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Disrespect in the Court: A Judge's Perspective



Disrespect in the Court: A Judge's Perspective

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“If you do not stop rolling your eyes every time I make a ruling with which you do not approve, I will start rolling my eyes at every poor question you ask or objection you make.”

I made this comment at a bench conference in a recent jury trial. It is how I handled a display of what I perceive is a growing number of outward signs of disrespect toward the court by attorneys. I base this perception and concern on my observations from over six years on the bench, discussions with fellow judges and with other members of the bar, and from reading about similar concerns stated in various legal publications.

Other authors have focused on the incipient lack of civility and professionalism between attorneys.¹ This article narrowly addresses actions by attorneys in court, generally subtle and often nothing more than “body language,” which manifest disrespect for the court. I am not talking about inappropriate actions that are a product of inexperience or, at the other end of the spectrum, the egregious behavior that leads to a contempt citation or disciplinary action. Displays of disrespect may be directed only to a particular judge at a particular moment or, perhaps, not at a judge at all. I believe all displays of disrespect undermine the foundation of the judicial system and may violate the Rules of Professional Conduct.

Attorneys must respect the court. The Oath of Admission each

Colorado lawyer takes includes the averment, “I will maintain the respect due to courts and judicial officers.” The preamble to the Colorado Rules of Professional Conduct states, in part, “A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials.”² In *Losavio v. District Court*,³ the court held, “[L]awyers, as officers of the court, must maintain the respect due to courts and judicial officers.”⁴ In *People v. Dalton*,⁵ an attorney was publicly censured for conduct that “displayed disrespect for the county court judge, the prosecutor, and the court reporter.”⁶ Judges are not necessarily seeking “personal” respect. The legal system, however, demands that attorneys show respect for the “robe” and what it represents. An Ohio court iterated this point when it noted that “[r]espect for the law and obedience to the orders and judgments of the tribunals by which it is enforced lies at the very foundation of our society.”⁷

In my experience, disrespect is not commonly seen in written material or in verbal presentations. It is most often through body language, including the type of gesture that got us all in trouble with our teachers and parents. It is one thing to think a judge is less than able or that a particular

ruling is, or series of rulings are, incorrect. However, it is quite another to openly show disfavor with rulings by rolling one’s eyes; slumping back in a chair in disbelief; turning one’s back on a judge; throwing hands into the air; “retreating” with a heavy sigh; interrupting and arguing with the judge; or slapping a pen or pad of paper on the table or lectern. Disrespect can also be unintentional, such as wearing an overcoat to the lectern, having a tie loosened, or being late or unprepared. Judges are expected to maintain composure and “judicial demeanor” at all times, and are criticized when they do not. No less is required from the attorneys.

Obviously, the most egregious behavior can be the basis for a contempt action or disciplinary action. Contempt, however, is the final sanction of choice. I wonder what an attorney thinks he or she is trying to accomplish with real (or feigned) disapproval with a ruling or other demonstrations of disrespect. I submit that the actions I am discussing do nothing, just as being found in contempt does nothing, to advance the position an attorney is espousing in court. A judge is not going to reverse a ruling because an attorney shows disdain.

Jurors notice such behavior and routinely criticize attorneys who, through word or body language, are critical of a judge. Jurors largely identify with the judge and look to the judge, not the attorneys, for guidance. If an attorney is showing disrespect for the judge, I believe that jurors feel they are also being shown

disrespect.⁸

I am concerned that some lawyers think that they better represent a client or demonstrate their zealousness by openly showing disagreement after a ruling does not go their way. I disagree with such a belief. I would like to think that this is primarily a problem with younger attorneys who have not received adequate training or just do not know better. Unfortunately, I see these actions in younger and older attorneys alike. There is also a concern that as a lawyer becomes more “comfortable” showing subtle signs of disrespect or gains confidence that these actions are

facing the jury and audience, in order to express displeasure with the ruling.”¹¹ She should have stopped when her actions would have cost her only \$100.00!

Other behaviors are not necessarily directed at a judge, but do show disrespect for the judicial system. The Rules of Professional Conduct prohibit attorneys from berating clerks, probation officers, and other court personnel in front of their clients.¹² Attorneys should realize that court personnel report such behavior to the judge. I wonder what others think, especially clients, when an attorney stands at the lectern with overcoat still on

will make a bee-line for the door, so that the conversation is not interrupted.

Additionally, most judges require and expect attorneys to be on time and prepared. Failure to meet these requirements is disrespectful to the court and judicial system.

The related topic of lack of professionalism deserves mention. Being disrespectful or showing disdain or condescension toward opposing counsel, a witness, or a party to the action, can be as harmful to the legal system as showing disrespect to the court. Petulant behavior can also lead to a more hostile courtroom

FAST FACT

In Colorado in FY 2002, 469,993 cases were filed statewide among the 64 County Courts, and 164,237 cases were filed in the 22 District Courts.

Colorado Judicial Branch Website, Court Facts, <http://www.courts.state.co.us/exec/pubed/courtfactspage.htm> (last visited Apr. 20, 2003).

somehow helping his or her case that the displays of disrespect will escalate to a more contemptuous level. In Colorado, one attorney was publicly censured for, among other signs of disrespect, “talking in a loud, indignant voice and waving his hands above his head” and “repeatedly interrupting [the] Judge.”⁹ It would be best if these actions were halted before contempt or disciplinary action is taken. In another extreme example, one appellate case outlines the escalation of disrespectful behavior throughout one trial. The attorney respondent in *In re Coe*¹⁰ began showing disrespect by “gestur[ing] with her arms, legs and body, while

or with tie loosened or is reading the newspaper in the gallery. Why should that client or a courtroom full of people show respect if the attorneys do not?

Cellular phones are a particular problem. A telephone ringing in court is really not the issue. A ringing phone is a product of today’s technology and hurried world. Answering the phone is a problem! I once had an attorney answer his cell phone and begin conversation during a hearing while the opposing attorney was examining a witness. There are times when I enter the courtroom and attorneys are on their telephones. However, rather than terminate the call, the attorney

environment. If an attorney is openly showing disrespect, everyone is more on edge, nerves fray, and people, including judges, say and do things they might not otherwise. I do not think this favors the attorney who is showing disrespect or does service to the judicial system as a whole. The Colorado Supreme Court has recently adopted a new rule requiring new admittees to the bar to take a “professionalism course,” in part, in recognition of the overall problem of the declining civility among practitioners.¹³

An appropriate time, place, and method for disagreement and criticism exists within the bounds of ethical conduct. First and

foremost, parties should make a record and then take their seats without argument or disapproving body language. If a judge does not allow you to make a record beyond the legal objection, sit down and take the matter up outside the presence of the jury at the next opportunity. Keep in mind, “[o]nce a judge rules, a zealous advocate complies, then challenges the ruling on appeal;

Criticism is carefully scrutinized and taken seriously by the Retention Commission, the judge, and, ultimately, the voters. Finally, an attorney can report inappropriate actions by a judge to the appropriate judicial regulatory agency.

Admittedly, there is a time and a place for public criticism of a judge. The Honorable Roger E. Miner, Circuit Judge for the

*I have no patience with the complaint that criticism of judicial action involves any lack of respect for the courts. When the courts deal, as ours do, with the great public questions, the only protection against unwise decisions, and even judicial usurpation, is careful scrutiny of their action and fearless comment upon it.*¹⁶

I agree that there is a place for

FAST FACT

Currently, there are 22 Judicial Districts within the State of Colorado, established by the State Legislature in 1963 and last revisited in 1975. Changes in District boundaries require a two-thirds vote of each house of the State legislature.

Colorado Judicial Branch Website, Court Facts, <http://www.courts.state.co.us/exec/pubed/courtfactspage.htm> (last visited Apr. 20, 2003).

the advocate has no free-speech right to reargue the issue, resist the ruling, or insult the judge.”¹⁴ If the ruling affects the proceeding’s outcome, appellate options are available despite expense, delay, and common dissatisfaction.

Aggrieved attorneys have additional remedies. Most judges are willing to meet with an attorney, as long as the rules prohibiting *ex parte* communication are observed. Additionally, attorneys may complain to a chief judge. Furthermore, in Colorado, attorneys, litigants, and others affected by the court are “polled” near retention time (in Colorado, judges at the state level are appointed by the governor, then placed on the ballot every set number of years for retention). Polling responses anonymously critique a judge’s performance and can lead to a recommendation that the judge not be retained.

United States Court of Appeals for the Second Circuit, wrote in *Criticizing the Courts: A Lawyer’s Duty*:

*Without question, the judiciary is accountable to the public, just like any other institution. If judges are arbitrary, if their behavior is improper, if their decisions are not well-grounded in constitutional and legal principles, the bar is in the best position to observe and evaluate the deficiencies, to inform the public, and to suggest corrections. When lawyers engage in criticism of the courts for constructive and positive purposes, grounded in good faith and reason, the judiciary is strengthened, the rule of law is reinforced, and the public duty of the bar is performed.*¹⁵

In his article, Judge Miner quoted United States Supreme Court Chief Justice Harlan F. Stone, who stated:

public, valid criticism where the dignity of the judicial system is observed and maintained. I do not, however, believe “bad-mouthing” a judge at a bar meeting (or while meeting in the bar) is appropriate.

A judge is limited in how to respond to disrespectful behavior and criticism. Judges confront disrespect in various ways, sometimes saying something at the time it occurs, at a later time, or by doing nothing at all. Contempt citations are the last resort. It is important to keep in mind that “[e]ven in the case of unfair and unjust criticism, the bench should remain silent, leaving to the bar its ethical obligation to come to the defense of the judiciary in such situations.”¹⁷

Finally, I frequently “judge” mock trial competitions at both the high school and law school levels. One of the gratifying

aspects of that endeavor is to see how respectful the students treat each other, their adversaries, witnesses, and the court. Obviously, the coaches have advised their students that the way to a better result is to act with the utmost courtesy and respect. I only hope that law schools, district attorneys' offices, public defenders' offices, and others offering trial tactics courses, are not teaching something different.

Endnotes

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¹ See Douglas R. Richmond, *The Ethics of Zealous Advocacy*, 34 TEX. TECH. L. REV. 3, 4 (2002); Samuel A. Rumore, Jr., *Reviewing Professionalism*, 61 ALA. LAW. 354, 355 (2002); Jeffery M. Vincent, *Aspirational Morality: The Ideals of Professionalism*, 15 UTAH BAR J. 12 (2002); Ben S. Aisenberg, *What it Meant to be a CBA President*, COLO. LAW., June 1999, at 15.

² COLO. RULES OF PROF'L CONDUCT, pmbl (2003).

³ 512 P.2d 266 (Colo. 1973).

⁴ *Losavio*, 512 P.2d at 268.

⁵ 840 P.2d 351 (Colo. 1992).

⁶ *Dalton*, 840 P.2d at 352.

⁷ *State v. Wilson*, 285 N.E.2d 38, 39 (Ohio 1972).

⁸ See J. Anne C. Conway, *From the*

Bench: Later Impressions, 28 LITIG. 3, 6 (2002).

⁹ COLO. LAW., Feb. 2000, at 109 (citing opinion of Presiding Disciplinary Judge in *In re Reveles*).

¹⁰ 903 S.W.2d 916 (Mo. 1995).

¹¹ *In re Coe*, 903 S.W.2d at 916.

¹² See COLO. RULES OF PROF'L CONDUCT, R. 3.5 (2003).

¹³ COLO. R. CIV. P. 201.14(3) (amended 2003).

¹⁴ *Maness v. Meyers*, 419 U.S. 449, 460 (1975).

¹⁵ J. Roger Miner, *Criticizing the Courts: A Lawyer's Duty*, COLO. LAW., Apr. 2000, at 31, 32-33.

¹⁶ *Id.* at 32 (quoting Remarks of Justice Harlan Fiske Stone to Professor Thomas Reed Howell of Harvard Law School (Nov. 15, 1935), in ALPHEUS THOMAS MASON, HARLAN FISKE STONE: PILLAR OF THE LAW 398 (1956)).

¹⁷ *Id.*

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