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Lawyers must embrace civility with all parties

By David M. Saperstein

In a scene from the movie *Monty Python and the Holy Grail*, French defenders of a medieval castle hurl insults instead of weapons against the British invaders, famously saying “your mother was a hamster and your father smelt of elderberries.” Although that scene may be comedic gold, when lawyers fail to distinguish between permissible and impermissible advocacy, they can be faced with both financial and ethical sanctions.

Monetary sanctions



Lawyers have been sanctioned when they crossed the line of civility in their insults of opposition. For example, the Fifth Circuit upheld a sanctions award of \$25,000 against an attorney who called opposing counsel an “underling who graduated from a 29th-tier law school,” and referred to the work of other attorneys as “garbage.” (In re First City Bancorporation of Tex, Inc., 282 F.3d 864 (5th Cir. 2002).) Another lawyer was required to

pay over \$11,000 in sanctions when he called the opposing parties “the grinch of Fairthorne” and said, “I don’t know whether their heads are not on just right or their shoes are too tight but something has shriveled their heart and made them bitter and tart.” The court reasoned: “[i]t is cheap for a party to throw garbage, but it is expensive for the party who must clean up the mess.” (Fairthorne Maint. Corp. v. Ramunno, 2007 WL 2214318 (Del. Ch. Ct. 2007).) Other attorneys have been sanctioned for “replac[ing] legal argument with vitriolic rhetoric,” (Guy Chem. Co. v. Romaco AG, 2007 WL 1276909 (W.D.Pa. 2007)) and for filing briefs that “were suffused with uncivil language, . . . sarcastic and bombastic rhetoric, and inflammatory language.” (Martin v. Essrig, 277 P.3d 857 (Colo. App., 2011).)

Disciplinary proceedings

Lawyers who are inappropriately aggressive also run the risk of professional discipline. In *In re Snyder*, 472 U.S. 634 (1985), the U.S. Supreme Court held that state ethical rules governing the conduct of lawyers do not violate the First Amendment simply because they limit speech. The court enumerated many privileges of bar membership (e.g. counseling clients, appearing in court, calling nonparties as witnesses, etc.), and held that the corresponding burden is that members of the bar must not commit “conduct contrary to professional standards that shows an unfitness to discharge continuing obligations to clients or the courts,” or “conduct inimical to the administration of justice.” Although the court found that the single act of rudeness at issue did not require discipline, it agreed that lawyers have an obligation of civility toward everyone in the judicial process:

“All persons involved in the judicial process — judges, litigants, witnesses, and court officers — owe a duty of courtesy to all other participants. The necessity for civility in the inherently contentious setting of the adversary process suggests that members of the bar cast criticisms of the system in a professional and civil tone.”

Abusive conduct toward client

Occasionally, attorneys have insulted their own client. For example, one attorney was disciplined because, while withdrawing from representation, he mailed three letters that called his client:

- "A TRUE C[**]T" who had "finally f[***]ed up one time too many";
- "a reprehensible human being" with "worthless progeny" and a "pathetic and dysfunctional world";
- responsible for her grandson's death; and
- tried to "weasel [her] way out of paying the full amount of [a funeral chapel]'s bill." (*Attorney Grievance Comm. of Maryland v. Basinger*, 441 Md. 703 (2015).)

Abusive conduct toward tribunal

Other times, misconduct has been directed toward a tribunal. One lawyer was disciplined after he threatened a judge with personal liability, accused an appellate court of false misrepresentation, and engaged in a disrespectful exchange with the court. (In re Disciplinary Action Against Garaas, 2002 ND 181 (2002).) Another attorney mentioned appellate judges by name, graphically invited abusing them, called the judges "jack***es," and stated that the judges could "kiss [his] ***." The court held that the nature of the graphic comments did "not come close to the margins of the civility or courtesy rules," and opined that: "resort to epithets or personal abuse is not ... safeguarded by the Constitution." (*Grievance Administrator v. Fieger*, 476 Mich. 231 (2006).)

Abusive conduct toward opponents

Most frequently, an attorney is disciplined for inappropriate comments about opponents. An attorney representing a church sent a letter to the client's landlords and town manager that questioned whether the town manager had a soul or a brain, and called the leadership of the town "pagans," "insane," and "pigheaded." The South Carolina Supreme Court insisted that lawyers must maintain civility despite the heated nature of the legal dispute:

“Legal disputes are often emotional and heated, and it is precisely for this reason that attorneys must maintain a professional demeanor while providing the necessary legal expertise to help resolve, not escalate, such disputes. Insulting and intimidating tactics serve only to undermine the administration of justice and respect for the rule of law, which ultimately does not serve the goals of the client or aid the resolution of disputes. (In re White, 391 S.C. 581, reinstatement gtd., 393 S.C. 227 (2011).)”

Another lawyer committed ethical misconduct when he threatened to beat the father of the opposing party, and made disparaging remarks to the opposing party. In particular, he called the opposing party “crazy,” a “stupid idiot” and a “nut case,” made demeaning facial gestures, and told her to “go back to Puerto Rico.” The attorney also called opposing counsel a “bush leaguer,” told her that depositions are not conducted under “girls rules,” and that she should return to school. (The Florida Bar v. Martocci, 791 So. 2d 1074 (Fla. 2001).)

Abusive conduct toward third parties

Finally, discipline has been imposed for inappropriate comments about third parties. One attorney was disciplined for insulting comments during depositions that the court characterized as “bullying of a mentally unstable witness.” The attorney had repeatedly interrupted one deponent, and made “rude or otherwise inappropriate” comments. As to a second deponent, the attorney commented that someone should be “locked in a room naked” with her, and that he would like to “put a bag over her without a hole for her mouth.” (Matter of Golden, 329 S.C. 335 (1998).)

Conclusion

Chief Justice Warren Burger once stated that “[a]ll too often, overzealous advocates seem to think the zeal and effectiveness of a lawyer depends on how thoroughly he can disrupt the proceedings or how loud he can shout or how close he can come to insulting all those he encounters” Lawyers who fail to act civilly may find that their conduct has caused unwanted consequences.

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