

Judicial Collegiality Resources

Listed alphabetically by author's last name

Mike Wolff: Chief of Collegiality

Duane Benton, Saint Louis University Law Journal, 2006.

<https://scholarship.law.slu.edu/cgi/viewcontent.cgi?article=1700&context=lj>

Judicial collegiality is “deliberately cultivated attitude among judges of equal status and sometimes widely differing views working in intimate, continuing, open, and noncompetitive relationship with each other, which manifests respect for the strengths of the others, restrains one’s pride of authorship, while respecting one’s own deepest convictions, values patience in understanding and compromise in nonessentials, and seeks as much excellence in the court’s decision as the combined talents, experience, insight, and energy of the judges permit.”

“John Roberts touts collegiality, but Supreme Court’s record suggests otherwise”

Joan Biskupic, CNN Politics, 2018.

<https://www.cnn.com/2018/10/17/politics/john-roberts-division>

“In equal measure, Roberts touted the justices’ efforts at collegiality. The 63-year-old Roberts referred to the justices’ century-old tradition of shaking hands before they hear oral arguments or meet in private sessions to decide cases. ‘It’s a small thing, perhaps, but it is a repeated reminder that, as our newest colleague put it,’ Roberts said, implicitly referring to Kavanaugh, “we do not sit on opposite sides of an aisle, we do not caucus in separate rooms, we do not serve one party or one interest. We serve one nation. And I want to assure all of you that we will continue to do that to the best of our abilities, whether times are calm or contentious.”

“Collegiality Among Judges: No More High Noons”

Helen V. Collier, Bettman Archives

<https://heinonline.org/HOL/LandingPage?handle=hein.journals/judgej31&div=21&id=&page=>

“I sometimes think that the secret inner image held by most judges is of themselves as Gary Cooper, all alone, picking on the bad guys one by one... Like the sheriff, judges think they ought to function alone and to win alone”

Understanding Collegiality on the Court

Frank B. Cross and Emerson H. Tiller, University of Pennsylvania, 2008.

<https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1201&context=jcl>

Collegiality means "that judges have a common interest, as members of the judiciary, in getting the law right, and that, as a result, we are willing to listen, persuade, and be persuaded, all in an atmosphere of civility and respect." It is created through “experiences of duty and professional obligation, understandings of shared purpose, concerns about the maintenance of corporate authority or legitimacy, and participation in a routine.”

The Anatomy of Judicial Collegiality

Frank M. Coffin, US Court of Appeals for the First Circuit, Federal Judicial Center, 1985.

http://files.mainelaw.maine.edu/Coffin/Public_Speeches/pdf/II-TheAnatomyofJudicialCollegiality.pdf

This resource examines threats to collegiality and provides examples of dos and do nots. It emphasizes the importance of recognizing and evaluating the strengths of one's colleagues and fostering a welcoming environment where nobody is trying to prove themselves at the expense of others. Before sparking contention, he suggests asking yourself this question: "Does it really matter? If my problem is not with the result, is my criticism of the approach, the length, the dictum worth the trouble to raise?"

"When rulings, respectfully, offer peek curtains at court collegiality"

Marcia Coyle, The National Law Journal, 2021.

<https://www.law.com/nationallawjournal/2021/03/11/when-rulings-respectfully-offer-peek-behind-curtains-at-court-collegiality/>

"The full U.S. Court of Appeals for the Fifth Circuit will rehear a labor case in which a contentious exchange flared up recently between two of its judges and offered a peek at how the language of opinions can matter as a reflection of collegiality."

A Conversation with Judge Harry T. Edwards

Harry T. Edwards, Washington University Journal of Law and Policy, 2004.

https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1392&context=law_journal_law_policy

"Collegiality enables better decisions and smaller courts are more collegial... In a collegial environment, divergent views are more likely to gain a full airing in the deliberative process—judges go back and forth in their deliberations over disputed and difficult issues until agreement is reached. This is not a matter of one judge compromising... Judges participate as equals in the deliberative process—each judicial voice carries weight, because each judge is willing to head and respond to differing positions."

The Effects of Collegiality on Judicial Decision Making

Harry T. Edwards, University of Pennsylvania Law Review, 2003.

https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=3222&context=penn_law_review

"When I speak of a collegial court, I do not mean that all judges are friends. And I do not mean that the members of the court never disagree on substantive issues. That would not be collegiality, but homogeneity or conformity, which would make for a decidedly un-healthy judiciary. Instead, what I mean is that judges have a common interest, as members of the judiciary, in getting the law right, and as a result, we are willing to listen, persuade, and be persuaded, all in an atmosphere of civility and respect. Collegiality is a process that helps to create the conditions for principled agreement, by allowing all points of view to be aired and

considered. Specifically, it is my contention that collegiality plays an important part in mitigating the role of partisan politics and personal ideology by allowing judges of differing perspectives and philosophies to communicate with, listen to, and ultimately influence one another in constructive and law-abiding ways.”

Judges: Selection, Competence, Collegiality

Silvia Fernández de Gurmendi, Cambridge University Press, 2018.

<https://www.cambridge.org/core/journals/american-journal-of-international-law/article/judges-selection-competence-collegiality/B14E18C8EDBF59DD34DD679A711D55E0>

This excerpt details how judicial retreats promote collegiality and integrate individuals to the work of the court. They developed judges' understanding of the procedures and foster discussion on how to promote respect, harmony, and identity within the court.

“In Session: Leading the Judiciary— Mastering Civility in the Workplace”

Federal Judicial Center, 2019.

<https://www.fjc.gov/publications/in-session-leading-judiciary---episode-5-mastering-civility-in-workplace>

In this podcast, Christine Porath defines civility in the workplace and details the dangers of multitasking and electronic communication. Both create misunderstandings and lead to hostile work environments. She reminds people to seek feedback from their peers to reinforce civility and respect.

“Collegiality is a Causality in US Legal Wars”

Anna Gorman, The Los Angeles Times, 2004.

<https://www.latimes.com/archives/la-xpm-2004-apr-02-me-onthelaw2-story.html>

The author details how respect and collegiality within the courtroom has been extinguished with reference to the prior times. Judges have become more polarized in their views, the workload has increased, and it has become increasingly difficult to foster a sense of camaraderie.

The Elevator Effect: How Collegiality Impacts Dissent

Morgan L.W. Hazelton et al.

<http://mjnelson.org/papers/HHN.Elevator.Effect.pdf>

“We explore collegiality by examining the effect of three measures of interpersonal contacts between federal circuit judges: whether they have their home chambers in the same city, the probability of serving together on a future panel, and years of cotenure on the circuit bench.”

Resource Guide for Chief Circuit Judges' Deskbooks

Laurel L. Hooper, Marie Leary, Federal Judicial Center, 2019.

<https://www.fjc.gov/content/341465/resource-guide-chief-circuit-judges-deskbooks>

“The *Resource Guide for Chief Circuit Judges’ Deskbooks* describes the roles of the chief circuit judge, the leader of administrative operations for the court of appeals, and the circuit as a whole. The guide outlines the chief circuit judge’s key responsibilities, including the duties that Congress, the Judicial Conference of the United States, and the director of the Administrative Office of the U.S. Courts have assigned or delegated to these judges. Also included is a discussion of the role chief circuit judges play in fostering judicial wellness and collegiality and in promoting an exemplary workplace. Circuit-specific policies and practices are not included, so that the guide can serve as a template for circuits to supplement with their local rules and policies.”

What Makes a Good Judge

Dorottya Justáz, Lila Barna, and Soma Márok

<https://www.ejtn.eu/Documents/Team%20HU%20semi%20final%20D.pdf>

“Communication skills also include the ability to listen. Appropriate communication with colleagues fosters the flow of information within the judiciary, and contributes to judicial dialogue, i.e. sharing best practices among judges.”

The One and Many: Adjudication in Collegial Courts

Lewis A. Kornhauser and Lawrence G. Sager, *California Law Review*, 1993.

<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjIgrau8ufvAhVHip4KHfaTCfY4HhAWMAZ6BAgGEAM&url=https%3A%2F%2Flawcat.berkeley.edu%2Frecord%2F1114609%2Ffiles%2Ffulltext.pdf&usg=AOvVaw1xu3LOSJaFNN6YteV5PTdH>

“The separate resolution of the question of collegial action in paradoxical cases has several advantages. It makes possible the development of a systematic, reflective jurisprudence of collective judicial action. It preserves the firmly entrenched practice of each judge casting her sovereign vote over the disposition of the case, while detaching that practice from an unconsidered commitment to case-by-case adjudication and opening the door to issue-by-issue adjudication in appropriate cases. Most importantly, it offers a procedure for choosing between the protocols that does not insist on a blanket choice or a litmus test, but allows for nuance and particularity in the choice.”

Legal Doctrine on Collegial Courts

Dimitri Landa and Jeffrey R. Lax, *The Journal of Politics*, 2009.

http://www.columbia.edu/~jrl2124/Landa_Lax_Rules.pdf

“Case dispositions and the development of legal doctrine can be affected by substantive and formal relationships between judges’ preferred legal rules and how and whether these judges can come together to state an official court rule. Judges may legitimately hold different legal philosophies or ideologies and thus legitimately prioritize distinct legal rules (particularly as to constitutional law), but divisions within the collegial court can produce paradoxical correlations between individual rules and collegial behavior, raising normative concerns as to the stability and rationality of the law.”

Inside Fourth Circuit Court of Appeals: How Collegiality Works.

Maura Levine, The University of Chicago Law School, 2016.

<https://www.law.uchicago.edu/news/inside-fourth-circuit-court-appeals-how-collegiality-works>

In this article, the collegial traditions of the Fourth Circuit Court of Appeals are explained. Judges refrain from discussing cases informally, judges do their research beforehand and come to arguments well-prepared, and every judge is granted the chance to speak. Conferences between judges are always followed with a social which “makes manifest that the disagreements about cases have no consequences for [their] personal interactions.”

“Collegial Deliberations are the Heart of Appellate Decision Making”

Marie E. Lihotz and Marianne Espinosa, *New Jersey Law Journal*, 2020.

<https://www.law.com/njlawjournal/2020/11/06/collegial-deliberations-are-the-heart-of-appellate-decision-making/?slreturn=20210226013235>

These authors emphasize the importance of relying upon other judges for guidance in specific subject matters and fostering an inclusive, supportive environment.

“For a Collegial Court, Justices Lunch Together, and Forbid Talk of Cases”

Adam Liptak, *New York Times*, 2016.

<https://www.nytimes.com/2016/06/02/us/politics/for-a-collegial-court-justices-lunch-together-and-forbid-talk-of-cases.html>

The Supreme Court justices reference how they foster collegiality between themselves. On days in which the court is in session, the judges eat meals together. On birthdays, they celebrate and toast each other. They also have a tradition to eat dinner together before the State of the Union address. They try to avoid controversial subjects to ensure that the space does not become hostile.

Collegiality and Technology

Michael R. Murphy, *The Journal of Appellate Practice and Process*, 2000.

<https://lawrepository.ualr.edu/cgi/viewcontent.cgi?article=1145&context=appellatepracticeproces>

“The product of a collegial court, its opinions, are “better in substance, style, and tone” than those of a court which expends little effort to harmonize diverse views. Thus, a collegial court better manifests the bedrock principle upon which appellate courts rest: multiple minds are better than one.”

Judicial Professionalism and the Relations between Lawyers and Judges

Randall T. Shepard, *Notre Dame Journal of Law, Ethics, and Public Policy*, 2014.

<https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1333&context=ndjlepp>

The author discusses professional ethics and explores that relationship between lawyers and their clients and between lawyers and judges. Communication between lawyers and judges is essential to an effective and efficient court system, but the relationships between the two parties are often

disconnected. The author highlights how judges and lawyers must perform a “unique balancing act” between distance and close cooperation in order for the legal system to thrive.

The “C” Word: On Collegiality

Deanell Reece Tacha, Ohio State Law Journal, 1995.

<https://core.ac.uk/download/pdf/159590032.pdf>

“It would trivialize the concept of collegiality to describe it as ‘getting along with one’s colleagues.’ Indeed, in some cases ‘getting along’ is the antithesis of collegiality. Collegiality is lively, tolerant, thoughtful debate; it is the open and frank exchange of opinions; it is comfortable controversy; it is mutual respect earned through vigorous exchange.”

Judicial Collegiality, Court Structure, and the Decision to Sit En Banc: Evidence from U.S. District Courts

Ahmed E. Taha, Wake Forest University, 2004.

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=527722

This source examines how the court structure and its composition, along with geographic distance, impact judicial collegiality.

“Collegiality on the Supreme Court”

The Faculty Lounge, 2018.

<https://www.thefacultyounge.org/2018/11/collegiality-on-the-supreme-court.html>

“Those of us on the court know that the best way to do our job is to work together in a collegial way and I’m not talking about mere civility, although that helps. I’m instead talking about a shared commitment to a genuine exchange of ideas and views through each step of the decision process. We need to know at each step that we are in this together.”

“The Court and its Traditions”

The Supreme Court of the United States

<https://www.supremecourt.gov/about/traditions.aspx>

“The ‘Judicial Handshake’ has been a tradition since the days of Chief Justice Melville W. Fuller in the late 19th century. When the Justices assemble to go on the Bench each day and at the beginning of the private Conferences at which they discuss decisions, each Justice shakes hands with each of the other eight. Chief Justice Fuller instituted the practice as a reminder that differences of opinion on the Court did not preclude overall harmony of purpose.”

“Tension in the Court: Public collegiality belies behind-the-scenes debates”

Mark Walsh, American Bar Association Journal, 2019.

<https://www.abajournal.com/magazine/article/tension-in-the-court-public-collegiality-belies-behind-the-scenes-debates>

Focusing on the Supreme Court, this article examines practices of judicial collegiality and how it varies depending on the term. “When two justices both sought to ask a question at the same time, a frequent occurrence during oral arguments, one will sometimes insist that the other take the floor.”

“Respectfully Dissenting: How Dissenting Opinions Shape the Law and Impact collegiality Among Judges”

Iman Zekri, Florida Bar Journal, 2020.

<https://www.floridabar.org/the-florida-bar-journal/respectfully-dissenting-how-dissenting-opinions-shape-the-law-and-impact-collegiality-among-judges/>

“Collegiality should not be equated with universal agreement among judges; rather, collegiality means that judges are willing to listen, persuade, and be persuaded all within an environment of civility and mutual respect... A dissenting judge should not make personal criticisms in dissent.”

Isolation in the Judicial Career

Isaiah M. Zimmerman, Civility Center for Law, 2000.

<https://www.civilitycenterforlaw.org/resources/category/Pillars+of+Civility>

“The role of the judge itself contributes to the isolation. Once one becomes a judge, ‘former lawyer colleagues immediately begin to show deference,’ and this barrier between judges and lawyers is reinforced by the formalities of the courtroom and wearing of robes. Over time, judges can experience greater difficulty shedding their ‘robes’ even in close personal settings.”