

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 the second article, published Dec. 6, 2013, we discussed the importance when dealing with difficult opposing counsel of Not Reacting and Empathy. Here are additional techniques and tools from interviews with forty attorneys which are effective for managing both.

**Part 3 of a Monthly Series
on Managing Dismissive
& Bully Attorneys**

Limits and Boundaries

It is important to set limits. You must stick by the rules and demonstrate that you know what you are doing. The rules are boundaries that help contain very difficult opposing attorneys. Tell them what you are going to do, and then just do it. No gamesmanship. You must follow through to be taken seriously. Put personality issues aside.

- Ask yourself, "Do I want to grab the tiger by the tail and be really unhappy with this case? Or do I want to cage the tiger and have reasonable intellectual enjoyment from it?"

- Depositions can be especially contentious. When it becomes obvious that further argument over a particular question will not lead to a solu-



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tion, or cause the conversation to spin out of control, one attorney calmly suggests, "Let's move on to your other questions and let the judge decide this question and others we cannot reach agreement on."

- If the opposing attorney exhibits bad behavior in depositions, such as screaming at you or your client, or he continuously seeks information that is not obtainable, such as privileged communication, consider adjourning the deposition. Then reset as a video deposition for the purpose of recording the behavior of the Dismissive or Bully attorney. In a discovery motion play excerpts for the judge so she can see what really is going on. But don't go overboard; judges hate when lawyers act like squabbling

children. For some Dismissive or Bully attorneys the presence of the video camera may tone them down, if not before then after the discovery hearing.

- Sound conciliatory when enforcing rules. One attorney recommends the "velvet glove threatening" letter: "Mr. Jones I realize you are having a difficult time getting the responses to interrogatories from your client. However they are more than 45 days past due. I would regret to make any motion to compel. I'll give you ten more days to give me full and complete answers. If there are any problems with this, call me at your convenience and we can work this out to your liking." This letter is firm but courteous, gives an extension of time, and provides a foundation for a

successful motion to compel.

- In discovery, one attorney first phones opposing counsel and discusses the need for cooperation in production of information or a narrowed request. If opposing counsel does not cooperate, he files a motion to compel or motion for protective order right away. The faster the motion, the sooner the relationship will shift. As described by another attorney, this dynamic is "like two gladiators in the arena. Somebody has to win. Someone has to submit. And the best place is in front of the judge. Winning creates a position of leverage. Once someone comes out on top that leads to improving the relationship."

- Another attorney carefully measures the cooperation he doles out to uncooperative opposing counsel, eventually coaxing the cooperation he needs to get the job done. There are things he can give in formal or informal discovery that don't cost him anything.

- In some cases, the use of a discovery referee may be less expensive than repeated discovery motions. One attorney believes it is the fastest way to "calm down the garbage."

- When you reply to all emails and phone calls, you allow yourself to be drawn into their game. When opposing counsel on a new case sends two or more emails and calls in the same day, one attorney

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tells them she has a busy practice and tries to return all calls and emails within 24 hours. She tells them asking the same question over and over is not productive. Eventually they learn. Another attorney responded to a 7:30 am faxed letter campaign with this eventual reply: "I have a very busy practice. Do not construe my non reply as an admission."

Practice Mindfulness

What we do as attorneys depends on what is going on inside ourselves. We are all limited by our thoughts, emotions and habits. Be deliberately aware of what is going on in yourself and your environment, moment to moment. This gives you the opportunity to notice things that influence you, such as emotions and physical sensations. These distract us from what we should be paying attention to. Mindfulness allows us to understand others and respond to others with compassion and empathy. It helps eliminate distractions that interfere with good judgment.

Stay aware of your emotional and physical reactions to opposing counsel. Each reaction is an alarm warning to look at what you are reacting to and why. Consider what is good for your professional relationship with the opposing counsel and your client. It may be necessary to detach, calm your mind and body, and then return to the moment. You can then reply calmly. With practice, this can be done in seconds.

Hand-to-hand combat never leads to success. When the other attorney gets louder your response should be quieter. When they get more upset, you become calmer: not just outwardly, but inwardly as well. The opposition will initially hate this, but you will be much more effective and they will eventually respect your professional approach.

Try to become detached in your interaction with opposing counsel. One attorney describes this delicate balance: "The challenge is being close enough to care about the outcome, to be most effective, and still maintain the distance and be objective so you won't endure more stress."

It is possible to make a change in your lawyering style. In mediations 15 years ago, Bill was like a bull in a china shop, routinely aggressive. In his words, "I would get in a silly battle that was not critical to the case. Most of these spats were horse shit and what I lived for. You don't win these silly battles. They take a toll on you, on your client's cause, the relationship with opposing counsel and the judge." Over the years he evolved: "I have changed as much as possible. I just do not react. If I do not react it makes my job different. I feel it in my chest when I am going to react. Then I stop it. I take a breath and find it's not a problem. I do not let it get to me. It's healthier for me

and my client." Now when opposing counsel screams at him, he "lets the storm blow out." He grounds himself and watches what is going on and how foolish it is. "There is already one fool in the room. Why have a second?" Bill is still a great advocate and more effective than ever.

Conclusion: "In a pissing contest with a skunk, you come out smelling bad." · Attorneys who allow their relationship with opposing counsel to break down are not serving their clients. They are merely repeating the dysfunctional behavior that brought their clients to them. As a judge once told one of the attorneys interviewed: "The rules are there for a reason." Stick to them and you will find your interactions with Bully and Dismissive attorneys will be far more fruitful.

Next Chapter

Actions that do not work in managing the Dismissive and Bully attorneys — enraging the tiger.

This series of articles is the result of extensive interviews with more than forty 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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