

Lawyers guilty of uncivil behavior get court push

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A female prosecutor pushes a male defense attorney during a break in a trial.

"She struck me in front of several witnesses," says attorney Steve Feldman of the incident several years ago. "And she's since been promoted!"

In another case, H.L. Roy Short admits shoving his opposing counsel in a scuffle during a break in a civil hearing. But more than a year later, he is still unrepentant.

"I only wish I had beaten him to a pulp," he says, contending it was the other attorney's lying that precipitated the battery.

Just typical days at the courthouse?

Although physical confrontations are not all that common, most lawyers concede that short-tempered, belligerent and generally uncivil behavior among attorneys is not unusual.

"There's a reason people don't like lawyers," says Michael Crowley, a San Diego attorney who specializes in criminal defense and civil rights cases.

Legal observers say an increasing trend of offensive behavior by attorneys has sparked a proliferation of "civility codes," or rules of behavior adopted by courts and state bar associations.

But the jury is still out on whether the codes do any good and whether they can be legally enforced. A California state law prohibiting lawyers from displaying offensive behavior was recently ruled unconstitutional by a federal appeals court. The State Bar of California has asked the court to reconsider the matter.

Ever since the Los Angeles County Bar Association adopted one of the first civility codes six years ago, more than 88 courts and bar associations in just about every state have followed suit.

Critics point to the strife-filled O.J. Simpson trial as evidence that the codes clearly aren't doing the job.

In San Diego's federal court, General Order 406, penned two years ago, demands that lawyers "be courteous and civil in all communications, oral and written and in all proceedings (act) with dignity and respect."

Critics contend that the order is nothing more than an etiquette guide and doesn't add or detract from any judge's ability to hold lawyers in contempt for any unreasonable behavior.

Others say having the civility order written into the book of local rules at least reminds attorneys that judges are looking over their shoulders. Local rules tell lawyers the procedures by which each court operates.

"I have that number memorized," defense lawyer Mike McCabe says of rule 406. "Many of my friends call it 'the Mike McCabe rule.' "

MCCabe said the rule was drafted as a result of an investigation into his conduct during a sidebar conference in 1993.

In the middle of a trial, McCabe had asked for the day off, saying it was the anniversary of the execution of his longtime client Robert Alton Harris, the first murderer put to death in California in 25 years.

Federal prosecutor Randy Jones objected. Jones said if McCabe was going to be a defense attorney, he should, perhaps, get used to losing clients.

MCCabe told the judge the comment was "offensive. The equivalent of my being called a (racial slur) if you really want to know."

Although McCabe quickly apologized, Jones, an African-American, remained deeply offended. He angrily retorted that it was inappropriate to ever use the epithet. But he promptly got himself in hot water when he added: "I don't use the word 'Jew.' "

After a transcript of the side bar comments was published, Jones was accused of equating the word "Jew" with the racial slur. The prosecutor said in a recent interview he was "just so angry" he lost his ability to communicate and the sentence came out wrong.

Today, McCabe and Jones say they have put the incident behind them and are cordial to one another.

MCCabe, a well-known champion of civil rights issues, says he is deeply apologetic and "completely rehabilitated."

But the two are split on whether the new civility code will prevent future incidents.

"It's not something you plan or premeditate," McCabe says. "In the heat of battle, emotions take over and before you know it you're ranting and raving."

Jones, however, thinks the code will serve as a deterrent to behavior that he says is often directed against prosecutors.

But James Milliken, presiding judge of the San Diego Superior Court, says the problem is systemwide.

The San Diego Superior Court adopted a civility code about five years ago, and Milliken says he insists that lawyers in his courtroom follow it. But he can't explain how he enforces the code and admits: "It's a constant battle. It's very difficult."

And not all offensive behavior occurs in the presence of a judge.

Many lawyers say they are terrorized outside the courtroom by the character they call the "hardball litigator."

This is a lawyer who will nitpick for hours over the wording of a document, then send a "confirming fax" that bears no resemblance to what was agreed upon -- the type of attorney whose correspondence contains snide and aggressive language and who generally believes if he pushes his weight around he'll win the case.

But in 20 years as a lawyer, Deputy District Attorney Josephine Kiernan says she has seldom come in contact with such

people. She thinks most lawyers are very reasonable.

"I haven't found people in this profession to be out of line," says Kiernan -- the prosecutor whom Feldman said struck him.

Kiernan admits to pushing -- not hitting -- Feldman, and says she's very sorry about it. She says it was under extreme provocation after he tried to interfere with her witness during a trial.

It happened at the downtown Superior Court long before civility codes were in vogue, and codes probably would not have affected the exchange, she says.

"It is true that emotions can be heightened in certain kinds of cases by certain kinds of personalities," Kiernan says. "Some lawyers have personalities that tend to border on the obnoxious."

She won't elaborate on who they are, but confides, "Sometimes I think I should have decked him," adding quickly, "I'm just kidding."

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Abstract (Document Summary)

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