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Improper Behavior At Depositions Not Tolerated

A Case For Civility And Professionalism

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New York County Supreme Court Judge Andrea Masley in *Hindlin v Prescription Songs LLC, et. al. 651974/2018* reminded, along with sanctions, two attorneys of their duties of civility and professionalism during a deposition. Things had already gotten heated in the matter by the time Judge Masley found it necessary to appoint Justice Moskowitz (Ret.) of the NYCLA Special Master's program to "assist" in the supervision of a deposition. Upon reviewing the transcript of the deposition, Judge Masley found that the behavior of both counsel warranted sanctions. She ordered, along with monetary sanctions, a "back to school" at an NYSBA sponsored CLE on attorney civility. Judge Masley noted that in the 175-page transcript of a May 18, 2022 deposition, both counsel interjected, combined, 292 times with improper speaking objections, and counsel defending the witness and instructed them to refrain from answering 30 questions without any lawful basis.

Practicing lawyers and judges that have been around, even only for just a little while, have seen, and likely may be guilty themselves of similar transgressions, and perhaps Judge Masley might have been willing to exercise her judicial grace had there not been a history of such uncivil behavior in this particular case. Judge Masley noted that at an earlier deposition in March 2021, these same counsel collectively intervened with arguments, speeches, and aggressive colloquy 325 times in a 255-page transcript. Counsel at an even earlier deposition in December 2020 lobbed crude comments like "you're a joke," "you are really obnoxious," and "you're not very good at asking questions." The counsel in this matter had crossed the line.

Although, it ought not to have been necessary, in sanctioning both attorneys Judge Masley reminded them, and the rest of the Bar, that attorneys are to "conduct themselves with dignity and refrain from engaging in acts of rudeness and disrespect." Lawyers already have a bad enough rap in some circles and as Judge Masley explained:

"Improper deposition behavior not only thwarts the deposition but tarnishes the profession, an attorney who demonstrates a lack of civility, good manners, and common courtesy taints the image of the legal profession and, consequently, the legal system."

New York, like many states, has adopted Standards of Civility for attorneys. Even though Judge Masley did not directly cite to them, it is easy to infer that she likely had them in mind as she considered and wrote her opinion. And while violating the standards may not necessarily result in any disciplinary action or a sanction, because they do serve as guidelines for the judiciary and the legal profession as to what is acceptable and what is not, they are worth a review, if only just as refresher. Judge Masley's opinion should serve as a reminder and, perhaps a word of caution, to lawyers, judges, and members of the court that uncivil and obstructive behavior should not be and is not tolerated in depositions or any court proceedings.