

# Civility And Professionalism:



*“Every action done in company ought to be with some sign of respect to those that are present.”*

—George Washington,  
*Rules of Civility & Decent Behaviour*

## A Modest Proposal

by Frank Overton Brown Jr.

“**R**aise your right hand, please. Do you solemnly swear or affirm that you will support the Constitution of the United States and the Constitution of the Commonwealth of Virginia, and that you will faithfully, honestly, professionally, and courteously demean yourself in the practice of law and execute your office of attorney at law to the best of your ability, so help you God?”

This is the oath taken by newly admitted lawyers each year at the Supreme Court of Virginia. In taking the oath to “courteously demean yourself in the practice of law,” each admittee attorney is binding himself or herself to an ethic of reciprocity which is part of the very fabric of our legal profession. Courtesy and civility are

synonymous words. Courtesy is accepted as “behavior characterized by graciousness and consideration toward others.” The Virginia State Bar’s Senior Lawyers Conference’s direct interest in civility springs from two sources: our individual responsibilities as legal professionals, and our Senior Lawyers Conference Bylaws, in which two of our charges are “to uphold the honor of the profession of law [and] to encourage cordial discourse and interaction among members of the Virginia State Bar.”

Throughout the United States, and in other countries as well, for decades the legal profession has continued to look for ways to maintain or restore civility in the practice of law. The word “practice” means to

be engaged in a learned profession, with the implication of a continuous upward progression in the skills and qualities of that profession. In Virginia, the privilege of practicing law is conferred upon lawyers by the commonwealth; in return, lawyers agree to be bound by the lawful requirements of the profession.

In looking at efforts in other jurisdictions regarding civility, it appears that most civility codes are aspirational in nature, although some have been adopted by rule or court order. Some have been promulgated by the organized bar, while others have been adopted by local or state bar associations. In many cases, civility codes are weighted toward trial practice and the courts, but the principles set out are

applicable to all areas of the practice of law. In the examples cited below, I have endnoted Internet links to facilitate the readers' access to the full text of referenced sources. These examples are not by any means all of the efforts which have been made. They are representative of common concerns and approaches regarding civility, and they demonstrate common threads in the overall fabric of programs encouraging civility.

The Supreme Court, by order entered on September 7, 1987, established the Virginia State Bar Mandatory Professionalism Course, which must be attended by any active member who is licensed after June 30, 1988, or who changes his or her membership to active status. The curriculum focuses on the Virginia Rules of Professional Conduct and lawyers' broader ethical obligations to their clients, to the judicial system and to society. The course is approved for six ethics hours of Mandatory Continuing Legal Education credit. Included in the Professionalism Course are Principles of Professional Courtesy, which were developed by the Board of Governors of the VSB Litigation Section. The preamble of the principles begins by stating: "Civility and manners, no less than a deep-rooted, broad respect for the law, are the hallmark 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." The principles address courtesy toward the court, other counsel, the court clerk and staff, and the press. The professionalism course is excellent, but it is not required for active members who were licensed before July 1, 1988, and lawyers are only required to take it once.

The Virginia Bar Association, a voluntary association of lawyers, has adopted a creed, the preamble to which states: "The practice of law is and must remain a profession. As members of an honored profession, lawyers are expected to exhibit the highest standards of honesty and integrity. In addition, lawyers must strive to achieve a sense of personal honor

which should be manifested, in part, by a vigorous devotion to civility in the courts, to clients and to other lawyers. Courtesy is neither a relic of the past nor a sign of less than fully committed advocacy. Courtesy is simply the mechanism by which lawyers can deal with daily conflict without damaging their relationships with their fellow lawyers and their own well-being." The creed then lists principles which are divided into guidelines for the lawyer's conduct toward the courts and other tribunals; toward opposing parties and their counsel and other colleagues in the practice of law; and toward clients and the public.<sup>1</sup>

On December 14, 1992, the Seventh Circuit U.S. Court of Appeals adopted "Standards For Professional Conduct," which include: lawyers' duties to other counsel; lawyers' duties to the court; and courts' duties to lawyers. The preamble states in part: "A lawyer's conduct should be characterized at all times by personal courtesy and professional integrity in the fullest sense of these terms...A judge's conduct should be characterized at all times by courtesy and patience toward all participants."<sup>2</sup>

The District of Columbia Bar on June 18, 1996, adopted "Voluntary Standards for Civility," which address lawyers' duties to other counsel, parties and the judiciary; litigation matters; judges' duties to lawyers; lawyers' duties to the court; judges' duties to each other; and representations involving business transactions and other negotiations. The preamble states in part: "Civility in professional conduct is the responsibility of every lawyer . . . The organized bar and the judiciary, in partnership with each other, have a responsibility to promote civility in the practice of law and the administration of justice . . . Civility and professionalism are hallmarks of a learned profession dedicated to public service . . . The goal is to ensure that lawyers and judges will conduct themselves at all times, in both litigated and nonlitigated matters, with personal courtesy and professionalism in the fullest sense of those terms."<sup>3</sup>

In May 1997, the Maryland State Bar Association's Board of Governors approved a Code of Civility for all lawyers and judges, setting forth lawyers' duties and judges' duties. In its preamble the Code states: "Civility is the cornerstone of the legal profession."<sup>4</sup>

In October 1997, the New York State Unified Court System adopted "Standards of Civility" setting forth principles of behavior addressing: lawyers' duties to other lawyers, litigants and witnesses; lawyers' duties to the court and court personnel; judges' duties to lawyers, parties and witnesses; duties of court personnel to the court, lawyers and litigants; and statement of client's rights. The preamble states in part that: "They are a set of guidelines intended to encourage lawyers, judges and court personnel to observe principles of civility and decorum, and to confirm the legal profession's rightful status as an honorable and respected profession where courtesy and civility are observed as a matter of course."<sup>5</sup>

On December 6, 2000, the Pennsylvania Supreme Court issued a *per curiam* opinion adopting a Code of Civility. The code covers judges' duties to lawyers and other judges and lawyers' duties to the court. In its preamble, the code states in part, "The hallmark of an enlightened and effective system of justice is the adherence to standards of professional responsibility and civility . . . The conduct of lawyers and judges should be characterized at all times by professional integrity and personal courtesy in the fullest sense of these terms. Integrity and courtesy are indispensable to the practice of law and the orderly administration of justice by our courts."<sup>6</sup>

By order dated October 16, 2003, the Utah Supreme Court approved "Standards of Professionalism and Civility," which in the preamble states in part: "A lawyer's conduct should be characterized at all times by personal courtesy and professional integrity in the fullest sense of those terms . . . The following standards are designed to encourage lawyers to meet their obligations to each other, to litigants and to the system of justice, and thereby achieve the

twin goals of civility and professionalism, both of which are hallmarks of a learned profession dedicated to public service.”<sup>7</sup>

By orders dated October 22, 2003, and January 9, 2004, the South Carolina Supreme Court amended the oath of office for attorneys in Rule 402, so that it reads in part: “To my clients, I pledge faithfulness, competence, diligence, good judgment, and prompt communication; To opposing parties and their counsel, I pledge fairness,

## *Lawyers have long memories particularly about the conduct of colleagues . . .*

integrity, and civility, not only in court, but also in all written and oral communications.”<sup>8</sup> All South Carolina attorneys are required to take this oath at one-hour continuing legal education seminars emphasizing professionalism.

The Advocates’ Society in Ontario, Canada, has published “Principles of Civility for Advocates,” which contains specific guidelines for relations with opposing counsel, communications with others, trial conduct, and counsel’s relations with the judiciary. In endorsing the society’s Principles of Civility, the Chief Justice of Ontario wrote: “It is also important to remember that the paths of lawyers may cross and recross over and over again. Lawyers have long memories particularly about the conduct of colleagues and in my experience there can be nothing more important than the reputation enjoyed by an advocate amongst his or her colleagues. Judges are entitled to expect that counsel will treat the court and each other with candour, fairness and courtesy. A failure to do so usually will create a much heavier burden of persuasion on an advocate, which may well undermine the interests of his or her client. ‘Civility amongst those entrusted with the administration of justice is central to its effectiveness and to the public’s confidence in that system.’ ”<sup>9</sup>

The efforts of the courts and the bar to promote or maintain civility must be viewed in light of the factors which affect civility, some of which are presented below.

In 2002, Justice John Simonett of the Minnesota Supreme Court delivered an address at the John E. Simonett Inn of Court in St. Cloud, Minnesota. The topic was “Civility and ‘Generalized Reciprocity.’ ” Justice Simonett said: “What

is needed is some way of convincing lawyers that civility is in their best interests. The answer may lie with the principle of generalized reciprocity. Let me explain. Several years ago Robert Putnam, a Harvard sociologist, wrote a book entitled *Bowling Alone*. It is his thesis that when people engage in civil and community activities, these social networks create a ‘social capital’ that has value and affects productivity in society . . . Putnam says that social capital depends on the principle of generalized reciprocity . . . In short, the principle of generalized reciprocity builds trust and honesty, and a trustworthy society is measurably more efficient than a distrustful society. The old maxims learned at one’s mother’s knee—‘honesty is the best policy,’ the Golden Rule—still hold true.”<sup>10</sup> In considering the value of social capital, the author is reminded of the saying that the coin in which we as professionals are really paid is in the respect of those whom we respect. It is respect for judges, respect for other lawyers, and respect for those whom we serve.

In Chapter 3 of their book titled *The Moral Compass of the American Lawyer*, Richard Citrin and Carol M. Languor wrote: “Viewed realistically, civility is something which comes from within each individual lawyer.” Their point is well taken, in that if a lawyer has a sense of justice, self-respect

and respect for others, those internal qualities of character will most likely result in behavior characterized by civility. The likelihood of civility in the practice of law is also increased by concerted efforts on the part of the bar and the judiciary to reinforce and to inculcate in lawyers the qualities which lead to civil conduct.

In a responsive memorandum about a faculty matter, dated March 19, 2001, to his faculty colleagues at the Howard University Law School, Professor Spencer H. Boyer wrote the following: “Civility and collegiality ought not be code words to stifle debate, passion, or advocacy, but rather the norms by which all discourse takes place . . . That civility and collegiality are reciprocal is such an elemental concept it ought not bear repeating or urging . . . Colleagues, it is not enough merely to praise the concepts; we must practice them. We embrace the trinity of civility, collegiality, and community but the dyad of civility and collegiality is the bright light showing the way to the holy grail of community.”<sup>11</sup> Professor Boyer’s comments are instructive in a broader sense to the profession of law.

Jacob Stein, a senior trial lawyer in Washington, D.C., and past president of the District of Columbia Bar, in an article in the journal *Cosmos* entitled “Civility As an Art Form in Diplomacy and the Law,” wrote: “The legal profession has produced an abundance of writing on civility, commenting on the need for civility, the lack of civility, and even the need for a published code of civility . . . Many jurisdictions have adopted a written civility code for lawyers, but I question the value of such codes. I believe incivility at the trial bar is easily controlled by the trial judge. There are some judges who have no trouble with lawyers. Not only are the lawyers well behaved before these judges, the lawyers enjoy engaging in the traditional flattery which is expected of them when addressing the Court. There are other judges who are always in trouble with lawyers. Why is this? Lawyers quickly learn what a judge will put up with and which judges have such a sense of dignity that shameful conduct before such a judge is unthinkable. A judge who invariably

shows up late will find his or her courtroom lacking in civility. A judge who is unprepared will have civility problems. A judge who loses his or her temper, or who is undisciplined, will see lawyers acting in a similar manner.”<sup>12</sup> These opinions are written from the point of view of a trial lawyer, and they illustrate the importance of good example and mentoring, both of which are important to all aspects of the practice of law. A civility code is not a panacea, but it can be beneficial to an overall approach to promote and maintain civility.

The author recently participated in a panel discussion presentation on civility in which the other panel members were state and federal trial and appellate judges, active and retired. The audience consisted of newly admitted lawyers. One of the panel members, a retired judge, expressed the view that there is no problem regarding civility, and that the civility panel discussion was not necessary, but all of the other panel members expressed views that reinforced the need for continuing emphasis on civility in the practice of law.

Judges and justices who participate in the VSB’s Bar Leaders Institute have expressed their valuable thoughts regarding civility. Here are some of their observations:

- Civility is a fundamental component of professionalism.
- Civility is really the “Golden Rule”: “Do unto others as you would have others do unto you.”
- While civility requires that we pay attention to the human nature aspects of our profession, we must also always pay attention to being prepared and knowing the facts and law regarding the matters on which we are working for clients. Being civil does not excuse poor preparation.
- The art of the graceful apology is an essential component of civility.
- Lack of civility on the part of attorneys and their clients makes the job of the judge harder in deciding cases on their

merits. Negative behavior antagonizes the decision maker.

- Judges are charged by law with maintaining decorum in the courtroom. Judges have a supervisory responsibility and role in promoting civility and professionalism among members of the bar. Judges should meet those responsibilities, and lawyers should help them to do so.
- Depositions should be conducted in the same civil manner as if the judge were in the room.
- Tardiness, rudeness and lack of preparation are forms of incivility.
- Disrespectful, deliberately provocative behavior and invectives should never be part of a professional’s conduct.
- The negative behavior of individual attorneys may provide the basis for members of the public generalizing about the legal profession as a whole.
- Lawyers have an obligation to control not only their own conduct, but also that of their clients.
- All members of the bar have the responsibility and the opportunity to have a positive influence on other members of the bar. Senior lawyers in particular should set the example.
- Professionalism and civility benefit everyone: lawyers, judges and the public.

In summary, there is a continuing need for an emphasis on civility in the practice of law. The author recommends that the Supreme Court of Virginia consider taking the following actions regarding civility and professionalism:

- Emphasize the importance of judges’ roles in promoting and maintaining civility and professionalism, both in and out of the courtroom;
- Require that the Virginia State Bar develop a one-hour continuing legal education course on civility and professionalism, including Standards of Civility and Professionalism (which are directed toward all areas of the practice of law, not just litigation practice).
- Require that all active members of the Virginia State Bar attend the civility and professionalism course annually, and that the course qualify for MCLE ethics credit.
- Require that the oath of office be administered each time the attorney attends the civility and professionalism course, as an ongoing reminder of the meaning and contents of the oath. ☞

Endnotes:

- 1 <http://www.vba.org/whoweaare.htm>
- 2 <http://www.insd.uscourts.gov/civility.pdf>
- 3 [http://www.dcbar.org/for\\_lawyers/ethics/legal\\_ethics/voluntary\\_standards\\_for\\_civility/preamble.cfm](http://www.dcbar.org/for_lawyers/ethics/legal_ethics/voluntary_standards_for_civility/preamble.cfm)
- 4 <http://msba.org/departments/commpubl/publications/code.htm>

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- 5 <http://www.nycourts.gov/jipl/standardsofcivility.pdf>
- 6 <http://www.pacode.com/secure/data/204/chapter99/subchapDtoc.html>
- 7 <http://www.utcourts.gov/resources/rules/ucja/ch23/>
- 8 [http://www.scb.org/member/cle/Oath\\_text.asp](http://www.scb.org/member/cle/Oath_text.asp)
- 9 [http://www.advocates.ca/civility/principles\\_tex.htm](http://www.advocates.ca/civility/principles_tex.htm)
- 10 <http://www2.mnbar.org/benchbar/2003/feb03/civility.htm>
- 11 <http://www.law.howard.edu/faculty/pages/boyer/avm9q.htm>
- 12 <http://www.cosmos-club.org/journals/1999/stein.html>
- 13 <http://www.cosmos-club.org/journals/1999/stein.html>

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