

The Pennsylvania Bar Association: A 125 Year Tradition Of Civil Discourse

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“The hallmark of an enlightened and effective system of justice is the adherence to standards of professional responsibility and civility.”²

The Pennsylvania Bar Association has a long tradition of encouraging professionalism and promoting civil discourse among the lawyers of our Commonwealth. As we prepare to celebrate the 125th anniversary of the PBA's formation, we reflect upon the beginnings of our tradition of civil discourse and professionalism, while embracing and building upon that rich history.

On December 28, 1894, *The Legal Intelligencer* published a General Call to all lawyers in Pennsylvania, which included the notice that, “Again it is part of the work of a bar association to bring together the members of the Bar from all sections of the State for purposes of social intercourse, and for the discussion of questions of interest to the profession and to the community in general.”³ Those who heeded the call met on January 16, 1895, in the Supreme Court courtroom in Harrisburg, and an association was born. The Charter of the Pennsylvania Bar Association was approved by the Court of Common Pleas of Dauphin County on July 1, 1895, calling upon its members, *inter alia*, “. . . to cultivate cordial intercourse among the lawyers of Pennsylvania. . . .”⁴ Today, the bylaws as amended and restated continue that call to, “. . . cultivate cordial relations among the lawyers of Pennsylvania.”⁵

The history of the PBA reflects that while the impetus for organization was a legislative concern, its roots are grounded in the desire for the lawyers of Pennsylvania to unite and form an organization that would enable lawyers across the Commonwealth to speak with one voice. Collegiality was the foundation of the

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2. Pennsylvania Code of Civility Preamble, 204 Pa. Code §99.1.

3. General Call to the organizational meeting of a State bar association appeared in *The Legal Intelligencer* of Philadelphia December 28, 1894, as reprinted from the *The Diamond Anniversary History of the Pennsylvania Bar Association* by Henry Thomas Dolan, *The Pennsylvania Bar Association Quarterly*, Vol. XLII, No. 2, January 1971.

4. Charter of the Pennsylvania Bar Association, dated July 1, 1895, as recorded in the Office of Recorder of Deeds of Dauphin County, Charter Book “F,” page 6.

5. Bylaws of the Pennsylvania Bar Association, www.pabar.org/about/bylaws.

PBA's formation. The late PBA Executive Director Ted Stellwag wrote that, heeding the call, "[T]hey came, some 200 strong, to meet in the Supreme Court chamber, in Harrisburg."⁶

The Pennsylvania Bar Association Quarterly published a special Diamond Anniversary edition in January 1971, with a history written by Henry Thomas Dolan. In that history, Dolan described the organizational meeting of those who would go on to form the PBA: "Sophisticated cosmopolite or rugged half-woodsman, neither met the other with either condescension or deference, only with recognition of mutual ability and respect."⁷

A tradition of civility and professionalism is embedded in the foundation of the PBA.

Those words continue to be true today. The PBA conducts meetings of its nearly 70 committees and sections bringing together members from across the Commonwealth to engage in endeavors that promote their common interests in the substantive and procedural aspects of the practice of law.

The history of the PBA reflects that it has always been on the forefront of promoting civility and collegiality within the profession. The original bylaws of the Association provided for five standing committees, one of which was the Committee on Grievances. Section 33 of the bylaws defined the role of that committee as follows:

They shall hear all complaints preferred by one member against another for misconduct in his relations to the profession or to this Association . . . They may also hear any specific complaints made by any member, affecting the interest of the profession, the practice of law or the administration of justice; and may report thereon to the Association, with such recommendations as they deem advisable. No report shall be made adversely to any member until after notice to him, with full opportunity to defend and to meet his accusers and witnesses face to face.⁸

The tradition of civility and professionalism was thus embedded in the foundation of the PBA.

On January 5, 1945, on the occasion of the fiftieth anniversary meeting of the PBA, the Honorable William H. Keller, President Judge of the Superior Court, delivered an address.⁹ His informative recollection of the first fifty years of our existence as an organization included his expression that we should recognize the importance of our interactions with one another, stating that, "I am sometimes fearful that in the hurry and bustle of our modern State bar meetings . . . we are apt to overlook the very important purpose of social intercourse, between members of the Bar from all sections of the State, and the mutual good that flows from it."¹⁰

The tradition of civility and professionalism continues. On May 12, 1989, the House of Delegates adopted the recommendations of the PBA Committee on Professionalism concerning eight Working Rules of Professionalism. The Recom-

6. Ted Stellwag, *The Pennsylvania Bar: A Brief History*, *The Pennsylvania Lawyer* magazine; January/February 2010; Vol. 32 No. 1, p. 18. Mr. Stellwag was a former PBA Executive Director.

7. Henry Thomas Dolan, *The Diamond Anniversary of the Pennsylvania Bar Association*, *The Pennsylvania Bar Association Quarterly*, Vol. XLII, No. 2, p. 132, January 1971.

8. Report of the First Annual Meeting of the Pennsylvania Bar Association, held at Bedford Springs, July 10 and 11, 1895, Bylaws Sec. 33, excerpt from the archives of the library of the Dickinson School of Law.

9. William H. Keller, *The Pennsylvania Bar Association*, *The Pennsylvania Bar Association Quarterly*, Vol. XVI, p. 117 (January 1945).

10. *Id.* at 122.

mentation espoused the sentiment that, “The practice of law is a profession, a genuine calling inspired with service to the system of justice, not a common business enterprise.”¹¹

The first of the eight recommendations called for lawyers to: “Treat with civility the lawyers, clients, opposing parties, the court, and all the officials with whom we work. Professional courtesy is compatible with vigorous advocacy and zealous representation.”¹¹ The Working Rules encompassed the need to maintain open communication (Rule 2); respect for others’ schedules (Rule 3); punctuality (Rule 4); judicial order and decorum (Rule 5); cooperation in extending time (Rule 6); resolving differences through negotiation (Rule 7); and the final Working Rule added: “Enjoy what you are doing and the company you keep. You and the world will be better for it.”¹²

Today, the PBA continues its mission through numerous outlets, including the recently-formed Civility in the Profession Committee. The mission of that committee reads as follows:

The mission of the PBA Committee on Civility in the Profession is to instill, promote and enhance professionalism and civility within the legal profession by encouraging discussion about the importance of professionalism and civility among the members of the bar, the judiciary and the public. The committee’s activities shall include planning and presenting continuing legal education and other programs and initiatives to promote courtesy and respect for other participants in the judicial system and commitment to the PBA Working Rules of Professionalism and the Pennsylvania Code of Civility.

The PBA’s goals are in keeping with the aspirational Code of Civility promulgated by Order of the Pennsylvania Supreme Court dated December 6, 2000.¹³ Article I addresses “A Judge’s Duties to Lawyers and Other Judges;” Article II sets forth “The Lawyer’s Duties to the Court and Other Lawyers.” The Code articulates the goal that lawyers and judges make a “voluntary and mutual commitment to adhere to these principles.”¹⁴

The Code encourages lawyers to exercise civility with regard to all participants in the system, not just lawyers and judges:

A lawyer should act in a manner consistent with the fair, efficient and humane system of justice and treat all participants in the legal process in a civil, professional and courteous manner at all times. These principles apply to the lawyer’s conduct in the courtroom, in office practice and in the course of litigation.¹⁵

The Code further stresses the fundamental need for dignity and respect for all involved in our legal system, such as in Article II, paragraph 16, which provides that, “A lawyer should understand that court personnel are an integral part of the justice system and should treat them with courtesy and respect at all times.”¹⁶

Respect and courtesy are consistent themes, with application to both the judiciary and the bar. Article I, ¶2: “A judge should show respect, courtesy and patience to the

11. *Working Rules of Professionalism*, Pennsylvania Bar Association. The recommendations of the Committee on Professionalism were adopted concerning eight proposed Working Rules of Professionalism. (Approved B/G 5/9/1989; H/D 5/12/1989).

12. *Id.*

13. Pennsylvania Code of Civility Adopted by Per Curiam Order of the Supreme Court of Pennsylvania December 6, 2000, As amended by *Per Curiam* Order April 21, 2005; 204 Pa.Code §§99.1–99.3.

14. *Id.* Preamble.

15. *Id.* Article II, ¶1.

16. *Id.* Preamble.

lawyers, parties and all participants in the legal process by treating all with civility;" Article II, §§2 & 3: "A lawyer should speak and write in a civil and respectful manner in all communications with the court, court personnel, and other lawyers. . . . A lawyer should not engage in any conduct that diminishes the dignity or decorum of the courtroom."¹⁷

The ways we address each other are a subject of the Code of Civility as well. Article II, §12: "A lawyer, when in the courtroom, should make all remarks only to the judge and never to opposing counsel. When in the courtroom a lawyer should refer to opposing counsel by surname preceded by the preferred title (Mr., Mrs., Ms. or Miss) or the professional title of attorney or counselor." And 13: "A lawyer should show respect for the court by proper demeanor and decorum. In the courtroom a lawyer should address the judge as 'Your Honor' or 'The Court' or by other formal designation. A lawyer should begin an argument by saying 'May it please the court' and identify himself/herself, the firm and the client."

Courtesy and respect extend beyond words, and the Code of Civility recognizes that time is more than money. The Code at Article II §11 provides: "A lawyer should be considerate of the time constraints and pressures on the court in the court's effort to administer justice and make every effort to comply with schedules set by the court;" and at §15: "A lawyer should attempt to verify the availability of necessary participants and witnesses before hearing and trial dates are set or, if that is not feasible, immediately after such dates have been set and promptly notify the court of any anticipated problems."¹⁸

The courts recognize the lack of courtesy in this regard as well. In *Johnson v. White*, counsel had failed to appear for argument before the Commonwealth Court, having notified the court by facsimile minutes before argument was set to begin. The court remonstrated that, ". . . in failing to comply with the Code of Civility, Counsel has done a disservice to his client, to opposing counsel, to opposing counsel's clients, to the judiciary, and to the general public, as significant resources were wasted in preparation for an argument that would not take place."¹⁹

The Code addresses the importance of punctuality as well. Article II, §9 provides that a lawyer should be punctual and prepared for all court appearances; and §17:

A lawyer should demonstrate respect for other lawyers, which requires that counsel be punctual in meeting appointments with other lawyers and considerate of the schedules of other participants in the legal process; adhere to commitments, whether made orally or in writing; and respond promptly to communications from other lawyers.²⁰

The Code recognizes that our legal system is predicated on the protection of the rule of law and that the lawyers and judges should lead by example. Article I, §11: "A judge should not impugn the integrity or professionalism of any lawyer on the basis of the clients whom or the causes which he or she represents." Likewise, Article II, §18 provides: "A lawyer should strive to protect the dignity and independence of the judiciary, particularly from unjust criticism and attack." And §19: "A lawyer should be cognizant of the standing of the legal profession and should bring these principles to the attention of other lawyers when appropriate."²¹

17. *Id.* §§2 & 3.

18. *Id.* Article II.

19. *Johnson v. White*, 964 A.2d 42, 50 (Pa. Cmwlth. 2009).

20. Code of Civility, *supra* n.2, Article II, §§9, 17.

21. *Id.* §§11, 18, 19.

The Pennsylvania Code of Civility is not mandatory. As set forth in its Preamble:

The following principles are designed to encourage judges and lawyers to meet their obligations toward each other and the judicial system in general. It is expected that judges and lawyers will make a voluntary and mutual commitment to adhere to these principles. These principles are not intended to supersede or alter existing disciplinary codes or standards of conduct, nor shall they be used as a basis for litigation, lawyer discipline or sanctions.²²

Accordingly, the U.S. District Court for the Middle District of Pennsylvania has stated that there is no private cause of action for Code violations.²³ However, the Preamble emphasizes the notion that we are engaged in a profession, and that dignity, respect and civility can't be imposed but rather that "... lawyers and judges will make a voluntary and mutual commitment to adhere to these principles."

The voluntary nature of the Code of Civility does not, however, mean that the Code should be taken lightly by counsel. To the contrary, both state and federal courts in Pennsylvania have shown a willingness to inform counsel of the need for adherence to the Code. In *Johnson*, the Commonwealth Court informed counsel that, "For future reference, Counsel is instructed to be 'cognizant of the standing of the legal profession' and to be more attentive to the principles outlined in the Code of Civility. See Code of Civility, Article II, para. 19."²⁴

The Pennsylvania Supreme Court has also informed counsel of the importance of civility. In *Scampone v. Highland Park*, the Court noted that:

We will note, however, our expectation that counsel will undertake to respect the code of civility and decorum appropriate when appearing before this Court, and upon remand, before the trial court."²⁵

In one case, *Huggins v. Coatesville Area School District*,²⁶ the U.S. District Court for the Eastern District of Pennsylvania took matters one step further. Addressing counsels' inability to cooperate, the court cited Justice Anthony Kennedy's speech at the 1997 ABA Annual Meeting:

Civility is the mark of an accomplished and superb professional, but it is even more than this. It is an end in itself. Civility has deep roots in the idea of respect for the individual.

Then, inspired by Shakespeare's admonition in *The Taming of the Shrew*, to "do as adversaries do in law, Strive mightily but eat and drink as friends," the court included as one part of its order that:

[N]o later than six (6) weeks from the date of entry of this Order, counsel . . . shall join each other for a meal (each responsible for his own costs), and thereafter shall jointly submit a letter to the Court confirming their compliance with this Order within two (2) weeks following their meal together.

The PBA leads by example in recognizing the importance of civil discourse. The Working Rules of Professionalism, the committees dedicated to civility, and the efforts of our members exemplify the Association's commitment to the dignity and

22. *Id.* Preamble §99.1.

23. *Wilkins v. Chardo*, 2018 WL 5734694 (M.D. Pa. 2018), *appeal docketed*, No. 18-3576 (3rd Cir. Nov. 19, 2018).

24. *Johnson*, *supra* n.19, at 50.

25. *Scampone v. Highland Park*, 618 PA 363, 57 A.3d 582, 594, n.9 (Pa. 2012).

26. *Huggins v. Coatesville Area Sch. Dist.*, 2009 WL 2973044 (E.D. Pa. 2009).

respect of the legal profession.²⁷ Ultimately, the way we treat each other, whether lawyers, jurists, clients or those with whom we come into contact in our daily lives, is a reflection on this profession. Every day we are presented with opportunities to engage in civil discourse; our association with one another supports our efforts to embrace those opportunities. And, when you are feeling vexed with opposing counsel, who is likely equally vexed with you, remember and implement Shakespeare's sage advice to strive mightily but eat and drink as friends.

27. The Pennsylvania Bar Association provides resources for practitioners, including Opinions by the Legal Ethics and Professional Responsibility Committee; the members-only Ethics Hotline; and the Ethics Digest published in The Pennsylvania Lawyer magazine. www.pabar.org. Additional resources for legal professionals impacted by substance abuse, anxiety and other matters leading to disquietude are also available, confidentially, through the independent, nonprofit corporation Lawyers Concerned for Lawyers, *see* www.lclpa.org.