

Is Lawyer Behaving Degenerating?

This is a question.

My contention is that lawyer behavior is worse than it was when I started 35 years ago.

In court today a very experienced lawyer moved to consolidate 2 cases, ex parte, before the defendants had appeared in the second case, before the cases had been “related”, that is, brought into the same courtroom before the same judge. Ok that was all wrong and I’m not complaining about that. (I was on the opposing, winning side of this battle.). What was troubling was that whenever this lawyer opened his mouth out came a stream of lies.

This would have been shocking and highly unusual, in my experience, 35 years ago. It is not as rare today as it was then, in my experience. This lawyer has lost his way. It seems more frequently to be the case nowadays.

Question: Am I misreading the times, past and present?

It has been my experience that lawyer behavior was never as bad as it was during the late 80's and early 90's. I remember silly drawn out colloquies during multi-day depositions over evidentiary and discovery matters, ad hominem attacks, and the routine use of tactics such as trying to get opposing counsel disqualified from cases. It was also a time when CLEs with titles such as Dealing with the SOB Attorney became fairly standard offerings. Ultimately (and belatedly) the courts stepped in and actually began issuing rules and sanctions to address such misconduct. There was also a movement among attorneys that advocated for civility that had the effect of ameliorating the level of ill-mannered discourse.

There are still bad apples practicing law, but my impression is that bad apple behavior is now almost universally regarded negatively as opposed to a skill set that "competent" attorneys should strive for.

Bert Krages, Oregon

I have only been practicing about 16 years and I recently said the same thing to myself. Your email made me feel better (not about the topic) but that I am not alone

in noticing the conduct. I work hard not to be that lawyer but at times, I feel like a chump for practicing with integrity.

Jay Calhoun, Arizona

I just looked up Jay, Roger, and Rob (nice sunflower!) on the ABA Member Directory... I keep my State Bar directory and the ABA directory links on my browser favorites for quick reference:

<https://connect.americanbar.org/network/members>

Deian McBryde New Mexico

I've only been practicing since 1997; but Bert makes the point that it was pretty bad in late 80's and early 90's; that's when the bar started pushing for "professionalism", seminars, rules, etc. I suspect it was pretty bad back in those days.

And, of course some of it depends on your jurisdiction; the worst behavior I have seen from lawyers have all been from South Florida (meaning, Dade, Broward and Palm Beach counties): which is not to say ALL of them have; some of the best most reasonable behavior has been from lawyers in those counties but the absolute Worst behavior has been from them; small firm, AMLaw 100, doesn't matter. A friend of mine who used to practice down there said it was likely because they could get away with it; there were so many lawyers and so many judges that it was unlikely you would deal with a particular lawyer again and that people burnt bridges. At least in Ocala lawyers really do try to get along; the bar is sufficiently small that everyone knows everyone else; and the standard is somewhat higher here than elsewhere.

From a Florida Bar Journal article on Professionalism:

Rules governing attorney discipline, at times, have been found to be unconstitutionally void for vagueness.²⁰ What will happen when a lawyer from Miami-Dade County, who holds a license from The Florida Bar and can practice in any county court, travels to a deposition in Marion County, and violates local professionalism expectations? Depending on the facts, the professionalism code and its definition of unprofessional conduct may be insufficient to enable the South Florida lawyer to navigate between the acceptable and the prohibited. When people of reasonable intelligence disagree over local norms, constitutional claims involving the void for vagueness doctrine seem likely

Ronald A Jones, Florida

My take on this type of lawyer behavior is that it is financially-driven.

In other words, the lawyer knows their case is lousy and that their client is an idiot who actually did do the things he or she is accused of.

However, the lawyer needs to pay their mortgage, their alimony, their country club membership, etc. and so they need to put on some sort of show of trying to advocate for their client. Sometimes this is with the client's consent -- imagine a divorce case where one spouse is motivated by anger and wants a "pit bull" to go after their ex. Other times the client has no idea they are being led astray by a lawyer who only sees dollar signs.

However, because the lawyer knows that their efforts are ultimately pointless (e.g. because their client's case is crap), the show they put on is half-hearted. They don't bother learning the facts, they recycle pleadings that haven't been proofread properly, etc.

I hope I'm not unusual in this way, but I turn down potential cases all the time when it is clear that there is no merit to what the client is asking for or I can't move the proverbial needle at all. The most common requests lately seem to be divorce cases where the potential client wants me to terminate the other parent's rights to the kids just because the other parent is disagreeing with what the PC wants.

Andy Chen, California

The whole lawyer civility movement goes back to the 80's. The NDTX blog describes the Dondi Properties case, which has been cited many times on the civility issue: <https://www.ndtexblog.com/2010/09/17/dondi-turns-22/>

While I cannot dismiss the factor of lawyer financial desperation, a bad case is a bad case and acting like the end of one's alimentary canal will not make the client's case better. The lawyer opposing such behavior needs to not allow such conduct to be rewarded unless his client cannot pay the freight to oppose such tactics.

Earlier in this tread I saw references to geographic regions and counsel conduct and IME there may be some basis for that belief. About 5 years ago, I was in a bankruptcy in Lubbock and the entry of counsel into the case from a certain northern Texas city resulted in comments from co-counsel about litigating with area code "214 lawyers." Perhaps not coincidentally, the Dondi Properties case originated in that same city.

While I saw an uptick in this behavior in the 80's, I don't see much difference between the lawyer bad behavior of the early 90's and that of now.

Craig A. Stokes, Texas

This question has come up in my Inn several times over the years, and we've generally seen more incivility where:

- You aren't going to see opposing counsel ever again
- You aren't going to see that judge again
- You are in a practice area that rewards bluster and/or delay tactics (like depositions with short time limits)
- The court does not have or does not enforce a code of civility

The bankruptcy bar, particularly the consumer bankruptcy bar, is pretty small where I am. We know most of the faces, including the LA attorneys who represent the big banks. We only have 7 judges sitting in NDCA, and they generally sit for 20-28 years. You are also likely to face the same opposing counsel. We don't have a lot of incivility for that reason, and the folks who are not civil really stand out.

That said, I had a newish attorney serve papers on my client at a 341 meeting. He threw them down on the desk and said "consider yourself served." When I asked counsel for a card, he said "my contact info is on the paperwork," and then strutted out. He probably thought he looked cool, like someone in a legal tv show. I found the whole thing funny.

I was lucky enough to have a mentor as a law student who sat me down and told me that opposing counsel can be some of your best friends, that just because your clients are fighting (this was in family law), it didn't mean that you had to fight. I hope that law students and new attorneys are getting that message.

Corrine Bielejeski, California

Only practicing a decade. I have found, without exception, that a***** behavior by OC has resulted in worse outcomes for OC client.

One of my very first cases was a family law post-decree issue. OC was a jerk. I was virtually certain he did not relay a settlement offer to his client. Since I was new to the bar I took a chance. During argument on the motion I mentioned the settlement offer.

CLIENT: (rising out of her chair) YOU NEVER TOLD ME HE OFFERED TO SETTLE!

OC: SIT DOWN AND SHUT UP!

REFEREE: Umm, Mr. X, your behavior...

OC: Oh, stay out of this!

The result is I suspect predictable.

After ruling in my client's favor, just before dismissing us, the Referee cleared her throat and said, "Um, Mr. Frost, I know you just started practicing. We don't normally favor discussing settlement matters in court."

ME: Yes, your honor, I apologize.

She knew, and I knew she knew, and so did OC, and we all knew she let it happen b/c OC was an utter jerk who was just trying to jack up his fees.

Larry A. Frost, Minnesota
