

# *Fostering Civility in the Legal Profession*

Pacific County Bar Association CLE

April 10, 2015

Tim Jaasko-Fisher



 **Robert's Fund**  
*fostering civility in the legal profession*

[www.robertsfund.org](http://www.robertsfund.org)

## About Robert's Fund

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.

## About the presenters

### **Timothy Jaasko-Fisher, M.A., J.D.**

Senior Director of Curriculum and Program Development, Robert's Fund

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 wellbeing within the individual, enhance productivity, and improve outcomes.

In his role as the founding director of the Court Improvement Training Academy (CITA) at the University of Washington School of Law, Mr. Jaasko-Fisher consulted with courts across Washington State since 2007 to improve their response to child abuse and neglect. Using a systems-based approach, he helps court communities engage in meaningful conversations across disciplines to improve their process, relationships, and outcomes. As a member of the federal Quality Improvement Center on Youth Representation curriculum team, he has provided training and consultation for a nationally focused program designed to improve the quality of youth representation in child welfare proceedings. 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, leading litigation teams, including one that won the Attorney General's "Outstanding Team Award" in 2004. The Washington State Attorney General awarded Tim the "Outstanding Diversity Advocate" award in 1999. 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. Tim serves as the Director of Internal Capacity Building for the emerging U.S. Department of Health and Human Services, Children's Bureau's Center for Capacity Building for Courts. 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 materials for this program, visit <http://www.robertsfund.org/past-programs/fostering-civility-in-the-legal-profession-2.html>

# Defining Civility



What words best describe “Civility”?

## The costs of incivility

In *The Cost of Bad Behavior*, Christine Porath and Christine Pearson cite a poll they conducted of a large, diverse national sample of managers and employers. In this poll, they found incivility reduced productivity. Of the targets of incivility they polled:

- 48% intentionally decreased work effort
- 47% intentionally decreased time at work
- 38% intentionally decreased work quality
- 80% lost time worrying about the incident
- 63% lost time avoiding the offender
- 66% said their performance declined
- 78% said their commitment declined
- 12% leave the workplace



### Incivility impairs cognitive function:

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

Witness of incivility also suffered impaired cognitive function. In a 2009 study by Porath and Erez, found that while attempting to unscramble the anagram “remdue” to “demure”, those who had witnessed the minor incivility were seven times more likely to unscramble it to the word “murder”. Students exposed to minor incivility also generated less creative responses in the “brick test”, and displayed a higher level of dysfunctional ideation.

### Incivility reduces volunteerism:

In the same study, Poratha and Erez found that 58% fewer students were willing to help pick up a dropped book when they had observed the person dropping the book engage in a mild incivility toward another student; 50% of the controls agreed to volunteer as compared to only 26% who witnessed the rude response; and that the controls were three-times more likely to volunteer.

## Incivility impacts psychological well-being:



Lawyers are 3.6 times more likely to be depressed when compared to 104 other occupational groups. When compared to general population, lawyers suffer increased levels of depression, obsessive compulsive disorders, anxiety, and alcohol problems:

### Depression

Females: 14% / Female lawyers: 16%  
Males: 9% / Male lawyers: 21%

### Obsessive compulsive disorder

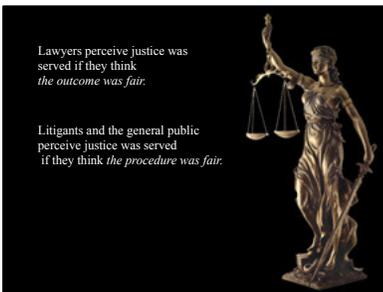
Females: 2% / Female lawyers: 15%  
Males: 2% / Male lawyers: 21%

### Anxiety

Females: 4% / Female lawyers: 20%  
Males 4% / Male lawyers 30%

Lawyers, in particular, seem to suffer personally as a profession. For example, in a study by Beck, Sales, and Benjamin, lawyers were found to be at much higher risk of alcohol related problems or other psychological concerns. For example, 71% of female lawyers in the study reported having issues with alcohol use whereas the prevalence rate in the general population is only 8%. Likewise, male attorneys reported at 67% compared to only 20% of males in the general population.

## Civility impacts the public perception of the justice system:

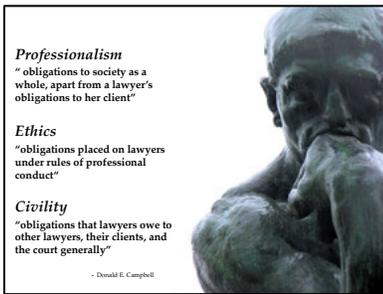


Lawyers perceive justice was served if they think the outcome was fair.

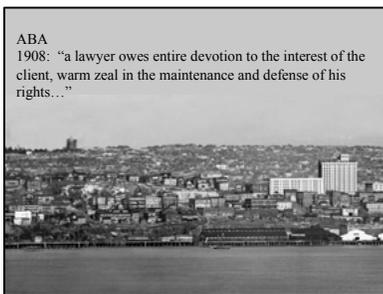
Litigants and the general public perceive justice was served if they think the procedure was fair.

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 to provide their voice, they feel the system was fair.

## The link between professionalism, ethics, and civility:



In *Raise Your Right Hand And Swear To Be Civil: Defining Civility As An Obligation Of Professional Responsibility*, Professor Donald Campbell distinguishes ethics, professionalism, and civility as follows: "Ethics addresses minimal obligations placed on lawyers under rules of professional conduct. Professionalism is identified as a lawyer's obligations to society as a whole, apart from a lawyer's obligations to her client. Civility is identified as those obligations that lawyers owe to other lawyers, their clients, and the court generally."



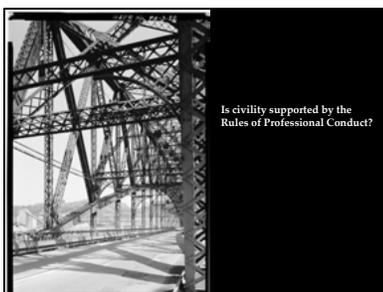
1908, ABA Cannons of Professional Ethics: "a lawyer owes entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights..."

1969 ABA Model Code of Professional Responsibility: a lawyer's duty is to represent the client interest "zealously within the bounds of the law."



1983: eliminated the word "zealous" from its rules, although it was included as a descriptive term in the preamble and commentary.

2006: Washington State Rules of Professional Conduct currently use *conscious and ardent* in the preamble.



What RPCs invite or suggest uncivil or unprofessional behavior?

# Pillars of Civility



**Consciousness**

**Creativity**

**Community**

## Consciousness fosters civility

- increases awareness of our emotions
- enhances awareness of our impact on others
- facilitates practice of discernment
- enables us to live with congruency



## Creativity fosters civility



- provides 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



# Fostering Civility in the Legal Profession

## Readings and Resources

### I. Characteristics of civility

1. Justice Steven González, *True Civility Requires More Than Being Polite*, Washington State Bar News (Sept. 2012)
2. Senior Judge Gerald W. Hardcastle, *Civility in the Courtroom: A Judge's Perspective*, Nev. Lawyer Mag. (Dec. 2009),
3. Humphrey, Thomas E., "Civil" Practice in Maine, Maine Bar Journal
4. Julie Braman Kane, *Civility: It's Not a Sign of Weakness* (Subtitle I: Make Your Mama Proud; Subtitle II: Would You Do it in Front of Your Grandmother?), 1 Ann.2007 AAJ-CLE 809 (July 2007)
5. Paula Lustbader, *Igniting a Culture of Civility*, Washington State Bar News (January 2011)
6. Harry J. McCarthy, *The Value of Civility in the Legal Profession*, Washington State Bar News 2011)
7. Sandra Day O'Connor, *Professionalism*, 78 Or. L. Rev. 385 (Summer 1999)

### II. Costs of incivility

8. Cynthia L. Alexander & G. Andrew H. Benjamin, *Civility Is Good for Your Health*, Washington State Bar News (Apr. 2011)
9. Dan Crystal, *The Unbar: Attorneys Come Together to Take On Alcoholism*, (Sept. 2012)
10. Mark G. Honeywell, *Civility is Good Business*, Robert's Fund (June 2011)
11. Paula Lustbader, *Lecture Notes on Civility in the Legal Profession*, Robert's Fund (2012)

### III. Pillars of civility

#### Consciousness

19. Amanda Enayati, *Seeking Serenity: When Lawyers Go Zen* (May 2011)
20. Leslie A. Gordon, *Law Prof Teaches Meditation Techniques for Lawyers*, A.B.A. J. (Feb. 1, 2014)
21. Janet Ellen Raasch, *Putting Relaxation Back Into Firm Retreats: Loosening Up the Lawyer Mind*, 32 Law Prac. (Jan.-Feb. 2006)
22. Stella Rabaut, *Lawyers: Leading with Integrity*, Washington State Bar Association, (October 2013).
23. Robert Zeglovitch, *The Mindful Lawyer*, GPSolo Magazine (Oct.-Nov. 2006)

Additional resources:

DANIEL GOLEMAN, *EMOTIONAL INTELLIGENCE* (Bantam Books 1<sup>st</sup> ed. 1995)

RICK HANSON, *BUDDHA'S BRAIN: THE PRACTICAL NEUROSCIENCE OF HAPPINESS, LOVE & WISDOM* (New Harbinger Publications 1st ed. 2009)

#### Creativity

24. Lera Boroditsky, *Lost in Translation*, The Wall Street Journal, July 23, 2010
25. Steven Keeva, *Lose the Box* (Sept. 12, 2004, 11:46 AM CST), A.B.A. J
26. Daniel H. Pink, *Revenge of the Right Brain: Logical and precise, left-brain thinking gave us the Information Age. Now Comes the Conceptual Age - ruled by artistry, empathy, and emotion*, Wired, Issue 13.02 (2005)
27. Janet Ellen Raasch, *Inspired by the Wonder of Poetry*, A.B.A.

28. Jeff Tolman, *Looking at the World Through Other People's Eyes*, Wash. Bar News, (Mar. 2011)
29. Mary I. Yu, *Civility in Our Conversations about Race and Culture*, Wash Bar News (May 2011)

#### Community

30. A.B.A., *Staying connected to friends and family, not necessarily your PDA, helps keep stress at bay* (Sept. 2011)
31. Celeste F. Bremer, *Fostering Civility Within the Legal Profession: Expanding the Inns of Court Model of Communal Dining*
32. David Brooks, *Nice Guys Finish First*, N.Y. Times (May 16, 2011)
33. Isaiah M. Zimmerman, *Isolation in the Judicial Career*, 36 CT. REV. 4 (2000)

#### **IV. Strategies to foster civility**

34. Donna F. Howard, *Learning to Listen, Learning to Be Heard*, GPSolo Magazine (Apr.-May 2006)
35. Steve Leben, *An Expectation of Empathy*, Washburn L.J., Fall 2011, at 49
36. Paula Lustbader, *Listening from the Bench Fosters Civility and Promotes Justice*, forthcoming in the Seattle Journal of Social Justice 2015.
37. Julian Treasure, *5 Ways to Listen Better*, Ted Talk (July 2011)

Additional resources:

Douglas Stone, Bruce Patton, & Sheila Heen, *Difficult Conversations: How To Discuss What Matters Most* (2d ed. 2010)

#### **V. Ethics and Civility**

37. Donald E. Campbell, *Raise Your Right Hand And Swear To Be Civil: Defining Civility As An Obligation Of Professional Responsibility*, 47 Gonz. L. Rev. 99 (Dec. 2011)
38. G. M. Filisko, *Be Nice: More States Are Treating Incivility as a Possible Ethics Violation*, A.B.A J. (April 2012)
39. Abstracts of Relevant Washington Rules of Professional Conduct
40. Washington State Bar Association Creed of Professionalism-adopted by the WSBA Board of Governors July 2001