

Dale Carnegie, Esq.

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What is the object of filing something with a court? Why do we do it?

Silly question, right?

The object is to persuade the recipient to do something for you or to give you what you ask. So most of us exercise care to put our requests in a form that improves (or at least does not lower) the chances that we will get what we want.

"Duh," you say.

But if the answer seems obvious, we lawyers just as obviously forget it. How else can we explain lawyers who file bile and personal attacks on judges presiding over their cases.

After the jump, an example of spleen venting being held to the Dale Carnegie standard.

I was reading the [ABA Journal](#) today and came across [this account](#) of a bankruptcy lawyer sanctioned for an intemperate brief followed by a ham-handed attempt to make up with an ex parte gift of wine to the offended judge.

The [Eleventh Circuit opinion was](#) concerned with whether sanctions could be upheld.

(They were.)

But what interests me is why any lawyer would file something like that in the first place.

The intemperate brief included language like this:

In your fourth published example of "Ready-Fire-Aim" against this attorney, it is obvious that you have not reviewed the record in this case which does not support the purported findings of fact. It is further quite obvious that you do not believe that the same respect mandated to be shown to you should also be shown to me. Your conclusion that [my client's] attempt to exempt his commissions as the head of a household is not supported by law is belied by the language of the actual statute. Your conduct in this case [h]as been without citation to any authority for the propositions that: your jurisdiction is never ending and without geographic

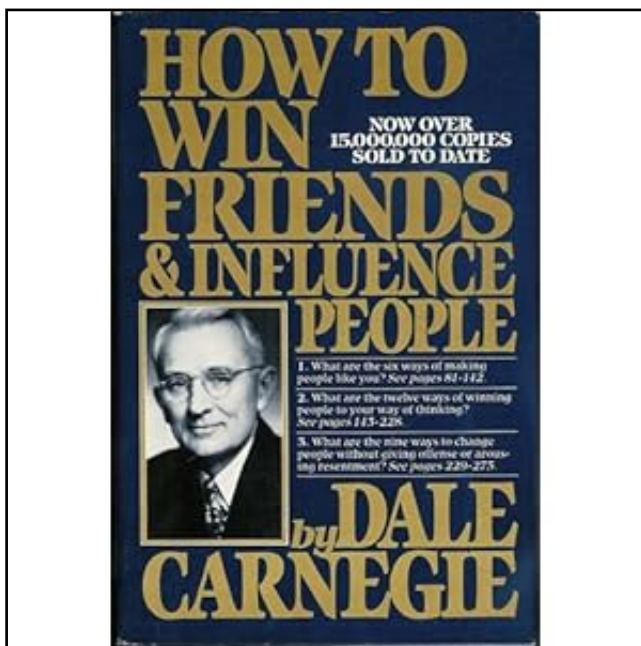
bounds; your unconditional releases are meaningless; and pronouncements of the United States Supreme Court are mere suggestions.

* * *

It is sad when a man of your intellectual ability cannot get it right when your own record does not support your half-baked findings.

"Wow, I changed my mind and decided to rule in your favor now that you've made this case a personal vendetta and really insulted me," said no judge ever.

Whether those words are sanctionable or not is beside the point. Words like that NEVER work. Insulted people don't come 'round to your way of thinking. And arguments should never be personal. Instead. just like the Godfather, it's got to be "strictly business."



Rather than holding a brief up to the sanctions rules, hold it up to a standard fit for the purpose of a brief--influencing people. Ask yourself, "what would Dale Carnegie do?" (WWDCD???)

[According to Wikipedia](#) (which means it has to be true), DC might offer this advice:

- Show respect for the court.
- If you're wrong, admit it quickly and emphatically.
- Let the the court do a great deal of the talking.
- Try honestly to see things from the court's point of view.
- Be sympathetic with the court's ideas and desires.

The very essence of being of an appellate lawyer is telling a court that it will have erred if it does not accept your argument. I do it every day. But encouraging a court not to commit error is a far cry from personally insulting it for not agreeing with you. The former tactic might just work. The latter never will. So why do it?

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