



Ostrich-like Attorney Reprimanded

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Leading jurist and legal scholar Richard Posner, of the United States Court of Appeals for the Seventh Circuit, is known for his writings on law and economics. He can also be a harsh critic of attorneys. In [*Monica del Carmen Gonzalez-Servin vs. Ford Motor Company, No. 11-1665 \(7th Cir. 2011\)*](#), Judge Posner authored a stinging critique of an attorney who failed to address dispositive precedent in his client's appeal brief.

Citing *Mannheim Video, Inc. v. County of Cook*, 884 F.2nd 1043, 1047 (7th Cir. 1987), Judge Posner stated that the "ostrich-like tactic of pretending that potentially dispositive authority against a litigant's contention does not exist is as unprofessional as it is pointless." He went on to identify offending counsel by name and found him "especially culpable" because he failed not only to cite the dispositive authority in his initial brief, but then did not address it in his reply brief after appellee's counsel discussed it at length in his response brief. Posner stated that "when there is apparently dispositive precedent, an appellant may urge its overruling or distinguishing or reserve a challenge to it for a petition for certiorari but may not simply ignore it."

Adding salt to the wound, Judge Posner included photos of an ostrich and an attorney, each with its head buried in the sand. While Judge Posner deftly addresses the issue through humor, the reader should come away from this case with renewed appreciation of counsel's duty to show candor to the tribunal. Kentucky Civil Rule 11 is clear on this point. When an attorney signs a motion, he certifies that to "the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of exiting law, . . ."

The Rules of the Kentucky Supreme Court governing the practice of law in Kentucky also address this issue. SCR 3.130(3.3)(a)(2) dictates that "a lawyer shall not knowingly fail to disclose to the tribunal published legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel." In the commentary accompanying this rule, the Court states that "legal argument based on a knowingly false representation of law constitutes dishonesty to the tribunal."

Clearly, the system of justice is well-served when counsel shows an unrelenting candor to the court and opposing counsel. The centrality of this point was hammered home by Judge Posner.