KEEPING UP WITH GRANGER AND GERTRUDE

Just back from their respective spring break ski trips, Granger and Gertrude decided to meet for lunch to catch up on their professional pursuits. They were now six months into the first year of their practice at a large Texas firm.

During lunch, Gertrude confided that she was struggling with some of the assignments she was receiving from a partner in a case in which her firm was defending a client in a personal injury case. The plaintiff in the suit was represented by a sole practitioner who seemed to Gertrude to be a pretty nice fellow. The problem she was having stemmed not from anything the plaintiff's attorney was doing—but rather from the tactics her firm's partner was employing in defending the matter. Granger asked her to explain.

Gertrude advised that the firm was defending a long-time client in the matter. That particular client once informed Gertrude that he wanted lawyers representing him to act like junkyard dogs—they should show no quarter in litigation matters. The firm partner heading up the engagement took a similar approach to litigation tactics, which was making Gertrude uncomfortable.

Gertrude advised that she was constantly being instructed to take advantage of the fact that the plaintiff's counsel was a sole practitioner. For instance, she told Granger that several weeks earlier plaintiff's counsel advised her that he and his family were going on a long-awaited family vacation. When she mentioned that fact to the supervising partner, he informed Gertrude to wait until the Friday before plaintiff's counsel was scheduled to depart on vacation and then notice several depositions to be taken during the week he was scheduled to be out of town. When Gertrude asked why she should do that knowing the lawyer would be out of town, the partner explained that plaintiff's counsel could always file a motion to quash if he didn't like it. After all—he had sued a good firm client and deserved to be treated harshly.

That was just one example, explained Gertrude. It seemed she was constantly being instructed to do things that struck her as unseemly and unprofessional. For instance, the week before she was instructed to set a hearing with the court on a particular issue that had arisen in the litigation. She did that and was prepared to send notice of the hearing to opposing counsel electronically. She was informed to not do that. Instead, send it by mail. The reason given—why give opposing counsel too much notice of the hearing?

She explained that on another occasion she was working with plaintiff's counsel in drafting a lengthy Rule 11 Agreement concerning the litigation. She presented what she thought would be the final draft for approval to the partner. He informed her to add an additional clause concerning what was clearly an important, substantive issue. She advised she would do that by redlining the change and then sending it to opposing counsel. However, she was instructed to not redline the change. Just add it. If opposing counsel was too lazy to read the entire document and catch the change before signing it, shame on him. After all—he started this fight.

Gertrude confided to Granger that this sort of conduct was starting to make her very uncomfortable. Not only was she being placed in embarrassing positions with opposing counsel, but also with the court. After all, she was

the one—not the partner—who had to go to court to respond to the plaintiff's motions and objections that pointed out her firm's abusive tactics to the court. In the end, this had to make the firm look unprofessional. What, if anything, could she do? What should she do? After all, this was a partner's strategy—not hers.

Discussion

On occasion during your career you will hear a client state they want a junkyard dog working on their case. And there is nothing wrong with that. As a lawyer, we are charged with the responsibility of representing our clients zealously. And a tenacious, hard-nosed litigation strategy is appropriate, so long as it is fair, honest, and civil in nature. The conduct exhibited by Gertrude's partner was not and should not be tolerated. Trying to exploit opportunities to trick, deceive, and unduly take advantage of an opponent may gain some advantage in the short run, but will always redound to a firm's detriment in the long run.

So what should Gertrude do? No doubt she is in an uncomfortable position. The last thing she wants is an unfavorable review from a partner in her file. But, if she persists in involving herself in this strategy, she will surely sully her reputation with the judiciary and the local bar.

As painful and awkward as it may be, Gertrude should discuss her concerns with the partner who is directing her in the matter. She should politely point out that the Texas Lawyer's Creed, promulgated by the Supreme Court of the State of Texas and the Court of Criminal Appeals in 1989, mandates that lawyers owe to the administration of justice personal dignity, integrity, and independence. And that lawyers should always adhere to the highest principles of professionalism.

Specifically, the Creed provides that lawyers owe one another a duty to conduct their affairs with courtesy, candor, cooperation, and scrupulous observance of all agreements and mutual understandings. And, specifically, with respect to the tactics she was instructed to carry out, the Creed provides the following:

1. I will be courteous, civil, and prompt in oral and written communications.

3. I will identify for other counsel or parties all changes I have made in documents submitted for review.

7. I will not serve motions or pleadings in any manner that unfairly limits another party's opportunity to respond.

14. I will not arbitrarily schedule a deposition, court appearance, or hearing until a good faith effort has been made to schedule it by agreement.

If, after discussing Gertrude's concerns, the partner persists in involving Gertrude in a strategy that conflicts with the mandates of the Creed, she should visit with her section head and request to be relieved of responsibilities in the case. If her firm holds that against her, then shame on the firm. There are plenty of other firms that do conform their conduct to the mandates of the Creed where she would be welcome to practice.

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