viewed as a "job perk," this aspect of the professional staff's job is rendered much more tolerable by simple displays of courtesy, respect and appreciation. Indeed, we should each ask ourselves when we last acknowledged the assistance and support which is routinely provided to us by the courtroom staff. The fact that we are privileged to have such a friendly, cooperative and professional environment in which to ply our trade is due in large part to the outstanding professionals at our courthouses and should not be taken for granted.

4. COURT PROCEEDINGS ARE FORMAL PROCEEDINGS.

Tardiness, lack of preparation, failure to adhere to basic tenets of courtroom etiquette, interrupting the Judge, interrupting opposing counsel's argument, inappropriate dialogue between counsel during hearings, carrying on conversations in the gallery -- all of these signs of disrespect for the forum are appearing with sufficient frequency so as to call into question the training and mentoring of the members of our Bar. While these concerns are by no means limited to new practitioners and/or new members of the Bar, one should keep in mind that the best method of teaching professionalism and civility is to lead by example. Additionally, while it is

from the "heat of battle" is not an acceptable excuse; rather, it is during these moments that the need for professionalism and civility is most pronounced.

5. ZEALOUS ADVOCACY REQUIRES PROFESSIONALISM.

Although a high level of personal involvement, belief and conviction is expected from the parties, particularly in domestic matters, an important part of an advocate's professionalism is the lawyer's ability to separate his persona from the client's, in order to provide the cool, calm considered judgment and counsel which the client deserves. It is readily apparent that the source of much incivility and questionable professional judgment arises from the attorney's failure to maintain an acceptable degree of separation from the often emotional issues confronting his or her client. Obviously, a litigant does not need a co-litigant; rather, a party needs and deserves a professional who will serve as both advisor and advocate. Once again, the more heated the matter becomes, the greater the need for maintaining perspective and exercising of independent professional judgment. When this perspective is lost, the descent down the slippery slope of incivility and lack of professionalism quickly follows.

I fear, however, that the above column contains far too much "bah humbug" and not nearly enough "ho ho ho." Please rest assured that the Committee is not devoid of holiday spirit. In fact, we would like to accentuate the positive, and thus we invite the readers to provide us with examples wherein a noteworthy display of civility or professionalism was exercised by another member of our Bar. We are contemplating a future column wherein we would highlight the good (as well as the bad and the ugly), with specific examples (e.g. excerpts from motions, depositions, hearing transcripts, etc.) which evidence displays, pro or con, of matters relating to civility and professionalism. The names will, of course, be deleted to protect the "innocent." Please forward any such examples to the attention of the Professionalism Committee of the BAMC, 27 West Jefferson Street, Rockville, Maryland 20850-4200 (Attention: Ed Brown). Happy holidays!

*Edward J. "Bud" Brown, Chair
Professionalism Subcommittee*
