Q&A

LAWYER LIABILITY AND ETHICS

Court Admonished over Revocation of Pro Hac Vice Application

Joseph Brophy

For those of us who write about legal ethics and lawyers behaving badly, the presidency of Donald Trump were boom years. Michael Cohen, Michael Avenatti, Rudy Giuliani and Sidney Powell were jailed, disbarred or sanctioned. Several lawyers at the DOJ and FBI were fired or convicted of crimes for their role in the Russia investigation. And the special prosecutor John Durham has indicted two private lawyers from the Clinton campaign with potentially more on the way.

For whatever reason, the Biden presidency has been a disappointment for those of us who follow legal skullduggery. Alas, President Trump is done, or as Miracle Max might say, "mostly dead." But the legal ethics fallout from his presidency remains a source of interest and entertainment in jurisdictions across the country, most recently in Delaware where the Supreme court of Delaware admonished a superior court judge in unusually strong terms for revoking a pro hac vice application from a Trump-connected lawyer.

Carter Page was the Trump campaign aide who found himself in the center of the Trump/Russia saga when he was pegged, apparently without cause, as a Russian asset. Mr. Page sued in Delaware for defamation allegedly committed by the defendant when it published articles accusing him of colluding with Russian agents to interfere with the 2016 presidential election. Mr. Page chose as his lawyer L. Lin Wood, who is licensed in Georgia and applied to be admitted pro hac vice in the Delaware action. Mr. Wood has a reputation as a bit of an eccentric. Mr. Wood styles himself via his website as "Attorney for the Damned," which I admit I am upset I did not think of first. He once allegedly floated the idea to his law partners that he "might" be the second coming of Jesus.

The Delaware superior court ordered Mr. Wood to show cause why his admission to the Delaware court should not be revoked because of Mr. Wood's allegedly ethically dubious actions in post-2020 election litigation in Wisconsin and Georgia. Let us just say that, to put it mildly, Mr. Wood does not believe Joe Biden won the election. For those of you wondering, Mr. Wood's alleged claim to be a resurrected deity was not among actions that concerned the court.

Mr. Wood withdrew his application to the Delaware court but denied engaging in any unethical behavior in Georgia or Wisconsin. However, that did not satisfy the Delaware superior court. Rather than accept the withdrawal, the court, without a hearing, made factual findings adverse to Mr. Wood with respect to both the Georgia and Wisconsin election litigation. As the court explained: "Albeit not in [the court's] jurisdiction, [Mr. Wood] exhibited a toxic stew of mendacity, prevarication and surprising incompetence."

Mr. Wood appealed to the Supreme Court of Delaware, which was not pleased with the superior court's ruling. First, the Supreme Court noted that neither the Georgia nor Wisconsin courts had found Mr. Wood's conduct to be unethical. Second, the Supreme Court considered it "questionable" for the lower court to insinuate that Mr. Wood was partially responsible for the riot that occurred at the US Capitol, particularly since that issue was not before the court and there was no evidence for that insinuation in the record. Third, the lower court reached its conclusions without a hearing, which is required under Delaware Superior Court Civil Rule 90.1(e) before a court may revoke a pro hac vice application. The Supreme Court of Delaware found that "[b]oth the tone and the explicit language of the Superior Court's memorandum opinion and order suggest that the court's interest extended beyond the mere propriety and advisability of Wood's continued involvement in the case before it." The court further concluded that "one cannot read the [superior] court's order without concluding that the court intended to cast aspersions on Wood's character."

The Supreme Court vacated the revocation of Mr. Wood's application because the Supreme Court found that an application for admission pro hac vice should not be denied based upon allegations in another jurisdiction that have not yet been adjudicated, particularly when there are no allegations that the applicant had disrupted or adversely affected proceedings in Delaware. The not very subtle subtext of the Delaware Supreme Court's opinion is that judges should not make factual findings based on headlines from political news coverage, especially about happenings in other jurisdictions.

The Delaware court's revocation of Mr. Wood's application echoes New York's suspension of Rudy Giuliani's license last year without a hearing on an "emergency" basis for statements Mr. Giuliani made six to eight months before the suspension in public and in front of courts in other jurisdictions that did not sanction him for those statements. Whatever one thinks of Lin Wood, it is unfortunate the country's ongoing fever over the 2020 election has yet to break and is still present in certain parts of the judiciary. ■

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How Not to Argue an Appeal

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M. Howe first concluded that affirmance was in order; Ramos had waived his appellate arguments by not filing a proper opening brief. Quoting a 1984 Arizona Supreme Court opinion, Howe wrote that courts have "a responsibility to see that litigants conform to an acceptable, minimal level of competency and performance." "We owe this responsibility to the judiciary, the bar and, more importantly, to all litigants and the people as a whole."

Arizona Rule of Civil Appellate Procedure 13 prescribes the contents of briefs, which Howe laid out in the opinion. Litigants must make a bona fide effort to comply, he wrote, adding that "Courts hold unrepresented litigants in Arizona to the same standards as attorneys and do not afford them special leniency." (Howe did not mention that Ramos is a disbarred Florida attorney.)

Howe ruled that Ramos had failed to "provide a bona fide and reasonably intelligent effort to comply." He had therefore "waived any issues he may have wished to submit for this court's review."

Howe described some of the deficiencies in the opening brief. For example, the statement of the case "states only that '[t]he issues in this appeal are identical to the first appeal, and therefore, Appellant adopts and reincorporates into this Brief, his Brief in the first appeal.'" Ramos called the defendants "punks" and asserted that they had hidden "behind a petty, pitiful, pathetic 'notice' statute."

And Ramos had failed to adequately brief his argument that the notice-of-claim statute does not apply to the ACC. Howe noted that "his argument, in a single sentence for each point, cites no legal authorities, contains no reasoning or references to the record, and refers only to his brief filed in the first appeal."

"Ramos makes no attempt to refer to the record or explain his contentions with citation to legal authority based on the record in this appeal," Howe wrote. Ramos's only effort to develop his arguments came in a document that he attached as an appendix: his opening brief from the previous appeal (the appeal that he had already lost). Howe noted that the court of appeals had ruled as far back as 1991 that litigants must brief the current case and that it would not consider briefs filed in prior appeals.

Howe accepted that deficiencies in briefs occur from time to time. And the courts often overlook them "in the interest of resolving appeals on the merits." But he refused to do so here.

Ramos's attempt to use his reply brief and supplemental brief to make his arguments also came up short. Howe cited several cases holding that an appellant waives issues not raised in the opening brief.

"Because Ramos has waived all appealable issues, he has effectively abandoned his appeal," Howe concluded. "The superior court's dismissal with prejudice of his action therefore must be affirmed."

But Howe did not stop with affirmance. He held that both "Ramos's violation of ARCAP 13 and his abusive language and argument warrant sanctions."

First, Ramos's violation of Rule 13 rendered the appeal frivolous. Howe observed the judicial preference to decide cases on the merits, but added, "judicial leniency can be stretched only so far." Quoting a 1984 opinion, he wrote, "If we ignore a failure to comply with these elementary rules and tolerate unprofessional standards, it will be the clients, the public, the bar, and the courts which ultimately suffer." He therefore awarded the appellees their attorneys' fees because they "have been required to allocate resources to respond to a frivolous appeal."

Howe then turned to Ramos's intemperate language. "Ramos not only grossly violated ARCAP 13; his briefs and motion papers are rife with abusive language and argument," he wrote. "He referred to the Commission and its individual members, the ALJ, and opposing counsel as 'punks' and 'rats,' and asserted that the ACC's investigation equated to George Floyd's death and analogized the ACC to rioters at the United States Capitol, including attaching photographs of one of those rioters in prison."

Although aimed at Ramos's opponents, the abuse had wider consequences: "Ramos's abusive language and argument used throughout his appeal demeans not only the appellees, but also constitutes an affront to the dignity of the judicial process and the people of this state that rely on it in resolving their disputes," Howe wrote. He concluded that the abuse "separately warrants censure and an additional sanction beyond shifting of fees and costs." He explained that "the rule of law depends largely upon civil discourse in the peaceful resolution of legitimate disputes upon their legal merits." He added, "Redress in our courts must not be employed using empty viciousness to decide matters based on who can voice the most powerful antipathy."

"To discourage similar conduct," Howe wrote, "we impose an additional sanction … against Ramos of $500, which he must pay directly to the Clerk of the Court of the Arizona Court of Appeals."

Joining Howe in affirming the judgment and sanctioning Ramos were Judges Brian Y. Furuya and Michael J. Brown. ■

Editor's Note: Daniel P. Schaack, an assistant attorney general, did not represent the appellees in Ramos v. Nichols, but he did assist in preparation of the answering brief and other appellate filings.