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## CLASSICAL RHETORIC

## A CALL FOR A RETURN TO CIVILITY

## CIVILITY AND THE MRPC

## TRANSGENDER CIVILITY: A PRIMER

CIVILITY, INCLUSION AND DIVERSITY  
IN THE LEGAL PROFESSION

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# A RETURN TO CIVILITY IN THE LEGAL PROFESSION

by Keela P. Johnson

**W**e have all heard the growing lack of civility in the legal community. Whether it is attributed to the advance of advertising, blamed on the billable hour or ascribed to the overall "win at all costs" lawyering that seems to be on the rise, as a self-regulating profession we must look within ourselves to fix these issues.

I was out of state for three days to attend a family funeral in early July. Upon my return, opposing counsel called to discuss an upcoming post-judgment hearing. Before even saying hello, he rather sarcastically said that it was nice that I could come back from vacation to address the hearing, to which I politely apologized for my family member's death inconveniencing him.

During the same week in July, my partner learned that a family member had been in a traumatic accident on the morning he was to begin a two-day evidentiary hearing that had been scheduled for quite some time. Opposing counsel showed him the utmost in civility throughout the day in allowing him breaks and even postponing the second day to allow my partner to be with his family. The following week, that attorney's office contacted me to check on the status of my partner and his family. This is true courtesy and civilized conduct between attorneys.

These are just the recent experiences of two attorneys, but I am sure readers can cite examples of many more, both good and bad. Whether you call it civility, professionalism, collegiality, courtesy or just good old manners, something needs to improve. As attorneys, it is easy to get caught up in the stress and demands of the job, but we must not forget how to be polite and kind. Simple words such as "please" and "thank you" can go a long way.

Civility is the "linchpin of our legal system,"<sup>1</sup> a "bed-rock principle,"<sup>2</sup> and "a hallmark of professionalism."<sup>3</sup> Justice Anthony M. Kennedy said that civility "defines our common cause in advancing the rule of law."<sup>4</sup> Chief Justice Warren E. Burger called civility a "lubricant that prevent[s] lawsuits from turning into combat."<sup>5</sup> Courtesy "is an essential element of effective advocacy," agreed Justice John Paul Stevens.<sup>6</sup> Justice Sandra Day O'Connor said, "It is enough for the ideas and positions of the parties to clash; the lawyers don't have to."<sup>7</sup> "It isn't necessary to say anything nasty about your adversary or to make deriding comments about the opposing

brief," adds Justice Ruth Bader Ginsburg, who says that such comments "are just distractions. You should aim to persuade the judge by the power of your reasoning and not by denigrating the opposing side. ... If the other side is truly bad, the judges are smart enough to understand that; they don't need the lawyer's aid."<sup>8</sup> Justice Kennedy called civility "the mark of an accomplished and superb professional."<sup>9</sup>

The qualities of professionalism and collegiality should be the foundation of our profession, especially given the emotionally charged situations family law attorneys face daily that require sound, levelheaded decision-making. We

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can be courteous, civil and prompt in our communications. We can disagree without being disagreeable; effective representation does not require antagonistic behavior. Incivility "takes the fun from the practice of law," said Judge Duane Benton of the U.S. Court of Appeals for the Eighth Circuit.<sup>10</sup> "Being a lawyer can be pleasant or unpleasant," explained Judge William J. Bauer of the U.S. Court of Appeals for the Seventh Circuit. He added that "[w]hen we treat each other and those with whom we have professional contact with civility, patience and even kindness, the job becomes more pleasant and easier."<sup>11</sup>

Every attorney took the Lawyer's Oath when sworn in, whether that was a month ago or 50 years ago. I encourage all of you to read it again and consider it carefully as it applies to your practice. We remember the "big" bullet points: no frivolous claims or defenses, keep your client's confidences, do not mislead a judge or jury in fact or law, and support the Constitution of the United States and the State of Michigan. But what about "*I will in all other respects conduct myself personally and professionally in conformity with the high standards of conduct imposed upon members of the bar as conditions for the privilege to practice law in this State*"? I encourage each of you, whether or not you practice family law, to re-read the Lawyer's Oath and to be a little kinder to the next person you

encounter. You never know what is going on in their world and the impact your actions could have.

**Keela P. Johnson** concentrates her practice in all areas of domestic relations at **Giarmarco, Mullins & Horton, P.C.** in Troy. She serves as a court-appointed guardian ad litem and parenting time coordinator in complex parenting time and custody matters. She also handles guardianships and conservatorships for children and adults. Prior to practicing law, Ms. Johnson was a mental health therapist for more than seven years.

### Footnotes

- 1 *Wilson v. Airtherm Prods, Inc.*, 436 F3d 906, 912 n5 (8th Cir 2006).
- 2 *Wescott Agri-Prods, Inc v. Sterling State Bank, Inc.*, 682 F3d 1091, 1096 (8th Cir 2012).
- 3 *Cardello v. Cardello*, No FA020088156S, 2002 WL 31875435 \* 1 (Conn. Super Ct Dec 4, 2002).
- 4 Louis H. Pollak, "Professional Attitude," 84 A.B.A.J. 66, 66 (Aug. 1998) (quoting Justice Kennedy).
- 5 Warren E. Burger, "The Necessity for Civility," 52 F.R.D. 211, 214-15 (1971).
- 6 Marvin E. Aspen, "Let Us Be 'Officers of the Court,'" 83 A.B.A.J. 94, 96 (July 1997) (quoting Justice Stevens).
- 7 Sandra Day O'Connor, "Professionalism," 76 Wash. U. L.Q. 5, 9 (1998).
- 8 "Interviews with United States Supreme Court Justices: Justice Ruth Bader Ginsburg," 13 *Scribes J. Leg. Writing* 133, 142 (2010) (quoting Justice Ginsburg) (italics in original).
- 9 Louis H. Pollak, *supra* note 6 (quoting Justice Kennedy).
- 10 Duane Benton, "Chief Justice's Address to Members of the Missouri Bar," Sept. 24, 1998, 54 *J. Mo. Bar* 302, 302 (1998).
- 11 J. Timothy Eaton, "Civility, Judge Bauer and the CBA," 28 *CBA Record* 8 (2014) (quoting Judge Bauer; citation omitted).



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