BACK STORY

BY BRI CORRIGAN, ASSISTANT BAR COUNSEL, STATE BAR OF NEVADA

THE GOLDEN RULE AND THE PRACTICE OF LAW

Do you remember, as children, being taught the Golden Rule? The one that advises us to treat others as we would like to be treated ourselves? That rule applies just as much to us, as adult professionals, as it did when we were kids. Unfortunately, not all lawyers put it into practice, resulting in often-unpleasant consequences.

The Nevada Rules of Professional Conduct (NRPC) outline the big "don'ts," like lying, cheating and stealing; but the rules seem silent on the subject of professional, courteous behavior within the practice of law. Why the oversight? Perhaps a very big assumption was made when the rules were drafted; something so obvious just goes without saying. *Of course* lawyers are expected to behave in a civil, polite and professional manner!

There are provisions in the NRPC that support this supposition. Take a look at Rule 3.4, Fairness to Opposing Party and Counsel. It states, among other things, that a lawyer shall not obstruct another party's access to evidence, falsify evidence, knowingly disobey an obligation under the rules of a tribunal, make frivolous discovery requests or fail to make a reasonably diligent effort to comply with a legally proper discovery request made by the opposing party, or allude to any matter the lawyer does not reasonably believe to be relevant or will not be supported by admissible evidence in trial. To summarize: zealously representing your client is not an excuse for being difficult or unreasonable in the process.

So, what happens when lawyers get too wrapped up in advocacy and forget to apply the Golden Rule? First, courts and colleagues alike tend to lose patience and respect for those attorneys. Some courts have ordered attorneys to complete Continuing Legal Education (CLE) courses in civility and professionalism, and have even sanctioned lawyers for their conduct. In *Davis v. L.A. West Travelodge,*[1] Plaintiff alleged discrimination because Defendant refused to provide accommodations for her needs as a minority accompanied by a service animal. During the proceedings, the court had to repeatedly admonish defense counsel to refrain from petting the service dog in an attempt to antagonize opposing counsel.[2] Further, during a court recess, an incident between counsel prompted an investigation by court security personnel, upsetting Plaintiff's counsel to such a degree that the court had to adjourn trial proceedings and excuse the jury early.[3] This pattern of incivility between attorneys led to the court denying reconsideration of an order imposing 20 hours of CLE in civility and professionalism.[4] Similarly, in *Carroll v. The Jaques Admiralty Law Firm,*[5] the Fifth Circuit affirmed a district court's imposition of sanctions in the amount of $7,000 for an attorney's "vulgar and profane words" and for threatening opposing counsel with an act of physical violence, as such behavior disrupted the litigation and constituted bad faith.

It has been said that "ethics is that which is required and professionalism is that which is expected."[6] So, when does discourteous conduct rise to the level of unethical conduct, mandating a report to either a court or the state bar? Brace yourself for a typical lawyer answer: it depends on the specific conduct. NRPC 8.3 discusses your duty to report professional misconduct and states that "[a] lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority." The key here is that you have to use your discretion to determine whether the conduct raises a "substantial question" as to the other lawyer's fitness. In other words, you shouldn't run crying to the judge or the bar every time opposing counsel is rude, just when the conduct is egregious enough to raise questions about the lawyer's honesty, trustworthiness or fitness as a lawyer—as that unfitness could pose a threat to the community. Keep in mind: the purpose of attorney discipline is to protect the public, the courts and the legal profession, not to punish the attorney.[7]

This issue has become important enough that language has been added to the Oath of Attorney, stating that we will conduct ourselves "in a civil and professional manner." Accordingly, try not to get so caught up in the mechanics of law practice that you forget the Golden Rule; it is every bit as applicable in your professional life as it was to your conduct as a child. NL

1. 2010 U.S. Dist. LEXIS 22079, 2010 WL 623657 (C.D. Cal. Feb. 3, 2010).
2. *Id.* at *3-4.
3. *Id.* at *8.
4. *Id.* at *9-10.
5. 926 F. Supp. 1282 (E.D. Tex. 1996), aff'd, 110 F.3d 290 (5th Cir. 1997).
6. *Evanoff v. Evanoff*, 418 S.E.2d 62, 63 (Ga. 1992).
7. *State Bar of Nev. v. Claiborne*, 104 Nev. 115, 213, 756 P.2d. 464, 527-28 (1988).