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As lawyers, we shape the public's trust

Talk about the incivility problem with lawyers and many express shock and disappointment that some judges tolerate court interactions that involve unfounded accusations and personal aspersions — even leveled at the judges.

As confirmed in the Illinois Supreme Court Commission on Professionalism's 2007 professionalism survey, Illinois lawyers look to judges to take more of a leadership role in bringing decorum and respect back to the litigation process.

Kudos to the justices on a panel of the Illinois Appellate Court for calling out a lawyer who "exploded, on paper" with statements he admitted were univil, intemperate and incorrect.

In *Talamine v. Apartment Finders*, 2013 IL App (1st) 121201, the plaintiff's counsel appealed the circuit court order granting summary judgment in favor of the defendants. The appellate court affirmed the judgment in an unpublished order.

Plaintiff's counsel filed a motion to publish the order and a petition for rehearing. In the motion and petition, the lawyer accused the court of "dishonest assumptions," "hypocrisy" and not being "serious about following the law." He objected to the fact that the order affirming summary judgment was unpublished, arguing it did not suggest "openness."

He stated that petitions for rehearing "never get granted [and] it seems doubtful that any members of the reviewing court even read the petitions for rehearing" and that he was "troubled" that the appellate court was reviewing the decision of a fellow member of the judiciary and perhaps issued its order because "this court felt it was more important to maintain a friendly relationship with their colleague down the hallway than it was to do justice in a case that

did not personally involve them."

The appellate court ordered him to file a response and show cause why sanctions should not be imposed. The attorney wisely engaged counsel for the response. He explained some of his comments, acknowledged that his petition lacked civility and apologized to the court.

However, the lawyer disagreed that his petition for rehearing brought the court into disrepute because "it [was] a cry from the heart of a disappointed advocate and — considering the source — it will not destroy public confidence in the integrity of the court."

In a published opinion delivered by Justice Daniel J. Pierce, the justices disagreed. They explained that the documents that the attorney filed in court contained disrespectful language and unjust criticism and ascribed offensive conduct to judges that tended to bring the court into disrepute and destroy public confidence in the integrity of the judiciary.

Lest attorneys think using such language is aggressive advocacy, the court went on to state, "Counsel's resort to invective rather than civil,

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PROFESSIONALISM ON POINT

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As Executive Director of the Illinois Supreme Court Commission on Professionalism, Jayne Rizzo Reardon promotes professionalism among lawyers and judges as a guiding principle for living the justice we are called to serve.

intelligible and intelligent argument in support of his position does nothing to encourage understanding of his client's position ... Appellate and trial judges deplore incivility, as should every lawyer and litigant."

In a special concurrence, Justice Michael B. Hyman wrote that the attorney should have realized at least that his comments would jeopardize his client's faith in the legitimacy of the decision. The concurrence goes on to say:

"Every ad hominem smear, insult and innuendo, every speculative accusation, every potshot leveled at members of the judiciary has the capacity of weakening confidence in the judiciary as a whole, confidence which is essential to the vitality of our legal system ... [E]very personal attack on the impartiality and integrity of judges diminishes the client's (and the public's) already limited trust in the fairness of the legal system.

"Until lawyers restrain their bashing of judges, the public's confidence in the judicial process will remain fragile. I urge lawyers to think twice before slamming the decision-makers instead of their decisions."

The justices in this case noted that the filings violated basic principles of professional

conduct articulated in the preamble to the Illinois Rules of Professional Conduct, but elected not to impose any sanction on the attorney.

Although criticism of a judge's reasoning or decision may be appropriate, attorneys should know that false accusations impugning the personal integrity of a judge violate Rule of Professional Conduct 8.2. Rule 8.2 provides in part that a lawyer "shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge ..."

In an opinion filed last month, the Attorney Registration & Disciplinary Commission Review Board recommended an attorney who falsely accused judges of corruption in violation of Rule 8.2 be suspended from the practice of law for three years and until further order of court. *In re Lanre O. Amu*, No. 2011 PR 00106 (Review Board 2013).

Similarly, a lawyer was suspended for six months and until further order of court for making false statements about an administrative law judge. *In re Melvin Hoffman*, 08 SH 65 (Ill. Sept. 22, 2010). The "until further order of court" part of the discipline means that after serving the suspension, the disciplined lawyer bears the burden of proving he or she is entitled to get their license back.

The rationale of these cases makes sense. We lawyers are the ones who practice in the courts and understand the process. We are more knowledgeable than members of the public about the legal and judicial processes.

Our statements about the integrity of our chosen profession and system of justice shape our client's perception and, ultimately, the public's trust.

Let's educate the public about the Rule of Law and its essential underpinning of fairness.