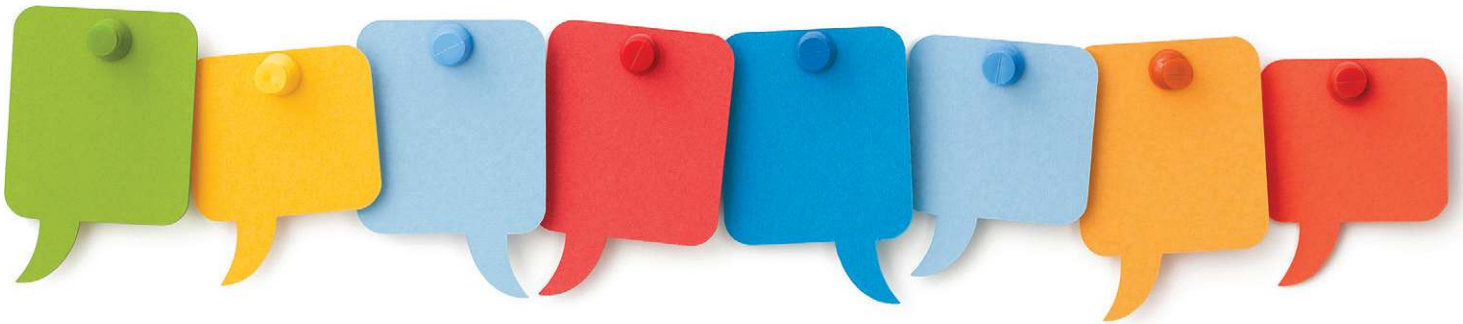




THE NATIONAL
JUDICIAL COLLEGE

Promoting Trust and Confidence

Recommendations from
The National Judicial College's
2013 SYMPOSIUM ON CIVILITY



50th Anniversary
2013

EDUCATION | INNOVATION | ADVANCING JUSTICE

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Introduction and Acknowledgement

For years, judicial systems, bar associations, professional entities and academics across the United States have been publishing guidance on how judges, attorneys, and court staff should behave as “professionals.” Such guidance about professionalism almost always gives a nod to the notion of civility.

To build upon the work of the past and continue the conversation on civility within the courts, The National Judicial College hosted a symposium in 2013 entitled *Civility in the American Justice System: Promoting Public Trust and Confidence*. The event, held at the National Constitution Center in Philadelphia, Pennsylvania, brought together distinguished members of the bench and bar, experts, and scholars. Based on their wise counsel and invaluable input, the NJC was able to develop these *Principles of Civility* (principles) and outline the ways that the principles apply to all persons within our nation’s courts.

The National Judicial College wishes to thank all who contributed to the symposium with special appreciation for the commitment of the participants and the civility program planning committee to making this project a success.



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The Principles of Civility

The law preserves our freedom and courts preserve our laws. Fair, impartial, and accessible courts are fundamental to democracy, as they support the stability of government, preserve constitutional rights, ensure social order, and promote predictability in commerce. How we conduct the work of courts impacts the real or perceived legitimacy of our justice system. Civility encompasses a form of courtesy in behavior and speech that is essential to the role of courts in a democratic society. It is, therefore, important that all involved with the court – judges, attorneys, jurors, witnesses, court staff, parties – act with civility to ensure the fair administration of justice and resolution of disputes. Essential elements of justice system civility include integrity, personal dignity, candor, respect, courtesy, and cooperation with others.¹ Civility in action and words is fundamental to the effective and efficient functioning of our system of justice and public confidence in that system.

These recommendations provide an introduction to what can and should be done to incorporate the principles into the operation of a local justice system. Hopefully, they serve to initiate an exploration of actual changes in conduct that are embraced by all. It is hoped that courts will develop materials to post in courthouses, statements to be included in forms and notices, and handouts for parties, witnesses, and other court users. The bench and bar should lead further discussions on civility and the implementation of these principles and develop other approaches to inform all involved in the justice system on the foundational role civility plays in the administration of justice.

The following four principles are intended to foster a level of civility and create a standard of conduct exceeding the minimum required under state-issued rules of professional conduct and canons. After each principle are some key points about its importance. In the subsequent pages, these principles are applied to judges, attorneys, court staff, parties, jurors, and witnesses.

The final page is intended for use as a bench card for judges to provide ideas for implementing these principles on the bench.

¹ See, for example, the State Bar of California, *Civility Toolbox* (2009).

The Principles of Civility

1 Prioritize courtesy and treat others with respect at all times.

Courtesy and respect are the hallmarks of civility. Respect within the justice system is executed by exercising patience with people and the process. It is also important to respect the rights of parties and non-parties as well as refrain from acting inappropriately, even if someone initiates unprofessional conduct. At all times it is essential to model civility by being courteous and respectful toward the rule of law as well as to all coming into contact with the justice system. Remember that courtesy and respect should also be practiced in all forms of communication, both oral and written.

2 Remember that time is precious, for everyone.

A high-functioning system of any kind operates at its best when efforts are applied to complete processes in a timely fashion. A reasonable amount of time is required for pleadings, discovery, and other court events, especially if a case is complex. However, to promote civility, the goal should be the timely resolution of cases. Justice delayed is justice denied² is a maxim that is often invoked by the justice system to fulfill the implicit promise of timely resolution. Another maxim is that time is money. Public confidence in the courts decreases as the costs of court proceedings increase due to unnecessary delay. Civility suffers and often erodes when parties are unable to receive resolution in a timely fashion. Additionally, delay reduces the ability to establish relevant facts as memories fade resulting in uncivil exchanges, to say nothing of lost evidence, and can needlessly heighten anxiety with a direct impact on civility. Communication and actions can become combative. Time, and the proper use of it, is an important element of civility and the administration of justice.

3 Preserve and improve the law, the legal system, and associated dispute resolution processes.

Civility has the capacity to preserve the value and importance of the legal system and its associated dispute-resolution processes and improve the administration of justice. All persons involved in the system profit when the benefits and the burdens of the law are applied equally and with civility. This principle is an effort to express the importance of a collective commitment to fairness, both actual and perceived.

4 Effectively and clearly communicate your role and any expectations you may have.

Effective communication is the foundation to the administration of justice. Tied to this principle is the notion that each person enters the courts with his or her own feelings and attitudes (implicit bias) about other system players based on a host of characteristics. Civility and effective communication can help reduce the impact of implicit bias³ and ensure that justice is administered efficiently, impartially, and fairly.

² Attributed to British Prime Minister William E. Gladstone (1868).

³ See, e.g., Stanford School of Medicine, Office of Faculty Development and Diversity, FAQ on Implicit Bias (available at http://med.stanford.edu/diversity/FAQ_REDE.html).

The Principles of Civility

Judges

- 1 Prioritize courtesy.** The judge is perceived as a leader in and out of the courtroom. The judge should model respect and courtesy at all times. Through his or her own behavior, the judge sets the tone with court staff, attorneys, parties, jurors, and witnesses. Further, the judge has the responsibility to address incivility in a positive manner whether in chambers, the courtroom, the courthouse, or the community. It is important for the judge to be consistent, keep a calm demeanor, be engaged in the process, and practice good listening skills. In particular, judges need to practice using procedural fairness with regard to the parties, attorneys, and witnesses as well as in addressing and responding to other judges. According to Tom Tyler, procedural fairness is attained when the judge conducts proceedings so that the parties have a *voice* to tell their story, perceive that the court system is *neutral*, are treated with *respect*, and believe the judge is *trustworthy* and sincerely trying to help them.⁴
- 2 Be timely.** Timely justice is best honored when all matters begin and end according to a reasonably-set schedule. Maintaining a well-run schedule with accommodation as required shows respect to court staff, attorneys, jurors, parties, and witnesses. It is also essential that judges make decisions, rule on motions, and issue opinions timely and keep all advised when a matter taken under advisement will be addressed.
- 3 Preserve and improve the law.** This principle of civility is especially critical for judges in their leadership role. As leaders, it is important that they take a strong role in ensuring that all persons receive fair, timely and equal treatment under the law. Judges should be taking the message to the community that uncivil behavior does not achieve a better justice. The courts can model that disagreements can be addressed in a civil manner. Judges can join with attorneys to initiate community outreach about civility by promoting justice-improvement initiatives focusing on positive aspects of the court's work and engage in much needed civic education to social and community organizations.
- 4 Communicate.** Clear, concise, and informative communication from the judge is imperative to procedural fairness. As stated earlier, procedural fairness is attained when the judge conducts proceedings so that the parties have a *voice* to tell their story, perceive that the court system is *neutral*, that they are treated with *respect*, and believe the judge is *trustworthy* and sincerely trying to help them.⁶ It is the judge's responsibility to lay out the expectations and set the agenda for all persons involved with in- and out-of-court processes, procedures, and timelines. The judge needs to clearly and concisely communicate the expectations of the court.

“The rule of law cannot effectively exist without civility.”

HON. WILLIAM DRESSEL
(Colorado, ret.)

⁴ Tom R. Tyler, Ph.D., *Procedural Justice in the Courts* 44 COURT REV. 26 (2009).

⁵ Tom R. Tyler, Ph.D., *Procedural Justice in the Courts* 44 COURT REV. 26 (2009).

The Principles of Civility

Attorneys

- 1 Prioritize courtesy.** Attorneys, like judges, are visible representations of civility in and out of the courtroom. In fact, several bar associations have adopted notions of civility into their statements on professionalism. As advocates, attorneys have many opportunities to demonstrate to their clients and colleagues these principles of civility. Zealous representation is not only compatible with civility but believed by those who embrace civility to enhance the adversarial process, resulting in quicker resolution at less cost. First and foremost is modeling respectful and courteous behavior, especially when confronted with inappropriate behavior. Attorneys should inform their clients that respect and courtesy are expected of them and not equated with weakness.
- 2 Be timely.** Attorneys can contribute to the timely administration of justice by filing pleadings, responding to discovery, and communicating without needless delay. However, it is important to keep in mind that there are sometimes situations when an extension to respond or a waiver is appropriate. Civility can be achieved by consulting with opposing counsel when scheduling meetings, hearings, and depositions, and conferring early to make efforts to resolve matters or engage in early settlement of the controversy.
- 3 Preserve and improve the law.** One of the best ways attorneys can promote justice is to be ever-conscious of the broader judicial system to which the attorney is a part. Attorneys must be loyal and committed to the client's cause and have fidelity to the client, but maintain a relationship that permits objective and independent advice. This balance helps ensure that the attorney is able to provide advice that may include advising against pursuing litigation that is without merit. Attorneys are encouraged, through their codes of conduct, to use the law's procedures only for legitimate purposes and are required to uphold legal process.⁶ Additionally, attorneys should be a partner with the court in civic education.
- 4 Communicate.** It is important that attorneys provide legal advice to their clients that will properly steer the clients toward good decision making. Attorneys have the dual role of being clear with the client about the merits of the case and mitigating uncivil behavior. Getting one's client to accept reality different from the client's expectations is invaluable in promoting the administration of justice and the professionalism of the legal profession. Attorneys should also communicate with opposing counsel with the goal to resolve the dispute as efficiently as possible within the interest of the client. Attorneys should honor their promises and commitments. Their communications, orally or in writing, should be factual, clear, concise, and use plain language.

“Civility is not just about treating others with courtesy, dignity, and kindness. It is also about maintaining the public’s trust and confidence in the American justice system and ultimately adherence to the rule of law.”

CHIEF JUSTICE
PAUL DEMUNIZ
(Oregon, *ret.*)

⁶ See, American Bar Association, *Model Rules of Professional Conduct* (preamble, 2002).

The Principles of Civility

Court Staff

- 1 Prioritize courtesy.** Court staff are often the first people with whom the public comes in contact. As such, their role in civility is a great one. Court staff should see opportunities to learn more about procedural fairness and understand implicit bias and how it can affect courtesy and communication. It is essential that court staff exercise a high level of professionalism, which includes the same courtesy and respect to all who come into the courts.
- 2 Be timely.** Court staff should endorse and provide informative and timely customer service to all who come into contact with the court system and consider how court processes can be streamlined. Like judges, it is important for court staff to be respectful of everyone's time. This is especially the case for parties, jurors, and witnesses who are likely anxious about their involvement with the court. Court staff should embrace efforts undertaken to respect the time of jurors whose lives have been interrupted to allow them to fulfill their civic duty by serving on a jury.
- 3 Preserve and improve the law.** Court staff's role in promoting justice is multifaceted. Court staff are often the front line of access to justice as they provide information which allows citizens to navigate the justice system. This role is especially true for self-represented litigants. Court staff can and should participate in community outreach initiatives.
- 4 Communicate.** Similar to judges, court staff need to be aware of the tenets of procedural fairness and follow its values of voice, neutrality, respect, and trustworthiness. Court staff are primary contacts and key information sources that allow citizens to enter and navigate the justice system. At times, they may need to strike a balance of providing superb customer service while ensuring that they do not provide legal advice.

“Civility is not about dousing strongly held views. It’s about making sure that people are willing to respect other perspectives.”

CONGRESSMAN JIM LEACH
(Iowa, ret.)

The Principles of Civility

Parties

- 1 Prioritize Courtesy.** Parties to litigation, whether as individuals or a corporate entities, often bring a high level of emotion with them into the court system. There is emotion due to the loss or harm that has been done from the precipitating event and possible escalation in acrimony as the parties enter litigation. Because of inherent conflict, it can be difficult for parties to remain civil. However, by doing so, it reduces the hostility between the parties and begins the process of resolving the conflict. Parties who are able to act with courtesy and respect to the opposing party and others involved in the justice system, will experience a reduction in the level of contentiousness and stress and, as noted, reach a resolution more quickly at less cost. Therefore, it is in the best interest of parties involved to exercise courtesy and respect during the process. As with the attorneys, parties who behave in a respectful and courteous manner are not viewed as weak but show strength of character.
- 2 Be timely.** It is important for parties to be responsive to the requests of their attorneys to ensure that the litigated matter is resolved at its earliest possible moment. Parties should make themselves available, as appropriate, for time-sensitive events such as discovery in the form of interrogatories and depositions and court hearings and events. Sometimes one or both parties may have a desire to use time to harass the other party by using delay tactics with the intention of obtaining an advantage in one's case. This manner of conducting business is a detriment to the fair and efficient administration of justice. It increases the costs to the parties and the court. Lengthy delays may cause confusion and take the attention away from focusing on the crucial issues and facts of the case.
- 3 Preserve and improve the law.** The court system is available as a forum for parties to resolve certain disputes. Thus, it is important that citizens understand the jurisdiction of courts and the relief available. When appropriate, parties should consider remedies in appropriate forums, including seeking resolution outside of court. The issue of how to address frivolous lawsuits remains a challenge. Further, once a case commences, parties should work to resolve the dispute as quickly and efficiently as possible.
- 4 Communicate.** Represented parties need to ensure that they communicate effectively with their attorneys and with the court when appropriate. Self-represented parties need to avail themselves of the tools and resources that the court and legal community offer in order to be prepared and properly communicate information about their dispute to the court while following court protocols.

“When once the forms of civility are violated, there remains little hope of return to kindness or decency.”

English writer and poet
SAMUEL JOHNSON

The Principles of Civility

Jurors

- 1 Prioritize courtesy.** Jury service is one of the most important duties of citizenship and is the cornerstone of our legal system. It is also an important opportunity for citizens who have not previously interacted with the justice system to participate in a meaningful way. They are the finders of fact and, like judges, it is important for them to understand the crucial role of being respectful and courteous. Jurors should be attentive, honest, impartial, patient, good listeners, and, of course, willing to keep an open mind during the presentation of evidence by each party. The protection of rights and liberties in our nation's courts largely is achieved through the teamwork of a judge, attorneys, court staff, and the jury.
- 2 Be timely.** Using a jury trial to bring a case to final resolution is a core component of our system of justice. It is each citizen's duty to serve even though it may occur at a time that is not convenient. It is each juror's responsibility to timely respond to a summons requesting that he or she serve on a future jury. Once sitting on a jury, it is important for each juror to meet the schedule of the court by arriving on time and returning from breaks on time. It is also important at deliberation for each juror to take the appropriate amount of time to review the evidence and deliberate the case as efficiently as possible with the understanding and knowledge that the parties are awaiting the results.
- 3 Preserve and improve the law.** As juries are a key feature of our legal system, jurors can preserve and improve the law by ensuring they are prepared for their service. As is practical, jurors should seek resources to inform them what will be expected of them and to inform them about court procedures. Jurors should also understand that as the finders of the facts that they must follow rules and model civil behavior. Courts should ensure that there is appropriate debriefing after the conclusion of the case as jurors can be ambassadors for the justice system in the community.
- 4 Communicate.** The role of juror is difficult. It is important that jurors are able to communicate their needs during their service. Jurors may need to communicate personal or logistical needs they may have to the court. Being able and willing to communicate such issues will help ensure that the process proceeds efficiently. Jurors should follow the rules and expectations of the court regarding juror conduct during the trial, especially around seeking information through the internet, various forms of media, or participating in social media. If a juror sees any misconduct occur among other jurors, he or she needs to immediately inform the judge.

*“Civility costs nothing,
and buys everything.”*

LADY MARY
WORTLEY MONTAGU

The Principles of Civility

Witnesses

- 1 Prioritize courtesy.** Being a witness is often stressful, whether testifying in court as part of a trial or testifying in an office environment as part of a deposition. Witnesses can reduce this stress by seeking information about the process and what is to be expected of them. Witnesses should be respectful and courteous to all whom they come into contact, which may be difficult when faced with a contentious issue or unknown procedure.
- 2 Be timely.** Witnesses have a role to play in ensuring that the schedule as set by the judge and the attorneys is met through their timely testimony and delivery of exhibits. The cooperation of witnesses is essential to keeping proceedings on time and can be achieved with notice and reminders. As stated earlier, witnesses need to be prepared and informed of the process. They need to know why it is important to arrive at a deposition location or at court at the time requested, ensuring sufficient planning time to navigate to the proper location.
- 3 Preserve and improve the law.** How a witness behaves or is treated while testifying is transmitted to the community and can impact how justice is viewed. Witnesses should be informed that their statements may be challenged to ensure their truthfulness and completeness to preserve the administration of justice. Witnesses, therefore, should be prepared and take responsibility of their role and their oath.
- 4 Communicate.** Attorneys initially have the communication role with witnesses. Witnesses need to work with the attorneys to ensure they are prepared to testify at a deposition or in court, including understanding the process and procedure that will occur in the deposition or court and what behavior is expected of them. Witnesses should be aware of their responsibility to communicate with court staff upon arrival at the courthouse. If the witness has any special needs, court staff should be advised in advance in order to provide an opportunity for those needs to be met.

“We have a choice about how we behave, and that means we have the choice to opt for civility.”

Author DWIGHT CURRIE

In Closing: Education and Mentoring

Education and mentoring are two core elements to ensuring that these principles of civility are applied and modeled every day in America's justice system. Education should occur at every junction possible. It includes law schools, new attorneys and judges programs, continuing legal and judicial education, court staff orientation and continuing education and a variety of civics education for citizens of all ages. Judges and attorneys need to participate in outreach at any number of community and service organizations, school groups, and even to legislative and executive members. Every opportunity to provide civics education helps to promote the legitimacy of the justice system.

Judges also have an obligation to mentor new judges, and attorneys have an obligation to mentor new attorneys. Many states have implemented programs to provide just that type of mentoring, and these states have found that it has increased the civility of the legal profession and has had a collateral outcome of increasing the efficiency of the justice system. Further, court staff should not only receive education about the court system, but on all matters of customer service, procedural fairness, and best practices to reduce and eliminate implicit bias.

Besides general civics education for the public, it is important to educate parties, witnesses, and jurors prior to their first contact with the justice system. Many courts have FAQs, mini-guides, and even videos to help prepare people for their interaction with the courts. These tools are helpful in increasing the level of procedural fairness that is administered because people are better prepared for the experience. When a court plans to develop tools to inform people about their various roles in the justice system, it is important to write those guides from the perspective of the party, witness, and/or juror rather than from just the perspective of what the court wishes to tell each of these constituencies. Special attention should also be paid to self-represented litigants. Many states have put together tools, customer service options, and kiosks to help assist self-represented litigants. These efforts are important to ensure that everyone has access to justice and that self-represented litigants are able to efficiently and affordably obtain the justice they seek.

The Principles of Civility: A Guide for Judges

1 Prioritize courtesy and treat others with respect at all times.

Courtesy and respect are the hallmarks of civility. As it relates to the justice system, respect is executed by exercising patience with people and the process. It is important to respect the rights of parties and non-parties as well as refrain from acting inappropriately, even if someone initiates unprofessional conduct. At all times it is essential to model civility by being courteous and showing respect for the rule of law as well as to all coming into contact with the justice system. It is also important to remember that courtesy and respect should also be practiced in all forms of communication.

2 Remember that time is precious, for everyone.

Time, and the proper use of it, is an important element of civility and the administration of justice. A high-functioning system operates at its best when efforts are applied to complete processes in a timely fashion. Delay reduces the ability to establish relevant facts as memories fade, to say nothing of lost evidence. Anxiety exists for most people involved in the justice system and delay needlessly heightens that anxiety with a direct impact on civility. A reasonable amount of time is required for pleadings, discovery, and other court events, especially if a case is complex. However, the goal should always be to work toward the timely resolution of cases.

3 Preserve and improve the law, the legal system, and associated dispute resolution processes.

An important goal of civility is to preserve and improve the administration of justice. Everyone involved in the system has an obligation to ensure that the benefits and the burdens of the law are applied equally to all persons. This principle of civility is an effort to express the importance of having a collective commitment to the fair administration of justice.

4 Effectively and clearly communicate your role and any expectations you may have.

Effective communication is the foundation of the administration of justice. It ensures that justice is administered efficiently, impartially, and fairly. It also helps to ensure that justice is administered without any implicit bias. The tenets of procedural fairness – voice, neutrality, respect, and trustworthiness – should be applied whenever possible.



The Principles of Civility: A Guide for Judges

Civility encompasses a form of politeness and courtesy in behavior and speech that is essential to the role of courts in a democratic society. Essential elements of justice system civility include integrity, personal dignity, candor, respect, courtesy, and cooperation with others. The following four principles are intended to foster a level of civility and create a standard of conduct exceeding the minimum required under state-issued rules of professional conduct and canons:

1 Prioritize courtesy and treat others with respect at all times.

- Keep a calm demeanor.
- Be engaged in the process by practicing good listening skills.
- Practice and promote procedural fairness (*see #4 below*).
- Introduce yourself and address litigants by name.

2 Remember that time is precious, for everyone.

- Begin and end proceedings according to a reasonably-set schedule and on time.
- Make decisions, rule on motions, and issue opinions timely.
- Disclose and keep all advised when a matter taken under advisement will be addressed.
- Explain or acknowledge delays.

3 Preserve and improve the law, the legal system, and associated dispute resolution processes.

- Practice judicial leadership by taking the idea of civility to the community.
- Join with attorneys to initiate community outreach.

4 Effectively and clearly communicate your role and any expectations you may have.

- Conduct proceedings so that the parties have a *voice* to tell their story, *understand* the process and what is expected of them, perceive that the court system is *neutral*, and treats those involved in each case with *respect*.⁷
- Lay out the expectations for attorneys, court staff, parties, and witnesses:
 - In-court activities and processes.
 - Out-of-court processes, procedures, and timelines.
- Consider perceptions of bias in verbal and non-verbal communication.

⁷ Tom R. Tyler, Ph.D., *Procedural Justice in the Courts* 44 COURT REV. 26 (2009).