

How to Handle a Difficult Adversary

By Joan Vestrand

Lawyers are ethically bound to treat one another with civility and respect. Courtesy, cooperation, and handshakes help to render humane and tolerable the chilly waters of an otherwise adversarial system. Yet every lawyer knows that there are times when this simply is not the case. So what should you do, as a lawyer, when you face a bully or overly aggressive opposing counsel? Can you stand your ground for your client without stooping to the aggressor's level, which is exactly what he wants? Or, are there smarter tactics that will, in the end, give you the advantage?

Most of us are familiar with the "sharp shooter"—the lawyer who attempts to gain advantage through bullying, mean-spirited, and discourteous conduct. Sharp shooters use overly aggressive measures intended to intimidate, overwhelm, and frustrate the opposing party. They are likely to refuse normal courtesies, such as reasonable requests for time extensions, and may fail to respond to correspondence and settlement proposals. They often seek to embarrass and demean opposing counsel with the goal of undermining the other lawyer's confidence.

Sharp shooters may refuse to stipulate to undisputed facts and will schedule depositions and hearings without regard for the opponent's availability. Intentional delay is a hallmark of a sharp shooter. They may intentionally send pleadings or messages at the end of a day or week to delay notice to the other side as long as possible. They promise responses or documents that never arrive. And then there is the written "confirmation" of conversations that do not fairly and accurately reflect the discussion and agreement of the parties. The list goes on.

Rambo-style lawyers are bullies, and the first rule when dealing with a bully is to act as if the conduct is not happening. Do not give the bully the satisfaction of a reaction. The second rule is to not allow the conduct to discombobulate you. You can do this; it is all a matter of attitude. It helps to realize that when dealing with a sharp shooter you have the upper hand.

Abusive conduct, offensive antics, and rudeness only serve to jeopardize *that* lawyer's client. As Justice Warren Burger said, "Lawyers who know how to think but have not learned how to behave are a menace and a liability to the administration of justice." Lawyers who interrupt, argue with, or talk down to the court, or who belittle or attack the adversary, will not command the confidence and respect of the court. Consequently, those lawyers are likely to bear a much heavier burden of persuasion. The law is full of close questions, and judges are often called upon to decide them. The uncivil lawyer is more likely to lose those close calls. And judges have long memories.

What the sharp shooter does not see is that by attempting to engage opposing counsel in distraction, it is the sharp shooter who becomes distracted. Use this to your advantage. Keep your eye on the ball as your opponent fails to do so. See the advantage that the objectionable behavior gives you and capitalize on it.

If you are facing a bull dog, you already have the tactical advantage. Keep it by maintaining your professionalism and viewing courtesy and civility strategically—as key tools in your litigation arsenal. Not only will you earn and keep the respect of your colleagues and the judiciary, you ultimately will benefit your clients.

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