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

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Children’s Law Institute
Albuquerque, NM

Civility Center for the Law
About Robert’s Fund and the Civility Center for the Law

In an era too often marked by acts of incivility, Robert’s Fund aims to elevate the way we treat one another in professional settings and to inspire acts of courtesy, kindness, and compassion among members of the legal profession. Increased civility demonstrably improves outcomes for legal professionals and the people that they serve. And because legal professionals profoundly influence society, even outside their formal work, their behavior often sets the tenor of corporate, political, and social interactions. Through consulting, continuing education programs, and collaborations with Seattle University School of Law, this family foundation works to promote civility. Robert’s Fund was founded in 2008 and became the Civility Center for the Law in 2016.

About the presenter

Tim Jaasko-Fisher, JD, MA
Senior Director of Curriculum and Program Development
Civility Center for the Law

Mr. Jaasko-Fisher works with people and organizations to explore how individuals exercising leadership can promote a more civil workplace, community, and society. He engages people through interactive workshops designed to promote well-being within the individual, enhance productivity, and improve outcomes. He is the Senior Director of Curriculum and Program Development at the Civility Center for the Law, a private, non-profit dedicated to promoting civility in the legal system and based at Seattle University School of Law.

Mr. Jaasko-Fisher also serves as the Director of Internal Capacity Building for the U.S. Department of Health and Human Services, Children’s Bureau’s Center for Capacity Building for Courts, where he provides consulting, coaching, and advice to a team of national experts working to improve courts’ response to child abuse and neglect on a systemic level. He was the founding director of the Court Improvement Training Academy (CITA) at the University of Washington School of Law and a member of the federal Quality Improvement Center on Youth Representation curriculum team. In 2010, he was awarded the Lee Ann Miller Individual Award for outstanding leadership in furthering the goals of the Washington State Children’s Justice Act and led the Court Improvement Training Academy to receive the Lee Ann Miller Team award in 2014.

Mr. Jaasko-Fisher worked as an Assistant Attorney General for 11 years. He has litigated at all levels of the justice system in Washington State, including administrative tribunals, the Superior Court, the Court of Appeals, and the Supreme Court. He presents nationally and internationally on issues relating to leadership, civility, and engaging groups in complex problem-solving. He resides in Tacoma with his two daughters.

Access to presentation resources and materials
To access additional material related to this program visit: www.robertsfund.org.
Initial Interviews

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?

What is “incivility”?

The most frequently cited definition of “incivility” in literature related to the topic comes from a 1999 article written by Anderson and Pearson in which incivility is defined as “low-intensity deviant behavior with ambiguous intent to harm the target, in violation of workplace norms.”

Ethical codes and practice standards

Various sets of rules and codes apply to the professionals who work in a child welfare legal setting. All attorneys are required to follow the Rules of Professional conduct. The American Bar Association’s Model Rules of Professional Conduct, among other provisions, may be found at


The National Association of Counsel for Children has also issued practice standards for attorneys representing agencies, parents, and youth in child welfare proceedings, which may be downloaded at http://www.naccchildlaw.org/?page=StandardsOfPractice

National CASA encourages all CASA programs to have a code of ethics. Some caseworkers may belong to the National Association of Social Workers, which has a code of ethics for its members (see www.socialworkers.org). Judicial officers are bound by the Code of Judicial Conduct. The American Bar Association’s Model Code of Judicial Conduct may be found at http://www.americanbar.org/content/dam/aba/migrated/judicialethics/ABA_MCJC_approved.authcheckdam.pdf.

Some Potential Points of Conflict

<table>
<thead>
<tr>
<th>Legal Lens</th>
<th>Social Work Lens</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>
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<tr>
<td>Interest focused</td>
<td>Objective focus</td>
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Incivility in the Courtroom

In a 2003 survey of the Texas judiciary, 43% of judges polled indicated they had sanctioned attorneys for attorney-on-attorney incivility. Of those who had issued sanctions, 75% indicated the sanction decreased or eliminated the unwanted behavior. Similarly, 35% of the judges polled indicated they had issued sanctions for attorney-on-judge incivility, resulting in the behavior being eliminated or reduced in 64% of the cases. Finally, when asked whether there was a civility problem between judges, 37% indicated that there were problems in at least some instances. See Catherine M. Stone, Kimberly S. Keller, and Shane J. Stolarczyk, Civility in the Legal Profession: A survey of the Texas judiciary, 36 St. Mary’s L.J. 115 (2004).

Washington State

In a survey of the Washington State Bar pending publication, survey respondents reported experiencing civility “often” or “always” over 50% of the time in every practice category as opposed to less than 10% reporting “never” or “infrequently”. The only exception to this result was in the discovery process where 11% reported experiencing civility “never” or “infrequently”. Similarly, mode of communication seemed to impact how frequently an attorney experienced civility. Survey respondents indicated that e-mail is a mode of communication in which they are less likely to encounter civility as compared to face to face or phone communication.

<table>
<thead>
<tr>
<th>Activity</th>
<th>Percentage Reporting Frequency</th>
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</thead>
<tbody>
<tr>
<td>Discovery</td>
<td>never: 10%</td>
</tr>
<tr>
<td>Arbitration</td>
<td>never: 5%</td>
</tr>
<tr>
<td>Mediation</td>
<td>never: 10%</td>
</tr>
<tr>
<td>settlement negotiations</td>
<td>never: 5%</td>
</tr>
<tr>
<td>Courtroom</td>
<td>never: 10%</td>
</tr>
</tbody>
</table>
Tools to Measure Civility

The **Workplace Incivility Scale (WIS)** measures the frequency of participants’ experiences of disrespectful, rude, or condescending behavior. This scale links increased incivility to a reduction in job satisfaction; employees more frequently considered quitting their jobs and had increased levels of psychological stress. This scale was normed based on data obtained in a study with the U.S. Court of Appeals for the Eighth Circuit. See L.M. Cortina, V.J. Magley, and J.H. Williams, *Incivility in the Workplace: Incidence and impact*, 6 J. of Occupational Health Psy. 64 (2001).

The **Uncivil Workplace Behavior Questionnaire (UWBQ)** measures workplace incivility using a multidimensional approach that differentiates between types of incivility and the prevalence of different types of incivility in an organization, specifically hostility, privacy invasion, exclusionary behavior, and gossiping. High UWBQ scores are associated with lower job satisfaction, higher levels of psychological distress, and lower levels of psychological health and physical well-being. See R.J. Martin and D.W. Hine, *Development and validation of the Uncivil Workplace Behavior Questionnaire*, 10 J. of Occupational Health Psy. 477 (2005).

The **Civility Norms Questionnaire-Brief (CNQ-B)** is designed to assess the workgroup climate for civility. It is a significant predictor of later-assessed incivility experiences, making it an ideal tool to identify workgroups that could benefit from intervention. See Benjamin M. Walsh, Vicki J. Magley, David W. Reeves, Kimberly A. Davies-Schris, Matthew D. Marnet, and Jessica A. Gallus, *Assessing Workgroup Norms for Civility: The Development of the Civility Norms Questionnaire-Brief*, 27 J. Bus. Psychol. 407 (2012).

The **Team Incivility Climate Scale (TICS)** examines incivility at both the team and individual level. The TICS demonstrates that in addition to being directly impacted by their personal exposure to incivility, teams with uncivil climates are more likely to experience turnover and reduced job
satisfaction. This scale was, in part, developed on the same data from the Eighth Circuit Court of Appeals that was used to develop the WIS. See Deanna Paulin and Barbara Griffin, *Team Incivility Climate Scale: Development and evaluation of the Team-Level incivility Climate Construct*, Group Organization Management (Dec. 30, 2015).

The costs of incivility

In over a decade of research devoted to the issue, Christine Porath and Christine Pearson have conducted polls of a large diverse national sample of managers and employers. Summing up their research they conclude that incivility significantly reduces productivity. Specifically, their research found that of those who were targets of incivility:

- 48% intentionally decreased their work effort.
- 47% intentionally reduced the time spent at work.
- 38% intentionally decreased the quality of their work.
- 80% lost work-time worrying about the incident.
- 63% lost work-time avoiding the offender.
- 66% said that their performance declined.
- 78% said that their commitment to the organization declined.
- 12% said that they left their job because of the uncivil treatment.
- 25% admitted to taking their frustration out on customers.

In addition to their conscious response to being the target of incivility, Porath and Pearson noted that targets of incivility suffer from impaired cognitive functioning as well. Specifically,

- Targets suffered 20% reduction in recall ability.
- 61% of targets performed lower on verbal tasks.
- 50% had a fewer creative ideas.


Witnesses of incivility also suffered impaired cognitive function. A 2009 study by Porath and Erez found that while attempting to unscramble the anagram “remdue,” those who had witnessed the minor incivility were seven times more likely to unscramble it to the word “murder,” rather than “demure,” the intended result. Students exposed to minor incivility also generated less creative responses in the “brick test”, and displayed a higher level of dysfunctional ideation. See Christine L. Porath and Amir Erez, *Overlooked but not untouched: How incivility reduces onlookers’ performance on routine and creative tasks*, 109 Organizational Behavior and Human Decision Processes, 29 (2009).

Incivility reduces volunteerism

In a 2007 study, Porath and Erez found that 54% fewer students were willing to help pick up a dropped pencil when they had observed the person dropping the pencil engage in a mild incivility toward another student; 90% of the controls (who had not witnessed any incivility) agreed to volunteer as compared to only 36% who witnessed the rude response. See Christine L. Porath and Amir Erez, *Does Rudeness Matter? The effects of rude behavior on task performance and helpfulness*, 50 Academy of Management Journal 1181 (2007).
Incivility costs money

In a study cited by Porath and Pearson (2009), one large law firm estimated that one partner’s incivility cost the firm over $2.8 million. Over the course of a few years, the firm lost six attorneys and two paralegals as a result of the partner’s actions. See Christine Pearson and Christine Porath, The Cost of Bad Behavior (2009).

Incivility impacts psychological well-being

Lawyers, in particular, seem to suffer personally. For example, in a 2015 study, Patrick Krill and his associates found that 46% of lawyers reported concern with depression at some point in their career. They also show significantly elevated instances of obsessive-compulsive disorder and anxiety. The study goes on to note that a full twenty percent of the lawyers reported hazardous or harmful drinking fully double the rate of the general US population. This rate has been relatively steady since first reported in the 1990s. See Patrick R. Krill, Ryan Johnson, and Linda Albert, The Prevalence of Substance Abuse and Other Mental Health Concerns Among American Attorneys, 10(1) Addict. Med. 46 (2016).

Incivility impacts the administration of justice

Lawyers and non-lawyers see justice differently. When asked whether justice was served, the majority of lawyers say yes if they believe the outcome was fair; whereas the majority of non-lawyers consider that justice was served where the procedure was fair. In general participants in the legal system want to give their views, tell their stories, and share in the discourse of the case. Thus although they might not be pleased with the outcome when they lose, as long as they have been given the opportunity for their voice to be heard, they feel the system was fair. See Somjen M. Frazer, Defendant Perceptions of Fairness at the Red Hook Community Justice Center (from The Impact of Community Court Model on Defendant Perceptions of Fairness, Center for Court Innovation, Sept. 2006), http://www.courtinnovation.org/research/defendant-perceptions-fairness-red-hook-community-justice-center?url=research%2F11%2Fall&mode=11&type=all&page=4 (last visited Apr. 18, 2014).
The Benefits of Civility

A 2015 study by Christine Porath and associates reported that 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 leaders.

Strategies to promote civility

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

Pillars of Civility

Consciousness

Creativity

Community

Consciousness fosters civility

- decreases impact of triggers
- increases awareness of priming
- reduces implicit bias

Creativity fosters civility

- provides a vehicle for mindfulness
- stimulates whole brain activity
- expands perspective
- supports effective problem solving

Community fosters civility

- revives civic humanism
- promotes psychological well-being
- builds positive social skills
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Page 3

Page 4
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Page 6
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Page 7

Page 8
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Page 9
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CNQ-B (Walsh 2012)

Rude behavior is not accepted by anyone in your dependency court system.
Strongly Disagree -- Disagree -- Somewhat Disagree -- Neutral -- Somewhat Agree -- Agree -- Strongly Agree

Angry outbursts are not tolerated by anyone in your dependency court system.
Strongly Disagree -- Disagree -- Somewhat Disagree -- Neutral -- Somewhat Agree -- Agree -- Strongly Agree

Respectful treatment is the norm in your dependency court system.
Strongly Disagree -- Disagree -- Somewhat Disagree -- Neutral -- Somewhat Agree -- Agree -- Strongly Agree

Those who work in your dependency court system make sure everyone is treated with respect.
Strongly Disagree -- Disagree -- Somewhat Disagree -- Neutral -- Somewhat Agree -- Agree -- Strongly Agree

Evaluation Form

1. Please write an awareness you learned from today.

2. What is one practice you plan to begin or do more often based upon the discussion today?

3. Comments: