

APRIL 30, 2007

"HOW LOW DOES THE BAR GO?"

Dear Editor:

Having joined the practice of law a mere two years ago, after a 30-year career in the United States Navy, I expected to feel right at home in dealing with my peers and with the members of the judiciary. I mean really, how much different could it be? The military has rules and regulations and so do the courts and the State Bar. Follow the rules and you will be fine. Break the rules, and stand by for the appropriate sanction.

Law school, the MPRE, and the bar exam all tested each of us on professional responsibility and ethics as officers of the court. Civility among our peers is as expected as zealous representation of our clients. ("And do as adversaries in law - Strive mightily, but eat and drink as friends." Shakespeare, *The Taming of the Shrew*.) We were taught that these are cornerstones of the practice of law. If that is the case, our foundation may be built on shifting sand.

As a new attorney, I attended the 'Bridge the Gap' seminar. No less than three sitting judges told us that the level of practice of law in Nevada is woefully low. It was up to us, the new attorneys, to strive to raise that level. I was motivated and inspired by these jurists. Think of it: me helping to raise the bar not only intellectually, but professionally and ethically.

Since attending that seminar, I have accompanied my seniors to many appearances and have recently been allowed to fly solo. What I have seen in the courtroom and in dealings with fellow attorneys is nothing short of appalling:

- Attorneys continually interrupting opposing counsel
- Snide comments and gestures while opposing counsel is speaking
- Arguing with the judge
- Refusing to comply with orders
- Not responding to correspondence- at all
- Lying to the court and to fellow attorneys
- Fee churning
- Refusal to negotiate

Each and every one of these issues violates either a Nevada Statute, a court rule, or the State Bar's Rules of Professional Conduct or the Bounds of Advocacy (see EDCR 5.04). Obviously, action is taken to stop and correct this action as soon as it is brought to light, correct? Wrong! Not in a single instance was the attorney (or attorneys) held accountable for their actions.

In some courtrooms, it is a joke among the staff and the bailiff: "Oh, get the ball gag out, Ms. [Attorney] has a hearing today." "Sorry to hear that you have Mr. [Attorney] for an opponent-- that will cost your client and his a lot of extra money."

It is clear that it is not just me seeing this. If the court staff and a majority of the bar is recognizing it, it really is happening.

There really is only one answer to this problem. Respect and decorum in the courtroom and between attorneys falls to the courts to police. Anyone can have a bad day or a bad mood, of course. Cautions are effective for all of us who get caught up in the moment and say something that is not appropriate. However, sanctions, bar complaints, suspensions, and disbarment are tools that are rarely used in even the most outrageous cases of intentional, unethical, and even illegal behavior by some attorneys. Acceptance of unacceptable, intolerable misbehavior only breeds further contempt and should be stopped by the court as soon as the infraction occurs.

I ask the legal community, how low do we allow the bar to be set just so a very few rude, unprofessional, and unethical attorneys can continue to practice? The answer should be clear that the minimum standards to which we should adhere should be the Rules of Professional Conduct. That is low as the bar should ever be set. Those who can't or won't comport themselves to these minimum standards should not be allowed to practice law. Period.

The tools are available to our courts to raise the bar at least to the minimum standards that every law school graduate expects when they begin their practice of law. Allowing even one practitioner (no matter how long they have practiced) to slip by without accountability is a slap in the face to the profession.

There has been much attention recently by the Supreme Court and the local media to lawyer advertising. The argument is that some advertising demeans the practice of law and may mislead the public. It is interesting that we don't seem to have the same concern for lawyers who ignore the Rules of Professional Conduct and Bounds of Advocacy even though these traits truly demean the practice and lead the public to believe that we condone this behavior. It is past time for the courts to take the appropriate action and fulfill their responsibility to police the profession.

Respectfully Submitted,

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