

Keepers of the Flame: The Duty of Judges to Promote and Preserve Civility and Professionalism

by William H. Ledbetter Jr.

Among many ancient cultures, especially those with no written language, a small and elite group was dedicated to preserving the laws and customs of the people. Sometimes called Keepers of the Flame, these tribal officials were highly esteemed because their work enabled the best traits of that culture to

continue from one generation to the next. Some might say that is the essence of civil progress.

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In our legal culture, without the loin-cloths and magical herbs, judges are Keepers of the Flame. Although today our laws are written, the bedrock of our legal culture — time-tested courtesies, civilities, manners, and professional mores — are not. As leaders of the communities they serve, judges have a duty to promote and preserve these things.

What Do Judges Do to Fulfill These Duties?

Judges participate in the functions of their local bar associations. Further, they should serve on committees and boards of statewide bar organizations. This includes acting as panelists, speakers, moderators, and in other capacities, especially on topics related to professional ethics and civility. Judges demonstrate a commitment to promote and preserve the traditions of our legal culture.

Since 1987, all lawyers in Virginia must complete a mandatory course on professionalism within twelve months of becoming an active member of the bar. The course is taught by prominent lawyers and judges who are appointed by the Supreme Court of Virginia for three-year terms. As an adjunct of that course, mini-courses on professionalism are now offered in all law schools in the commonwealth, taught by some of the same faculty. Judges participate in these programs, evincing a commitment to the preserva-

tion of civility and professionalism among members of the bar.

Foremost, of course, judges must promote civility and professionalism in their official capacity as jurists.

The Litigation Section of the Virginia State Bar has adopted principles of professional courtesy that state: “Civility and manners are the mark of an enlightened and effective system of justice. Courtesy, then, emanating from all quarters, extending in all directions, becomes an indispensable ingredient in the orderly administration of the courts.” As noted in an article by G. Marshall Mundy and Vicki L. Wiese in the December 2003 *Virginia Lawyer*, “The importance of the judiciary in the foregoing is apparent, and greater involvement of the judiciary will be to everyone’s benefit.”

There are several areas in the practice of law where appropriate professional conduct is under particular strain. In all of them, judges have a responsibility to deal with corrosive behavior. Four areas deserve our attention.

The Courtroom. The judges from central casting on *Boston Legal* and *Law and Order* do not preside in real courtrooms. Virginia lawyers do not practice before trial judges who sit in near-nap repose while allowing the attorneys to insult one another and the court, engage in circus-like antics, and argue social theory rather than facts to the jury. That’s television, and the real world, thankfully, is not the same.

Nevertheless, there are occasional breakdowns in courtroom decorum that should be addressed firmly and immediately. (It is human nature to want to be liked. Thus, how does a judge caution, admonish, or even scold, an attorney without affecting the outcome of the matter before the court, without unduly embarrassing the offender, and without appearing, well, unlikable? Each judge must come to grips with a particular methodology, based on that judge’s background and personality.)

When an attorney consistently arrives late to court, or fails to stand when addressing the court, or turns to the adversary to argue an objection rather than directly addressing the court, or charges toward an adverse witness without asking permission to do so, or displays a document to the jury without having moved it into evidence, or floods the court with last-second motions expecting to argue them on the day of trial, these missteps must be corrected by the judge.

Communications. Notwithstanding strides made in the field of communications, why do judges hear so many complaints about attorneys failing to return telephone calls or not responding to e-mails? No lawyer is so busy that he or she cannot respond to a letter, phone call, or e-mail from a colleague about a pending matter before a court or to entreaties from a client, whether the case involves a high-dollar claim for a well-heeled client or a court-appointed defendant in a local jail. (It is amazing how many bar complaints originate with this sort of discourteous neglect.)

Scheduling and Notices. Why do attorneys schedule proceedings before the court without giving adequate notice to opposing counsel? Contacting the other attorney usually triggers a response so that the matter is scheduled at a mutually convenient time. A phone call or e-mail requesting available dates for a pretrial motion often leads to a resolution without the need for a court appearance. Only if opposing counsel does not respond should an attorney file notice unilaterally, appointing a date available to the noticing attorney. In cases in which the other attorney fails to cooperate, the noticing attorney should keep notes so that a skeptical judge can be persuaded

(but rapidly expanding) breed of trial lawyers concluded that the trial should not be the focus of the litigation process; instead, discovery became the fulcrum around which all else revolved. This development has moved litigation from the public arena to the private conference rooms of law firms, thereby shielding it from oversight. Without supervision or public scrutiny, some attorneys are discourteous and unprofessional. When such matters reach the attention of a judge, obviously they are more difficult to deal with than inappropriate conduct in the courtroom. Nonetheless, it is incumbent upon the judge to correct the problem or at least minimize recurrence.

This is not to say that judges are *the* Keepers of the Flame. They are complemented by senior practitioners, law schools, and continuing legal education program designers, among others. Judges must continue to promote, preserve and pass on the laudable traditions of professionalism in our Virginia legal culture. ■

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to grant a hearing notwithstanding the lack of concurrence of opposing counsel. Judges must decide such disputes to ensure that the uncooperative attorney does not profit from such conduct.

Discovery. Some time during the last couple of decades of the twentieth century, a relatively small