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## PERSPECTIVE

## A lawyer's reputation can be hard to untarnish

By Kenneth K. So

Attorneys have much to be proud of. They have undergone a rigorous course of study and joined a profession esteemed for its intellectual discipline and its commitment to the ideals of justice. But unless attorneys assiduously guard their reputations, these achievements may have little value. Over my years on the bench, I observed the many ways in which an attorney's reputation could hurt both the attorney and his or her clients.

How we are viewed often starts well before we enter the practice of law. Recall your own time in law school. Certain students would raise their hands in class; other students would exchange furtive glances or roll their eyes. Such reactions may not have been malicious or ill-intentioned, but they reflected a shared perception among classmates. You remember who treated you fairly, was trustworthy, or shaded the truth. Once these perceptions are entrenched, it can be difficult - if not impossible - to shift them.

Although they may not realize it, attorneys have reputations that precede them. Whether they are reviewed on Yelp or disparaged on a ListServe, legal professionals must understand that - whether well-deserved or not - their reputations can come back to haunt them in the courtroom, a mediation or arbitration, or other important forums.

### Conduct

It begins with how attorneys comport themselves. Judicial officers notice when attorneys appear

overly self-focused or tone-deaf to colleagues or clients. Seemingly innocuous conduct, such as consistent lateness for court appearances, can also result in reputational damage. Whether it is a comment by a court clerk or a judge's frustrated expression, word will somehow get out that this attorney is unpunctual and unreliable. Even if he is an exceptional litigator, judges and other attorneys will remember this about him.

In recent years, a win-at-any-cost mentality has increasingly pervaded the legal profession. An attorney who interrupts others during trial or who bombards opposing counsel with expletive-laden emails invites not only judicial sanction but also judicial censure. Judges and fellow attorneys will see him as disrespectful and lacking in civility.

Attorneys who fail to observe basic rules of decorum not only undermine their standing in the legal community, they ultimately hurt the clients who rely on them for reasoned, professional counsel and discourse. Those clients post reviews and talk with their neighbors. A bad reputation could end up being very bad for business.

### Ethics

Although attorneys are theoretically versed in legal ethics, the real world can pose challenges that - if not well handled - may upend their reputations. A single request by a single client for their attorney to engage in ethically questionable tactics can cause irreparable harm to that lawyer's reputation.

Imagine, for example, a novice attorney whose client demands

that he "bury" the other side with a torrent of motions, including many that appear to be frivolous. The attorney, trained to work on behalf of his clients, understands that a wrong decision could mean losing that client. At the same time, he knows that the court's time is better spent on legitimate claims.

The supervising attorney, apprised of the client's request, should see that the directive to his junior colleague is likely intended for "no substantial purpose other than to delay or prolong the proceeding, or to cause needless expense," in violation of California Rule of Professional Conduct 3.2. If the junior attorney nevertheless follows the client's instructions, the senior attorney may also be held accountable under California Rule of Professional Conduct 5.1, which governs Responsibilities of Managerial and Supervisory Lawyers.

Had the senior attorney exercised appropriate oversight, the reasoning goes, the client's request would have been shut down and the client's expectations properly managed.

But the junior attorney's reputation will undoubtedly suffer, even if the senior attorney was also at fault. How hard it will now be for that younger attorney to appear before the judge - and other judges in the same courthouse - in the months and years ahead. Even if no rule or law was violated, the attorney now has a reputation as someone who lacks respect for judges' time and patience.

California Rule of Professional Conduct 3.3 bars lawyers from knowingly making false statements

of material fact or law to the court, failing to disclose proper legal authority for positions asserted, or offering evidence known to be false. When a client asks an attorney to engage in an ethically questionable litigation tactic, the attorney may have no choice but to withdraw from representing the client. According to Comment [5], the attorney may invoke remedial measures that "include explaining to the client the lawyer's obliga-

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tions under this rule and, where applicable, the reasons for the lawyer's decision to seek permission from the tribunal to withdraw, and remonstrating further with the client to take corrective action that would eliminate the need for the lawyer to withdraw."

Once an attorney's reputation has been damaged, restoring it may be near impossible. She may find herself advocating not just for her clients but for her own credibility and reputation every time she appears before any judge who has learned about the purported transgression.

### **Implications**

Judges are generally aware of their obligations in discussing matters outside of a courtroom (See CJEO Formal Opinion 2022-020). It would, however, be disingenuous to assume that judges never hear tales. If attorneys, clerks and courtroom walls can talk, judges know things. And they must seriously consider whether their knowledge about an attorney's conduct or ethics could color the way they rule on the case before them. If they could be prejudiced by such knowledge, they may need to recuse themselves.

Even when they believe themselves to be completely impartial, all judges are affected by factors outside their conscious knowledge. These could be childhood experiences or stories the judges have heard or read, but they could end up coloring their perception of cases in ways they don't realize.

Given all the things that are outside of attorneys' control, why would they ever risk adding to that mix factors that are within their control? Attorneys can comply with ethics rules, behave in a civilized fashion and set their alarms to arrive at court on time. If they fail

to properly manage such matters, they have nobody but themselves to blame for negative consequences.

Though hard won, a good reputation can be easily lost. Every lawyer should consider his or her reputation sacrosanct. No client - regardless of wealth, celebrity or mission - is worth compromising that reputation. Saying "no" might seem, in the short term, to have career-ending consequences, but an attorney's reputation for candor, fairness, and civility is far more important in the context of a lifelong career and practice than any individual case or client.