



When lawyers attack

Behave yourself! Attorneys can be guilty of bad behavior and need to control that inner pit bull

By ANAYAT DURRANI

Sometimes lawyers behave badly. Trouble at home, stress on the job, or just a really bad day can cause a lawyer to become temporarily unhinged. While most can pull it together and move on, others unleash their inner animal and show teeth. That's what happened when two Florida lawyers locked horns. What ensued were six months of vicious e-mail exchanges that got both lawyers sanctioned by the Florida Supreme Court.

It all began in May 2008 with a lawsuit against Volkswagen of America. The

plaintiff's lawyer, age 36, and the defense lawyer, age 50, start out trying to schedule hearings and depositions for the lawsuit, but can't agree on dates. Then things spiral out of control, and the name-calling begins. The defense lawyer calls plaintiff's attorney a "jerk" and "junior lawyer," and plaintiff's attorney refers to the older man as an "old hack" with "asinine behavior." Throughout their e-mail correspondence, the defense attorney refers to plaintiff's attorney as "Sparky," and plaintiff's attorney calls his opponent "Corky."

In another exchange, one that involved trying to schedule a deposition,

plaintiff's attorney says the defense attorney is incapable of handling the pressures of litigating. The defense responds, explaining his case load includes more than 200 cases, which he says are more important than the "little Mag Moss claims that are handled by bottom feeding, scum sucking, loser lawyers like yourself."

Then, they really start to hit below the belt. Plaintiff's attorney explains he went online to find a mental disability that fits the defense attorney's "symptoms," such as "closely spaced eyes, dull blank stare, bulbous head, lying and inability to tell fiction from reality."



The defense attorney, whose son has a birth defect, called plaintiff's attorney a jerk and told him he needs to look in the mirror to see his own mental disability. He added: "Then check your children (if they are even yours ... Better check the garbage man that comes by your trailer to make sure they don't look like him)."

Plaintiff's attorney responds: "While I am sorry to hear about your disabled child; that sort of thing is to be expected when a retard reproduces... Do not hate me, hate your genetics. However, I would look at the bright side, at least you definitely know the kid is yours."

The Florida Supreme Court issued sanctions for both lawyers. Following two complaints by the Florida Bar, the plaintiff's attorney was suspended for 10 days and ordered to attend anger management class. The defense counsel received a public reprimand and was advised to take a class on professionalism. This past fall, a judge dismissed the underlying case with prejudice.

A necessity to return to civility

Incidents like these are not unheard of and highlight the necessity of a return to civility and professionalism in the practice of law. This is something the Florida Supreme Court perhaps tried to emphasize by handling this case.

"Civility is an attitude that lawyers will treat everyone – opponents, witnesses and judges – with dignity and respect. Respect is the foundation of civility as it is to good sportsmanship, good manners and the Golden Rule," said William B. Smith, vice president of the San Francisco chapter of the American Board of Trial Advocates (ABOTA) and chairman of the civility and professionalism committee.

Examples of incivility, said Smith, include a lawyer's bad behavior during discovery, distasteful advertising and rudeness to judicial officers. Other examples include lawyers scheduling depositions near a holiday or when opposing counsel is going on vacation, or large law firms trying to "paper to death" solo practitioners to overwhelm them.

Smith, a partner at San Francisco's plaintiff's firm Abramson, Smith, and Waldsmith, said ABOTA has been a leader in promulgating civility and professionalism. The group stresses the importance of civility and professionalism with its Civility Matters Program. The program offers a panel of judges, lawyers, and other experts discussing their experiences with courtroom bullies. They present a short film, including Hollywood movie clips of the stereotypical "rude lawyer," and provide advice on how to deal with and avoid these types of behavior. The program has been used in law schools, bar associations and law firms.

As trial lawyers, Smith explained, lawyers are expected to "fight the good fight" but said attorneys should not forget that one's own reputation and the reputation of all lawyers and the viability of the entire legal system "are more important than any disputed issue or case." He added, "We seem to have forgotten this and that is why our reputation has fallen to such depths."

Starts in law school

Professor Rhonda Magee of the University of San Francisco School of Law said that law schools have not taught professionalism between lawyers in a systematic way.

"Many of us, however, seek to teach a sense of professionalism generally – between students and everyone with whom they interact, starting in the first year of law school," she said. "The Florida incident suggests that all law schools should reflect on what we are doing to accomplish this objective, and consider how we might do more and better."

Magee is also a mentor and life skills coach and has coached many young attorneys on transitioning into professional life. She said a large focus of her work has been to enhance lawyer professionalism and leadership. As a professor she has sought to humanize legal education and the practice of law to assist law students and practitioners to better cope with pressure so that they may be more successful and effective.

"Self-reflection increases self-awareness, and self-awareness is critical to the emotional and social intelligence necessary to nonviolent communication," explained Magee. "We all must attend to these if we are to master the interpersonal dynamics of anger management."

Still, sometimes attorneys go over the edge. In June 2010, a Chicago public defender, age 47, lost it. The PD was in court to set the next court date on a post-conviction hearing for a convicted murderer, but could not get agreement with the county prosecutor, age 50. The PD wanted to move the date, but the prosecutor did not, remarking, "Too bad, that's the date the judge set." That comment was too much for the PD. Once outside the courtroom, the PD proclaimed he was "sick of being mocked" and shoved the prosecutor against the wall, putting him in a choking headlock. Two officers had to pry his hands off the prosecutor. The PD was charged with aggravated battery and resisting arrest.

Professor Geoffrey Hazard of UC Hastings College of Law, who is co-author of a treatise and a casebook in civil procedure and also in professional ethics, said he teaches future lawyers to practice civility between one another.

"In teaching the subject I start with an explanation that a lawyer's interchanges, particularly when opposing another lawyer, involve a different kind of interchange than in most ordinary encounters," said Hazard. "The other side often is duty bound to resist and to obstruct what you are trying to accomplish. That is the nature of the work and should be understood that way. One must become used to controlling any sense of indignation or outrage; grit one's teeth so to speak."

Hazard said most lawyers have been able to master that skill pretty well. He said most understand that they must maintain a formal politeness, or civility, when dealing with one another in any type of situation.

"Good behavior based on respect has the power to influence the behavior of



others; it is an infectious attitude,” said Smith. “You will find that the practice of law is easier, less stressful, less costly and more profitable when you make civility a habit.”

Deeper issues

Sometimes bad behavior has deeper roots. In these situations, all matters of professionalism and civility are thrown out the door.

“Under the rubric of professional responsibility class, professionalism is taught. But lawyers getting worked up in a case is more than that; they could be angry because of something else,” said Carol M. Langford, adjunct professor at the University of San Francisco School of Law. “Or they may have emotional or alcohol problems. Lawyers have high depression rates, and this could be masked as anger.”

A Johns Hopkins University study found that lawyers suffer the highest rate of depression among workers in 104 occupations. Another study from the University of Washington, found that 19 percent of lawyers suffered depression, compared to a rate of 3-9 percent for the general population.

In 2004, according to State Bar discipline records, a severely stressed San Francisco attorney was under the influence of alcohol and pain medication when he lost it over a client’s reluctance to pay for legal services provided.

Hopped up on liquor and pain medication, the attorney chose to collect it on his own, with the help of a tire iron. He visited the client’s office and smashed the windshield of his car, a computer, and a photocopier, not to mention the client, who sustained minor injuries. The attorney was convicted of trespassing and disturbing another person by a loud noise. As part of his court-ordered punishment, he paid damages to his victim and sought counseling. In 2006, the Supreme Court gave him a 30-day suspension and two years’ probation.

“In my view, the schools do a cursory job at best at teaching legal ethics and professional conduct issues,” said Jonathan Arons, a San Francisco legal ethics attorney, who has advised lawyers on ethics issues, defense of disciplinary charges, and problems concerning admission or reinstatement to the State Bar of California. “I have had cases where the conduct of an attorney has been reported to the State Bar by a judge, but there is always something more to the case than just rude behavior.”

In a 2010 Oregon incident, a lawyer and a judge who have a history and apparently despise one another, get to an elevator at the same moment. They loudly bicker over who gets to use the elevator first, then the lawyer chest bumps the judge. The cops take the attorney away, who then slaps a restraining order on the judge.

In October 2010, a federal magistrate ordered the 60-year-old disability lawyer to undergo anger-management counseling after the incident at the elevator with the 60-year-old administrative judge. The quarrel over the elevator culminated a three-year verbal fight between the lawyer, who represents clients in disability cases, and the judge who hears those claims. Their dispute includes dueling state bar complaints, allegations of slander and a \$10 million lawsuit. The lawyer was sentenced to a year of probation and required to pay a \$10 court fee, attend anger management and have no contact with the judge. The whole sordid affair was covered both in the local daily newspaper and on a television station.

Civility is not a sign of weakness

On July 30, 2007, the State Bar Board of Governors adopted California Attorney Guidelines for Civility and Professionalism along with a voluntary pledge for lawyers to sign to adhere to them. Lawyers are encouraged to sign the

guidelines voluntarily, but they are not professional rules that can be applied as the basis for attorney discipline.

Smith cited John F. Kennedy’s words that, “Civility is not a sign of weakness,” which he believes all lawyers should remember. He said it is important to educate lawyers and law students about the advantages of civility.

“Good relationships with your opponents lead to a less stressful career, increased opportunity for resolution through informal settlement discussions and/or mediation and referrals,” said Smith. “The goal is to transform these ‘guidelines’ into enforceable rules of court.”

Smith cited how in 2008 the Utah Supreme Court approved a mandatory program to help lawyers during their first year of practice in professionalism, ethics and civility. He said the Montana ABOTA chapter is developing a Civility Mentor/Mediator Program and there are efforts to make civility part of a lawyer’s oath, which has been accomplished in South Carolina and Utah.

“All the states should take Utah’s lead of adding professionalism and civility to their attorney oaths and incorporating the state’s civility standards, as well,” said Smith. “Civility standards should be mandatory and not merely voluntary guidelines. Incivility will not end until we demand that officers of the court treat others with respect.”



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