THE CANTOR'S COMPLAINT

ANNALS OF JUSTICE

By Steve LaCheen

When I first started in practice in the late 1950s ("back in the day," as my children say), it was still possible, although difficult, to embark on a legal career as a sole practitioner without any more specialized knowledge than had been obtained in three years at law school, even before the advent of the now indispensable practice courses.

Like everything else, the law was simpler then. The official court reporters published two or three volumes a year; the Rules of Procedure governing civil and criminal matters were fewer and more easily understood, although, like now, not always followed by the forensic sharks who referred to themselves with the often oxymoronic label, "civil litigators." Back then, it was still possible to carry on as a general practitioner; someone who could presume to undertake just about anything and anyone that came through the door, with the obvious exception of patent matters.

I distinctly remember the first time I received a telephone call asking whether I handled what we now call Workers' Compensation cases, but were then referenced as Workmen's Compensation cases. Between the time I received the call, and assured the caller that I did indeed handle such cases, I read the statute and accompanying cases, went to the Workmen's Compensation office, to be sure I knew where it was, what documents had to be filed, what procedures to expect, etc., so that by the time of the client's appointment several days later, I was indeed an attorney who knew the fundamentals of Workmen's Compensation practice.

I introduced myself to other facets of the law in much the same fashion, handling in fairly short order after admission to practice matters about which I had learned nothing in law school and knew virtually nothing until encountered on a need-to-know basis.

The mainstay of my practice was, as might be expected, personal injury claims, and claims arising out of commercial disagreements. Among the latter was a matter that I had inherited when my preceptor died between the time I passed the bar exam in January 1958 and was admitted to practice in June of that year.

The matter involved a lawsuit instituted by Mr. Cantor against Mr. Kossack. The gist of Mr. Cantor's claim was that Mr. Kossack, a business broker, owed him $750 in commissions on several sales. What appeared to be a clear cut and easily provable claim was, however, made somewhat problematic by the fact that Mr. Kossack was a licensed business broker and Mr. Cantor was not. He was, according to his version, working under a verbal agreement with Mr. Kossack that he would receive a $250 commission on any successful sale he brought to Mr. Kossack.

Mr. Cantor did not depend for his livelihood upon commissions he expected to earn from Mr. Kossack; he did have a day job. Ironically, Mr. Cantor was a cantor. When I asked him if his name had influenced his choice of an eponymous profession, he asked, "So, what else should I have become, a comedian, like Eddie? I couldn't tell jokes, but I can chant. And, as a cantor, would I lie about a case?" I assured him I believed he would not, although I couldn't begin to fathom the logic of his explanation. The thought did, however, cross my mind how the case might be perceived differently, if the parties' roles had been reversed and the caption read, "Kossack v. Cantor."

Unfortunately, Mr. Cantor had no records to support his claim. He remembered the three businesses on which he was supposed to receive a commission, so we felt sure we could prove the sales. What we didn't have was proof of payments that Mr. Cantor claimed had previously been made to him by Mr. Kossack, which would support our contention that there had in fact been an agreement between them, as Mr. Cantor alleged.

I served a subpoena upon Mr. Kossack, requiring production of all checks he had issued to Mr. Cantor during the past several years, hoping to establish the pattern of payment that would corroborate Mr. Cantor's testimony that he had been a commissioned employee. Imagine my surprise, therefore, when I received photocopies of three checks in response to the subpoena, each of which bore the legend "loan." I saw that word, loan, as a torpedo that had just sunk my client's boat.

But my client insisted he had never borrowed money from Mr. Kossack; and we proceeded to arbitration in the face of what appeared to be damning evidence.

At the arbitration hearing, Mr. Kossack's lawyer attempted to introduce photocopies of the checks into evidence. I objected that photocopies were not the best evidence; whereupon, he reluctantly pulled from his briefcase the three original checks. Examining the originals, I noticed something very strange. The word "loan" on each check looked to me as though it had been written in a different ink than the other portions of the check. Stranger yet, the uppermost portion of each check had been cleanly sliced off along the printed margin. It just didn't look right.

Over the defense's strenuous objection, I obtained an adjournment of the hearing, saying I wanted to bring in a rebuttal witness, who I believed would corroborate my client's version of the events. The following day, I served a subpoena upon Mr. Kossack's bank and obtained copies of the checks made when they had been presented for payment and credited against his account.

The earlier photocopies showed the checks in their original complete form; and on each one there had been a notation that the check represented a commission on the sale of a particular business. I was as livid about the deception as I was excited about the discovery, and I didn't know quite how to handle the matter; that is, whether I should save it as surprise evidence at the continued hearing or notify opposing counsel in advance. I chose the latter course; and opposing counsel vociferously assured me that he had known nothing of the deception, and would make sure his client paid the full amount claimed, plus costs, prior to the date scheduled for the adjourned hearing.

"Look," he said, "you have to understand. Him trying to cheat me out of my money wasn't personal, it was just business."

I was thrilled to know that I would be winning my first case; but I was put off somewhat by the casual manner in which opposing counsel handled the news that his client had been guilty of an attempted fraud upon the court as well as upon my client. Similarly, when I advised my client that he would be receiving payment in full, less my contingent fee of course, he was elated, but insufficiently concerned about the blatant criminal offense committed by his former employer that he had no interest in pressing charges.

"Look," he said, "you have to understand. Him trying to cheat me out of my money wasn't personal, it was just business; the same for my suing him; it wasn't personal, it was just business. Having him arrested, that would be personal, not business; and I would be looked upon as a pariah. After all, we are members of the same congregation."

So ended my first trial, and my introduction to the world of "civil" litigation. ■

Steve LaCheen (slacheen@slacheen.cnc.net), a sole practitioner, is a member of the Editorial Board of The Philadelphia Lawyer.