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Professionalism 2.0: The Dawn of a New Era of Civility

BY BRADLEY TRUSHIN



The “Wild West” era of litigation by intimidation, bullying tactics, and abusive behavior is coming to an end, and the Supreme Court of Florida is

the new sheriff in town. On October 8, 2015, the Supreme Court of Florida imposed permanent disbarment upon a South Florida attorney after determining that he failed to comply with the terms of an initial two-year suspension. In 2013, the attorney was ordered to appear before the Court to face a rare public reprimand arising out of his proclivity for “screaming” and “yelling” in court “to such an extent that it was impossible...to conduct hearings” and “incessantly disparaging and humiliating” an opposing lawyer. The inappropriate conduct directed toward his opposing counsel included written insults and threats, yelling insults in the courthouse hallway, and loudly accusing the opposing lawyer of being a liar in front of a judicial assistant and other lawyers. The 2013 opinion established new precedent for substantial disciplinary action against an attorney based principally on unprofessional conduct, as opposed to core ethics violations. The Court had ordered the two year suspension after flatly rejecting a Referee’s recommendation of a 90-day suspension. Yet, some viewed the 2013 opinion as an outlier limited to a uniquely egregious pattern of highly provocative and public misconduct and questioned whether the Court would continue to apply the same degree of scrutiny in other disciplinary actions that related to unprofessional conduct, but lacked the same level of notoriety. The real question was whether the Court was signaling a change that would have a practical impact on deterring the smaller, but altogether more common, acts of unprofessional conduct that are endemic to the modern practice of law in Florida.

Last week, the Supreme Court answered that question in the affirmative, when it suspended a Dade County lawyer from the practice of law for three years based on the Final Report of the Court-Appointed Referee, who found that the lawyer “...unabashedly ignored all civility, decorum, and professionalism by creating an atmosphere of intimidation, bullying, and abuse, as well as an unprofessional environment, all of which served to interfere with the administration of justice during [a] document review session.” The Referee, Eleventh Judicial Circuit Court Judge Thomas Rebull, a member of the Eleventh Judicial Circuit Professionalism Committee, over the course of four days, painstakingly documented the lawyer’s misconduct, which included:

- Offensive and inappropriate comments (e.g., referring sarcastically to opposing counsel as “the box fairy” in reference to his accusations she was magically making boxes of evidence appear, and in declining to take a lunch break: “That’s why I’m fat. I’m like a bear. I store it up, so I can go right through.”).
- Sarcastic accusations of a conspiracy to conceal documents with no good faith basis (e.g., stating he was there to uncover “a whole bunch of missing tapes, like the White House back in the Tricky Dick days”).
- Consistent rudeness (e.g., caustically accusing opposing counsel of orchestrating “a three-ring circus” and loudly making sexist “jokes” directed towards counsel such as “Elvis has left the building” when she left the room).
- Baseless accusations of unprofessional conduct (e.g., accusing opposing counsel of spying on him, trying to steal his work product, and withholding documents, and spontaneously accusing counsel of playing video games on her computer instead of watching him).
- Generally abusive behavior, including threats and demands that caused opposing counsel to hire a court reporter during the first day and a videographer at the beginning of the second day.
- Loud and angry rants concerning the placement of a video camera by opposing counsel’s videographer, no matter where the camera was placed, which went on for hours and became highly disruptive.
- Highly provocative comments intentionally calculated solely to disparage opposing counsel (e.g., “I heard you’re a dominatrix who likes to control people”) and humiliate her paralegal (e.g., “I’ve got this sniveling, sick thing sitting in the room that doesn’t seem to have any purpose”).
- Aggressive behavior calculated to bully and intimidate opposing counsel, culminating in the lawyer demanding to see an index that counsel was holding, invading her physical space, and forcibly attempting to grab documents from her hand and from under her arm. A security guard was required to intervene in order to get the attorney to release the documents back to counsel.

Judge Rebull found that the lawyer ignored the Florida Bar Creed of Professionalism, which states, in part, that lawyers “should abstain from all rude, disruptive, disrespectful, and abusive behavior and at all times act with dignity, decency and courtesy” and likewise failed to “abstain from all offensive personality” as mandated under the Oath of Admission to The Florida Bar. Additionally, the lawyer was guilty of violating several of the Rules regulating the Florida bar, including Rule 4-8.4(d) (“A lawyer shall not engage in conduct prejudicial to the administration of justice, including to knowingly, or

through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment or physical characteristic”) and Rule 4-4.4(a) (“In representing a client a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person or knowingly use methods of obtaining evidence that violate the legal rights of such a person”). Citing United States Supreme Court Justice Anthony Kennedy, Judge Rebull noted in his Final Report that while the actual injury to the individuals present in the fateful document production is significant, the more far-reaching and corrosive harm caused by incivility in the practice of law is the resulting damage to the judicial system, without which there can be no rule of law.

The Supreme Court of Florida adopted Judge Rebull’s findings and disciplinary recommendations, which faithfully illuminated for all to see a principle eloquently announced by former Third District Court of Appeal Chief Judge Alan Schwartz: “a lawyer’s duty to his calling and to the administration of justice far outweighs—and must outweigh—even his obligation to his client, and, surely what we suspect really motivates many such inappropriate actions, his interest in his personal aggrandizement.” *Rapid Credit Corp. v. Sunset Park Ctr., Ltd.*, 566 So. 2d 810, 812 (Fla. 3d DCA 1990) (Schwartz, C.J., specially concurring) (lamenting the Bar’s perceived policy of not viewing “conduct which is ‘merely’ unprofessional worthy of professional discipline”). Fifteen years after the *Rapid Credit* opinion, the Supreme Court cited Judge Schwartz’s special concurrence in *Boca Burger*, turning a flicker to a flame. See *Boca Burger, Inc. v. Forum*, 912 So. 2d 561, 571-72 (Fla. 2005) (citing *Rapid Credit Corp. v. Sunset Park Centre, Ltd.*, 566 So. 2d 810, 812 n.2 (Fla. 3d DCA 1990)) (Schwartz, C.J., specially concurring). Ten years later, the Supreme Court has boldly ridden into town and served notice that the fair and just administration of the judicial system may be usurped neither by “personal aggrandizement,” nor even an attorney’s rightly cherished promise of zealous representation of clients.

Bradley Trushin is a co-founder of Chepenik Trushin LLP, an estate planning, probate, trust and guardianship law firm. He focuses his practice on estate and trust administration and litigation, including will and trust controversies, fiduciary claims, and claims based on undue influence, lack of testamentary capacity, fraud, civil theft, elderly abuse and guardianship. Mr. Trushin is a member of the Eleventh Circuit Professionalism Committee, and the DCBA Professionalism and Probate Committees. He served two terms as chair of Florida Bar Grievance Committee 11N. Mr. Trushin co-authored the book, Strategies for Trusts and Estates in Florida, 2015 Ed., published by Thomson Reuters. He can be reached at btrushin@ctllp.com or 305.981.8889. ■