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Watch Your Language!

Brian Cohen

Novack and Macey LLP

It should come as no surprise that a lawyer's duty to zealously advocate on behalf of his or her clients is not boundless and cannot come at the expense of other obligations set forth in the Illinois Rules of Professional Conduct.

Last month, a three-person panel of the Illinois Attorney Registration & Disciplinary Commission recommended that an attorney be suspended for three months due to insults he lobbed at opposing counsel during a deposition. While defending his client's deposition in a case pending in the Circuit Court of Cook County, attorney Charles Cohn heard a question that he described as "vague" and "ridiculous." After instructing his client not to answer the question -- an instruction that, absent a claim of attorney-client privilege, likely violated Illinois Supreme Court Rule 206 -- Cohn told the questioning attorney to "certify your own stupidity . . ." and later called her a "bitch." When the questioning attorney asked him to stop insulting her, Cohen retorted that "a man who insults on a daily basis . . . has now been elected President of the United States. The standards have changed. I'll say what I want."

The ARDC disagreed, and found that Cohn's aggressive behavior violated three of the Illinois Rules of Professional Conduct:

- Rule 3.5(d), which provides that a "lawyer shall not engage in conduct intended to disrupt a tribunal," including at a deposition;
- Rule 4.4(a), which prohibits lawyers from "us[ing] means that have no substantial purpose other than to embarrass, delay, or burden a third person . . ."; and
- Rule 8.4(d), which cautions lawyers against behaving in a way "that is prejudicial to the administration of justice."

Unfortunately, but probably not surprisingly, Cohn's behavior was not the first of its kind. Earlier this year, a District Court judge in California sanctioned a California attorney and ordered him to pay almost $18,000 in attorneys' fees and costs to his opposing counsel after sending him series of profanity-laced emails that were colorful, to say the least. The court found that the lawyer's "profanity-laced emails, using discriminatory epithets, and repeatedly threatening physical violence against witnesses, attorneys, and their families purportedly as negotiation tactics" violated the lawyer's moral and ethical responsibilities, and declared that the lawyer should resign from the profession. The lawyer is currently appealing the District Court's finding to the United States Court of Appeals for the Ninth Circuit.

In 2015, Maryland's Attorney Grievance Commission sanctioned an attorney who referred to his *own* client as a "true c**t" and "a reprehensible human being" with "worthless progeny." Relying on Maryland's version of Illinois Rule 8.4(d), the Commission required the attorney to pay the fees and costs of the client. The Commission also noted that while there might be certain circumstances under which it was acceptable to use profane or vulgar language, the lawyer's language in that case "exceeded an appropriate

expression of grievances," and "tended to bring the legal profession into disrepute."

Finally, a June 2014 opinion by a Magistrate Judge sitting in the Southern District of New York began with the uncontroversial point that: "'You're an asshole, Dan' is not how an attorney should address her adversary." The court also bemoaned the fact that the attorney's email concluded with "Don't f**k me." However, the attorney's subsequent apologies to the court and her opposing counsel appear to have spared her a formal sanction.

Although apologies and acknowledgements of wrongdoing may occasionally save attorneys who offend from formal discipline, lawyers should think twice before engaging in schoolyard behavior that probably isn't helping their clients in any case.

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