INCIVILITY AND UNPROFESSIONALISM ON APPEAL: IMPUGNING THE INTEGRITY OF JUDGES*

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In general, the ethical duties of appellate lawyers are no different from those of trial lawyers. Yet the specialized nature of appellate practice and procedure produces a relatively small number of recurring issues.[1] One of the more prominent of these is the prohibition against impugning the qualifications and integrity of judges. Disrespectful criticism of judges in briefs, motions, and public statements is a recurring problem. Having lost at trial, lawyers often find themselves unable to resist the temptation to attack the trial judge. Indeed, Eleventh Circuit Judge John Godbold has warned against appealing out of "the nerve ends of disappointment and defiance."[2] The case law addressing these situations arises from conflicting forces: the freedoms of the First Amendment and the ethical restrictions on what lawyers can say or write.

The Model Rules of Professional Conduct prohibit a lawyer from making "a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge,"[3] and state that "false

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*This article includes some material previously published in the *Florida Bar Journal*. *See* Steven Wisotsky, *Invective on Appeal: Impugning the Integrity of Judges*, 79 Fla. Bar J. 1 (May 2005). A treatment of this issue appears in section 15.1 of the author's treatise *Professional Judgment on Appeal* (Carolina Academic Press 2002) (Supp. 2005).

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1. *See generally* J. Michael Medina, *Ethical Concerns in Civil Appellate Advocacy*, 43 S.W.L.J. 677 (1989).

2. John Godbold, *Twenty Pages and Twenty Minutes Revisited*, 2 The Record (journal of the Fla. B. Sec. Appellate Prac. & Advocacy) 801 (March 1994).

3. ABA, *Annotated Model Rules of Professional Conduct* R. 8.2(a) (5th ed., ABA Ctr. for Prof. Responsibility 2003) [hereinafter *ABA Model Rules* or *ABA Model Rule*, as appropriate]. Some state rules are analogous. The Florida counterpart, for example, is substantially similar, but it adds quasi-judicial officers like mediators and arbitrators,

statements by a lawyer can unfairly undermine public confidence in the administration of justice."[4] With that in mind, this article surveys cases in which attorneys have been warned, charged, or disciplined under Model Rule 8.2(a) or its equivalent as a result of attacks on appellate judges in and out of court.

FACT OR OPINION?

At the outset, note that the false-statement language of the rule implies the existence of an objective set of standards for determining the truth or falsity of the statement at issue. Many invectives are not amenable to empirical (dis)proof. Suppose, for example, that appellate counsel were to criticize a bench as arrogant or ignorant.[5] Is that charge a triable fact or an expression of opinion? There is no bright-line distinction between them. In most cases, moreover, the classification does not matter. The insult is what counts. Thus, a lawyer may well be brought under disciplinary scrutiny for harsh or critical statements of opinion if they address a court's motives, qualifications, or alleged biases in deciding an appeal.

This blurring of the fact/opinion boundary was manifest in a case in which a prosecutor publicly criticized a criminal-law appellate decision in a TV interview. The attorney named the author of the opinion, and asserted that "he made up his mind before he wrote the decision, and just reached the conclusion that he wanted to reach."[6] The Missouri Bar filed a disbarment action against him. On review, the lawyer argued that his statements "reflect subjective opinion and not verifiable factual assertions" and could not therefore be "false."[7]

The majority opinion rejected this "artificial dichotomy" and concluded that the statement, in its full context, "at the very

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jurors, and members of the venire to the list of those whose integrity may not be impugned by counsel. Fla. R. Prof. Conduct 4-8.2(a) (LEXIS 2005).

4. ABA Model R. Prof. Conduct 8.2(a), cmt. Both the Rule and the comment are unchanged in the 2003 version of the Model Rules, which amends the 1983 version based on the work of the Kutak Commission.

5. One lawyer accused a court of both. *See Matter of Reed*, 716 N.E.2d 426, 427 (Ind. 1999) (public reprimand for stating, among other things, that trial judge's "arrogance is exceeded only by her ignorance").

6. *In re Westfall*, 808 S.W.2d 829, 832 (Mo. 1991) (en banc).

7. *Id.*

least implies that the judge's conduct exhibited dishonesty and lack of integrity and is sufficiently factual to be susceptible of being proved true or false."[8] Notably, a dissenting justice took the opposite view of counsel's statements, and concluded that there was no Rule 8.2 violation: "There is no assertion of objective fact regarding [the judge's] 'judicial integrity.' There is no implication 'that the judge's conduct exhibited dishonesty and lack of integrity.'"[9] In addition to parsing the lawyer's statement as referring to the judge's reasons rather than to his character, the dissenter argued that it was simply an assertion that the panel opinion was "result oriented. This assertion is frequently made about judicial opinions, and cannot be found to be a statement of fact."[10]

The question whether a statement is not opinion but fact, and hence either true or false, is distinct from the question of the lawyer's state of mind in saying it. The language of Rule 8.2(a) clearly requires proof of the lawyer's subjective state of mind, that is, whether he knew the statement to be false, or recklessly disregarded the possibility that it might be false. In this regard, Rule 8.2(a) is analogous to the law of defamation as it applies to public officials,[11] which requires the plaintiff to prove that the defendant's statement was uttered or published with "actual malice," a term of art for knowing a statement to be false or making it with reckless disregard for whether it is true or false.

THE REASONABLE ATTORNEY STANDARD

The majority rule is that the "actual malice" standard of public-official defamation does not apply to attorney discipline. Thus, in *The Florida Bar v. Ray*,[12] an attorney contended that he had "a subjectively reasonable basis in fact" for making accusations against an administrative law judge hearing

8. *Id.* at 833.

9. *Id.* at 841 (Blackmar, C.J., dissenting) (quoting assertions made in majority opinion).

10. *Id.* at 842. The dissent went further in allowing a wide latitude for attorneys to call judges names such as "wimps," "hanging judges," "tyrants," tools of the insurance companies, and so forth, concluding that "[c]haracterizations such as these are not the subject of discipline." *Id.*

11. *See N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 279 (1964).

12. 797 So. 2d 556, 558 (Fla. 2001).

immigration cases. But the court concluded that "a purely subjective *New York Times* standard is inappropriate in attorney disciplinary actions."[13] Instead, "the standard to be applied is whether the attorney had an objectively reasonable factual basis for making the statements."[14] The rationale for rejecting the defamation standard is that lawyers "are viewed by the public as having unique insights into the judicial system" and therefore the state's "compelling interest in preserving public confidence in the judiciary"[15] is paramount. Applying this objective standard, the *Ray* court concluded that the attorney had no reasonable basis in fact for questioning the judge's veracity, and upheld the imposition of a public reprimand.

Standing Committee on Discipline v. Yagman[16] is important for its constitutional analysis of Rule 8.2(a), and because it applies to both trial and appellate lawyers. The opinion, written by the irrepressible Alex Kozinski, describes Rule 8.2(a) as "overbroad"[17] and in need of a narrowing interpretation to avoid First Amendment invalidity. The opinion also notes that "the purely subjective standard applicable in defamation cases is not suited to attorney disciplinary proceedings," and that such cases are to be governed by an objective standard based upon a "reasonable attorney."[18] But unlike the Florida Supreme Court, and indeed unlike most courts, the Ninth Circuit in *Yagman* insisted on adhering to the distinction between false statements of fact and expressions of opinion. Thus,

> statements impugning the integrity of a judge may not be punished unless they are capable of being proved true or false; statements of opinion are protected by the First Amendment unless they "imply a false assertion of fact."[19]

Further, "the disciplinary body bears the burden of proving falsity."[20]

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13. *Id.*
14. *Id.* at 559.
15. *Id.*
16. 55 F.3d 1430 (9th Cir. 1995).
17. *Id.* at 1437.
18. *Id.* at 1437-38.
19. *Id.* at 1438 (citing *Milkovich v. Lorain J. Co.*, 497 U.S. 1, 19 (1990)).
20. *Id.*

The court's closely reasoned opinion allowed Yagman to escape discipline for his out-of-court accusation (made to a reporter) that a district judge was anti-Semitic; the court regarded that charge as containing both an assertion of fact, not proven to be false, and an expression of opinion.[21] The court also protected Yagman's survey-response letter to Prentice Hall calling the judge "the worst judge in the central district" and containing a "string of colorful adjectives," including "ignorant," "ill-tempered," "buffoon," "sub-standard human," "right-wing fanatic," and the like.[22] The court held that these barbs were "statements of rhetorical hyperbole, incapable of being proved true or false."[23] As such, they were protected by the First Amendment.

The court then considered an alternative theory of punishment based on interference with the administration of justice, noting that First Amendment protections might have to give way in the face of "a clear and present danger" to the administration of justice, a standard that the court characterized as "demanding."[24] But the court found a lack of immediacy or "direct and immediate impact on the fair trial rights of litigants" from Yagman's invective.[25] The court emphasized the fact that Yagman was not commenting upon a pending case, whereas the Supreme Court's decision in *Gentile v. State Bar of Nevada*[26] was concerned about the fair-trial impact of lawyers' comments to the press. Thus, the *Yagman* court interpreted *Gentile* to impose the clear-and-present danger test where no case was pending, but a lesser substantial-likelihood test where a case was pending. It is not clear which test should apply to a completed appeal, although the Florida Supreme Court applied the latter in *5-H Corp. v. Padovano*.[27]

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21. *Id.*

22. *Id.* at 1434 n. 4.

23. *Id.* at 1440.

24. *Id.* at 1442. This result is similar in spirit to the ruling that "vulgar and insulting words or other incivility, uttered, written, or committed outside the precincts of a court are not subject to professional discipline." *Justices of the App. Div. v. Erdmann*, 301 N.E.2d 426, 427 (N.Y. 1973).

25. *Yagman*, 55 F.3d at 1443.

26. 501 U.S. 1030 (1991).

27. 708 So. 2d 244 (Fla. 1997).

Yagman notwithstanding, other courts are less clinically analytical and less tolerant of tirades. Lawyers who bad-mouth judges, whether to reporters or in their court filings, are at risk of bar discipline. "Lawyers are officers of the court and, as such, may legitimately be subject to ethical precepts that keep them from engaging in what otherwise might be constitutionally protected speech."[28] A lawyer is not only an advocate for a client but also an officer of the court, and must therefore refrain from hostile utterances that might well pass constitutional muster under other circumstances. Accordingly, he or she must refrain from "undignified or discourteous conduct which is degrading to a tribunal."[29] As a result, derogatory remarks and the expression of unfavorable opinions are likely to get a lawyer in trouble, even though the Model Rules deleted the Model Code requirement that the lawyer be "temperate and dignified."[30] Cases from many states have put lawyers on notice.

WHAT NOT TO WRITE OR SAY

Motions for rehearing are one especially troublesome area of appellate practice for lawyers inclined to invective; apparently, the sting of an adverse panel opinion drives many lawyers to use harsh language. Thus, counsel for one appellant characterized the panel's decision as a "bad lawyer joke" in his motion for rehearing, and the court struck an entire section of the motion as offensive. It also admonished counsel that "such impertinent argument is both a disservice to his client and demeaning to the judiciary and the legal profession."[31]

In a similar case, the losing lawyer was more aggressive in his motion for rehearing, calling his opponent's arguments "ridiculous," "a joke" and "total b[—] s[—]." He also indicated

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28. *Gentile*, 501 U.S. 1030, 1081-82 (1991) (O'Connor, J., concurring); *accord In re Snyder*, 472 U.S. 634 (1985)); *In re* Sawyer, 360 U.S. 622, 646 (1959) (Stewart, J., concurring) ("A lawyer belongs to a profession with inherited standards of propriety and honor. . . . He who would follow that calling must conform to those standards").

29. *Greene v. Va. St. Bar Assn.*, 411 F. Supp. 512, 515 (E.D. Va. 1976) (citing Va. Code Prof. Resp. DR 7-106 (C)(6)).

30. *See* Model Code of Prof. Resp., EC 1-5 (ABA 1969). In 1983, The Model Rules of Professional Conduct replaced the Model Code of Professional Responsibility.

31. *B&L Appliances and Servs., Inc. v. McFerran*, 712 N.E.2d 1033, 1038 (Ind. App. 5th Dist. 1999).

that he wondered whether it was possible for a Miami lawyer to get "a fair shake up North" and raised innuendoes about possible court bias against one of his clients and in favor of opposing counsel. The appellate court referred a copy of the motion to the Florida Bar, which instituted disciplinary proceedings against the attorney, although the Bar ultimately dismissed its complaint for want of probable cause.[32] Still, the Florida Supreme Court thought that the district court had acted properly because the attorney's conduct

> showed at the very least a "substantial likelihood" that he had compromised the integrity of the legal profession, engaged in professional misconduct, or violated one or more of the Rules Regulating The Florida Bar.[33]

Like the Ninth Circuit in *Yagman,* the Florida Supreme Court saw Rule 4-3.5(c) "conduct intended to disrupt a tribunal" as bearing on the analysis.[34]

Another Florida case was based on offensive language contained in a petition for rehearing; the court did not impose sanctions or refer the attorney for Bar discipline, but expressed its displeasure: "It is not a part of an attorney's duties to his clients to use language in his Petition for Rehearing, or in any other papers filed in this court[,] that is actually insulting to the members of the panel which heard the case."[35]

In an Indiana appeal, the intemperate criticism came in a motion to transfer the case to the state Supreme Court. The appellant argued to the intermediate appellate panel that its opinion "erroneously and materially misstates the record," was "replete with misstatements of material facts," "misapplies controlling case law," and "does not even bother to discuss relevant cases that are directly on point."[36] That language alone

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32. *Padovano*, 708 So. 2d at 245-46, 248.

33. *Id.* at 247 (footnote omitted).

34. *See* Fla. R. Prof. Conduct 4-3.5(c) ("A lawyer should not engage in conduct intended to disrupt a tribunal."); ABA Model Rule 3.5(c) (same). The court also cited the Preamble to the Florida Rules: "A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers, and public officials." *Padovano*, 708 So. 2d at 246-47 (citing Fla. R. Prof. Conduct, Preamble: A Lawyer's Responsibilities). Identical language appears in the ABA Preamble.

35. *Vandernberghe v. Poole*, 163 So. 2d 51, 51 (Fla. App. Dist. 2 1964).

36. *In re Wilkins*, 777 N.E. 2d 714, 715 (Ind. 2002) [hereinafter *Wilkins I*], *modified*,

would not have gotten the attorney into trouble because, as the court noted, there was some factual basis for it. Rather, the "offending language" consisted of a footnote to the attorney's Supreme Court brief stating that the panel opinion was

> so factually and legally inaccurate that one is left to wonder whether the Court of Appeals was determined to find for Appellee Sports, Inc., and then said whatever was necessary to reach that conclusion (regardless of whether the facts or the law supported its decision).[37]

The court drew a line between "sound advocacy and defamation," noting that "[l]awyers are completely free to criticize the decisions of judges," but that "[a]s licensed professionals, they are not free to make recklessly false claims about a judge's integrity."[38] The court construed the relevant footnote as falling into the latter category because it

> ascribes bias and favoritism to the judges authoring and concurring in the majority opinion and it implies that these judges manufactured a false rationale in an attempt to justify their pre-conceived desired outcome. These aspersions transgress the wide latitude given appellate argument, and they clearly impugn the integrity of a judge in violation of Professional Conduct Rule 8.2(a).[39]

The panel had held that the First Amendment did not protect these "offending remarks" and imposed a thirty-day suspension from the practice of law. On petition for rehearing, the court mitigated the sanction to a public reprimand for three reasons. First, the offending lawyer had "timely contacted the offices of both the Chief Judge of the Indiana Court of Appeals and the Chief Justice of Indiana . . . offering to apologize in person."[40] Second, the lawyer had "an outstanding and exemplary record for honesty, integrity, and truthfulness among his peers in the Bar, and among members of the judiciary."[41] Third, the offending footnote had been written by an out-of-state

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782 N.E.2d 985 (Ind. 2003) (reducing sanction from thirty-day suspension to public reprimand) [hereinafter *Wilkins II*].

37. *Wilkins II*, 782 N.E. 2d at 986.

38. *Id.*

39. *Id.*

40. *Id.* at 987.

41. *Id.*

co-counsel and not by the respondent himself. Still, because he had signed the brief, the local lawyer was responsible for its contents.[42] It is also noteworthy that two justices thought that the lawyer's conduct was protected by the First Amendment, and was therefore not subject to any sanction at all.[43] One of them observed that the attorney's remarks were similar to criticisms that Supreme Court justices have not infrequently aimed at one another.[44]

Thus, although motions may be a particularly fertile ground for disrespectful language, appellate briefs also may give offense. For example, where appellate counsel had argued in his brief that the trial court had decided the case on "the basis of conjecture," the appellate court termed the language an unfounded accusation of judicial misconduct and admonished counsel not to make another accusation of that sort in the future.[45] Similarly, a government lawyer drew a rebuke for scribbling the word "wrong" beside several findings of the trial court's order and including that order in an appendix. The court did not impose sanctions, but deemed the conduct "indecorous and unprofessional."[46] And a Florida appellate court referred a lawyer to the state bar because he made "unsubstantiated charges of collusion" against the trial judge and argued in his appellate brief that the judge's ruling was "cockeyed and absurd" and demonstrated a "most startling absence of legal knowledge and irrational decision."[47] The court quoted from the Oath of Admission to the Bar requiring attorneys to "maintain the respect due to courts of justice and judicial officers" and to "abstain from all offensive personality."[48]

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42. *Id.*

43. *Id.* (Boehm, J., concurring in result); *see also Wilkins I*, 777 N.E.2d at 719 (Sullivan, J., dissenting) (noting that the protection of the First Amendment "extends at least as far as the statement made . . . here").

44. *Wilkins I*, 777 N.E.2d at 720 (Boehm, J., dissenting) (citing examples of harsh language used by Justice Scalia).

45. *Vacation Village, Inc. v. Hitachi Am. Ltd.*, 901 P.2d 706, 707 (Nev. 1995) (warning that such conduct "may be in violation of the rules of ethical behavior").

46. *Allen v. Seidman*, 881 F.2d 375, 381 (7th Cir. 1989) (publicly noting misconduct "in the hope it will not recur").

47. *Shortes v. Hill*, 860 So. 2d 1, 2-3 (Fla. App. Div. 5 2003).

48. *Id.* at 3.

Suspension was imposed in a case in which the plaintiff's attorney, upon losing his verdict in the appellate court, filed a federal civil rights action accusing the state appellate judges of having acted "illegally" in reversing the trial court's judgment.[49] The federal district court dismissed the lawsuit, and the attorney appealed to the Ninth Circuit seeking reversal. In his reply brief, he argued that the state appellate judges, acting under color of law, had become "parties to the theft" of his clients' property.[50] "Money is King, and some judges feel that they are there to see that it does not lose."[51] The state bar began disciplinary proceedings against the offending lawyer. He wrote a letter of apology to the panel. Through a complicated course of proceedings, including further insinuations about the integrity of the appellate judges contained in a petition for writ of certiorari that he filed in the United States Supreme Court, the attorney ended up with a brief suspension and a year's probation.[52] Notably, two justices dissented.[53]

In a comparable case in which the attorney was arguably more offensive although less persistent, her insults caused her to be referred to the state bar for investigation.[54] In that case, the attorney had also lost a verdict on appeal. She attacked the appellate court's reasoning as "specious" and accused the court of making "some rather outlandish representations which are not supported by the record, the transcript, or by any matter before the court."[55] Her petition for rehearing further attacked the court for "writing new law to assist the insurance companies of a sleazy nursing home that happen[ed] to be represented by an insurance defense firm" and wrote that "it must be embarrassing to take such a pro-rapist, pro-big-insurance-defense-firm

49. *Ramirez v. St. Bar*, 28 Cal. 3d 402, 404 (Cal. 1980).

50. *Id.*

51. *Id.* at 406 (footnote omitted).

52. *Id.* at 414.

53. Justice Newman's dissent characterized the attorney's actions as "forceful" advocacy, *id.* at 414, by a self-described "poor person's lawyer," *id.* at 419, who spoke "sincerely though inelegantly on behalf of his clients." *Id.* Chief Justice Bird's dissent deemed the discipline "rather dangerous," *id.* at 427, as well as inconsistent with the sharp exchanges in which appellate judges themselves sometimes engage. *Id.*

54. *In re Maloney*, 949 S.W. 2d 385, 388 (Tex. App. 4th Dist. 1997) (en banc) (per curiam).

55. *Id.* at 386.

position with so appallingly non-existent legal or logical basis."[56]

In another Texas case, the appellate court found the language of appellate counsel in briefs to be "insulting, disrespectful, and unprofessional."[57] The Court of Appeals concluded that the briefs "evidence[d] a violation of the Texas Disciplinary Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness, or fitness."[58] The Court of Appeals accordingly forwarded copies of those briefs to the Texas State Bar.

The attorney in this case was apparently provoked by the loss of his jury verdict for both compensatory and punitive damages, although on rehearing, the court reinstated the compensatory damages portion of the verdict. When the Supreme Court denied the motion for rehearing, it made a point of reinforcing the lower court's assessment of the conduct of the attorney: "A distinction must be drawn between respectful advocacy and judicial denigration."[59] The Court also pointed out that "Courts possess inherent power to discipline an attorney's behavior,"[60] and cited the disciplinary rules governing the conduct of a lawyer:

> A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.[61]

The Court concluded by ordering the attorneys to show cause why they should not be referred to the state bar for disciplinary investigation and subjected to other sanctions.

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56. *Id.*

57. *Merrell Dow Pharms., Inc. v. Havner*, 907 S.W. 2d 565, 566 (Tex. App. 13th Dist. 1994) (en banc) [hereinafter *Havner I*]; *see also Johnson v. Johnson*, 948 S.W. 2d 835, 840-41 (Tex. App. 4th Dist. 1997) (sanctioning counsel for disparaging remarks about the trial court and forwarding the appellate opinion to the Office of General Counsel because a substantial question had been raised about counsel's honesty, trustworthiness, or fitness as a lawyer).

58. *Havner I*, 907 S.W 2d at 566.

59. *Merrell Dow Pharms., Inc. v. Havner*, 953 S.W. 2d 706, 732 (Tex. 1997) (quoting *Maloney*, 949 S.W. 2d at 388).

60. *Id.*

61. *Id.* at 733 (quoting Tex. Disciplinary R. Prof. Conduct Preamble 4, *reprinted in* Tex. Gov. Code, tit. 2, subtit. G, app. A (Vernon Supp. 1997)).

Acts independent of writing appellate briefs or motions have also been sanctioned. An appellate court disbarred an attorney because he wrote an insulting letter to the lower court judge while the case was on appeal.[62] The attorney had sent a letter to a magistrate of the district court accusing him of both incompetence and religious bias in a case that was on appeal. The Court noted that sending the letter while the case was on appeal constituted an attempt to prejudice the administration of justice in the course of the litigation. In addition, the accusations were repeated on appeal even after the appellate court affirmed the decision of the district court. The attorney's lack of remorse appeared to be "a factor . . . in deciding the severity of the sanction imposed and in choosing between disbarment or some lesser form of discipline."[63]

CONCLUSION

Appellate advocacy should never be conducted *ad hominem*. For one thing, it is ineffective; it violates the principles of persuasion posited by classical rhetoricians: logos, pathos, and ethos.[64] Wild accusations of corruption, ethnic prejudice, or home-town favoritism violate all three: they are not reasonable, they are not likely to inspire sympathy in the reader, and they are not indicative of the good character or credibility of the accuser. Thus, the momentary gratification that may be realized by the intemperate attorney making—or the angry client directing—such accusations leads to self-defeat.

If the trial judge erred in ruling on a motion, on the admissibility of evidence, on the jury instructions, or on anything else, the appellate lawyer must do the professional thing: screen the claimed error for its reversibility potential and present it on its merits without resorting to a personal attack on the judge. Similarly, if the appellate bench decides the case wrongly, the appellate lawyer has to focus on the available tools of correction: (1) possible review in a higher court or (2)

62. *In re Evans*, 801 F.2d 703, 705 (4th Cir. 1986).

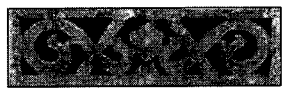
63. *Id.* at 707, n. 1.

64. *See generally e.g.* David S. Coale, *Classical Citation*, 3 J. App. Prac. & Process 733 (2001).

rehearing, clarification, or any other post-decision review procedure provided for under the relevant rules.

Trial judges, like appellate judges, can make mistakes and misstate the law without being collusive or corrupt. Attorneys should limit their pleadings and briefs to addressing their legal errors because it is unprofessional to make or imply charges of collusion or corruption, "no matter how clearly wrong the ruling."[65]

Appellate lawyers who resort to invective do their clients no good and put themselves at risk of disciplinary proceedings or other sanctions. Their reputations will also suffer among the very judges they need for relief in future cases. Incivility in appellate practice is not only bad advocacy, it is also bad for career development. Conversely, vigorous advocacy gains power from fire concentrated on the record and argument presented in accordance with the principles of good appellate practice.



65. *Shortes*, 860 So. 2d at 4 (Sharp, J., concurring).