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## Reprimand Sought for Attorney Who Wrote Scare Letter to Ethics Grievant

Henry Gottlieb  
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When an attorney-client relationship turns nasty and litigation seems imminent, is it OK for the lawyer to send the kind of aggressive letter that attorneys sometimes write to scare off potential adversaries?

The answer is no, the Disciplinary Review Board suggests in recommending a reprimand for a lawyer who wrote such a letter, Harry Levin of Levin & Cyphers in Toms River, N.J.

Levin's actions violated Rules of Professional Conduct requiring courtesy to participants in the justice system, RPC 3.2, and against trying to intimidate the filer of an ethics grievance, RPC 8.4(c), the board said in an opinion made public Monday, In re Levin, DRB 07-132.

In a letter sent to personal injury client Linda DiBella on Aug. 29, 2005, after she filed a grievance that suggested he mishandled escrow funds, Levin warned he would sue her and would ask a judge to send her to a psychiatrist if she pursued an ethics grievance.

"As soon as the complaint is dismissed by the ethics committee, which it is sure to be, I will file suit against you and your husband," Levin wrote.

"It is obvious to me that there is something wrong with you," he continued. "I do not know if it's a function of some medical condition you have or some other emotional limitation, but I am not going to stand by while you try to blemish my reputation."

He concluded, "I am also exploring seeking court intervention to have you examined by a physician and psychiatrist. If you are suffering from some ailment that is affecting your thinking, I want that known by the ethics committee as well."

The dispute centered on whether Levin had properly handled a medical lien on a \$110,000 crash settlement he had obtained for DiBella and whether he owed her money he had held in escrow.

DiBella filed an ethics grievance when the dispute arose in 2004, withdrew it to pursue negotiations with Levin, and re-filed it when she didn't like his proposed resolution.

An investigator for the District IIIA Ethics Committee in Ocean County found the grievance over the escrowed money to be without merit. The panel dismissed a formal complaint prompted by the letter.

What's more, although the DRB reinstated the ethics case prompted by the letter, it found credibility problems with the client and the members of the client's family, saying they "claimed an ill-fitting fragility" in portraying their relationship with the lawyer.

Yet credibility and motivation didn't matter because the letter was unethical on its face, the DRB concluded, stating, "That respondent's letter was discourteous is unquestionable. Moreover, it contained threats of lawsuits and of court-ordered psychiatric examinations, threats that had the obvious purpose of frightening DiBella into withdrawing her grievance."

"The only inference to be drawn was that respondent's pledge to sue DiBella and her husband was intended to either frighten or bully her into abandoning her grievance," the DRB said.

Levin's lawyer, Frederick Dennehy of Wilentz, Goldman & Spitzer in Woodbridge declined to comment except to say he would ask the state Supreme Court to reverse the DRB decision.

The defense argued that Levin's letter was prompted by frustration over the client's refusal to recognize that the lawyering was proper. By Levin's reckoning, the filing of the grievance, its withdrawal and its refiling was evidence of an ongoing dispute with a tough-minded client that could end up in court.

As Levin put it in a certification, "While the letter certainly demonstrates extreme frustration it is not unethical. In fact, it is no different than letters write every minute of the day, advising the claimant of a vociferous defense to baseless charges."

Besides warning lawyers to keep their fingers on the edit button when venting their anger, the DRB opinion serves as a reminder that the lawyer-client relationship can be worse than a war between adversaries.

Take, for instance, what DiBella told the ethics committee.

"She recalled that on one occasion he became so upset with her that he had 'pulled out of his pocket a whole bunch of needles, and he goes, because of clients like you, that's why I have to take these,'" the DRB said. Levin, who takes insulin shots for diabetes denied the story.

During the dispute, Levin called in a policeman turned private investigator to dig up information on the DiBellas. They had "constantly bragged about getting over on other people and filing lawsuits and claims against others," Levin told the district ethics committee.

"He also wanted to use the same lawyer skills against the DiBellas that he had used so effectively to litigate their claims for them," the DRB said.

Levin said he halted the investigation after a week because the detective called on DiBella's son's fiancée, which went beyond the operative's instructions to make a records search only.

Levin's former associate, Laura Nunnink, now of November, Nunnink & Napoliello in Glen Rock, told the ethics committee that DiBella was one of the most difficult clients she had ever met and had claimed to be a "witch" who could read people's minds. DiBella later said she was joking.