



Bad Manners May Lead to Discipline



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A recent report on disciplinary cases¹ indicates that bad manners among lawyers are not only becoming more common. They also are being dealt with through the disciplinary process.

There are several ethical rules that you should keep in mind when considering obstreperous behavior. ER 3.5(d) of the Rules of Professional Conduct² provides that a lawyer shall not engage in conduct intended to disrupt the tribunal. ER 4.4 prohibits lawyers from embarrassing third persons (nonclients) while representing a client. ER 8.4(d) provides that it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice. These ethical rules cover a wide range of misbehavior.

Let's start with the case of Ohio lawyer Luther J. Mills.

At a court hearing to modify parental rights, Mills became upset when the magistrate granted two of his opposition's motions, one of which was a motion for continuance. Mills reacted to the rulings by slamming his fists down on the table and shouting at the magistrate; his words were variously obscene and offensive. At the disciplinary proceeding, the evidence was that Mills raised his voice, clenched his fists, became red-faced, pounded on the table and leaned toward the magistrate in a threatening manner.

Finding that Mills had engaged in discourteous conduct toward a tribunal that was prejudicial to the administration of justice and that adversely reflected on his fitness to practice, the Ohio Supreme Court gave him a public reprimand.³ It should be noted that Arizona, unlike many jurisdic-

tions, does *not* have a specific disciplinary rule prohibiting conduct that "adversely reflects on a lawyer's fitness to practice law." Perhaps it should.

Then there's the case of John Lloyd Swarts, III, the county attorney for Bourbon County, Kansas. His disciplinary proceedings involved many complaints against him, including one case in which he became angry after an attempted murder charge was thrown out at a preliminary hearing. When defense counsel approached

him afterwards, Swarts told the lawyer, in open court, to “F_ _ _ off” and not to be “F_ _ _ing messing” with him. He then apparently refiled the charge. The Kansas court⁴ found that the conduct violated, among others, ER 8.4(d) and Rule 3.5(d). Swarts was allowed to resign his position as prosecutor and go on inactive status as lawyer.

Although the disciplinary authorities seem to be uniform in condemning lawyers’ untoward behavior, there is a wide disparity in the type of sanctions imposed. Take the case of Joseph Lopez Wilson. When he discovered that a client of his had run off with Wilson’s wife, he threatened to expose the client to the INS to compromise his visa status, and harassed him through phone calls, faxes and late-night visits, which included threatening notes left at the client’s front door. Wilson was suspended for two years.⁵

Compare that with the case of Pennsylvania lawyer Gary Green, whose cancellation of a *pro hac vice* admission was

reversed by the U.S. District Court in New Jersey.⁶ A magistrate judge found that Green had engaged in a clear pattern of misconduct, including excessive sarcasm, hostile outbursts, constant interruptions and personal attacks on opposing counsel during depositions in a civil action. The magistrate revoked Green’s *pro hac vice* admission.

On appeal, the court found that Green’s behavior violated fundamental precepts of professional civility and, among other things, that he had violated New Jersey’s version of ER 4.4, which requires that a lawyer treat with courtesy and consideration all persons involved in the legal process. Noting that the disqualification of Green as counsel would work a hardship on his clients by depriving them of a lawyer in the middle of what was found to be acrimonious litigation, the court also found that the other side occasionally had been overzealous in its representation and that Green’s behavior had not been the only fac-

tor affecting the administration of justice in the case. The district court further found that because Green’s behavior did not occur in the presence of the court, there was no evidence it affected the affairs of the court or the orderly and expeditious disposition of any cases before it.

The moral of these stories is that while Peer Review will be used in most of the “bad manners” cases, overly offensive and persistent lack of professionalism may eventually lead to discipline. ▀

endnotes

1. 17 *Lawyer’s Manual on Professional Conduct*, 619-646 (Oct. 24, 2001).
2. Rule 42, ARIZ.R.S.CT.
3. *Office of Disciplinary Counsel v. Mills*, No. 01-413 (Ohio Supreme Court, September 26, 2001).
4. *In re Swarts*, No. 86, 384 (Kansas Supreme Court, September 14, 2001).
5. *State ex rel. Counsel for Discipline v. Lopez Wilson*, No. S-01-122 (Nebraska Supreme Court, September 28, 2001).
6. *Mruz v. Caring, Inc.*, Civil No. 97 CV 01468 (D.N.J., September 26, 2001).