

Managing Dismissive and Bully Opposing Attorneys

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Identifying Dismissive and Bully Attorneys

Attorney-to-attorney interactions often are a battleground of skill, knowledge, and personalities. It is the personality component that can lead to the same dysfunctional relationship between the attorneys that the parties experience with each other. The authors explore these sometimes explosive relationships and provide effective tools for attorneys to manage the most difficult and possibly high-conflict-personality opposing attorneys.

These high-conflict attorneys will be referred to as the Dismissive and the Bully. For these attorneys, the conflict is driven to some degree by lifelong patterns of behavior rather than the legal issues. How these very difficult attorneys are handled can cause the relationship between attorneys to either reach the abyss or be manageable.

The Dismissive Attorney

The Dismissive attorney has enormous difficulty trusting others, which leads to compulsive self-reliance and an overestimation of his own value because he cannot depend on others. Often this attorney makes you feel as though you need to bulletproof your words. In actuality, this is how he feels he “gold plates” his performance to avoid being judged or attacked or making a mistake. Look for these traits:

- can deal but can't feel,
- incapable of empathy,
- untrusting,
- disengaged,
- looks skeptically and critically toward you and your client,
- exhibits hostility,
- tone of voice is cold and condescending, and
- shows bad behavior when he does not get his way.

This attorney makes a big deal of small things, asks for unnecessary information, drags out negotiations, or turns common courtesies into bargaining chips. Other signs of lack of courtesy include refusing to get to know you personally, displaying no sense of humor, ignoring phone calls and e-mails or snubbing you with, “I have to speak to my client,” and never calling back.

In court, the Dismissive opposing attorney may ask the judge for relief before giving notice or making a written demand, or may ask for an order to immediately produce a document when he has never asked for it before the hearing. Cal. Civ. Proc. Code § 2030.300.

The Bully Attorney

Although some of the traits of the Dismissive attorney overlap with the Bully attorney, the Bully attorney also has some unique traits. This attorney was bullied and began to engage in these types of behaviors early in his life without consequences. This type of attorney is aggressive in his interactions with the opposing counsel. He will do anything to win his case, often using intimidation, fear, and verbally aggressive tactics. He is very dominant, and he is easily identified by the amount of space he occupies in the room. Look for these traits:

- openly aggressive and forceful,
- getting his way is extremely important to him,
- inflated ego,
- needs to dominate and exert power over others,
- boastful and arrogant,
- uses fear to motivate others,
- can be disrespectful to women and often acts macho, and
- needs to convince others he is a big shot.

You may hear the Bully attorney communicate in a manner that includes a personal attack, is abrasive, insulting, condescending, or makes the dispute personal, for example, “You are a dumb ass, too stupid to live, and you are just wasting everyone’s time. I’m smart and you are an idiot.”

Even more outrageous is when the Bully attorney asks, “Do you know who I am? You should look me up.” Then he arrogantly belittles the other attorney who has less experience, citing his own Ivy League law school, years in practice, and stellar trial experience, followed by a refusal to discuss the issues.

Destroying Trust

Much of what attorneys accomplish together is the result of trust built between them. Lack of trust damages relationships and undermines the possibility of a resolution. Dismissive and Bully attorneys don’t care what you think of their behavior. The following are examples of typical behaviors that destroy trust and relationships:

- lying about basic facts or making up facts,
- agreeing to certain terms while on the phone but then sending a document omitting, changing, or adding material terms never discussed,
- denying previous agreements or attempting to weasel out of them by saying, “I don’t remember saying that,” and
- attempting to confirm in writing every detail discussed on the phone.

Actions That Do Not Work in Managing Dismissive and Bully Attorneys

Bully and Dismissive attorneys are very invested in winning, which is necessary for keeping their egos intact. These dysfunctional attorneys fight as if their lives depended on winning. Engaging in a battle with such an attorney will result in two losers. When you participate in a personal war with such an 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 e-mail communications, which, if the attorney is not tuned into moment to moment, may trigger actions that contribute to a dysfunctional or unprofessional relationship with the opposing attorney. Responding in kind is not effective. Although it is difficult to resist and, for some, exhilarating to jump into such a battle, don't. Don't become engaged in that fight. Aggression can escalate forever, and in negotiations, it blocks deals from getting done.

Avoid Interrupting—Listen Instead

Attorneys often speak over each other. When you are dealing with difficult opposing counsel, resist the urge to interrupt. Listening is one of your most powerful tools. Everyone likes others to listen to him, especially the Dismissive or Bully attorney. If you listen to such an opposing counsel, it is likely that he will provide you with important information.

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, which may require extraordinary patience.
- Focus on the substance of what is said, not tone or volume.
- Repeat back, “Here is what I think you said, is that correct?”

When listening to opposing counsel, also listen to the emotional content of his message. Identifying emotions can provide valuable insight into opposing counsel's priorities, values, and intentions. Opposing counsel could be lying, or he could be fearful of losing on a particular issue or many issues.

Don't Reciprocate

Reacting only draws you, and your client, into the opposing attorney's side of a game that you cannot win.

Ways to manage your emotions include engaging in activities that are pleasant. Go for a walk or do strenuous exercise, listen to music, or seek out a confidant who can help you see the funny side of the situation. If you discuss the case with another, be sure to not reveal confidential information. Cal. Bus. & Prof. Code § 6068(e); Cal. Prof. Conduct R. 3-100; Cal Evid. Code §§ 954, 955. *Elijah W v. Superior Court*, 156 Cal. Rptr. 3d 592 (Ct. App. 2013) (an attorney's ethical duty of confidentiality to his client is broader than the lawyer-client privilege and protects virtually everything the lawyer knows about the client's matter regardless of the source of the information).

Do not criticize the opposing attorney, which immediately will downgrade communication and the relationship. Instead, blame everything on the client and keep the communication professional. Reciprocating criticism can make you look bad. One attorney shared that while in the judge's chambers, she heard

opposing counsel tell something to the judge she thought was a lie. She struck back by telling the judge the other attorney had not been honest. After the meeting in chambers, she felt she and the other attorney had argued like children. She felt she had made an unprofessional impression on the judge.

Recovery from Reciprocation

If you do react in a negative way, some tools can help turn the relationship around:

- One attorney recommends being candid and acknowledging being unreasonable. She suggests saying, “I may have reacted. Let’s revisit this issue.” This changes the tone of the conversation and possibly the relationship.
- Before things spiral out of control, another attorney attempts to mend bridges by apologizing on the phone or in a letter. “Let me try again. My behavior was inappropriate.” On occasion the other attorney may say, “We both have terrible clients. Let’s agree that when the case is done we will meet for martinis” or she will send chocolates.
- One attorney deals with opposing counsel’s outrageous behavior by drafting a nasty letter that covers the complete catalog of miserable acts. Then she tears up the letter. This is a very therapeutic process. She then writes the appropriately professional letter.

Tools to Manage Dismissive and 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 Dismissive and Bully attorneys, have learned to deactivate and minimize their feelings. As a result, those interacting with them feel frustrated, while the Dismissive and Bully attorneys seem to feel nothing. Interactions with this type of opposing counsel can trigger all kinds of reactions within us, and it can be difficult to know what to do. Things will be confrontational only if you allow them to be.

When the other attorney makes what appears to be a personal remark to you, such a remark merely may be what he says to everyone. Let the remark pass over you and don’t assume it is intended to be confrontational. Here are some powerful tools:

- Never raise your voice.
- Walk away from an avoidable confrontation.
- Remind yourself that you know what professional practices are.
- Respond by saying, “I don’t know why you 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 will do the same.”
- Take a break from the action with a deposition recess or break during negotiation.
- When opposing counsel is nasty or makes personal attacks in front of the judge, remember judges don’t want to hear it. Don’t dignify it with a reaction.
- Change media. When telephone conversations fall apart, such as when the opposing attorney keeps changing his story or is extremely unpleasant, abusive, or uncooperative, move the conversation to e-mail. Conversely, a good way to overcome tit-for-tat letters or e-mails is to pick up the phone and ask, “What’s going on? Let’s talk about this.”

Getting angry at difficult people gives them a sense of victory and accomplishment. 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 his position. Even though it is challenging, empathizing can in some cases diminish opposing counsel's bad behavior.

- Try saying, "I hear what you are saying. Let's work through this so we can understand each other."
- Allow opposing counsel to vent, and when he stops, reply by saying, "I have to apologize to you. I must have done something very rude for you to talk to me like that."
- When there is a lull in the action, one attorney attempts to establish a human connection by asking, "Do you have kids? What school do they attend?" He learned that their sons were on the same soccer team. The relationship worked much better from then on.

Setting Limits and Establishing 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 the opposing counsel what you are going to do, and then do it. Do not engage in gamesmanship. You must follow through to be taken seriously. Put personality issues aside.

- Depositions can be especially contentious. When it becomes obvious that further argument over a particular question will not lead to a solution, one attorney calmly suggests, "Let's move on to your other questions and let the judge decide this question and others on which we cannot reach agreement." Cal. Civ. Proc. Code § 2025.480 (to compel responses); Cal. Civ. Proc. Code § 2025.420 (protective order); Fed. R. Civ. P. 37(a)(3)(B)(i) and 30(d)(2). A federal judge levied sanctions of more than \$29,000 on a lawyer and his client after finding that a deposition was a "spectacular failure" because of the client's constant use of vulgar language and insults and dodging or refusing to answer questions, and his lawyer's failure to rein him in. In his 44-page opinion in *GMAC Bank v. HTFC Corp.*, www.paed.uscourts.gov/documents/opinions/08D0240P.pdf, U.S. District Judge Eduardo C. Robreno found that Aaron Wider, the CEO of HTFC, engaged in "hostile, uncivil, and vulgar conduct, which persisted throughout the nearly 12 hours of deposition testimony." Robreno noted that Wider used the "F word" or variations of it 73 times during the deposition and that the video shows that his lawyer, Joseph R. Ziccardi of Chicago, at one point "snickered" at his client's conduct. Ziccardi was also to blame, Robreno found, because he failed to stop his client's tirades and persuade him to answer questions.
- 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 communications, consider adjourning the deposition. Cal. Civ. Proc. Code § 2025.470 (adjourn deposition to obtain motion for protective order). Then re-set as a video deposition (Cal. Civ. Proc. Code § 2025.330(c) (any party may videotape deposition and must give notice)) for the purpose of recording the behavior of the Dismissive or Bully attorney. In a discovery motion, provide excerpts for the judge so she can see what really is going on, but don't go overboard because judges hate when attorneys act like squabbling children.

- 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, the attorney files a motion to compel or a motion for protective order right away. The faster the motion, the sooner the relationship will shift.

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, which distract us from that to which we should be paying attention. Mindfulness allows us to understand others and eliminate emotional distractions that interfere with good judgment.

Stay aware of your emotional and physical reactions to opposing counsel. Each reaction is an alarm telling you to be alert to your own reactions and figure out why you are reacting. 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 then can reply calmly and professionally. With practice, this reaction can occur in seconds.

When the other attorney gets louder, your response should be quieter. When he gets more upset, you become calmer, not just outwardly but inwardly as well. The opposing attorney initially will hate this, but you will be much more effective, and he eventually will respect your professional approach. One of the original and best resources is Leonard L. Riskin, *Mindfulness: Foundational Training for Dispute Resolution*, 54 J. Legal Ed. No. 1 (2004). For a brief synopsis, see Harvard Health Help Guide, *Benefits of Mindfulness*, www.helpguide.org/harvard/benefits-of-mindfulness.htm.

Conclusion

Attorneys who allow their relationships with opposing counsel to break down are not serving their clients. These attorneys merely are repeating the dysfunctional behavior that brought their clients to them. As a judge once told an attorney, “The rules are there for a reason.” Stick to them, and you will find your interactions with Bully and Dismissive attorneys to be far more fruitful.

Do not get drawn into the games of Bully and Dismissive attorneys. Keep your eye on your goal and what you are trying to accomplish in the interests of your client. If how the opposing counsel engages you does not meet your goals, don't let yourself spin out of control. Determine to win with intellectual strategies, rather than emotional games. n