

ON COMMUNICATION: WHAT NOT TO DO

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Many lawyers are skilled communicators. Quality legal representation demands the ability to effectively advocate, both orally and in writing, for our clients. Included in this skill is the ability to effectively advocate professionally. One of first things to surprise me in this position was the prevalent lack of professionalism I saw in communications between counsel or between counsel and unrepresented parties in the materials submitted with complaints.

Case in point: *In re Gallatin**

A recent discipline case highlights how not to communicate with others, particularly unrepresented parties, in a litigated matter. Daniel Gallatin was admitted to practice law in 2007 and practices in Duluth. Mr. Gallatin received a public reprimand from the Minnesota Supreme Court in March 2024 for filing a settlement document with a court containing the opposing parties' electronic signature without having confirmed consent or authorization to do so. The appropriate discipline in this case was a matter of some debate for a few reasons.

Typically, knowingly false statements to courts, such as this, would warrant a short suspension. The referee who heard the matter, however, recommended to the Court a public reprimand, and the Director agreed to waive further proceedings and stipulate to a public reprimand recommendation, in light of the deference the court typically gives to referee recommendations for discipline. We debated this decision because we felt that a suspension was warranted by the facts. But at the end of the day, the decision of the referee—an experienced senior judge—was entitled to significant weight, and it is time-consuming to challenge decisions through briefing and oral argument before the Court.

A majority of the Court agreed with the stipulation and imposed a public reprimand. Three justices dissented. Although the primary reason for dissent was the fact that the false representation to the court (by way of an unauthorized signature) warranted a suspension, Mr. Gallatin's "derisive and belittling treatment of unrepresented parties" was also a significant factor. The facts in this matter really speak for themselves.

Mr. Gallatin represented defendants in a conciliation court case where the plaintiffs were *pro se*. The *pro se* plaintiffs won the conciliation court matter in the amount of \$10,000. Mr. Gallatin attempted to resolve the matter by agreeing to waive any appeal to the district court in exchange for a \$3,000 payment. Mr. Gallatin set the tone for future communication with the following offer:

The [defendants] offer \$3,000 to resolve the dispute. The removal to district court is ready for filing. I hope you are not too excited about the conciliation court judgment. Your sympathetic story lacks legal merit. In district court where there are actual rules of evidence and law that apply, you will lose.

The *pro se* plaintiffs were not interested in the \$3,000 offer but countered with a \$9,000 resolution, which was accepted. Part of the settlement involved providing the settlement check the next day. No part of the settlement discussion involved the *pro se* plaintiffs drafting any part of the settlement documents. Mr. Gallatin, however, then insisted the *pro se* plaintiffs draft the settlement agreement and dismissal paperwork, even though it was his client that owed money and the opposing parties were unrepresented.

The *pro se* plaintiffs attempted to draft the requested paperwork through internet research, but also encountered difficulties sending a PDF to Mr. Gallatin. Due to the difficulties, the plaintiffs sent a picture of what they had drafted to Mr. Gallatin. Mr. Gallatin chose to reply as follows (all caps in original):

FIGURE OUT HOW TO CREAT [sic] A PDF. MOST HIGH SCHOOL SENIORS CAN DO THAT. CREATE A PDF. E-MAIL A PDF. PICTURES FROM YOUR PHONE ARE A JOKE. THERE IS NOT A SETTLEMENT AGREEMENT AND ORDER TO FILE. THERE'S A DISMISSAL OF THE ACTION. A SEPARATE DOCUMENT IS A SETTLEMENT AGREEMENT.

The *pro se* plaintiffs took issue with Mr. Gallatin's response—testifying that they felt belittled and talked down to—and did nothing further to assist Mr. Gallatin, as it was their position he could easily print out the relevant documents, sign them, and send the required settlement check. Mr. Gallatin also did nothing, even though he had agreed to send the settlement check that day.

Mr. Gallatin then stated a couple of weeks later, "If you cannot get papers written up properly I'll do it but its \$250 off the settlement. That will include me electronically filing the document." The plaintiffs declined as this was not part of the settlement. At this point, the plaintiffs decided to collect on the conciliation judgment because Mr. Gallatin had not followed through on the settlement and the time to appeal had passed. They filed an affidavit of identification of judgment debtor.

Mr. Gallatin responded, "It seems your incompetence and lack of integrity know no boundaries. A stipulation for dismissal with prejudice is being filed today with your signatures. I'll do the paperwork and send you a check." The *pro se* plaintiffs did not respond; nor did they agree to this course of action. They knew that Mr. Gallatin did not have a stipulation with their signatures and were no longer interested in working with Mr. Gallatin given his attitude and his broken promises.

Without the plaintiffs' approval, Mr. Gallatin filed a dismissal of the action using a document containing the electronic signatures of plaintiffs, even though he had still not sent the \$9,000 check. Mr. Gallatin did not copy the plaintiffs on what he filed, and they learned of the dismissal of the action when they were at the courthouse looking into next steps to collect on the judgment. Ultimately, the plaintiffs moved to set aside the dismissal based upon Mr. Gallatin's forging their signatures, and the court granted that motion. (As an aside, the plaintiffs also filed a police report regarding Mr. Gallatin's unauthorized use of their signature; Mr. Gallatin was charged with but ultimately acquitted of an aggravated forgery count.) In the end, Mr. Gallatin's clients paid the full conciliation court judgment plus interest, Mr. Gallatin was required to defend himself against criminal charges, and he was later publicly disciplined by the court.

All of this resulted, in Justice McKeig's words, from Mr. Gallatin's "petty and childish behavior," which "unfairly subjected his opponents to a frustrating legal ordeal and caused his own clients to pay the full judgment amount—despite the opportunity to pay less."

Mr. Gallatin acknowledged during the referee trial that sending an email in all caps looked like he was shouting at the opposing parties and agreed that he was "combative" and exhibited needless hostility. It is an understatement to say that Mr. Gallatin did neither himself nor his clients any favors by the actions that he took, causing significant damage to the profession along the way. And, but for his grave error in signing the opposing parties' names to a pleading without permission, it is likely that no adverse consequences would have stemmed from Mr. Gallatin's complete lack of professionalism. Lawyers unfortunately get away with similarly disrespectful behavior (excluding the dishonest conduct) every day. Mr. Gallatin chose to do his job in a manner that caused harm to the courts, the opposing party, his client, and the profession. No matter how much you might dislike the opposing party or believe in the merits of your client's position, nothing is gained by the lack of basic civility.

Conclusion

In 2001, the Minnesota Supreme Court adopted professionalism aspirations. They are printed in the Rules of Court. Those aspirations include: "A lawyer's conduct should be characterized at all times by personal courtesy and professional integrity in the fullest sense of those terms." The oath we take upon admission to the bar required us to affirm that we will conduct ourselves in an upright and courteous manner. We are charged with disagreeing without being disagreeable. Some days this is harder than others. Everyone makes mistakes and sometimes situations or people get the best of us. But as the aspirations state: "[C]ivility and courtesy are expected and are not a sign of weakness." Thank you to everyone who strives every day to reflect the best of the profession. ▲

* *In re Petition for Disciplinary Action against Daniel M. Gallatin*, 4 N.W.3d 91 (Minn. 2024), 2024 WL 1089966 (3/8/2024).