

LOCAL GIANTS: AN INTERVIEW WITH FORMER ASSISTANT ATTORNEY GENERAL TONY ZARRILLO

By Daniel F. Thornton, Esq.

***Tony Zarrillo** has been a trial lawyer for almost 40 years—he has tried more than 150 civil and criminal cases before juries. He has acted as a trial advocate in diverse roles—as a prosecutor, criminal defense counsel, plaintiff’s counsel, and government defense counsel. Tony’s prior experience includes Deputy Director of the New Jersey Division of Criminal Justice, the first Executive Director of the New Jersey Office of Counter-Terrorism, and Assistant Attorney General in the New Jersey Attorney General’s Advocacy Institute where he ran litigation-training and trial-skills programs for government attorneys at all levels. Following his retirement from public service, Tony recently returned to private practice in Cherry Hill.*

***Dan Thornton** is the Co-chair of the Young Lawyer’s Committee and is an employment attorney at Post & Schell in Mount Laurel. He defends employers against claims of harassment, discrimination, and retaliation in state and federal court.*

Dan: What is your definition of “Professionalism?”

Tony: Several things. For one, professionalism means understanding that you have a relationship with your client that goes far beyond a mere business exchange. An attorney has to understand that clients come to you with their problems and their conflicts—you have to understand this relationship and be willing to commit to the relationship, irrespective of the dollars and cents involved.

Each client’s representation is a responsibility you take on, and sometimes this involves being in situations that aren’t particularly pleasant. We’ve all encountered clients who want us to do things that are contrary to their interests or contrary to how lawyers should conduct themselves. Thus, another aspect of professionalism is having a relationship with the client where they understand that—even though they might want you to do something—the law or other factors may cause you to decline the client’s wishes or to pursue an alternative course of action.

Another vital element of professionalism is civility, and this is something that has changed dramatically since I started practicing. This isn’t peculiar to the legal profession—anyone whose eyes are open can see that our world today is a far-less-civil place. As the competition among lawyers has increased over the years, I’ve seen that it’s become a much-less-collegial environment. As the old saying goes, one can disagree without being disagreeable. I wish more of today’s attorneys took that notion to heart: you can be an advocate—you can be a forceful, zealous advocate, as the RPCs require—but you can do so without reducing the matter to a personal battle between yourself and your adversary.

The judge I clerked for used to tell me: “The best lawyers remember that it’s not the lawyers who are on trial: it’s their clients.” So, the diminution of civility in our profession—in our society—is a

serious concern. To me, the sign of a true professional is someone who can remain civil in the midst of the stress and frustrations that come with litigation.

Dan: What are the traits of a true professional?

Tony: Attention to detail; understanding the law; if you don’t understand the law, researching it until you do; treating everyone you meet with civility; and maintaining your credibility with judges and adversaries.

Dan: Can you tell us about a case where you’ve had to put those principles into practice?

Tony: Many years ago, I represented a judge and his son who were involved in a very tragic accident. The judge faced a number of charges following the accident. We had a hearing in front of an assignment judge in a different county. The prosecutor presented the State’s case, which I believed did not meet the “beyond a reasonable doubt” standard. After the State rested, I moved to dismiss. The assignment judge determined—correctly—that at the close of the State’s case, all reasonable inferences must be drawn in favor of the State, and thus denied my motion.

At that point, we took a short break, and my client—the judge—told me that he was going to testify. I told him, “You are not going to testify.” He replied, “But I have to tell my side of the story.” After we went back and forth like this for several minutes, I very emphatically told the judge—using some language that I won’t repeat here—that he was not going to testify. The judge stared at me for a few seconds, eventually smiled, and said “you’re the lawyer, Tony.”

At that point, the assignment judge went back on the record, asked us if we were ready to proceed, and I stated that we rested our defense. The assignment judge then immediately granted my motion to dismiss, because at the close of the entire case, the presumption in the State’s favor goes away, and the judge found—rightly—that the case had not been proved beyond a reasonable doubt. So that was an instance where my judgment as an advocate proved correct, but where I had to convince my client in order to achieve the best possible result.

Dan: What does blustering behavior tell you about an attorney’s character?

Tony: That the person probably is not a very good lawyer. As I’ve always told my students, the lawyer you have to worry about most isn’t the blusterer, it isn’t the one who’s the loudest one in the room—it’s the lawyer who comes back at you with the quiet, well-thought-out, well-researched argument—that’s a truly formidable adversary—that’s the advocate you have to worry about.

Dan: You’ve told me many times that “litigation is preparation”—what does that mean?

Tony: You cannot be a true professional if you do not understand the importance of preparation. I’ve been a trial attorney my whole career. Trial attorneys work in an arena where everyone in the courtroom sees what you’re doing. If you’re not prepared, or if you’re less-prepared than your adversary, then you’re going to be beaten. Solid preparation includes knowledge of the facts, comprehensive attention to detail, and knowledge of the governing law. It also includes knowing what’s in your case file—what’s there, what’s not there, what should be there—so that you have the relevant material at your fingertips when you need it.

Dan: What are some client-communication best practices for young lawyers?

Tony: We all encounter clients who test our patience—that’s the nature of interpersonal relationships. Anyone can communicate with the easy-to-deal-with clients—it’s the difficult ones who present a challenge. But you have to keep each client reasonably apprised of what’s going on in their case. One technique to do this is to copy the client on everything—whether hardcopy or e-mail—so that they can see that you’re moving the ball forward in their matter.

Dan: How should a young lawyer deal with an uncivil adversary?

Tony: If you encounter an adversary who resorts to name-calling and throwing profanities at you, one thing you can do—though I wouldn’t necessarily recommend it—is to file an ethics complaint. There are some less-drastic measures, too. For example, if an attorney slammed the phone down during a conversation with me, I would cease communicating with him by phone—everything we did would be in writing—and there would be a significant diminution in my willingness to be understanding of that adversary.

That brings me to one final aspect of civility: when you can give an adversary some leeway, and it won’t hurt your client, you should do so. When an adversary asks you for an extension, give it—at least the first time or two. However, when you have a truly uncivil adversary, hold him or her to every deadline, and do everything by the book. I don’t mean to sound trite, but it really is a Golden Rule situation—either you have mutual civility or you don’t.

About This Series

This series is a joint project between the Professionalism and Young Lawyers’ Committees. Each monthly series, a member of the Young Lawyers Committee will choose a local practitioner to interview, inquiring about legal experience, war stories, perspectives on civility and professionalism, and asking for advice for newer attorneys. It is our sincere hope the publication of these articles advances both younger lawyers’ understanding as well as strengthens civility and professionalism within our county.

