

The Devil Came Down

By Brad Elbein

I was not completely surprised when the Devil showed up in my office on a hot Georgia afternoon. After all, clients from the corporate group got lost and wandered into my office all the time. And since it was August, the weather was certainly appropriate for him to make an appearance. To top it off, at that moment I was on the phone, engaged in a hell of an argument with a client who didn't want to pay her bill.

There was no puff of smoke or clap of thunder or anything supernatural. Suddenly, there he was. Just as suddenly, I knew who he was.

I hung up in the middle of a sentence and sat down heavily. "Oh my God," I said.

"Not quite," he said with a chuckle, reaching out across the desk to offer his hand.

Without thinking I took it. The hand was gentle and soft, maybe a little warmer than you'd normally expect a hand to be. I wondered if he had horns hidden under his carefully coiffed hair. Whether his tasseled loafers hid cloven hoofs.

Whether he had a tail hidden under the suit that fit him like snakeskin.

The Devil sat in one of my client chairs. "So," he began, "let's get down to business." His voice was as gentle and as warm as his hand and completely without accent. He sounded just like a news anchorman. His breath smelled sweetly of cinnamon spice as he continued. "You come highly recommended by my clients." His cologne was subtle: Aramis, perhaps; certainly not anything sulfurous.

"Wait a minute," I protested. I was damned if I would take this lying down. "I'm a God-fearing man! Twice a week I go—"

He waved my protest aside. "I know, I know, twice a week you go to church. Or is it the Mosque? Temple?" He touched his temple and waved his hand like a movie producer who can't remember a name. "I keep forgetting the little details. But details aside, I think we can do business, don't you? I mean, you know all about me," he grinned, "and I certainly know all about you."

A lawyer's stock and trade — contrary to Lincoln's belief — is his reputation. I'd worked hard to build a reputation. Now I wasn't entirely happy that I was so widely known.

Like a thunderbolt, terror seized me. If the Devil knew me . . . I slumped down in my chair. Sweat trickled down my shirt. The sour



taste of fear rose in the back of my throat. My voice trembled as I said: "You're here to take my soul."

The Devil laughed. It was a glorious, melodic sound that made you want to laugh along with him. "Oh, please — not that. Those old myths die hard, don't they? We don't do things like that. Not any more. Business is so much more complex and subtle nowadays. As you know."

I waited for him to explain. Intuition warned me that it doesn't pay to get out in front of the devil. Besides, he hadn't actually said that he wasn't after my soul. I wasn't inclined to be cordial until we got that out of the way.

The Devil continued, as clients will when the lawyer falls silent. "I find myself in the odd position of needing a lawyer." When I didn't say anything, he continued. "I want to sue someone. For libel. Or slander." He waved the distinction into irrelevance. "I can never keep it straight."

The idea struck me as humorous, even hysterical. "Someone defamed . . . you?" I spluttered. How could you possibly defame the Devil Himself? How could you hold the King of Hell up to ridicule? What could you say to damage the reputation of Evil Incarnate? I started to chuckle and I am afraid the sound rose quickly to uncontrolled laughter.

The Devil frowned and raised his voice. "Someone wrote something about me —"

"A book?" I asked. A chill came over me. Tell me, I prayed, tell me please that he doesn't want to sue God over the Bible!

"A song," he sniffed, looking out the window. "It contains a damnable lie about me, if you will pardon my language. I want the perpetrator punished."

A song about the devil? I could think of a whole bunch of phrases from a whole bunch of songs, but nothing I'd advise suing over. There was A Friend of the Devil is a Friend of Mine and The Silver-tongued Devil and Got a Black Magic Woman and —

"The Devil Went Down to Georgia!" I said, sitting up and snapping my fingers.

He cringed at the sound. "Don't do that!" It was the first cross thing I'd heard him say. His eyes flashed as he spat: "Damn Charlie Daniels! I want to make Charlie Daniels pay!"

When the Devil says he wants to make someone pay, you wouldn't normally think in terms of civil damages. But that was apparently exactly what the Devil wanted. "Sue Charlie Daniels," I said, flabbergasted.

"That's right. For slander. Libel. Whatever."

I knew the song, of course. There was only one line that seemed

defamatory to me. "Because the song says that you were looking for a soul to steal?" I'm afraid my incredulity was not well hidden.

"Hell no," he snapped. "Back then — before the high-tech bubble — that was how we operated. No, it's because of the other thing." His faced turned inscrutable, his eyes darkened. He made an obvious effort to control himself and after a time said, "It's the thing about me losing."

Apparently the outrage was too much and his control faltered. He sprang to his feet and towered over me, a hundred feet tall. "The thing about the Devil losing a fiddle contest," he hissed. "It's outrageous!" He leaned toward me over the desk. "The Devil," he confided in a whisper, "never loses. Never. Ever."

"Never ever loses a fiddle contest?" I asked from where I'd shrunk back into the depths of my chair.

"Never loses anything." He blew out his breath. "Particularly not a fiddle contest with a cracker." He spun on his heel and walked two angry steps away, then turned back. "You know I taught Toscanini?"

"I heard that," I admitted cautiously. Clients love to name-drop; usually once the name was out there, they shrugged it off like the famous person was just one of the guys. Sure enough, the Devil dis-

Annual Fiction Writing Competition

The Editorial Board of the Georgia Bar Journal is proud to present "The Devil Came Down," by Brad Elbein of Dallas, Texas, as the winner of the Journal's 12th Annual Fiction Writing Competition.

The purposes of the competition are to enhance interest in the Journal, to encourage excellence in writing by members of the Bar and to provide an innovative vehicle for the illustration of the life and work of lawyers. As in years past, this year's entries reflected a wide range of topics and literary styles. In accordance with the competition's rules, the Editorial Board selected the winning story through a process of reading each story without knowledge of the author's identity and then ranking each entry. The story with the highest cumulative ranking was selected as the winner. The Editorial Board congratulates Elbein and all of the other entrants for their participation and excellent writing.

missed the great violinist with a wave. "He had some talent, of course. It was I who gave him fire!" He moved his fingers rapidly through the air as though they were flying satanically up and down violin strings.

Then he went back to the issue at hand. "I certainly wouldn't lose a fiddle contest to an uneducated country boy," he sniffed. "To imply that I would is outrageous. Ridiculous. And you should note," he enunciated slowly as he stalked toward my desk, "that Mister Daniels doesn't say who the boy was. He doesn't even give me a chance to confront my accuser!"

I thought about college and about my class in Milton and about the Devil losing once. Losing big. But here was the Devil himself looming over me. It seemed impolitic to mention what was, after all, just one side of the story. So I swallowed hard and didn't say anything at all.

He glared at me for a minute or two, simmering. Then he seemed to shake himself and pull himself together, as I have often seen clients do after a blow-up. He sat, crossed his legs and waited for me to speak.

I've been in practice for quite a while. I've been fired by my share of clients and I've fired my share. Now that I knew what he wanted — now that I knew that we were playing in my ballpark, not his — I knew just how to handle it. These things need to be done with a certain finesse. It has to be obvious to the client that the representation won't work out.

So I asked him a question to set him up. "You want me to sue Charlie Daniels for defamation because his song says that some unidentified country boy beat you in a music contest."

"Correct."

"I'm sorry to say that I don't do that kind of work," I said with my best sorry-I-can't-help-you expression.

The Devil met my smile with one just as calm and twice as nice. "In fact you do!" he said happily. "Didn't you handle that National Enquirer case?"

The smile melted from my face. Just how much did this guy know about me? Indeed, ten years ago I'd handled a case against the Enquirer, a case my partners still ribbed me about. The paper falsely claimed that my client was a hooker. She was really an actress who specialized in playing hookers, in a series of adult movies. I didn't expect the Devil to know that and I'd practically forgotten about the case, myself. So now I forced myself to breathe deeply and to think carefully. "That was a long time ago," I tried. "I haven't done that kind of work in years."

"Oh, please. No false humility. You know, too much humility can be a sin, too." He must have seen the horror on my face, because he held up his hand in apology. "Sorry. Not my business. However, didn't you just yesterday tell someone that you never lose a case? You remember, I'm sure. You were just out of the shower at the gym, telling that gentleman at the next locker all about your nearly unbeaten record in trial."

I felt the blood drain from my face. My arms and legs felt dead, my body empty and weightless. The Devil had overheard my conversation? The Devil had seen me naked?

"Okay," I said, thinking fast. "I admit I think I'm pretty good. But I don't think my law firm would want me to take this kind of case."

He dismissed this objection with a laugh, a man totally at ease.

"Don't worry. The managing partner and I have a complete understanding. In fact, the whole management committee and I are like this." He held up his hand to show me his intertwined fingers. "Which has been, I believe, your contention since you became a partner here." He patted his sport coat pockets. "That reminds me. Here's your retainer." The Devil pulled a thick wad of cash out of his pocket.

Now, there are certain styles in the way clients pay their bills. Construction clients, for example, will tell you to bill them and then file the invoice with all the other invoices they don't intend to pay. Criminal defendants will cry and whine and pay as little as possible because guilty or innocent, they don't really think they owe you anything. Drug dealers will throw the money on your desk with disgust, like they're throwing slop to the pigs.

The Devil placed the money on the polished mahogany surface gently, exactly between my ornamental scales of justice and my daily billing log.

"I haven't told you what my retainer is," I stammered.

"Don't worry about it. Whatever your retainer is, it'll be there." He winked at me. "There are advantages to being the Devil: one of them is that I'm a wizard with money. By the way, that client you were talking to when I walked in? She's just paid her bill in full. In fact, all of your clients will be bringing their accounts up to date. Your collections will be so good this month, you won't have to do anything creative with your time sheets."

"Look," I pleaded, desperate for a way out, "isn't this really a criminal matter? Why don't you go down and see the DA?"

After a pause he confessed: "Actually, I tried to get in to see the DA. He wouldn't see me. Something about 'getting behind him.'" He brightened. "What a difference with you!" He beamed a smile at me that I did not find comforting.

I was running out of objections. The truth was simple and since I'd run out of excuses, I thought I'd try it out on him. "I hope my being honest with you doesn't offend you," I said with what I hoped was a disarming frown. "The truth is that I don't really want to represent someone of your character."

His face fell. He did not glower, or scowl, or sneer. His expression became perfectly blank, his body perfectly still. "Is that a fact?" he asked quietly. Suddenly along with the hint of cinnamon and the smell of Aramis, a wave of profound cold wafted over the desk.

"So," I said, clearing my throat and standing. I thought he was taking it well, all things considered. I held out my arm to usher him toward the door. "Thank you for coming by." I was wondering whether, when my colleagues saw the Devil leaving my office, they'd be impressed. I'd walked two steps toward the door before he spoke again. He sat still in the client chair behind me.

"If I remember correctly," he mused, "didn't you represent those gentlemen from the American Nazi Party? The ones who wanted to march down to the synagogue on Holocaust Memorial Day?"

"Yes," I said slowly, not sure of his point.

He remained in my client chair, legs crossed, arms resting comfortably on the armrests. Only his head was turned as he stared at me in silence. A slight smile played at the corner of his lips. The Devil smiled more than almost anybody I had

ever met: more than a plaintiff's lawyer in front of an Alabama jury.

I said, "Everyone deserves representation. It's the way our system works."

The Devil remained silent.

Restless, I added: "I don't endorse the cause of every client I represent. I provide my clients with advice and representation, not . . . not . . . approval." My voice trailed off, but it echoed hollowly in the office. This was what I always said when people asked me how I could represent criminals. Something told me that it wasn't quite the right argument here. But the Devil didn't give me time to think about it.

"Didn't you represent that officer in that corporation — what was its name?" The Devil tapped his forehead, trying to remember. "You remember, the audit committee chairman, the one who sold her

stock just before the corporation went — what's your phrase, 'belly up'? — and ruined all those shareholders." He tsked.

I shook my head, unable to speak. The Devil knew his business. That was my case, all right.

"Then I seem to remember a couple of HMOs you represented. The ones that denied care to cancer patients, you remember? The survivors sued your clients. As I recall, you tore the poor survivors up on witness stand." He shook his head in admiration.

"It was a simple matter of contract law," I croaked out, looking away.

"Then there were the drug dealers who sold crack to the children in that suburban school. I think you got them probation. And that man who would have killed his wife if the gun had been loaded. Probation

again." The Devil slapped his hands on his knees and grinned. "I could name a whole list of cases just like those. In every one, there you were." He made an *atta-boy* gesture with his fist. "Right in the thick of the fight. Fighting for justice."

"Fighting for my clients," I muttered.

Suddenly the Devil's voice grew sharp. "Yet you would represent all those fine upstanding characters—"

I flinched at his tone. "Even obnoxious clients are entitled—" I stopped, recognizing the trap too late.

"Whereas I?" He patted himself on the chest with spread-eagled fingers. His nails were carefully shaped and lightly polished. "I am not entitled to the same consideration. How is my character worse than theirs?"

"You're the Devil! Everybody knows—"

Calmly he interrupted. "Surely you are not judging me purely by reputation, counselor. I believe that's inadmissible."

Silence sizzled heavily around us. I sought desperately for a way out. After too long a pause, I said: "Fine. You're entitled to representation. I can refer you to someone." I crossed quickly to my desk and started fanning through the Rolodex. Who did I know that deserved this referral?

"I don't want someone," the Devil snapped. "I want the best. I want you." The Devil gestured to the stack of money. "I've already paid your fee, whatever it is. You can't refuse to represent me."

"I do refuse," I said with the stubbornness born of desperation.

"It would not be ethical for you to refuse."

"It has nothing to do with ethics and I refuse!"

The Devil stood. He held out his hand, palm up, toward the bookshelf. The volume entitled *Rules of Professional Conduct* flew across the room and landed, open, in his palm. By themselves the pages turned as if an unseen thumb were riffling them. He handed the book to me, open to Rule 1.3. "According to your own Code of Ethics you must represent me."

I scanned the rule quickly, concealing a grin. Nobody knew the *Rules of Professional Conduct* better than I. Nobody used them more effectively in litigation. If we were going to argue the code of ethics, I had him. I answered quickly: "This rule doesn't require me to represent you. It only says that if I represent a client, I have to do it with diligence. That's subjunctive: *if*. Meaning 'on the condition that.' And that's a condition that isn't going to happen."

The devil smiled — that damn smile was wearing on me — and waved a finger at me. "You will undoubtedly not be surprised, sir, that I am a master of grammar in general and the subjunctive mood in the particular. You should take a look at comment one."

I read it aloud as I read it to myself. "'A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience.'" He started to speak but I interrupted. "That only means that if I were to represent you I'd have to do it with diligence. But since I'm not—"

He waved the objection away. "As you are no doubt aware, counselor, the use of the word 'should' indicates a positive injunction. That rule says that you should represent a client, as long as he doesn't ask you to do anything unethical." As he spoke I looked down at the rule.

You could read it that way, it was true.

Something seemed wrong with his argument, but ... I wished I'd paid more attention to grammar in sixth grade.

The Devil continued calmly. "I haven't asked you to do anything unethical. Nor would I." Butter wouldn't melt in his mouth. "I haven't given you a single one of the reasons mentioned there" — indicating the book — "for you to decline my representation."

"But—"

"You yourself told me that every client is entitled to his day in court. If you would willingly represent your Nazi, your drug dealer, your white-collar thief, but not me, it would be an indication of the most naked prejudice on your part. Would it not? That rule in your hand says that you are supposed to act 'despite personal inconvenience,' never mind prejudice. It would be unethical for you to refuse to represent me based on your personal convenience or worse, because of your prejudice."

I stared at him. There was something wrong with his reasoning. I knew that. I knew that you couldn't trust the Devil. But just what it was that was wrong I couldn't quite tell. The code of ethics floated in front of me — the rule was clear, right there in black and white — and there was a lot more stuff about access to justice and zealous advocacy and the right to representation that we hadn't even gotten to yet. For the first time in all my years of litigation the *Rules of Professional Conduct* failed me.

"I can just refuse to represent you," I insisted stubbornly. "Just because I don't want to." Even to me my voice sounded thin and weak. I was grasping at straws. I certainly couldn't cite any legal

authority for that proposition. I wasn't entirely sure I was correct.

The pages of the book turned in his outstretched hand as he shook his head in disagreement. "According to Rule 1.16 you can't just refuse." He returned to his seat. The book hung in the air.

Not really wanting to look, unable to resist, I turned my eyes toward the text. Despite the fact that the Devil himself was standing in my office and that the pages of the book were moving magically, the text of the rule wasn't written in fire and brimstone. In plain black and white I read words I knew well: "A lawyer shall not represent a client... if the representation will result in a violation of the law or the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client or the client is discharged."

"I could be wrong," the Devil said, "but I don't think that any of those excuses apply to you."

"No," I conceded, hanging my head. My mental condition wasn't benefiting from the Devil's cross-examination, but none of the rule's exemptions applied to me. Then a thought occurred to me. I blurted it out in desperation. "There's no precedent for the Devil to have standing to sue!"

The Devil smiled and the pages riffled in a whisper. "There is no precedent yet. Our case would be a case of first impression. Rule 3.1," he said helpfully. "Part B."

I read it with a chill. "'A lawyer shall not . . . knowingly advance a claim under existing law, except that the lawyer may advance such a claim ... if it can be supported by good faith argument . . .'"

"But look," I objected, "a litigant has to be a 'natural person.' I'm not sure you are. I don't even know if it can be done!"

"The law," the Devil said in a voice that made it clear he was quoting, "is not always clear." I looked down at the rulebook and as if by magic the words were highlighted as he spoke them. It was comment one to Rule 3.1. "Accordingly, in determining the proper scope of advocacy, account must be taken of the law's ambiguities and the potential for change.' The law doesn't explicitly prohibit the Devil from suing, does it?"

I shook my head weakly.

"Well, then," he said, a note of triumph sneaking into his voice. "That settles it." He clapped his hands together like a man who's won his argument. He had won, too: I couldn't see how I could refuse to represent him. Not under the rules. I was thinking wildly, but no other answer occurred to me.

The Devil laughed lightly. "I'm glad we had this little chat. I find it really helps to clear the air at the beginning of a professional relationship. Don't you?" He took a couple of quick steps toward me and clapped me on the back. "I'll be in touch," he said. And then he disappeared. The book hung in the air, rocking a little in his Aramis-and-cinnamon flavored wake. I physically caught it and returned it to its place in the dust between Legal Ethics and Persuading Juries.

That was how I came to represent the Devil. He isn't a bad client, all things considered. He pays all of his bills on time, as do my other clients now. He answers all of my questions promptly. He speaks the same language as the firm's management committee. He gets along really well with judges, with whom he seems to share a peculiar understanding. All in all, it hasn't been any more difficult a professional relationship than most.

I have to confess that, early on, I suffered some doubts. On the day that I headed down to the courthouse to file that very first suit, I felt... well, itchy. I couldn't shake a nagging feeling. A nagging feeling that the Devil had, after all, gotten a piece of my soul. I just couldn't figure out how. I mean, I hadn't done anything that violated the Code of Professional Responsibility — either the Georgia Code or the Model Code.

And now that I handle so much of the Devil's legal work, I just don't worry about it anymore.

Author's Note

The characters in this story bear no intentional resemblance to any individuals, beings, or entities, either living, dead or transcendent. No reflection is intended on any of those lawyers with whom I've worked. In fact, I should note that since I have never practiced in private practice in Georgia, this story must be entirely fictional. Of course, the narrator's comments about trial judges are strictly the opinions of the Devil and not the public views of the author, the State Bar of Georgia or this publication.

Finally, I am obligated to confess that the first line of this story was created by my son, a young writer of great promise. I promised him that I would not steal this line, but obviously I have used it prominently. I can offer no excuse for my conduct, except to say that I've been a trial lawyer for more than 20 years and a writer for longer. Perhaps the Devil made me do it. 

Brad Elbein is director of the Federal Trade Commission's Southwest Region. He has published several law review articles, including articles in the San Diego Law Review and the South Carolina Law Review. He is a graduate of the University of Texas School of Law.