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Los Angeles Superior Court

Cultural competence in changing times

How cultural differences can affect judicial outcomes

Is this scene typical of the cultural conflicts in store for the Los Angeles Superior Court as we adjust to the new court consolidation plan? Will judges and litigators encounter more cultural diversity as litigants from Torrance end up trying cases in Van Nuys, litigants from East L.A. try their cases in Santa Monica, or litigants from Glendale try their cases in Long Beach? Given the rich heritage of ethnic neighborhoods in Los Angeles County, the answer to these questions is probably, yes.

The likelihood of increased cultural conflict presents an opportunity for the judges, lawyers and litigants in our courts. We have an opportunity to heighten our awareness of how cultural differences might affect litigation outcomes. With heightened cultural awareness, we should be better able to minimize negative reactions to cultural differences (such as Judge Haller's reaction in the movie), and maximize our development of cultural competence.

New York attorney Vinny Gambini,

speaking with a strong Brooklyn accent in an Alabama courtroom, questions a witness: "Is it possible the two youths...?"

Judge Chamberlain Haller: "Two what?"

What was that word?"

Gambini: "What word?"

Judge: "Two what?"

Gambini: "What?"

Judge: "Did you say 'Yoots'?"

Gambini: "Yeah, two youths."

Judge: "What is a Yoot?"

[Gambini couldn't understand why the word "youth" was so perplexing to the judge.]

[The judge, with fully wrinkled brow, stared at Gambini trying to understand the language Gambini was speaking in this Alabama courtroom.]

Excerpt from the motion picture "My Cousin Vinny" (1992 - Twentieth Century Fox).

Where to draw the line

The challenge to become more culturally competent pre-existed the court's consolidation plan. Indeed, this challenge has been with us for decades. Our neighborhood courts experienced the gradual cultural transition of most communities in Los Angeles. For example, we are all aware of the increase in immigrant/migrant populations into Los Angeles over the past 30 years from places such as New York, Mississippi, China, Armenia, Mexico, Iran, Jamaica, and Ireland, to name just a few. As these new population groups settled into various neighborhoods, cultural differences became more pronounced. The 2013 court consolidation plan merely sharpens the conflict by instantly introducing new and different culturally rich communities to courts that had become accustomed to the cultural and ethnic mix of the gradually transitioning neighborhoods in which the courts were situated.

This new cultural challenge also presents in the same year that courts statewide must begin complying with a change in the California Code of Judicial Ethics. Prior to January 1, 2013, Judicial Canon 3 read: "A judge shall perform the duties of judicial office impartially and diligently." Now, it reads as follows: "A judge shall perform the duties of judicial office impartially, *competently* and diligently."

The addition of the word "competently" to this canon of ethics could, and perhaps should, be read to mean that we are ethically required to increase our cultural awareness in order to competently respond to cultural differences. Coupled with Judicial Canon 3(b)(6) which states in relevant part: "A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, gender, religion, national

origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation against parties, witnesses, counsel, or others."

Importantly, this canon **does not** preclude legitimate advocacy when race, sex and the other stated cultural factors are issues in the proceedings. The new obligation to increase competence extends to increasing our awareness of when these cultural factors are legitimate issues in the proceedings. We must competently decide where to draw the line. This ethical mandate should lead to changes in continuing legal education for judges and lawyers alike.

Some would argue that anti-bias CLE courses already address the issue of cultural conflict. This is partially true. Anti-bias education helps us learn to be sensitive to stereotypes and avoid acting negatively based upon reliance upon stereotypes. But, requiring cultural competence suggests an even greater obligation. It suggests that we must not only understand and avoid negative action based upon stereotypical views of others, we must understand cultural differences and how they influence the litigation process. A few examples may help illustrate this point.

African Americans

An anti-bias CLE might help you understand that you may harbor negative views about certain racial groups, such as African Americans. You might learn to be sensitive to those negative views and eventually eliminate them. This result would be a great outcome of an anti-bias CLE. But, you may have learned nothing about how African-American cultural nuances might otherwise legitimately influence a litigation outcome. For example, a cultural competence CLE might show you that African Americans (some, not all) tend to be more suspicious of law enforcement and the justice system.

Understanding this cultural nuance, your approach to mediation conferences that leave African American litigants waiting *alone for extended periods of time*, while lawyers and judges negotiate a “compromised” settlement might change and become more client-inclusive to avoid resistance/suspicion about the “compromised” settlement from the litigant.

Sexist stereotypes

Another example: Anti-bias CLE might teach you to be sensitive to any sexist stereotypes you might harbor about women, such as assuming that women litigants in an employment dispute are not entitled to the same presumptions about their earning capacity as men. Correcting this thinking would be an excellent outcome for an anti-bias CLE.

But, as Mark Ameli, Esquire of Diversified Dispute Resolution points out in a CLE on cultural competence, a woman litigant from a group (high-context) culture, such as many Middle Eastern cultures, might have cultural expectations about how to approach the litigation process that differ radically from a woman from a more individualistic (low-context) culture, such as

American culture. Faced with the potential for settling an employment dispute, the woman from the group culture might, for example, require input from elders, or spouse and children who are not present for the settlement before making a settlement decision. A judge or lawyer (or private mediator for that matter) might miss an opportunity to resolve the case if they are unaware of these cultural differences and mistake them for resistance to a proposal for how best to advance/resolve litigation.

Regional differences

Another affirmative example of cultural competence was presented in the movie “My Cousin Vinny.” The attorney, Vinny Gambini gained cultural awareness

about how long it takes a southerner to properly prepare grits. He then used that enhanced cultural awareness to assist in his successful defense of two young men wrongfully accused of murder. He was easily able to convince the Alabama jury that no self-respecting Southerner would claim to prepare grits in five minutes. Judge Haller was culturally competent to handle the reference to grits and elected to not interject a question about the reference.

The point here is that we must now look for the opportunities created by the 2013 Court Consolidation Plan. Since systems and processes are changing, we should seize the moment and change our level of competence in handling cultural differences that present in the litigation context.

Judge Huey P. Cotton of the Los Angeles Superior Court, Northwest District – Van Nuys, presides in a general (unlimited) jurisdiction civil court. He was appointed to the bench in 2009 by Governor Arnold Schwarzenegger. Judge Cotton practiced law for 27 years prior to taking the bench. He started his legal career as a staff attorney with the United States Civil Rights Commission in Washington, D.C. and later served as a senior trial attorney for the Defenders Association of Philadelphia and later joined the national law firm of Cozen O'Connor in Philadelphia. While practicing law in Philadelphia, he helped initiate a comprehensive study of cultural conflict and bias in the courts. He also organized the first comprehensive CLE for judges on judicial ethics in Philadelphia.

In addition to his regular duties on the Superior Court, Judge Cotton serves as a mentor for high school and college students interested in pursuing legal careers.