

Dealing with Problem Lawyers: Issues, Options, and Barriers

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This presentation will discuss issues, options, and barriers in dealing with problem lawyers. The session will emphasize judges' inherent authority over officers of the court, the wide variety of corrective measures that are available, and cooperation/collaboration with professional organizations in curtailing disruptive, abusive, and unprofessional behavior by lawyers. Topics will include:

Identifying "Problem Lawyers"

Certain types of conduct by lawyers are particularly likely to impact the efficient and orderly operation of the courts. For example:

- Chronic lateness
- Arguing with the judge
- Perseverating on frivolous arguments or objections
- Unprofessional comments directed to the court and/or opposing counsel
- Improper argument or comments in the presence of the jury
- Expressing disrespect or frustration through facial expressions/body language/gestures
- Frivolous allegations of misconduct by opposing party or counsel
- Public threats to report another lawyer or judge to a regulatory authority

Rules that May Regulate or Proscribe the Conduct of Problem Lawyers:

- Rule 12 of the General Rules of Practice ("Courtroom Decorum")
- Rule 11 of the Rules of Civil Procedure
- Rules of Professional Conduct:
 - Rule 3.1: A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous...
 - Rule 3.3(a)(1): A lawyer shall not knowingly make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.
 - Rule 3.4: A lawyer shall not:
 - (c) knowingly disobey or advise a client or any other person to disobey an

obligation under the rules of a tribunal...

....

(e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, ask an irrelevant question that is intended to degrade a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant, or the guilt or innocence of an accused

- Rule 3.5(a)(4): A lawyer shall not engage in conduct intended to disrupt a tribunal, including:
 - (A) failing to comply with known local customs of courtesy or practice of the bar or a particular tribunal without giving opposing counsel timely notice of the intent not to comply;
 - (B) engaging in undignified or discourteous conduct that is degrading to a tribunal; or
 - (C) intentionally or habitually violating any established rule of procedure or evidence
- Rule 4.4(a): In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person...
- Rule 8.4(d): It is professional misconduct for a lawyer to engage in conduct prejudicial to the administration of justice.

Harm Caused by Disruptive, Abusive, and Unprofessional Behavior:

- Undermining the ability of other lawyers to represent their clients
- Negative impact on public perception of the judicial process
- Further erosion of public perception of the legal profession
- Delay and expense

Barriers to Judges Taking Corrective Action:

- Allocating limited court time
- Uncertainty about whether the conduct is an isolated incident, and if so, whether it is worth pursuing.
- Concerns about being perceived as "taking things personally" when the lawyer is disrespectful toward the court
- Desire to complete a case when the jury is already empaneled
- Not wanting to prejudice a litigant for his lawyer's bad acts
- Time and effort involved
- Questions about how it might impact your ability to preside over the lawyer's cases in

the future

- Anticipation of continued or escalating tension with a home-county lawyer
- Concerns about stepping on toes if the problem lawyer is outside of your home district

Options for Addressing Misconduct

- Informal intervention or inquiry
- Arranging for mentoring
- Warning (privately or on the record)
- Referral to the Chief Justice’s Commission on Professionalism
- Disciplinary proceedings in the court—either via show cause procedure or initiated/prosecuted by the State Bar upon request
- Referral to the North Carolina State Bar for grievance investigation
- Contempt
- Rule 11 sanctions
- Fee awards (where available)
- Referral to the Lawyer Assistance Program, when the conduct appears to be attributable to mental health or substance abuse problems.

Presenter Contact Information:

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Other Resources:

For Questions About Conflicts of Interest or Interpretation of the Rules of Professional Conduct, contact State Bar Ethics Counsel Alice Mine at amine@ncbar.gov or 919-828-4620, ext. 236.

For Concerns About a Lawyer's Mental Health or Substance Abuse, contact the Lawyers Assistance Program (<http://www.nclap.org>). LAP's services are regional, so the contact person depends upon your location:

Raleigh and Areas East:
Nicole ("Nicky") Ellington
919-719-9267

Piedmont Area:
Towanda Garner
919-719-9290

Charlotte and Areas West:
Cathy Killian
704-910-2310

If a Lawyer is Disappeared, Deceased, or Disabled, contact Root Edmonson or Brian Oten in the State Bar's Office of Counsel to discuss whether a trustee should be appointed to protect clients and wind down the law practice.

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