

## Managing your dismissive and bully peers

By Paul Fisher and Juli Adelman

In this latest installment of the series on managing Dismissive and Bully attorneys, we describe actions that do not work or that contribute to dysfunctional relationships with these opposing attorneys. It is drawn from interviews with more than 40 attorneys.

### Part 4 of a Monthly Series on Managing Dismissive & Bully Attorneys

Bully and Dismissive attorneys are very invested in winning; it is necessary to keep their ego intact. These dysfunctional lawyers fight as if their life depended on it, and engaging in the battle will result in two losers. When you participate in a personal war with opposing counsel, you will pay emotionally and ultimately physically – and your client will pay more for the process. A lot goes on very quickly during verbal and email communications which, if we are not tuned into moment by moment, may trigger actions that contribute to a dysfunctional or unprofessional relationship with the opposing attorney. Responding in kind is not effective. While it is difficult to resist, and for some, exhilarating to jump into such a battle, ignore it. Don't become engaged in that fight. Aggression can escalate forever. In negotiations, it blocks deals from getting done.



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As one litigator shared, when he was younger and trying to make a reputation, he got into huge fights with opposing counsel. He was combative and aggressive. Sometimes, neither he nor the opposing attorney would let up and they would find themselves in a corner. Personalities and too much ego took over. "Once the case becomes personalized, you want to kill the other attorney and he wants to kill you. Then you're done. That's the biggest mistake an attorney can make." Nothing productive got done until a judicial settlement conference.

### Avoid Interrupting the Tiger – Listen Instead

Lawyers often speak over each other. When you are dealing with difficult opposing counsel, resist the urge to interrupt because listening is one of your most powerful tools. Everyone likes others to listen to them, especially Dismissive and Bully lawyers. If you listen to them, most likely you will hear a lot of information you are not interested in as well as statements meant to intimidate you. If you have patience, it is also likely that opposing counsel will

provide you with important information. When someone is arguing their point we can either cognitively process the information systematically and decide if it is a good or bad argument, or focus on the person and our frustrations with them. When we are focused on how much we dislike the way opposing counsel is acting, we miss the substance of their argument.

People will tell you more when they feel you are listening to them. Try these powerful listening tools:

- Avoid interrupting. Wait until opposing counsel has finished. This may require extraordinary patience.
- Ask yourself:

*Have I learned something new? What do I need opposing counsel to expand on?*

*Did opposing counsel talk about an area of law that I need to learn about?*

*Does anything opposing counsel said require a response?*

- Focus on the substance of what was said, not tone or volume.
- Repeat back, "Here is what I think you said, is that correct?"
- Pay attention to facial expressions and tone of voice.

When listening to opposing counsel, listen also to the emotional content of their message. Identifying emotions can provide valuable insight into their priorities, values and intentions. While sometimes difficult opposing counsel exhibit

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strong emotions that act as barriers to resolving problems, if we practice listening for the nuances of the emotion rather than interrupting, this can provide information that ultimately will help us resolve problems for our client. It is important to watch and listen for the emotional tone. This is loaded with information. Opposing counsel could be lying, or they could be fearful of losing on a particular issue or many issues. Identifying this information takes practice. Changes in emotions can be subtle and the reason behind the emotion is difficult to identify.

Take notes on your ideas. You may begin to notice a pattern that will make more sense to you over time.

## Antagonizing the Tiger

We are all unique. Some of us have experienced devastating loss, personal problems, less than ideal childhoods, and other experiences that contribute to how we respond to opposing counsel, particularly difficult opposing counsel. In addition, our historical emotional wounds are triggered when our negative interactions with difficult opposing counsel are felt – sometimes days after the interaction. Being sarcastic, antagonistic or simply mean can have all kinds of payoffs for us. In that moment our retort makes us feel more in control, smarter or successful at making them look bad by making ourselves look good, or so we make ourselves believe. However, when we lash out, we are not just reacting to the rude opposing counsel, we are reacting to what has happened in our lives long before him or her. Regulating our emotions and impulse control are necessary for a successful career. While the bully and dismissive lawyers may seem to be getting away with exploding at others, it is taking a toll on their careers. We frequently read about business leaders who lacked impulse control and were sued or removed for it. Your goal is to avoid allowing their behavior to get you in trouble. If you can manage the obstacle of difficult opposing counsel and avoid allowing it to interfere with your goals,

this can increase the likelihood of a successful career. To tame the tiger across the table, we must first cage the tiger within.

Emotions are an inseparable element of legal conflict. One common emotion we experience when interacting with a difficult opposing counsel is anger. The problem with anger is that it decreases trust. It detracts from problem-solving for the client because angry people are less concerned about and more likely to blame others. Anger can also escalate, leading us to actions we regret. Anger is the culprit for ignoring advice; it blocks us from processing information and causes us to make quick, often inaccurate judgments.

With experience, some of the lawyers interviewed have reached these conclusions on their own. An attorney I have mediated with for many years indicated that when he was younger and the opposing attorney angered him, he reacted, lashed out and intentionally gave the other attorney a hard time. He acknowledges he “has a smart mouth and uses it.” This only adds fuel to the fire and makes the opposing counsel more difficult to deal with. Today this same attorney understands that this behavior was only for immediate gratification, and regrets his actions.

Rather than escalate the argument, de-escalate by tactfully calling the Dismissive or Bully on his or her behavior. For example, one attorney interviewed acknowledged that he can be difficult or obnoxious and will rant or rave if he feels he will get results for his client. Sometimes he baits opposing counsel to distract away from the client and make it “about” the attorney. He purposefully gets under their skin, in order to disable them from advocating for their client. Most other attorneys do not know how to handle him in his obnoxious bully role. However, when people appeal to his human side he calms down. One attorney called him out saying, “Let’s step back. You are being obnoxious to me.” The other attorney behaved as a non-confrontational gentleman, and they got the matter resolved.

## Next Chapter

Additional actions that do not work or that contribute to dysfunctional relationships with opposing attorneys.

*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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