

WHOSE LINE IS IT ANYWAY?

Sticks & Stones and All That Jazz: A Look at Prejudicial and Unprofessional Speech

References and Resources at a Glance

ORPC 3.1-3.5; 8.4(a)(4)

28 USCA Sec. 1927

FRCP 11

ORCP 17

“Attorney's Verbal Abuse of Another Attorney as Basis for Disciplinary Action,” 87 ALR 3d 351 (1978)

“Under Attack: Professionalism in the Practice of Law,” 15 No. 4 Prac. Litigator 51 (2004)

“Occupation Code 541110: Lawyers, Self-Regulation, and the Idea of a Profession,” 74 Fordham L.Rev. 1079 (2005)

Chambers v. Nasco, Inc., 501 US 32 (1991) (A court may act sua sponte under its inherent contempt power to issue sanctions under the rules, engage in attorney fee shifting and even dismiss a case when attorneys act in bad faith. The federal rules do not displace this power, but a judge must act within the boundaries established by Congress and must ensure due process.)

Nusbaum v. Berlin, ___ Va ___ (March 2007) (WL 624373) (Declining to follow *Chambers v. Nasco, Inc.* because Virginia's contempt provision is designed not to punish an attorney but to protect the public. The court did authorize criminal contempt).

Revson v. Cinque & Cinque, 70 F Supp 2d 415 (SDNY 1999) (Attorney engaged in variety of tactics including threatening to tarnish opposing attorney's reputation and subject him to legal equivalent of a proctology exam; making a sham offer to settle; publicly accusing the opposing party without any evidence; threatening to interfere with the other firm's clients; serving overly broad subpoenas; threatening to add RICO claim; contacting reporter to make good on threat to "tarnish" reputation; threatening criminal accusations; and repeatedly attacking opposing party in an offensive and demeaning fashion, saying the opposing party was; "a lawyer who ... has acted in a manner that shames all of us in the profession," "a disgrace to the legal profession," and an example of "why lawyers are sometimes referred to as snakes." The cumulation amounted to "unreasonably and vexatiously multiplying the proceedings" and was appropriate for sanctions under 28 USCA Sec. 1927).

Principe v. Assay Partners, 586 NYS 2d 182 (1992) (Attorney's rude and condescending references to a female colleague during a deposition as "little lady," and "little girl," and saying "tell that little mouse to pipe down," constituted unprofessional conduct. The language violated a then-existing disciplinary provision prohibiting gender discrimination in the practice of law which, under the rules in place, could be prima facie evidence of professional misconduct.)

Schlaifer Nance & Co. Inc., v. Estate of Andy Warhol, 194 F3d 323 (2d Cir 1999) (Recognizing

that language and conduct of attorneys must be viewed in the context of what is currently acceptable in the realm of public discourse.)