

YOUR SUPPORT FOR CIVILITY GUIDELINES NEEDED

By: Thomas B. Dominick

As Idaho judges and lawyers we are privileged members of a learned and noble profession. The more seasoned veterans of the bench and bar undoubtedly recall when their word “was their bond” and interactions were characterized by professional courtesy and respect.

Civility and professionalism are hallmarks of a profession dedicated to public service. In recent years, however, the ABA and numerous state bars have addressed the growing problem of a lack of civility and professionalism among lawyers. Professionalism and civility standards have been adopted in 45 states, including Oregon, Montana, Washington and Wyoming.¹ Those jurisdictions adopting civility codes substantially agree in their assessment that a lack of civility damages the very essence of the law. According to one respected judge, “the lawyer who tramples on civility undercuts belief in the law . . . [t]o treat an adversary with advertant discourtesy – let alone with calumny or derision – is a form of incivility that rends the fabric of the law.”² Unfortunately, modern litigators are seen by members of the bench and bar, as well as the general public, as being all too willing to engage in “hardball” tactics, becoming discourteous, hostile, deceptive, and uncooperative towards one another. Some lawyers consider these tactics necessary to satisfy their clients’ interests.³ As membership in our

¹ For a list of Professionalism Codes adopted by various states, local bar associations, and ABA entities, please contact the ABA Center for Professional Responsibility, www.abanet.org/cpr/profcodes.html.

² Honorable Louis H. Pollack, *Professional Attitude*, ABA Journal 66-67 (Aug. 1998). Senior U.S. District Judge for Western District of Pennsylvania. See *Saldana v. K-Mart Corp.*, 84 F. Supp.2d 629, 640 (D.U.I. 1999.)

³ Professor Eliot Glicksman. *Civility – A Return to Normalcy*, Advocate (March, 1998).

storied profession continues to increase, we can expect to see a concomitant increase in attorneys willing to win “at all costs.”

The Professionalism and Ethics Section (PRE) studied the issue of incivility among members of our bench and bar for over a year. After considerable study, PRE decided to propose adoption of the following standards, which are identical to the “Standards For Civility In Professional Conduct” recently adopted by the United States District Court for the Western District of Michigan. During the past six months, Dick Fields and I met with many members of the bench and bar to discuss these standards. Chief Judge Lynn Winmill, Chief Justice Linda Copple Trout, numerous district judges, Magistrate Judge Renae Hoff and many attorneys support the adoption of these standards for Idaho attorneys and judges.

Over the years, the practice of law was generally characterized by professional civility. Members of the bench and bar were known to treat their profession and its institutions with honor and dignity. Both clients and members of the public expected lawyers to maintain a high level of respect and courtesy for each other. Persons considering a career in the law looked forward to joining such a collegial body. We seek to revive these professional traditions.

PRE seeks to remind lawyers through the adoption of the following standards that uncivil, abrasive, hostile, discourteous or obstructive conduct impedes the fundamental goal of resolving disputes rationally, peacefully and efficiently. Incivility tends to delay and often deny, justice. In an effort to end the growing problem of incivility in Idaho, PRE respectfully requests that you support the adoption of the following civility guidelines. While the adoption of a civility code is but one step along the road to

restoring public confidence in the legal system, there is no reason to believe that members of the general public will not welcome this attempt to police our profession.

We invite your questions and comments concerning these standards. Please forward them to Dick Fields, PRE Chair or to PRE, c/o the Idaho State Bar.