

Rambo Litigation Tactics: The Ethical and Human Impacts

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Professional Rules Applicable to Rambo Tactics

- **Model Rules of Professional Conduct 8.4(g)**
 - In 2016, the ABA amended Model Rule 8.4 to include a broad anti-discrimination and anti-harassment provision and three related comments.
 - “It is professional misconduct for a lawyer to . . . engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law. This paragraph does not limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16. This paragraph does not preclude legitimate advice or advocacy consistent with these Rules.”
 - https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_8_4_misconduct/
 - On July 15, 2020, the ABA Standing Committee on Ethics and Professional Responsibility issued Formal Opinion 493 to provide guidance on the purpose, scope, and application of Model Rule 8.4(g).
 - https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/ethics-opinions/aba-formal-opinion-493.pdf
 - Held Model Rule 8.4(g):
 - prohibits a lawyer from engaging in conduct related to the practice of law that the lawyer knows or reasonably should know is harassing or discriminatory.
 - covers conduct that occurs outside the representation of a client or beyond the confines of a courtroom.
 - does impose a higher standard on lawyers than that expected of the general public.
- **Illinois Rule of Professional Conduct 8.4(j) mirrors Model Rule 8.4(g) eff. as of 7/1/2024**
 - “It is professional misconduct for a lawyer to . . . engage in conduct in the practice of law that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, color, ancestry, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, gender expression,

marital status, military or veteran status, pregnancy, or socioeconomic status. This paragraph does not limit the ability of a lawyer to accept, decline, or, in accordance with Rule 1.16, withdraw from a representation. This paragraph does not preclude or limit the giving of advice, assistance, or advocacy consistent with these Rules.”

- **Change #1** - Standard to prove misconduct is now what a lawyer “knows” or “reasonably should know” is harassment or discrimination.
- **Change #2** - Comment [3A] to IRPC 8.4(j) defines harassment and discrimination:
 - “Discrimination means harmful verbal or physical conduct directed at another person or group that manifests bias or prejudice on the basis of any characteristics identified in paragraph (j).”
 - “Harassment includes conduct directed at another person or group that is invasive, pressuring, or intimidating in relation to any characteristic identified in paragraph (j). It includes sexual harassment and derogatory or demeaning verbal or physical conduct. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other unwelcome verbal or physical conduct of a sexual nature.”
- **Change #3** - There is no longer a requirement of a final and enforceable finding by a court or agency before charges of professional misconduct can be brought.
- Illinois Supreme Court also amended Comment 2 of IRPC 5.1 to ensure partners, managers, and supervisory attorneys take the revised 8.4(j) into account:
 - “Paragraph (a) requires lawyers with managerial authority within a firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that all lawyers in the firm will conform to the Rules of Professional Conduct. Such policies and procedures include those designed to detect and resolve conflicts of interest, promote a firm environment free of the harassment and discrimination prohibited by Rule 8.4(j), identify dates by which actions must be taken in pending matters, account for client funds and property and ensure that inexperienced lawyers are properly supervised.”
 - <https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/8e4aa53f-0a63-4923-a924-617e276a9e18/RULE%205.1.pdf>

Professionalism, Integrity, Professionalism and Civility-- Illinois Study

- The Illinois Supreme Court established the Commission on Professionalism under Supreme Court Rule 799 to promote integrity, professionalism, and civility among the lawyers and judges of Illinois, to foster a commitment to the elimination of bias and divisiveness within the legal and judicial systems, and to ensure those systems provide equitable, effective, and efficient resolution of problems for the people of Illinois.
- October 2024 – Illinois Supreme Court Commission on Professionalism released a report on “Bullying in the Legal Profession: A Study of Illinois Lawyers’ Experiences and Recommendations for Change”
 - Defined bullying as inappropriate behavior intended to intimidate, humiliate, or control the actions of another person, including verbal, nonverbal, or physical acts
 - Believed to be one of the first wide-scale research projects conducted in the U.S.
 - Focused on a one-year period during 2022 and 2023, as opposed to an attorney’s entire career
 - 6,010 Illinois lawyers participated in the survey and 48 Illinois lawyers participated in the focus groups
 - <https://www.2civility.org/bullying-in-the-legal-profession/>

Study: Key Finding #1: Prevalence

- The data showed that, while bullying impacts lawyers from all backgrounds, it disproportionately affects female attorneys, attorneys with disabilities, attorneys of color, younger attorneys, and LGBTQ+ attorneys.
- **Gender**
 - 38% of female lawyers were bullied at work in the past year, compared to 15% of male lawyers
- **Disability**
 - 38% of lawyers with an impairment that substantially limits a major life activity were bullied in the past year, compared to 23% of lawyers without that level of disability
- **Race and ethnicity**
 - In the past year:
 - 36% of Middle Eastern/North African lawyers were bullied

- 35% of Black/African American lawyers were bullied
 - 34% of Hispanic lawyers were bullied
 - 32% of multiracial lawyers were bullied
 - 28% of Asian American lawyers were bullied
 - 23% of white lawyers were bullied
- **Age**
 - 39% of lawyers aged 25 to 35 were bullied in the past year; lawyers in this age group were more likely than others to report that they had been bullied
 - The likelihood of being bullied decreases for each increasingly older group of lawyers
 - 12% of lawyers aged 66 to 75 were bullied in the past year
 - **Sexual orientation**
 - 29% of gay or lesbian lawyers were bullied in the past year as compared to 25% of heterosexual lawyers
 - 29% of lawyers who are gay, lesbian, or bisexual were the target of verbal bullying related to their sexual orientation, while 3% of heterosexual lawyers were verbally bullied related to their sexual orientation

Study: Key Finding #2: Behavior

- **The seven most reported types of bullying behavior were:**
 1. Verbal intimidation, such as insults, name-calling, or shouting
 2. Harsh, belittling, or excessive criticism of work
 3. Demeaning nonverbal behaviors
 4. Imposing unrealistic work demands
 5. Behind-the-back malicious rumors
 6. Improperly taking credit for work
 7. Not receiving important work information

- **Lawyers also reported being subjected to cyberbullying, physical intimidation (throwing objects, invading space, and stalking), and physical contact (inappropriate touching, pushing, or shoving).**

Study: Key Finding #3: Bullies

- Lawyers reported being bullied at work by lawyers within their organizations, especially by those who hold powerful positions, as well as by lawyers outside their organizations (e.g., opposing counsel) and judges.
 - 33% of lawyers identified the bully as a lawyer external to their organization
 - 31% of lawyers identified the bully as a lawyer within their organization who was in a more senior or high-level position
 - 14% of lawyers said they were most recently bullied by a judge

Study: Key Finding #4: Harm

- Lawyers suffered negative professional, emotional, and physical effects from being bullied.
 - 54% of those bullied experienced a negative change in emotional well-being (such as anxiety, loss of self-confidence, and other negative feelings and reactions)
 - 39% of those bullied felt less productive at work
 - 20% of those bullied experienced a decline in physical health
 - 18% of lawyers said they had left a job practicing law because of bullying
 - Extrapolating that percentage to the total number of Illinois-based lawyers means that there are nearly 10,000 lawyers currently practicing in Illinois who left at least one job due to bullying.
- Workplaces without appropriate anti-bullying standards, policies, and procedures are more likely to lose female lawyers, LGBTQ+ lawyers, lawyers of color, and lawyers with a disability due to bullying.

Study: Key Finding #5: Response

- Only 20% of lawyers who were bullied in their workplace reported it to a supervisor, upper-level attorney, or human resources manager.
- Common reasons for not reporting bullying behavior include not wanting to be perceived as weak or a “complainer” (34%), fear of the bully’s status (27%), the belief that the

employer would not do anything (27%), and concerns regarding loss of work or job (16%).

- 52% of those who did report the bullying to their employer rated their employer's response as either "not sufficient" or "totally unsatisfactory."
 - Only 22% of lawyers said that their employer committed to taking appropriate action against the bully
 - Only 18% of lawyers said that their employer committed to promptly investigating the complaint

Study: Core Recommendations

- Legal workplaces should develop, implement, and enforce anti-bullying policies.
- Legal workplaces should conduct training specific to their organization's anti-bullying policies and procedures to equip lawyers with tools to respond, whether they are being targeted by bullying or witnessing it.
- Courts should enforce anti-bullying standards in courtrooms and litigation activities.
- Bar associations should use their resources and reach to advance programs that educate members on the prevalence and impact of bullying in the legal profession.
- Lawyers being bullied should respond in the way they feel best safeguards their rights, well-being, and career.

Real Life: Risk of Litigation Sanctions

- The litigation at issue involved a dispute over music publishing and production agreements between plaintiff Jacob Hindlin, a music writer and producer, and defendants Prescription Songs LLC and Kasz Money, Inc., a music publishing company and a music production company, respectively. See *Hindlin v. Prescription Songs LLC*, New York Supreme Court, New York County; Cal. No. 2022L-01547; Ind. No. 651974/2018.
 - <https://civility.wpenginepowered.com/wp-content/uploads/2023/06/FIN-2023-Panel-Participant-Guide.pdf>
- Defendant Kasz Money filed counterclaims, including claims against Nonstop Management, LLC, which served as plaintiff Jacob Hindlin’s manager. Notably, the plaintiff’s wife Jaime Hindlin was the CEO of Nonstop Management.
- The defendants sought to depose Mrs. Hindlin, and Justice Andrea Masley ordered that her deposition be taken over two days. Following day one of Mrs. Hindlin’s deposition, however, the defendants sought sanctions against the lawyers representing Mr. and Mrs. Hindlin. They alleged that the Hindlins’ lawyers:
 - “(i) relentlessly obstructed the deposition by making personal attacks on Defendants’ counsel and our law firm with disparaging and insulting diatribe and threats of retribution in violation of established rules of civility and the rules of professional conduct, (ii) amplified this orchestrated obstruction repeatedly with pages and pages of argumentative speaking objections, often filled with invective, and (iii) repeatedly instructed the witness not to answer appropriate questions.” (Defendants’ Memorandum of Law, NYSEF Doc. No. 960, p. 1.)
- The defendants also alleged that the Hindlins’ lawyers “repeatedly engaged in abusive, unprofessional, insulting, and bullying behavior, stating to opposing counsel, among other things:
 - ‘You’re pretty terrible about asking questions...’
 - ‘I’m going to object on the grounds of it being obnoxious.’
 - ‘Somebody ought to teach you about conducting depositions.’
 - ‘[S]omebody ought to run a CLE program for your firm.’
 - ‘I suggest that maybe you and your colleagues attend a CLE about what depositions are really about.’
 - ‘[W]e have a combined approximately ... 100 years of litigating experience, and I join in his — in his statement. And, by the way, I know [other] lawyers who have the same opinion of you gentlemen.’
 - ‘You’re going to get your comeuppance for this, I can guarantee it.’

- ‘If you don’t show up [to a post-deposition conference], you will suffer the consequences. It is not a threat. It is a promise.’”
- (Id., pp. 1-2) (Internal emphasis and citations omitted.)
- Additionally, the defendants asserted that “counsel repeatedly swore, and used inappropriate and aggressive language throughout the deposition” and suggested that if the defendants’ counsel continued asking questions about a certain topic, then “God help you, because it will be up to a higher [power] than me or the Court[,] and you have to look at yourselves in the mirror in the morning.” (Id., p. 10.)
- Judge Masley 7/30/2022 Order:
 - “This is not the first time [Attorney] Goodman has exhibited this type of unprofessional, bullying behavior in this action, though it was only brought to this court’s attention with this motion. ... [Goodman: ‘You are not very good at asking questions, but you are very good at interrupting others.’], ... [Goodman: ‘You are really obnoxious’]; ... [Goodman: ‘wipe that silly smile off your face’] ... [Goodman: ‘You have no knowledge of the law at all. You’re a joke you’re nonsense.’]; ... [Special Master: ‘Ok, Mr. Montclare. You are on mute sir ... You’ve got to unmute yourself.’ Montclare: ‘I said it’s nice to see you again ...’ Goodman: ‘You could have stayed on mute Paul. That would have been fine’].
 - <https://iapps.courts.state.ny.us/fbem/DocumentDisplayServlet?documentId=hFrSda3m/XBLtZjQFkpAsw==&system=prod>