

Civility, the Hallmark of our Profession

by Gus Chin

At a recent Bar function I visited with several respected veteran lawyers who commented about how the practice of law has changed over the last couple of decades. While applauding the improvement in technology and other areas, they were rather critical of – among other things – the marked increase in un-professionalism, disrespect for the rules, aggressiveness, as well as incivility. Many reminisced about the days of the so-called gentleman's agreement, a warm handshake despite adversarial positions and where “an attorney's word was considered to be golden.”

As of October 12, 2006, with the admission of 273 new attorneys, we passed the 9,000 membership mark. Wonderful as this growth is, there is still concern about public expectation and the practice habits of some of our members who mirror the rude, mean-spirited advocacy often portrayed in the media. As a Bar we must be mindful of our actions which have the potential of reflecting negatively on our profession and could result in the ongoing over-generalization about attorneys.

The adoption of the Standards of Professionalism and Civility as Chapter 23 of the Supreme Court Rules of Professional Practice should serve as an indicator of their importance. This memorialization is more than an aspirational expectation by the Utah Supreme Court of the conduct expected of members of the Utah State Bar. Moreover, civility is an ongoing subject of discussion by other bars and bar associations throughout the country and for our colleagues to the north. For example, it has been recently reported that the California State Bar has launched a civility initiative and may consider adopting a civility code with hopes of convincing judges to sanction rude behavior. Additionally, in Canada there is growing concern about the rise in incivility in their courts and law offices.

I do realize that given the adversarial nature of our profession there are times when being perfectly civil can be somewhat difficult. However, uncivilized and unprofessional conduct by others should not serve as an excuse to rationalize violation of the Standards or to engage in reciprocal conduct. Despite being treated unkindly, one can prevail by maintaining a high degree of personal professional dignity and control. Furthermore, the constitutional guarantee of freedom of speech does not amount to an open license to engage in invective, rudeness, and uncooperative conduct.

This past summer, at the Bar Admission Ceremony for the State of Connecticut, Justice Peter Zarella of the Connecticut Supreme Court referenced comments by former Chief Justice Andrews who, in or about 1891, said in part:

“It is not enough for an attorney that he be honest. He must be that, and more. He must be believed to be honest. It is absolutely essential to the usefulness of an attorney that he be entitled to the confidence of the community wherein he practices...a lawyer needs, indeed, to be learned...and he must have prudence, and tact to use his learning, and foresight, and industry, and courage. But all these may exist in a moderate degree and yet he may be a creditable and useful member of the profession, so long as the practice is to him a clean and honest function. But...if once the practice becomes to him a mere ‘brawl for hire’, or a system of legalized plunder where craft and not conscience is the rule, and where falsehood and not truth is the means by which to gain his end, then he has forfeited all right to be an officer in any court of justice or to be numbered among the member of an honorable profession.”

The aforementioned words attributed to Chief Justice Andrews are still most relevant today over a century later, especially in an age when aggressiveness, dishonesty, and ill-temperament are perceived by the public to be the norm of our profession. These characteristics are absolutely contrary to the oath we take as attorneys granting us the privilege to practice law.

As a means of helping to improve the public image of our noble profession, we must refrain from rude and unprofessional conduct. I commend for your earnest consideration adherence to the Standards of Civility and Professionalism. While they are presently aspirational, our actions may dictate if they remain so. Finally, after all is said and done, I believe that while we may not be remembered for the number or type of cases won or lost, for a certainty we will be remembered for such virtues as honesty, civility, and professional integrity – the hallmarks of our noble profession.

