

## Managing your dismissive and bully peers

By Paul Fisher and Juli Adelman

In our first article published Nov. 14, 2013, "Managing Your Dismissive and Bully Peers," we provided you with traits and warning signs of difficult opposing counsel. In this article we introduce tools that work in dealing with them. Although the Dismissive and Bully attorneys have characteristics that make them unique, these tools, selected from interviews with forty attorneys, are effective for managing both.

### Part 2 of a Monthly Series on Managing Dismissive & Bully Attorneys

#### Don't React

Not reacting to difficult opposing counsel is fundamental. When the opposing attorney is aggressive or abrasive, do not take it personally. High conflict personality types, including the Dismissive and the Bully, have learned to deactivate and minimize their feelings, which means those interacting with them feel frustrated, while they seem to feel nothing. Interactions with this type of opposing counsel can trigger all kinds of reactions in us, and it can be difficult to know what to do. Try to accept these feelings and keep things in perspective. If opposing counsel has a reputation for being impossible to work with, you can use this to your advantage and prepare



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yourself. Things are confrontational only if you allow them to be. you feel that way. You take whatever actions you need and I'll do what I have to."

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- Walk away from an avoidable confrontation:

After a hearing outside the courtroom opposing counsel

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everyone. Let it pass over you and don't assume it is intended to be confrontational. Here are some tools for your box:

- Do not raise your voice. In as emotionally neutral a tone as possible, reply "I'm sorry

yelled at an attorney at the top of his lungs with spit flying from his mouth. Knowing there was nothing she could say that would calm him down, she merely walked away nonchalantly.

A young woman associate was confronted outside the courtroom door by opposing counsel, screaming she had not given statutory notice of the hearing. Believing she had given notice, she avoided the attorney by walking toward the courthouse exit. The other attorney followed her outside, still screaming. She never said a word, making him look like the unreasonable person. When she returned to her office she sent an email to his senior partner politely requesting that another attorney be assigned to the case. The other firm met her request.

- Remind yourself that you know what professional practices are. You are getting paid for every minute you are being screamed at.

- "I don't know why you have to turn this into a conflict between you and me. I know you have a job to do and I don't take anything you do personally. I hope you would do the same."

- Take a break from the action with a deposition recess or break during negotiation.

- Not every letter or email needs an answer. Step back to determine if it addresses issues in the case. If it is solely personal, consider doing nothing.

- When opposing counsel is nasty or makes personal attacks in front of the judge,

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remember judges don't want to hear it. Don't dignify it with a reaction. One attorney interviewed had a judge nod at him not to respond.

- **Change media.** When telephone conversations fall apart, such as when opposing attorneys keep changing their story or are extremely unpleasant, abusive or uncooperative, move the conversation to email. This can bring communication to a productive level and reduce emotion. Conversely, a good way to overcome tit-for-tat letters or emails is to pick up the phone and ask, "What's going on? Let's talk about this."

- **Use humor.** When his opposing attorney said, "This document speaks for itself," one attorney held it to his ear and replied, "And it can't carry a tune, either."

Getting angry at difficult people gives them a sense of victory and that they have accomplished their goal. If you must show anger before a judge or mediator, be very measured about it so that you will be taken seriously.

## Empathize

When you empathize with another person, you are heard as genuinely trying to understand their position. Even though it is challenging, empathizing can in some cases diminish opposing counsel's bad behavior.

- "I hear what you are saying. Let's see if we can work through this and find common ground."

- One attorney offers this suggestion in replying to the screaming opposing counsel: "I'm very sorry you are upset about this. I'm trying to move this along. Though I respect your opinion I have a different take on the case. Neither of us was there at the time of the events. Discovery will reveal that information."

- Find out why the other attorney behaves so aggressively in front of the judge. After a hearing at which the opposing attorney behaved outrageously, one attorney suggested meeting for coffee. Counsel had a friendly relationship out of court up to this point. The opposing attorney explained that his client is always in the courtroom and he has to put on a show. Understanding the behavior as merely theatrics for the client allowed this attorney to not take it personally.

- When opposing counsel becomes angry: "I notice you are angry, and angry with me. I'm advocating for my client. Why do you take that personally?"

Allow them to vent. "I have to apologize to you. I must have done something very rude for you to treat me like that." (Actu-

ally a nice insult.) If the screaming or bad behavior continues over time, you may comment, "The good news is we only have to deal with each other for a few more months."

- When there is a lull in the action, one attorney attempts to establish a human connection. "Do you have kids? What school do they go to?" He learned that their sons were on the same soccer team, and the relationship worked much better from then on. However, don't reveal too much about yourself. When the bully opposing attorney learned this attorney as Jewish, he set depositions for the High Holy Days.

- **Empathize with yourself, without feeling sorry for yourself.** When a fat envelope arrives from the bully attorney, one attorney tells himself, "Thank God I don't work for him."

## Next Chapter

Additional tools that work in managing the Dismissive attorney and the Bully attorney (Caging the tiger part B).

*This series of articles is the result of extensive interviews with almost 40 attorneys in Southern California. These attorneys are primarily litigators/trial attorneys and several transactional attorneys. The group has some diversity, male, female and gay, with a range of practice experience from seven to 40-plus years with the average of approximately 25.*



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