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LAW DAY

'Judicial temperament' a matter of showing respect to all

By James E. Duffy Jr.

This is the second of several articles written by state judges and legal experts commemorating Law Day (May 1) in Hawai'i.

The rules of the Judicial Selection Commission provide that it may consider the "judicial temperament" of a judicial applicant (or a petitioning judge seeking retention) together with other qualities such as integrity and moral courage, legal ability and expertise, intelligence and wisdom, compassion and fairness, and diligence and decisiveness.

What is "judicial temperament"? The American Bar Association defines it as having "compassion, decisiveness, open-mindedness, sensitivity, courtesy, patience, freedom from bias and commitment to equal justice."

While the association's definition is helpful in its generic sense, it does not define for us what it means to have a "good" judicial temperament in the real world of courtroom interaction with a judge.

Recognizing that any evaluation of "good judicial temperament" in general, or as applied to a specific individual, is subjective, I offer my thoughts based upon 35 years in the practice of law and 10 months as a member of the judiciary.

To begin, having a good judicial temperament does not mean that the judge must be "Mr./Ms. Congeniality," with a sparkling personality and good sense of humor. While these attributes may be helpful (particularly a good sense of humor), having a good judicial temperament is something much deeper and fundamental to our system of justice.

Our system of justice depends on our citizen's faith and trust that judges will decide disputes fairly and impartially, free from bias or prejudice. Out of respect for the system of justice and the judge's position in this system, judges have traditionally been accorded respect by our citizens. In return, judges must respect all those they interact with, including the parties to the dispute, their attorneys, witnesses, jurors, court reporters, staff and members of the public.

How do judges show respect? In many ways, including the following: by treating everyone with dignity, by being polite and courteous, by listening carefully to the testimony presented and the arguments of counsel, by being patient (understanding that litigation involves human emotions and that the courtroom is not a familiar or comfortable place for most people), and in general by showing that the judge genuinely cares about the matter being presented, understands that it is an important matter for those involved, and conveys the attitude that he/she will do his/her best to decide the case fairly and objectively, based on the evidence presented and applicable law.

In summary, the judge must strive to be the embodiment of justice. In my experience, if the judge has done his/her job, the parties and counsel (who are well aware that there will be a "winner" and "loser" in the litigation

if it is pursued to a decision in court) will be satisfied that they have had a fair hearing of the dispute, regardless of the judge's ultimate decision.

To me, having a "good judicial temperament" is thus not a matter of personality but a matter of commitment to be the embodiment of justice by showing respect to all one interacts with. If shown genuine respect by our judges, our citizens will continue to place their faith and trust in our judicial system, which is a cornerstone of our democratic form of government.

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