



Staff Memorandum

HOUSE OF DELEGATES Agenda Item #9

REQUESTED ACTION: Approval of the report and recommendations of the Committee on Diversity and Inclusion.

Attached is a report and resolution from the Committee on Diversity and Inclusion calling for the Association, other bar associations and lawyers generally to promote civil discourse and promote diversity. The report notes that current public discourse contains strong elements of hostility and divisiveness, threatening democracy. It calls for the Association to reaffirm the principle of civility as a foundation for democracy; for the legal profession generally to advance principles of civility and diversity; for public officials and organizations to strive toward more civil public discourse; and for the profession to promote and revive civil public discourse.

This report was submitted in September 2019 and posted in the Reports Community. No comments have been submitted.

The report will be presented at the November 2 meeting by committee co-chair Mirna Santiago.

RESOLUTION

NOW, THEREFORE, IT IS

RESOLVED, that the New York State Bar Association affirms the principle of civility as a foundation for democracy and the rule of law and urges lawyers to set a high standard for civil discourse as an example for others in resolving differences constructively and without disparagement of others;

FURTHER RESOLVED, that the New York State Bar Association urges all lawyers, NYSBA member entities and other bar associations to take meaningful steps to enhance the constructive role of lawyers in promoting a more civil and deliberative public discourse;

FURTHER RESOLVED, that the New York State Bar Association urges all government officials and employees, political parties, the media, advocacy organizations, and candidates for political office and their supporters, to strive toward a more civil public discourse in the conduct of political activities and in the administration of the affairs of government;

FURTHER RESOLVED, that the New York State Bar Association supports governmental policies, practices, and procedures that promote civility and civil public discourse consistent with federal and state constitutional requirements;

RESOLVED, that the New York State Bar Association reaffirms its unwavering commitment to diversity, equity and inclusion at all levels of the Association, and its firm belief that diversity and inclusion must be fostered within the legal community and in society at large;

RESOLVED, that the New York State Bar Association strongly condemns the use of divisive and uncivil rhetoric by elected or other public officials that seeks to vilify specific groups or classes of individuals and/or seeks to sow division among the populace on the basis of gender, race, color, ethnic origin, national origin, religion, sexual orientation, age, disability and/or any other classification, by elected and other public officials.

Report

As gatekeepers to the justice system, lawyers are bound by the rules of engagement. At the heart of these rules lies the delicate art of civil conduct. Lawyers play overarching roles: we are stewards of the public, members of the judiciary, and on the frontline between our clients and the court system. Lawyers have been bestowed the great opportunity to shape the character of public discourse. Now is the time for us to inspire both preservation and change.

Current public discourse has devolved to a myopic stalemate, replete with hostility and divisiveness. This spate of incivility endangers a democratic society, and thereby, endangers the public. Now is the time to choose our words with greater care than ever before.

The New York State Bar Association urges its members to strive towards a more civil public discourse.¹ It is more critical than ever before for individuals and organizations in leadership to impart the significance of civil rhetoric. Now is the time for members of the New York State Bar Association to decree a recommitment to civility.

Civility and Public Discourse

Civility is the linchpin of democracy and public discourse. At the core of civility are four central tenets: appreciating the insight of an opponent, avoiding fallacies in argument, considering differing viewpoints, and affirming all persons in society.² Civility in public discourse cements an interactive process, and leads to the progression of effective deliberation,³ liberty, fairness, equality, safety, family, faith, and opportunity.⁴ With it, the public thrives: we build communities, we engineer solutions, and we lay the foundations of societal trust.⁵ Without it, public discourse shrinks, communities crumble, solutions escape us, trust collapses; the entire structure of the American democratic system faces ruin.

To recognize the greatest call for civility in American discourse, we must revisit the Philadelphia Convention of 1787. There, in the summer heat, in a modest shuttered room,

¹ American Bar Association Resolution 108, 2011.

² J. Taylor Danielson, Robin Stryker. *National Institute for Civil Discourse Research Brief No.10: Deliberative Democracy and Civil Discourse*, National Institute for Civil Discourse, available at https://nicd.arizona.edu/sites/default/files/research_briefs/NICD%20Research%20Brief%2010%20FINAL%20for%20web%20posting.pdf

³ *Id.* at 8.

⁴ *Revive Civility*, National Institute for Civil Discourse, <http://www.revivecivility.org/sites/default/files/documents/Short%20guide%20How%20to%20Listen%20-90%20minutes%20no%20tech.pdf> (last visited Sept. 14, 2019). *See also*, Jayne R. Reardon, *Civility as the Core of Professionalism*, American Bar Association, https://www.americanbar.org/groups/business_law/publications/blt/2014/09/02_reardon/ (last visited Sept. 11, 2019).

⁵ *See*, CAROLE PATEMAN, *PARTICIPATION AND DEMOCRATIC THEORY* (CAMBRIDGE UNIVERSITY PRESS 1970).

brimming with fifty-five of the Colonies’ most lauded experts in jurisprudence, political science, history, and economics, these delegates were primed to advocate for legions of competing persuasions. These very debates breathed life into the canon of civility in public discourse and gave rise to civic friendship. Despite their differing social dispositions and philosophies, the delegates crafted a framework that championed unison. By virtue of mutual respect and open dialogue, the Convention transcended all sources of division, and paved the road for American democracy to take the reins.

The Current State of Public Discourse

Considering the tone of public discourse in recent years, the rhetoric has become a breeding ground for dialogue, teeming with corrosion and division. Speech concerning political expression, once designed to promote reason and deliberation, is now littered with demonizing incivility. Symptoms of incivility in political expression include: ad hominem attacks on political opponents, information that is recklessly false or intentionally misleading, the use of vulgarity or derogatory epithets⁶ to advance an argument, and hyperbolic or false characterizations of political opponents.⁷ In fact, researchers have defined incivility as “attacks that go beyond facts and differences, and move instead towards name-calling, contempt, and derision of the opposition.”⁸

The degeneration of civil rhetoric bears a striking relationship to increased public polarization.⁹ Adverse consequences of polarization lend themselves to legislative gridlock, citizen alienation, decreased citizen interest in politics, and decreased trust in government¹⁰ Mean-spirited discourse hinders the ability to legislate critical issues or respond to citizens’ needs. In this climate, democracy will falter.

The Resolution: NYSBA Strives for Civility in Public Discourse

In response to the current state of public discourse, the resolution embodies the call for civility, and embraces the New York State Bar Association’s commitment to diversity and inclusion. The New York State Bar Association’s Committee on Diversity and Inclusion seeks to promote the full and equal participation of attorneys of color, and other diverse

⁶ National Institute for Civil Discourse, *supra* note 1: “*Speech that deploys racial, sexual, religious, or other epithets against a political opponent that a reasonable person would consider extremely demeaning.*”

⁷ *Id.* at 8.

⁸ Carli Brosseau, Zachary Schrank, Robin Stryker. *National Institute for Civil Discourse Research Brief No.7: Negative Campaigning*, National Institute for Civil Discourse, available at https://nicd.arizona.edu/sites/default/files/research_briefs/NICD_research_brief7_0.pdf

⁹ Robin Stryker. *National Institute of Civil Discourse Research Brief 6: Political Polarization*, National Institute of Civil Discourse, available at https://nicd.arizona.edu/sites/default/files/research_briefs/NICD_research_brief6.pdf

¹⁰ *Id.* at 6.

attorneys, throughout the legal profession.¹¹ The resolution avows that the New York State Bar Association is made stronger and more capable of implementing societal change as a result of its diverse members.

1. NYSBA’s Statement of Principle

The New York State Bar Association recognizes that the recent use of uncivil rhetoric by elected officials and other public representatives, vilifies classes of individuals on the basis of gender, race, color, ethnicity, national origin, religion, sexual orientation, age, disability, and other classifications. The New York State Bar Association has long been committed to civility and decorum in the legal profession. The Standards of Civility, adopted in 1997 and revised in April 2019, serve as guidelines for all New York State attorneys with the purpose of preserving the integrity of the practice of law.¹² As such, the New York State Bar Association affirms the principle of civility as a foundation for democracy and the rule of law. The statement of principle reflects the New York State Bar Association’s commitment to encouraging civil discourse that is constructive and impactful, rather than discourse that results in the disparagement of others. This component of the resolution points to the unique role that lawyers must play in effectuating higher standards of civility, which warrants further discussion in the second pillar.

2. The Call to Civility in the Legal Profession

The second pillar of the resolution issues a call to action to all lawyers and members of the legal profession to take meaningful steps to advance a more civil and deliberative public discourse. Members of the legal profession carry a unique ability to be the harbingers of civil discourse through research, debate, and client counseling. This appeal to “all lawyers, NYSBA member entities and other bar associations” urges members of the bar to uphold the shared professional responsibility of weaving the threads of civility and inclusivity into the fabric of our conduct. Lawyers, as public servants, can fine-tune the strings of the instrument that resonate with the sounds of civil discourse. We can inspire tones that are harmonious rather than divisive, language that is inclusive rather than ‘othering,’ and overtures that advance ideas instead of attacks.

3. The Call to Civility in Administration and Governance

Public discourse gains most visibility in the public arena. The New York State Bar Association calls for government employees, public officials, organizations, and other key players in the political sphere, to “strive toward a more civil public discourse in the conduct of political activities and in the administration of the affairs of the government.” As a product of our democratic process, members of the political realm are often the very face

¹¹ New York State Bar Association, *Committee on Diversity and Inclusion Page*, New York State Bar Association, <https://www.nysba.org/diversityandinclusion/> (last visited Sept. 14, 2019).

¹² New York State Bar Association, *Report of the Committee on Attorney Professionalism*, as adopted by the House of Delegates on April 14, 2019, <https://www.nysba.org/capstandards/> (last visited Sept. 24, 2019).

of rhetoric. Political leaders' words can easily sway public demeanor and may freely alter the trajectory of public discourse. This is a call to action for leaders to use their gravitational pull in ways that align discourse with civility.

4. Reviving Civility in the Community

The final pillars of the resolution reaffirm the New York State Bar Association's efforts to promote civil public discourse that is consistent with the federal and state constitution, and promote diversity at all levels of the Association. This is an invitation to both, the legal community, and society at large, to stay engaged. Cultivating civility and diversity is an ongoing process, and the product of a ripple effect. Developing federal, state, and local legislation, cannot take shape without a populace that is attuned. A populace cannot tune into the waves of decision-making without trusting our democratic system, and without trusting each other. We must anchor our conduct in civility. It is our collective responsibility to revive civility, to revive trust in one another, and to revive a public discourse that banded together fifty-five diverse leaders and directed the creation of our Union.

Respectfully submitted,

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