Inns of Court False Scenario on Professionalism [Coutroulis]

Short Clicker / Statement

Hello – My name is Nigel Skiffington Jones III, and I am an intellectual property lawyer.

I had no choice but to accept settlement terms I never approved when sleazy opposing counsel lied to the court about whether his handwritten changes were already on a written settlement agreement when I signed it.

Full Scenario (forming the basis for answers to questions)

Quick service restaurant context. Litigation over use of plaintiff company's registered trademark for "largemouth" hamburgers. Defendant company uses the exact same word, descriptive design, and logo for its hamburgers.

Owner of the mark offers a fair settlement provided the infringer agrees to an injunction to cease and desist using the mark in all forms.

Plaintiff's counsel brings an executed written settlement agreement to a deposition and presents it to defendant's counsel, who takes it under advisement.

A few days later, defendant's counsel meets with plaintiff's counsel and presents the settlement agreement signed by his client, but with significant changes to some of its provisions shown by initialed interlineations. These changes significantly dilute the injunction.

Plaintiff's counsel looks at the changes and advises they are unacceptable. He of course does not initial them.

A couple of days later, Defendant's counsel moves the court for a show cause order attaching the interlineated Settlement Agreement as changed, arguing it is binding on plaintiff since it bears the signatures of both plaintiff's counsel and defendant's counsel.

A hearing is set at which defendant's counsel argues that at the time plaintiff's counsel signed the Settlement Agreement, the changes had already been handwritten and interlineated on the document – and the fact that they were initialed by defendant's counsel and not also by plaintiff's counsel doesn't matter since plaintiff's counsel signed the Agreement with knowledge of the changes. (He implies the failure of plaintiff's counsel to initial the changes was just an oversight.)

In point of fact, this is all <u>blatantly false.</u> Plaintiff's counsel had presented the Settlement Agreement signed, and defendant's counsel <u>later</u> made the changes to it and signed it. Plaintiff's counsel never agreed to the changes nor were they on the document when plaintiff's counsel signed it.

There is no written correspondence proving the chronology of events since all of this took place in face-to-face meetings. That is why defendant's counsel believes he can get away with this false story to the court.

The court takes the matter under advisement, indicating that nothing else, including declarations, is to be submitted.

Coming out of the courtroom, defendant's counsel offers to forego some of the changes indicated by the interlineations if plaintiff's counsel will agree to the others. The court is unfamiliar with plaintiff's counsel who is from out of state, and this is a concern to plaintiff's counsel. Fearing that the court may find the Settlement Agreement binding with all the changes – especially since this particular judge has a reputation for enforcing settlements and disposing of cases quickly -- plaintiff's counsel feels he has no practical choice but to agree to the compromise. Though disgusted, he does so.

Rules of Professional Conduct Implicated

1. 4-3.1 (meritorious claims and contentions)
2. 4-3.3 (candor toward tribunal)
3. 4-3.4 (fairness to opposing party and counsel)
4. 4-3.5 (a) (frankness with the court)
5. 4-4.1 (truthfulness in statements)