

MY MODEM MADE ME DO IT

Is there an unintended price tag that goes with the convenience and cost efficiencies of electronic filing? Uploading a pleading to the court's electronic filing system means that no one sees Joe down at the courthouse. And because it's no longer necessary to lay eyes on anyone, it is much easier to forget that we are part of a larger system.

When we're not forced to look at opposing counsel on a regular basis, we can demonize them, becoming more adversarial and less attuned to the ultimate goal of practice: solving the client's problem. Instead of being problem solvers, lawyers are becoming problem accelerators. This leads to a loss of civility and collegiality. Instead of picking up the phone and calling the lawyer you've met face to face to quickly and expeditiously resolve matters and arrive at a settlement that everyone can live with, the first impulse is to draft a pleading and put it on the calendar. This increases costs, raises the level of conflict, and obscures potential settlement possibilities. The friendly phone call that once might have led to a resolution has given way to a warpath of litigation. It's easier to flip a pleading to the electronic filing system than to deal with a faceless lawyer. Lines are drawn in the sand and marching orders given before reasonable minds have the opportunity to settle disputes. Much larger cultural forces are at work, but it's all exacerbated by the isolation and lack of perspective that technology has wrought upon the judicial system.

Another unintended consequence is the lack of training for new attorneys. In times past, lawyers were required to sit in the back of the courtroom while motions were argued. The new, increased efficiency means less education in how law is really practiced.

The solution to the problem of civility and professionalism must come from the judiciary. Bar associations can have forums and meetings, but if lawyers don't come to the table for one reason or another, it defeats the purpose. If judges regularly call informal meetings, lawyers will participate because the master of the house will be there. As the practice of law moves into the 21st century, the loss of civility, collegiality, and old-fashioned courtliness should not be accepted. To do so is bad for the profession and for our clients.

Footnotes

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