

Lifestyle

ONE-WAY STREETS: MAKING A CASE FOR CIVILITY

By Alan G. Greer

These days it seems we are in danger of losing our civility as lawyers because far too many of us practice negative gamesmanship rather than positive professionalism. And what worries me is that most of us tolerate this behavior. Our dilemma is typified by the ever-increasing incidence of rude Rambo-like attorneys who look for the smallest technical defects in their opponents' cases or conduct, and then elevate them to the level of capital crimes with uncivil phrases like "lie", "rule 11 violations" and "misrepresentations".

These are the same attorneys whose verbal agreements are not to be trusted and who intentionally misconstrue what their opponents say to them. Yet, when these individuals inevitably miss a filing deadline, they expect you to give them a break, and act startled when you refuse.

They remind me of the story of the baker who was sure that the farmer who sold him butter was shortchanging him on the deliveries. The baker hauled the man into court where the magistrate asked the farmer, "How do you weigh the butter you sell?" The farmer answered, "By putting one of the baker's one-pound loaves of bread on the other side of the scales."

To me, this "one-way street" kind of thinking typifies the attitude that is dragging down the bar. It is up to us individually, and as a profession, not to

let this happen. We may never completely change the repeat offenders, but if we continue to tolerate uncivil behavior, we will have only ourselves to blame. By raising our threshold of tolerance, we can elevate these delinquent practitioners to what we hope is acceptable standards of conduct.

How do we do this? One way is by not allowing ourselves to descend to the same levels of negative practice through tit-for-tat responses.

Another is to call the offenders up or even take them to lunch. Tell them that sort of conduct is unacceptable. Explain in a polite manner how you intend to conduct the case or negotiation and that you expect them to do the same.

When I am confronted with discourteous behavior, I often reflect on John F. Kennedy's remarks in his 1961 inaugural address, "Civility is not a sign of weakness," and Eric Hoffer's quote in *The Passionate State of Mind*, "Rudeness is a weak man's imitation of strength."

Many of the offenders we encounter have inner compasses that are out of whack, partly because we've given them room to cut corners and to be rude. They start out on a small



scale and then, step-by-step, increase the severity of their transgressions. When we don't reprimand them on their conduct, they think this is the way that the "game" is played. In short, we've accepted them as they are and systematically give in, when we don't have to accede. As a result, these attorneys believe this is how to move forward in our profession, even though they're really on a treadmill of negativism to nowhere. This leaves them unhappy, trying to justify their harmful behavior by thinking the whole profession acts just like them. So they do it even more.

It is like the teacher who asked the overly-aggressive youngster, "George, what would your classmates think of you if you were kind, polite and followed the rules?" George promptly replied, "They'd think they could beat me up." Like George, too many of us accept being condemned for rudeness out of fear of being laughed at for civility.

We act like civility and ethics are the deceased at an Irish wake: Their presence is required for the party to take place, but nothing is expected of them. This is the kind of mentality we must change, especially among our newer members of the bar when they are most susceptible to "friendly" advice.

The courts and the organized bar can go a long way to making this happen if we as individuals make it clear that we'll back their efforts. Let our judges and bar leaders know we are not willing to accept the lowest common denominator as our standard of professionalism. As that newscaster in the movie "Network" so eloquently put it, "We're mad as hell and aren't going to take it anymore."

If our own efforts at reasoning and peer pressure won't change the Rambos, we need to demand that judges not hesitate to slap them down, good and hard. And for repeat offenders, perhaps the bar should seriously consider lifting their licenses. The codes of ethics and civility necessary to set the standards are already in place. They simply need to be enforced by all of us. But remember, we cannot demand that others follow the rules if we don't adhere to them as well.

If we are willing to do this, I am convinced we will be doing a favor for those attorneys who are on that one-way road of negativism leading inevitably to Rambodum. Look at them. Most are sour, unhappy human beings who in their hearts despise themselves and the practice of law as well. They know they have offended the practice, and the rest of us.

To quote Lord Tennyson's "Aylmer's Field":

He that wrongs his friend,
Wrongs himself more,
And ever bears about a silent court of justice
In his breast,
Himself the judge and jury,
Himself the prisoner at the bar ever condemned.

Just substitute "fellow members of the bar" for "friend" and you have our situation. Anyone who practices rude, uncivil conduct is driving down a one-way street to nowhere. It is up to us to set them on the right path by ensuring consequences for their unacceptable conduct.

Alan G. Greer is a senior partner with Richman, Greer, Weil, Brumbaugh, Mirabito & Christensen, P. A., a Miami and West Palm Beach, Florida trial law firm where he practices civil commercial litigation. Mr. Greer is certified in civil trial law practice by the National Board of Trial Advocacy and The Florida Bar and is Florida Bar board-certified in commercial litigation. Mr. Greer is admitted to practice before The Florida Bar, the New York State Bar and the Bar of the District of Columbia. He is currently serving on the American Bar Association's Standing Committee on Professionalism.

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Contact: Romelio Hernández
Calle Cuarta 1626-104, Zona Centro
Tijuana, Baja California 22000, México
Tel./Fax: +52 (664) 685-1387, 685-9196
info@hmh-law.com