Practical Tools for Promoting a More Civil Approach to Child Welfare Law

Tim Jaasko-Fisher
Civility Center for the Law
Alfred, Duke, and Robert
on the stoop of their Brooklyn row house
circa 1936
Think of an example where you were the target of or witness to an uncivil act at work.

How did people’s “role” in the system influence their behavior?

How did the incivility impact the process or outcome you were seeking to create?
### Potential Points of Conflict

<table>
<thead>
<tr>
<th>Legal System</th>
<th>Social System</th>
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<tbody>
<tr>
<td>Individual Client</td>
<td>Broad client</td>
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<tr>
<td>Duty to maintain secrets</td>
<td>Duty to share information</td>
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<tr>
<td>Duty to advocate</td>
<td>Duty to collaborate</td>
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<tr>
<td>Loyalty to one client</td>
<td>Loyalty to broader social goals</td>
</tr>
<tr>
<td>Interest focused</td>
<td>Objective focus</td>
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</tbody>
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What can we do about the conflicts?

- Understand “working in the system” vs. “working on the system”
- Understand that roles may explain behavior
- Become a learning system that continually seeks to improve
- Be civil
Preamble to NM RPC: A Lawyer’s Responsibilities

“A lawyer, as a member of the legal profession, is a representative of clients, an officer of the court and a public citizen having special responsibility for the quality of justice…”
Defendant’s attorney repeatedly petting plaintiff’s service dog after being asked not to touch the dog.
[THE STATE]: Objection, Your Honor, and motion outside the presence. And counsel walked right into this after freaking six weeks.

THE COURT: Hold on just a minute.

[HOLMES'S COUNSEL]: [The Prosecutor] is having a tantrum.

THE COURT: If I could have the jury go into the jury room.

[STATE]: Tantrum, because you—
Judge: If you drive like an idiot ‘cause you’re late for work, you’re gonna have to pay for it. You can see your picture on the headlines of the Seattle Times, stupid young man who shouldn’t be driving.
Judge: You know, that’s the problem with mature people, they think, I see my exit so I have to get ahead, imagine that, ahead of those other trucks, then what did you do, you probably slowed down to get off at the off-ramp making all those people behind you think you were an idiot.
You make the call:

Dissenting opinion:

The [majority] opinion is couched in a style that is as pretentious as its content is egotistic. It is one thing for separate concurring or dissenting opinions to contain extravagances, even silly extravagances, of thought and expression; it is something else for the official opinion of the court to do so. Of course the opinion’s showy profundities are often profoundly incoherent.
43% of judges polled had sanctioned attorney on attorney incivility
35% of judges polled had sanctioned attorney on judge incivility
36% report that Judge on Judge incivility is an issue in at least some instances.
Percentage of Survey Takers Reporting Frequency They Experienced Civility in the Last Year by Activity

- **Mediation**
  - **Never**: 5%
  - **Infrequently**: 10%
  - **Sometimes**: 20%
  - **Often**: 75%
  - **Always**: 5%

- **Arbitration**
  - **Never**: 5%
  - **Infrequently**: 10%
  - **Sometimes**: 20%
  - **Often**: 75%
  - **Always**: 5%

- **Settlement Negotiations**
  - **Never**: 5%
  - **Infrequently**: 10%
  - **Sometimes**: 20%
  - **Often**: 75%
  - **Always**: 5%

- **Courtroom**
  - **Never**: 5%
  - **Infrequently**: 10%
  - **Sometimes**: 20%
  - **Often**: 75%
  - **Always**: 5%

- **Discovery**
  - **Never**: 5%
  - **Infrequently**: 10%
  - **Sometimes**: 20%
  - **Often**: 75%
  - **Always**: 5%
% of Survey Takers Reporting How Often They Experienced Civility in the Last Year by Mode of Communication

- **e-mail**
  - never
  - infrequently
  - sometimes
  - often
  - always

- **face to face**
  - never
  - infrequently
  - sometimes
  - often
  - always

- **phone**
  - never
  - infrequently
  - sometimes
  - often
  - always
Measuring civility

Workplace Incivility Scale (WIS)

Uncivil Workplace Behavior Questionnaire (UWBQ)

Civility Norms Questionnaire – Brief (CNQ-B)

Team Incivility Climate Scale (TICS)
The price we pay
Business
Health and well-being
Justice
Incivility decreases
Performance
Effectiveness
Helpfulness
Reputation
Motivation
Creativity

Incivility costs money.
48%  Reduce effort

47%  Reduced time at work

80%  Lost time worrying about the incident

78%  Lowered commitment to the organization

12%  Leave workplace
50% Reduction in creative ideas
61% Performed lower on verbal tasks
20% Reduction in recall
remdue
demure
murder
$2.8 Million +
46% of lawyers report concern with depression at some point in their career.
Anxiety

General Population: 4%

Lawyers: 19%
Obsessive Compulsive Disorder

Population: 2%
Female Lawyers: 15%
Male Lawyers: 21%
Alcohol Problems

Americans: 10%
Lawyers: 20.6%
Lawyers perceive justice was served if they think *the outcome was fair.*

Litigants and the general public perceive justice was served if they think *the procedure was fair.*
Persons perceived to be civil are more likely to be:

• Seen as warm and competent
• Sought out for advice
• Top performers at work
• Better connected to workplace networks
• Seen as a leaders
Strategies to promote civility
*(what the science says)*

- Civility training
- Take another’s perspective
- Build empathy
- Be present
- Give positive feedback
- Listen
Pillars of civility
Consciousness

- decreases impact of triggers
- increases awareness of priming
- reduces implicit bias
- promotes values congruence
How full is your cup?
Decision fatigue
Lack of food or sleep
Stress
Time pressures
Fear of error
Vicarious trauma
Lack of values congruency
Lack of information
Cross cultural communication
Implicit bias
Liar
Heard, seen, and respected
Creativity

- fosters mindfulness and flow
- reduces impact of priming
- opens aperture setting
行政區域：臺灣省基隆市七堵區

民國 102 年 3 月 22 日

門牌

六堵里

工建西路 4 號
Community

- Promotes physical well-being
- Reduces impact of implicit bias
Long-term happiness comes from a sense of service to others’ well-being.

The Dalai Lama
Stay connected

Help others understand your role

Never worry alone
15% Solution
Greater civility can only enhance the effectiveness of our justice system, improve the public’s perception of lawyers, and increase lawyers professional satisfaction.

- Justice Sandra Day O’Connor