

A Life in the Law

Advice for Young
Lawyers

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EDITORS



On Encouraging Civility

Honorable William S. Duffey Jr.

I REMEMBER THAT AFTERNOON too well. I was the lead partner in a particularly difficult case—a commercial dispute between parties competing hard in a tough industry. The stakes were high and the clients demanded successful results. It was important to them. The lawyers on the other side were aggressive and, in my view, unreasonable. The litigation environment was unpleasant and nerves were frayed as we entered the last weeks of discovery.

The issue that afternoon was the scheduling and scope of a Rule 30(b)(6) deposition. The scheduling discussions were not going well. A younger lawyer from the opposing firm was charged with resolving this issue for his client, and he had to deal with me. He was at most a mid-level associate, and he had not been especially active in the litigation. Our client was being hard-nosed on this scheduling, and I had not enjoyed dealing with him on it. He insisted we resist what opposing counsel wanted at all costs. I was frustrated and my nerves were shot when my young adversary called to try to put this scheduling issue to rest. I resisted everything he suggested, probably for the sake of resisting. I remember being uncooperative and unpleasant. Then he said something that just struck me the wrong way. I do not recall that the comment was rude or angry, just that it did not sit well. I let loose with what I am sure was received as an intemperate lecture to a young lawyer who was simply trying to do his best to deal with a difficult issue. While I hate to admit it now, I cut the conversation short and left the issue open.

As I got some distance from the conversation, I found myself wondering why it was so upsetting to me. In a moment of honest reflection, I realized how disappointed I was in myself. The more I replayed the conversation over in my mind, the more I recognized that I was not upset about failing to seek resolution to the issue but about how I had behaved. The more I considered the conversation, the more I regretted how I had treated a younger colleague who simply was given the assignment to do his best to resolve an issue.

I would like to say I acted immediately, but it took longer than it should have to make the call. I remember how tentative my young opponent was when he answered the phone, probably fearing he was in for more of the same from me. While I cannot remember our whole conversation, I remember two things very clearly. First, I told him plainly and unequivocally that I was sorry for how I had acted, and that I did not have any excuse for how I had treated him in our conversation. I told him that I knew I was impeding our ability to get beyond an issue we both needed to settle. I also told him that one of the things I had regretted about our profession was the increasing acrimony that was evident among lawyers in litigation. And then I told him that I hoped he would remember my role in the conversation as a reminder of how not to act.

There is one other time I wish I had kept my tongue in check. I was involved in a matter after I became responsible for the United States Attorney's Office in Atlanta. We were prosecuting a case against a law enforcement agency employee who had disclosed confidential information that put other law enforcement officers and their investigative strategies at risk. The employee's actions were egregious, and he had been indicted for it. We were discussing with his lawyer the terms on which he might enter a plea. We were near the end of the negotiations, and the focus was on the term of imprisonment the defendant should face. His lawyer and I disagreed about what was appropriate. When I stated my view of a reasonable plea, the defense lawyer responded with a sarcastic, inappropriate attack on our office, our integrity, and me personally. I responded with several terse, biting remarks, and the meeting ended abruptly.

Within minutes after the meeting concluded, I thought about what had occurred. I, and the other lawyers from my office who were with me, all agreed that my response was justified, that we had been provoked, and that the defense lawyer was way out of line. While I concurred in their assessment, I knew it was my job to create an environment where we could explore whether his client might plead to his

offense. I knew I had to call the defense lawyer and schedule another meeting. We reconvened a few days later. I began by apologizing for my reaction during our prior meeting and we both acknowledged that we needed to get past our last conversation to determine whether we could agree on a reasonable plea agreement to conclude the matter. Within a very short time, an agreement was struck.

These are two very different examples. Thinking back on these two incidents, I know that my decision to reconcile these relationships was professionally, and personally, important. In the first, the conduct I modeled for my younger colleague was wrong. At that stage in my career, it was my responsibility to exhibit professionalism—grace under fire. If I could do that, I could at least model my willingness to make amends. In the second incident, I realized that in life there will be times when we are justified to act as we do. The question is whether our actions, while justified, are right. In my encounter with this defense counsel, I decided my public function required me to consider the interests of justice and the defendant's desire to accept responsibility for the crime that he had committed. It was irresponsible for me to allow his lawyer to interfere with my duty to serve justice, even if circumstances "justified" my response. My ultimate decision in these two instances was to model professionalism to a young lawyer and to serve our justice system in a responsible way. These values prompted me to make two very difficult telephone calls. The calls simply were the right response to my errors in judgment.

The work we do is hard. The pressure is often intense, and the demands unreasonable. None of these excuse impulsive, intemperate conduct. Ours is a profession of service to others and to clients. We are charged with addressing and resolving tough issues that often have important and substantial consequences. The incivility and hostility of litigation today not only makes this work more unpleasant, less satisfying, and less fulfilling, but it also serves as a barrier to what we are charged to do—to represent clients in the resolution of disputes by seeking just results. My conduct was a barrier, in both of these examples, to the service to our profession and the public. There will be times in one's professional life when an apology is in order because of the way we have treated someone in a case. Making the call to express your regret is hard. You have to swallow your pride and risk the vulnerability of admitting you were wrong. But it will be a necessary step to restore professional and personal relationships with another lawyer so progress in a case can be made and a

resolution achieved. That is our duty: to seek justice and to treat others with dignity.

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