Why Manners Matter

By Travis Pickens

I have heard many a Southerner disparage, fairly and unfairly, the comparative “bad manners” of a Northerner. Manners are not the same as character, and broad exposure to different regions of the country confirms that people are generally more or less the same all over. But manners do matter. Manners may not tell you the full quality of a person’s soul, but they are far more than social niceties. They manifest courtesy and respect for other people, and significant institutions. They signal sophistication and tolerance. They will tell you with whom you would rather share a trying experience. And barring other evidence, they will certainly tell you whom you would prefer your children imitate.

Traditional notions of good manners sometimes rub up against what some may see as good lawyering. If you are a man of a certain age, you may have wrestled with reconciling an upbringing that counseled courtly behavior and deference to women with the modern day reality that a woman may be on the other side of your high-stakes lawsuit and she is coming at you with everything she has. Conversely, if you are a woman of a certain age, you may sometimes struggle to reconcile traditional conceptions of “ladylike” behavior with the duties you have to your client. Lawyers often have a duty to press for not just fair results, but favorable results. Sometimes you have to say “yes” and “no,” when personally you would much rather say “no” and “yes.” And for women, taking the hard position sometimes unfairly earns them an unpleasant name, instead of the adjective “aggressive” more often used describing men.

Striking the balance between good behavior and effective representation is difficult for many. The path one takes as a lawyer often has to do with how you see your role. Some lawyers see their role as a “warrior,” and that they are duty bound to do everything in their power, and for an especially unpleasant few, everything within their personality, to wrest the result desired by their client. For others, being a lawyer has a certain regal quality to it. The clients are in some ways just the pieces the attorney moves around in a royal game of legal chess. They regard their reputations (read regard by others) to such a degree that one wonders whether they will go to all lengths to earn the approbation of the opposing lawyer, to the detriment of their own client. There is also a good sized group of lawyers, male and female, that strike that perfect balance between soldier and diplomat. They represent their clients well, generally achieve good results and honor their colleagues and the legal system along the way. The key to this delicate balance...
is to understand that courtesy does not mean weakness and client-injuring deference.

Take speech for example. What we say and how we say it matters. Abusive language does not enhance your efficacy as an advocate. Judges routinely make this point every time they have an opportunity. If bombast was an effective tool, then we may as well go back to the day of the grind and the scream. Proper and courteous speech benefits the legal system and is a benchmark of respect, security and a dignified process. Flip, slang, and raggedly informal words do not help. The words we use with each other and in court represents the esteem we hold for not just those immediately present, but the entire justice system. The words should reflect the respect, dignity and value of the court, and each other as officers of it.

Similarly, proper dress is important. We lawyers should maintain a conservative style of dress, not because we are stubbornly old-fashioned or prudes, but because the process and institution of justice benefits from a visible reminder that this is serious business that has deep and lasting consequences on people, their property and yes, our state and nation. These uniforms we wear, often in shades of blue, black and gray, remind each of us, our clients and the general public, that we play a role in something larger than our contract negotiation or lawsuit. Conservative dress puts the emphasis where it should be, on the proceedings, not the individual. Flashy, sloppy or provocative dress under-mines this. Would Handel’s “Messiah” be as majestic or moving if the choir went, say, cabana casual, instead of robed? Would you prefer your health care professionals to dress in shorts and flip-flops? The lawyers and the court are on “stage” to speak, and they each have their role. If one or the other breaks out of character, through word or wardrobe, there is a risk that the sanctity of the law (not only the participants) will be diminished.

This is not to say that the players in this drama must take themselves as seriously. There can be laughter in the courtroom, but there should never be any mistake that the process is about justice, not entertainment. Similarly, the courtroom is not about smack downs or revenge. That is a different kind of drama: one presided over by daytime television or reality show hosts, not judges. Clients and the public should feel they have been to a court of law, not some sort of large and well-funded government complaint department.

Lawyers should require their clients to dress properly as well. The fact that there is a local rule in many courts as to dress is ample evidence that there have been consistent and dramatic deviations. We have all seen litigants appear in clothes more suited for Dancing with the Stars. Clothing does not have to be expensive to be proper. It is about coverage and coloring, not quality of material or fine tailoring. The clients, too, have their role in court. They will behave and react better to whatever happens if they see the justice system and its participants as worthy of respect and decorum.

It should especially be noted by judges that the lawyers before them follow their lead. Respectful, courteous treatment is appreciated and modeled by the lawyers, as to their behav-ior before the court and among themselves. It sets the overall tone of the litigation. Think of it as trickle-down professionalism. A judge should treat the lawyers and litigants as well in a bench trial, as with a jury watching. The judge should act as an administrator of the law, not as the embodiment of it. The judge is the government’s representative and decision maker in this process of justice. For example, indiscriminate use of the phrase “my courtroom” can signal something other than the true role of the judge, which is to apply the law of the land, not impose, even in the slightest sense, a personal code or slant on justice.

Like all manifestations of truth and beauty, professional behavior has many profoundly desirable consequences beyond the relationship between lawyers and their clients. Man-nerly behavior inspires professional behavior that exceeds courteous phone calls and temperate e-mails. There are fewer scheduling issues, discovery disputes decrease and settlements often occur earlier in the case, leaving
the clients enough money to pay their fees (and still celebrate).

You are likely to find more professionalism exhibited among lawyers that routinely practice with and against each other. Speak to a lawyer with a busy practice in insurance defense, or at the Oklahoma Corporation Commission, and you will often find a “knights of the roundtable” type quality that makes one long for an earlier day. Those in family or criminal law, whether government lawyers or in private practice, have unique and daunting client challenges, but professionalism still often triumphs. That is, when the lawyers control the client’s expectations and act as their lawyer, not their champion.

The legal profession should not be looked upon as a club by its participants, for the system of justice is for everyone, the rich and poor alike. Legal societies have an important place in developing collegiality and furthering education for lawyers, but the legal system itself must never be seen as a club to be joined or from which to expel the less popular. Lawyers and judges come with many different backgrounds, experiences and abilities and all are valuable and needed in the beautiful mosaic we call the American justice system. We lawyers and judges should remember that like actors, we have an audience, and no jobs without them. We should remember our clients and the general public are paying for all of this.

This sliver of professionalism loosely called “manners” matters a great deal, for reasons far beyond regional mores. As a practical matter, they affect the realization of several key rules of the Oklahoma Rules of Professional Conduct, such as those dealing with diligence, communication, expediting litigation, impartiality and decorum of the tribunal and fairness to the opposing party and counsel. Good manners affect every relationship in the justice system. They affect how well justice is administered and how quickly justice is attained. Good manners affect how justice is perceived by the public. There are few things more important, and by comparison so easily done.

About the Author

Travis Pickens serves as OBA ethics counsel. He is responsible for addressing ethics questions from OBA members, working with the Legal Ethics Advisory Panel, monitoring diversion program participants, teaching classes and writing articles. A former litigator in private practice, he has served as co-chair of the Work/Life Balance Committee and as vice-chair of the Lawyers Helping Lawyers Assistance Program Committee.