

Improper Conduct During Court Proceedings, Part 2 (...Or What Not to Do at a Deposition!)

By: Joseph A. Corsmeier

In a recent article, I discussed the recent Florida Supreme Court opinions reminding lawyers to act professionally and ethically in and out of the courtroom. The Court recently addressed this issue in *The Florida Bar v. Ratiner*, No. SC08-689 (June 24, 2010). In *Ratiner*, the referee found the lawyer guilty of numerous Bar Rule violations based upon his alleged improper conduct during a 2007 deposition in a civil lawsuit.

The referee summarized the misconduct as follows:

During the course of the deposition, [opposing counsel] attempted to place an exhibit sticker on the Respondent's laptop computer.

Just prior to [opposing counsel's] attempting to place the exhibit sticker on the computer, the Respondent was standing up and speaking forcefully towards [opposing counsel].

As soon as [opposing counsel] attempted to place the exhibit sticker on the computer, the Respondent very briefly touched [opposing counsel's] hand, then attempted to run around the table towards [him].

Additionally, the [deponent] expressed that she was very scared as a result of the Respondent's conduct.

The Respondent's own consultant had to attempt to calm the Respondent down and specifically told the Respondent to "take a Xanax."

Further, while the Respondent was acting as described above, the court reporter stated, "I can't work like this!"

Respondent then proceeded to forcefully lean over the deposition table, lambast [opposing counsel] in a tirade while proceeding to tear up the evidence sticker, wad it up and flick or toss it in the direction of [opposing counsel].

The Respondent's conduct during the deposition was outrageous, disruptive, and intimidating to the witness, opposing counsel, and other persons present during the deposition and otherwise prejudicial to the administration of justice.

The Bar Rule violations included 3-4.3 (misconduct and minor misconduct, 4-3.5 (disrupting a tribunal), 4-4.4(a) (using means with no substantial purpose other than to embarrass, delay, or burden a third person), 4-8.4(a) (violate or attempt to violate Bar Rule), and 4-8.4(d) (conduct prejudicial to the administration of justice). The referee partially granted the lawyer's motion for summary judgment, finding him not guilty of violating Bar Rules 3-4.4 and 4-8.4(b).

The referee found the following aggravation: pattern of misconduct, multiple offenses,

refusal to acknowledge the wrongful nature of the conduct, and substantial experience in the practice of law. The pattern of misconduct was based in part on the lawyer's conduct during the 2007 deposition (for which the lawyer was not charged by the Bar), including a series of belligerent, abusive, and vulgar comments, and conduct underlying a September 2006 diversion based in part on abusive conduct by the lawyer at depositions in a case beginning in 2002. The Court's opinion approved this uncharged conduct as aggravation.

In mitigation, the referee found no prior discipline or dishonest motive, emotional problems, and that the lawyer "appear[ed] to have an intelligent understanding of the law, as well as the facts surrounding the various cases he [was] prosecuting on behalf of his clients."

The referee recommended disbarment ("Plan A") or, as an alternative, a two-year suspension with conditions ("Plan B"). In addition, the referee recommended that the lawyer attend mental health counseling, all depositions by the lawyer be videotaped or with co-counsel, and the lawyer send letters of apology to all persons involved in the 2007 deposition.

The Court's opinion reviewed the cases on unprofessional conduct, approved the recommended Bar Rule violations, and ordered a 60 day suspension (which does not require rehabilitation) stating that the lawyer's "behavior during the laptop incident was unacceptable and unbecoming of any member of the Bar, especially one who has been a practicing attorney for more than nineteen years."

In addition to the 60 day suspension, the Court ordered a public reprimand and 2 year probation period in which lawyer must undergo mental health counseling, send letters of apology to persons present at the deposition, and be accompanied to any depositions and court proceedings by co-counsel approved by the Bar or ensure that such appearances or proceedings are video-recorded.

Lawyers should again be on notice that the Supreme Court of Florida (and The Florida Bar) will continue to be far less tolerant of rude, belligerent, and disrespectful behavior in litigation (or otherwise). Be careful out there!

Joseph A. Corsmeier is a Martindale-Hubbell "AV" rated attorney who practices in Clearwater, Florida. His practice consists primarily of the defense of attorneys and professionals in disciplinary and admission matters, expert analysis and opinion and court testimony on ethics and liability issue, and estate planning. Mr. Corsmeier is available for retention to provide attorney ethics and professionalism advices, provide expert opinions on ethics and malpractice issues, assist attorneys to insure compliance with the Rules Regulating The Florida Bar, and defend Bar applicants before the Florida Board of Bar Examiners.