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## True Civility Requires More Than Being Polite

Justice Steven González, widely known for his commitment to access to justice, is highly regarded by his peers for his professionalism, reasonableness, and pro bono service. For this reason, Robert's Fund views him as an exceptional role model for civility in the profession and asked if he would write the first in the "Rallying the Role Models: The Promise of Civility in Our Profession" series of articles for *Bar News*.

BY JUSTICE STEVEN GONZÁLEZ

In an article for the Bar Association of San Francisco, Maria Yuen wrote that "one of the benefits of civility is the reduction of the cost of litigation for all parties involved." And I think she meant not just the financial cost, but different costs as well. She went on to say, "Another benefit of civility is that it makes our professional life more fulfilling when we can depend on courtesy, respect, and fairness from those we deal with."<sup>1</sup>

Courtesy, respect, and fairness only work if in the context of true civility. There is such a thing as false civility and I'll suggest to you that it is no better and sometimes even worse than open acrimony. We sometimes refer to false civility as passive-aggressive behavior or being manipulative. I make the distinction between true and false civility because I don't want to suggest that acting civilly means being obsequious, diffident, or a sycophant. I don't think any

of those things are civil. Further, I don't want to suggest that the civil advocate is anything less than a zealous advocate for his or her client, cause, or self.

Some attorneys think that being civil means being nice, which they believe runs counter to advocacy. They like to wrestle with opponents. While they acknowledge that there are lines that shouldn't be crossed in our profession, such as the use of bad words or physical punches, they don't want to be nice. I don't agree that being civil equals being nice. I think we can be direct and frank with each other. We can even be sarcastic from time to time. Civility is a way of connecting and interacting with people; of engaging and thinking about what our relationships are with one another, and of discerning what we care about it. It is about how we communicate and how we persuade and convince, because that's often what we're doing in our profession. If we've alienated people from the outset, it can be much harder to do that and to be effective.

Mark Twain said that "all emotion if sincere is involuntary." And so when we see our colleagues (possibly opposing counsel), or our clients, or others being uncivil, we should give them the benefit of the doubt that it wasn't a voluntary response. Of course, if it goes on for a long time, you can stop giving the benefit of the doubt. But at least start with the premise that they're sorry for their own bad behavior — or they will be when they reflect or when they've been able to calm down and get past what may have been an involuntary emotion. It certainly was clear that that was the case when I sat on the family law calendar for King County Superior Court. When I first took on that role, a now-retired judge sat me down and said, "Steve, I want you to remember that when the dissolution petition is filed and for 90 days thereafter, the parties are temporarily insane. So please remember that about them when you hear their case. They're doing things that they wouldn't otherwise do, they're saying things that they wouldn't otherwise say, and they'll regret it later if you give them the time to regret it and change their position."

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The Japanese have a phrase called *bakateinei*, which means literally “idiot politeness.” It can mean a number of things. It can mean to ridicule someone by being excessively polite to them; that is, being more polite than the situation calls for. Japanese has levels of honorifics. And if you go up too high and you are too honorific to someone, you're really making fun of them rather than honoring them. It also means being more polite to a person than the person deserves, given his or her role in life compared to yours. And, in some contexts, it means shaming the impolite person, the person who's been impolite to you, by being excessively polite back to them in response to their rudeness. Now, in English, we might sometimes call it patronizing but that doesn't really capture the full meaning of this phrase. It means being polite without being civil in some context and this is why I go back to the phrase “true civility,” not superficial civility. I want to distinguish those two and I want to distinguish civility from protocol, superficiality, and from custom.

In 1996, in *State v. Bright*,<sup>2</sup> the Washington State Supreme Court held that it is an abuse of formal courtroom protocol to address adult participants by their first names. In that case, counsel both for the state and the defense referred to the 24-year-old rape victim by her

first name. And so did the defendant, who was a commissioned officer and who had raped her while she was in his custody. When he took the stand, he referred to her by her nickname only, and he wasn't corrected by the court or by counsel. In the opinion, the court called this an arrogant depersonalization of the victim and went on to say that all the participants in court proceedings are entitled to be addressed with courtesy titles. That may suggest that some find solace in formality. There are times when people feel more comfortable when we're being formal, not informal. And I've noticed this particularly with the disenfranchised of an organization.

Let me mention, for example, attorneys of color who are sometimes mistaken for the defendant by the participants in criminal cases. How do we respond to that? Sometimes we are overly formal, by making sure that we're dressed particularly well and that our speech is particularly professional, just to let people know who we are because we're not always given the benefit of the doubt. I remember when I was a federal prosecutor, I was traveling with my wife to Texas and we went to the federal courthouse in Laredo. I was curious: I thought, I'm part of the federal family, so I'm going to go in and see what a different federal courthouse looks like. When I went into the courthouse, I started getting tailed by security; they followed me through the courthouse, and when I walked into a courtroom the clerk said, “Defendants sit to the left.” That was the first thing she said to me as I walked in. And I realized that, out of my suit, I looked to them like a suspicious person or a defendant in that context. So sometimes in response to that, we get formal. Please understand that people react differently to different contexts and that it goes directly to the point that civility depends on the person, the context, cultural factors, and on so many other things that there cannot be one rigid definition of civility.

*State v. Bright* cited a 1964 Supreme Court case, *Hamilton v. Alabama*,<sup>3</sup> as precedent. That case reversed a con-

tempt finding against Ms. Hamilton. She actually spent time in jail for contempt. Her contempt was insisting that she be called Ms. Hamilton instead of Mary and the judge put her in jail for that. Of course she was entitled to that dignity, and it was the court, frankly, that was contemptuous in that instance to her. But ask yourself, what if the lawyers in that case and the judge had referred to her as “Ms. Hamilton,” but did so with a voice dripping in sarcasm. Would that have been more civil than using her first name?

Civility is more complicated than protocol issues. Like the example of *bakateinei*, polite words alone do not amount to civility. It is the substance that brings dignity and true civility to our courts and to our system. As we consider who benefits from protocol, I'd like to also suggest that it's usually those in power who benefit from formality and protocol, because that respects us and preserves our position, doesn't it? As a judge, when you call me “Your Honor,” it is supporting my position because it is perceived as higher than yours — so as we think about civility and protocol, we need to think of

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them as very distinct things and consider who they benefit and for what they were designed.

Charles Dickens wrote, “The civility which money will purchase is rarely extended to those who have none.” So to repeat, it doesn't mean protocol, it doesn't mean etiquette; it must have a far deeper meaning. In the context, going back to my time on Superior Court both in family law and sitting in *ex parte*, my expe-



rience was that the *pro se* litigant does not benefit from protocol. Certainly this litigant benefits from civility in its true meaning, but not from an application of the formalities of the courtroom. Those litigants, as I mentioned before, are often under great stress and emotion in going through what may be one of the most difficult times in their lives. And that is what true civility means. If you are the lawyer opposing a *pro se* party, it means speaking in plain language and bringing relevant cases, rules, and statutes to the court's attention. In other words, it means bringing controlling authority to the court's attention, even if it does not support your case, and not taking advantage of the *pro se* party by using legalese and a rigid adherence to procedure. In this way, your reputation will be enhanced because the court will know you're honest with the court as a true officer of the court about the issues before the bench that day.

My comments about civility are grounded in the Preamble to the Constitution of the United States. It's pretty short: "We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare and secure the blessings of liberty to

ourselves and our posterity, do ordain and establish this Constitution for the United States of America." In our Constitution of this great nation, justice comes first. When you read it look at the order of things, it comes before tranquility, it comes before the common defense, and it even comes before our welfare. And I suggest to you that that order of things is not accidental. I believe it was intentional, because without justice, there isn't tranquility; without justice, there

is little to defend. The common defense is even subordinate to justice. So how do we establish justice in our society in the context of an adversarial system? That is like telling a soldier we're going to have sensitivity training and the first thing the soldier says is, "I have to get rid of my weapons, right?" And that's what we see in as some lawyers' reactions to this discussion.

Let me give an example of what civility is not. This was the closing sentence in a summary judgment brief I received a couple of years ago in Superior Court. "If you do not grant this summary judgment motion, the only ones who will benefit are the liars who started this matter in the first place." A strong ending, right? The lawyer actually had established in the briefing that the other side wasn't being forthcoming, so this wasn't good advocacy. It didn't promote respect for the process or for his colleague. As a practice point, I would suggest that civility matters in every phase, and I'll give one example. You know when you're preparing a witness for a deposition or testimony, that preparing a witness on the substance is only part of your job. If you don't prepare the witness to be challenged and to be prepared for the emotion, rigor, and endurance required to get through the

testimony, you're not preparing them to be civil. And if they lose their civility and their composure, that can wash away all the good preparation that you've done on the substance.

Civility permeates every single part of the practice of law. One way to look at it is to strive to be the most reasonable person in the room — or at least to appear as if you're the most reasonable person in the room. <sup>6N</sup>

in cooperation with



*Before joining the Washington State Supreme Court in 2012, Justice Steven González served for 10 years as a trial judge on the King County Superior Court, hearing criminal, civil, juvenile, and family law cases. Prior to that, Justice González practiced both criminal and civil law. He was an assistant United States attorney for the Western District of Washington, a domestic violence prosecutor for the City of Seattle, and an associate in the business law department at the Seattle law firm of Hillis Clark Martin & Peterson.*

*He has received numerous professional awards, including two Department of Justice awards: the U.S. Attorney General's Award for Distinguished Service and the Director's Award for Superior Performance; three "Judge of the Year" awards from the Washington State Bar Association, the Washington Chapter of the American Board of Trial Advocates, and the Asian Bar Association of Washington; the Exceptional Member Award from the Latina/o Bar Association of Washington; and the Vanguard Award from the King County Chapter of Washington Women Lawyers.*

#### NOTES

1. "Play Nice — It Makes for a Better Day in the Sandbox for All," [www.sfbar.org/cle/tests/self-study-exams-aug2011.aspx](http://www.sfbar.org/cle/tests/self-study-exams-aug2011.aspx).
2. 129 Wash. 2d 257 (1996).
3. 376 U.S. 650 (1964).