

Some friendly advice

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Next to losing an appeal, I can think of few things that are more painfully disappointing in the world of appellate litigation than spending hours researching and writing a brief in a case that, after all of the hard work is done and the final product has been filed, is dismissed on the basis that the case has become moot. Just thinking of all that wasted scholarship and legal prose is enough to keep my psychotherapist busy for weeks.

Even when the case has been argued and it's pretty clear from the way some of the judges acted at oral argument that they're doing you a big favor by dismissing the case on mootness grounds, I'd almost rather lose than not get any decision at all. But that's not the worst kind of moot case. At least in that situation you know that the brief has been read. The worst is when the case doesn't even make it as far as the argument but is dismissed shortly after the briefs are filed.

This is the fate that befell a case that I recently worked on, but, unlike prior cases that met the same unfortunate demise after my brief was filed, this time I have found a way to turn lemons into lemonade to make sure that the legal community will not again be deprived of the fruit of my labor. This time I get to write all about it in this column.

Before turning the page to read something more interesting, please allow me to offer some friendly advice. Don't. Not because I desperately want somebody, anybody, to read about what I wrote in a brief that never made its way out of the clerk's office. That's not why you should keep reading. It's because what you don't know can hurt you. Maybe even kill you.

Okay, so I got a little carried away with that last part, but moot cases tend to make me a little hysterical.

First Amendment concerns

I alluded to the subject of today's article in last month's column when I briefly discussed my involvement in an attorney grievance case that presented the question whether statements that a lawyer made in a motion to recuse violated Rule 8.2(a) of the Maryland Rules of Professional Conduct. This rule provides that "[a] lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office."

Some disgruntled clients may think that any reason is a good idea to sanction a lawyer — or to take even more extreme action, as suggested by that famous Shakespeare line — but disciplinary action based on statements an attorney makes about a judge triggers First Amendment concerns, regardless of whether the statements are true or false.

The Court of Appeals was sufficiently interested in Rule 8.2(a)'s constitutionality that it not only asked the parties in that case, but also invited the Maryland State Bar Association, to address several questions about the rule, including whether it is

