

Manners maketh the advocate

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It is ironic that in the eyes of the general public the legal profession is often viewed as dishonest and lacking in ethics. Yet our profession is the modicum of professional integrity and ethical values.



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The layman is astounded to hear of all our rules concerning ethics, integrity and professional courtesy. Members of the public always express their amazement about the amount of courtesy towards the courts and between colleagues. It is often truly an eye-opener to see how members of the profession conduct themselves considering the litigious, antagonistic, stressful and high-pressure environment in which we toil every day. Of course much of this is owing to the Bar rules of conduct which foster collegiality, ethics, court etiquette and of course manners.

However, it has saddened me lately to see the drop in standards regarding court etiquette and manners. Of course these two go hand in hand and will be discussed collectively as "courtroom manners". In the past few years I have repeatedly and almost on a daily basis seen flagrant disregard for manners in court, not only as concerns colleagues but also towards the judiciary. Common examples of this are counsel leaving the courtroom before the next counsel is on his feet; counsel referring to another judge as "your Brother *****" instead of "His Lordship Mr Justice *****"; junior counsel failing to sit in the back benches of the courtrooms and counsel failing to inform colleagues of legal points or exceptions, to name but a few. There are of course many other examples; just sit in the motion court on any motion day to view such.

Many fail to realise that many of the practices which we perceive to be merely good manners are actually *rules*, and therefore to disregard them is in fact a breach of the Bar Rules. Rule 4.4.13 enjoins junior counsel to sit at the back of the court. Rule 4.9 states that there is a duty on counsel to remain in court until the next counsel is on his feet and addressing the court. Rule 4.28 states that it is counsel's duty to inform an opponent

of an intended exception or to give notice of a legal point which is to be raised.

There will of course be those of us who will say that such manners are outdated and belong to a bygone age. Many who would argue that there is no basis for many of the rules, fail to realise that for many, if not all the rules, there is a good reason. Take for example the rule enjoining junior counsel to sit towards the back of the courtroom. Is the basis of this rule to discriminate against juniors or to belittle them? Of course not! The reason is simply that when the court is calling the roll according to seniority it is much easier for a junior sitting towards the back to see his more senior colleagues and avoid unintentionally standing up before them. For standing up before senior colleagues may embarrass him and annoy his senior colleagues who will no doubt think he has no manners. Why remain in court until the next counsel is on his feet? Simply because the judges often forget to ask counsel something which they may remember just after the counsel has sat down and if counsel is still there the judge may address the issue which concerns him. Let's also not forget that it is also simply good manners.

Why, you may ask, write about this? The purpose is to suggest that there is merit in the "broken window" theory. Protagonists of this theory will tell you that if there is a broken window in a neighbourhood, it must be fixed immediately since failure to do so will eventually lead to a second broken window and then a third and before long the area has become a slum. Really what the theory is all about is that the smallest disregard for rules or order may lead to a general lack of adherence to rules, standards and order. Therefore any such disregard must be stamped out immediately.

How does this effect the disregard for Bar rules concerning manners in court? Well, simply by the "broken window" theory it is clear that today we may have mere disregard for manners but soon such disregard for manners will lead to a disregard for more serious aspects of the Rules, such as ethics and integrity. If one continually disregards certain Bar Rules for what may seem petty things and such is generally accepted it will soon lead to less remorse to breach more serious rules and a downward spiral in the standards of the Bar, which I believe is what we cherish and makes the institution of the Bar an institution of excellence.

If this is the problem, how do we stamp it out? In my opinion prevention is better than cure and one must first go back to the roots of the problem, in other words the training of advocates. Pupillage plays a vital role in the formation of an advocate, not only teaching him the how but also the why. There should be a conscious effort by pupil masters and pupil teachers to emphasise strongly courtroom manners and collegiality between members of the profession. Of course one cannot lay the blame solely at the door of the masters but we too, the members of the profession, are at fault. How many times do we see flagrant lack of courtroom manners and yet fail to reproach the offender or inform him of his breach of the Rules; after all he may merely be ignorant or have done so completely unintentionally. We all owe it to the profession to become more pro-active in this regard.

Finally I wish to blame a third party which I believe has a monumental role to play in enforcing standards: the judiciary.

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- We need to pay reasonable salaries for government servants or at least be on par with the cost of living. This would prevent officials from using positions to earn extra money unlawfully.
- We need to promulgate codes of conduct for public servants and politicians in order to ensure the continued integrity of the representatives of the people.
- We need to curb improper relationships between public officials and corrupt business people by enforcing codes of conduct.
- Government needs to be transparent in executing decisions involving discretionary powers.

- We need to establish strong and properly resourced oversight institutions.

These are but some of the measures to ensure accountability, transparency and good governance. The list is not exhaustive. Most of all however we need a political will to fight corruption. Without it corruption and unethical behaviour are sure to flourish. I am glad to say that the government of South Africa has shown at various levels that it possesses such a political will. The existence of numerous regulatory and oversight structures is evidence of such intention. Government has also published codes of conduct for civil servants, Members of Parliament and Members of

the Executive. The acid test is going to be in how these are implemented in practice.

Conclusion

It is a gratifying to note that a new wind of democratic change has been blowing across the length and breadth of Africa. Many countries in the continent have cast off the scourge of autocratic rule and embarked on democratic reforms. It is hoped that the national regional and continental anti-corruption coalition will constitute a chief strut in the historic bridge taking the continent away from a culture of authoritarianism to a culture of clean governance, transparency and fairness. 


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I believe the judiciary is also to blame for the drop in standards in courtroom manners. After all, is the judiciary not the master of its courtrooms? Is it not before the judiciary where most such violations take place? Is it not in fact an affront to the judiciary, in whose courts we appear, when such lack of courtroom manners is manifested? Is the judiciary not in the perfect position to enforce courtroom manners

and etiquette? Yet when is the last time you have witnessed a judge castigating a member of the Bar for failing to remain in court before the next counsel is on his feet or reproaching juniors who are seated in the front rows when clearly, even to the judiciary, there are senior colleagues, even senior counsel, in the courtroom? Therefore it is the judiciary's duty also to enforce standards in its court before there is such a lack of standards that a judge cannot even accept counsel's word from the Bar. For when this occurs it will indeed be

a sad day in the history of the Bar.

This article is not merely an academic viewpoint of a certain counsel who values standards in the profession of the advocate. It is a plea to all members of the profession, from the pupil masters to the judiciary, to firmly commit themselves to a continuation of the spirit of excellence which permeates throughout the Bar and which is acknowledged as an institution with the highest regard for integrity and ethics and an institution to which it is an honour to state: "I am a member of the Bar." 

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