



Bridge the Gap

Bridgeport Conference  
Center

October 27, 2023

# Presenters



**Robby J Aliff**

**Jackson Kelly PLLC**

**Secretary/Treasurer, WV ABOTA Chapter**



American Board  
of Trial Advocates™

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## **Who We Are**

- ABOTA is a national association of experienced trial lawyers and judges dedicated to the preservation and promotion of the civil jury trial right provided by the Seventh Amendment to the U.S. Constitution. ABOTA membership consists of more than 7,300 lawyers—equally balanced between plaintiff and defense—and judges spread among 96 chapters in all 50 states and the District of Columbia.

## **Our Mission**

- The general purposes of this Association shall be to foster improvement in the ethical and technical standards of practice in the field of advocacy to the end that individual litigants may receive more effective representation and the general public be benefited by more efficient administration of justice consistent with time-tested and traditional principles of litigation.



**Why do a civility program for lawyers?**



From: \_\_\_\_\_  
Sent: Tuesday, September 30, 2014 3:15 PM  
To: \_\_\_\_\_  
Subject: Re: Response to your email below

**Dear Mr. \_\_\_\_\_:**

**Bull%\$\*#! My communications were made in respect to the Mandatory Settlement Conference proceeding. There are numerous and sundry ex parte communications that are permitted between parties to a Mandatory Settlement Conference proceeding except perhaps where the sitting Judge happens also to be the single assignment trial judge, which is not the case**

# Stun gun at deposition

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Trial court did not abuse its discretion by ordering terminating sanctions after plaintiff failed to pay sanctions, harassed opposing counsel, made highly contemptuous statements to the trial judge, and brandished pepper spray and discharged a stun gun at a deposition, conduct described the by the trial judge as **“the most outrageous behavior that I have ever heard of in my life by an attorney.”**

- *Crawford v. JPMorgan Chase Bank, N.A.* (December 9, 2015, 2<sup>nd</sup> District)

DEATH OF A PRACTICE • DREAM LAWYERS SPEAK OUT  
WHEN TO RAISE (OR DROP) YOUR POINT • GAME THEORY AND THE BLUFF

# ABA JOURNAL

JANUARY 2013 THE LAWYER'S MAGAZINE



Keeping It Civil



# ABA JOURNAL

Cover Story

## You're Out of Order! Dealing with the Costs of Profession

Posted Jan 1, 2015 5:18 AM CST  
By G.M. Flippo



Illustration by Matt Moratin

William Gary White III was accused of being an uncivil and unsympathetic attorney in 2011 for 90 days and ordered him to program.

White was found to have violated a slew of South Carolina S.C., church that had received a town notice that it was town manager and later made part of the published report.

"You have been sorry a letter by purported Town Manager has no order. He also has no brains, and it is questionable ago. The church is his body on Earth. The papers speak again."

"First graders know about freedom of religion. The federal law. They do not seem to be able to learn similar lack of success."

A town council member filed the disciplinary committee supreme court held that White can roughshod over "honesty, integrity and civility, not only in court, but in the office."

White says he's learned from the experience. "I've learned the time believed them to be political statements explain. 'I think the rules are clearer now, I'm representing a client.'"

# THE WALL STREET JOURNAL

WSJ.com

THE NEWS | Updated January 27, 2013, 10:38:21 AM ET

## Lawyers Behaving Badly Get A Dressing Down From Civility Cops

Attorneys' Spats Cross (Unwisely) Into More Results With Impact

By JAMIE SMITH



A group of attorneys convened about 100 attorneys in their profession said a modest group of attorneys in Manhattan law firm, complete with courtroom 2013 from 1992's Justice Court Report.

In New York one night recently, U.S. District Judge Richard Sullivan donned his robes, walked onstage and helmed out to his colleagues this heartfelt plea for lawyerly politeness (in the tune of "If I Were a Rich Man"):

*"If lawyers were more civil"*

*Daidle deidle daidle daidle deidle daidle daidle*

*They'd treat their brethren with more respect*

*Wouldn't always yell, 'objection!'"*

The ditty struck a nerve—and brought down the house, a largely pinstriped crowd of 80 or so lawyers there for a musical refresher course on the virtues of civility.

But it is no laughing matter to those who fret that a tide of rudeness has engulfed the legal profession.

# American Inns of Court Professional Creed

- Whereas, preservation and promulgation of the highest standards of excellence in professionalism, ethics, civility, and legal skills are essential to achieving justice under the Rule of Law; . . .
- I will treat the practice of law as a learned profession and will uphold the standards of the profession with dignity, civility and courtesy;
- I will serve as an officer of the court, encouraging respect for the law in all that I do and avoiding abuse or misuse of the law, its procedures, its participants and its processes. . . .
- I will honor the requirements, the spirit and the intent of the applicable rules or codes of professional conduct for my jurisdiction, and will encourage others to do the same. . . .
- [www.innsofcourt.org](http://www.innsofcourt.org)



AMERICAN BOARD OF TRIAL ADVOCATES

## Code of Professionalism

*As a member of the American Board of Trial Advocates, I shall*



*Always remember that the practice of law is first and foremost a profession.*



*Encourage respect for the law, the courts, and the right to trial by jury.*



*Always remember that my word is my bond and honor my responsibilities to serve*



*Always remember that the practice of law is first and foremost a profession.*



*those whose practices are different from mine, to make our system of justice  
more accessible and responsive.*



*Resolve matters and disputes expeditiously, without unnecessary expense, and  
through negotiation whenever possible.*



*Keep my clients well-informed and involved in making decisions affecting them.*



*Achieve and maintain proficiency in my practice and continue to expand  
my knowledge of the law.*



*Be respectful in my conduct toward my adversaries.*



*Honor the spirit and intent, as well as the requirements of applicable rules or  
codes of professional conduct, and shall encourage others to do so.*



**What does it mean to be civil?**

The fallacy of  
the “zealous  
advocate.”

## **zeal-ot**

noun

- A person who is fanatical and uncompromising in pursuit of their religious, political, or other ideals.
- Synonyms: fanatic, extremist, radical, diehard, militant.



**“Zealous  
Advocate”  
redefined**

**zeal-ous**

adjective

- Fervent, ardent, passionate, impassioned, devout, devoted, committed, dedicated, enthusiastic, eager, keen, avid, vigorous, energetic.

# Baby Blues









**What does it mean to be uncivil?**



In the future, please say "I object"  
rather than "that's total bullshit."



## **Techniques for avoiding the negative affects of incivility**

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“And do as adversaries do in the law, --  
Strive mightily, but eat and drink as friends.”

*William Shakespeare, 1590*

*The Taming of the Shrew, Act 1, Scene 2*



**Is lack of civility a problem?**



“Our profession is rife with cynicism, awash in incivility. Lawyers and judges of our generation spend a great deal of time lamenting the loss of a golden age when lawyers treated each other with respect and courtesy. ***It’s time to stop talking about the problem and act on it. For decades, our profession has given lip service to civility. All we have gotten from it is tired lips.*** We have reluctantly concluded lips cannot do the job; teeth are required. In this case, those teeth will take the form of sanctions.”

*Kim v. Westmoore Partners* (2011) 201 Cal. App. 4<sup>th</sup> 267

Supreme Court of Appeals of West Virginia



Oath of Attorney

"I do solemnly swear or affirm that: I will support the Constitution of the United States and the Constitution of the State of West Virginia; that I will honestly demean myself in the practice of law; that I will conduct myself with integrity, dignity and civility and show respect toward judges, court staff, clients, fellow professionals and all other persons; and to the best of my ability, execute my office of attorney-at-law, so help me God."

# WV Oath

(adopted summer 2021)



**What do you do if your client insists that you play “hardball” with opposing counsel?**





A lawyer shall not unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act.

W. Va. Code of Professional Conduct 3.4(a)

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# Requests

“May I have a brief extension of the deadline?”



**Civility should be the norm**

What Should you tell  
your clients and  
potential clients about  
civility?



**What do you do if your partner is uncivil and that is what is expected of you?**

**W. Va. Rules of Professional Conduct 5.1(a):**

A partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

**W. Va. Rules of Professional Conduct 5.1(c):**

A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if the lawyer the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

**W. Va. Rules of Professional Conduct 5.2(a):**


A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person.

**W. Va. Rules of Professional Conduct 5.2(b):**

A subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

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***There is no better guide to professional courtesy than the Golden Rule: you should treat opposing counsel the way you yourself would like to be treated.*** Where, as here, there is no indication of bad faith, prejudice, or undue delay, attorneys should not oppose reasonable requests for extensions of time brought by their adversaries. See Cal. Attorney Guidelines of Civility & Prof. § 6.

*Ahanchian v. Xenon Pictures, Inc.* (2010) 624 F.3d 1253



**What do you do at a deposition if your opponent improperly objects, coaches the witness, or insults your client?**



10 **π Counsel:** We have sent you offers to settle, you have dragged us through this nonsense,  
11 you've been sanctioned \$6,000 and yet you keep this nonsense up. Now we'll take a lunch break  
12 and based on your little preface a minute ago, I'll go through with my client various paragraphs so  
13 he can come back in here and answer your questions. We are now at lunch.

14 **Δ Counsel:** Okay, fine. I would appreciate it if you maintain your professionalism during ---

15 **π Counsel:** I cannot because you're an idiot.

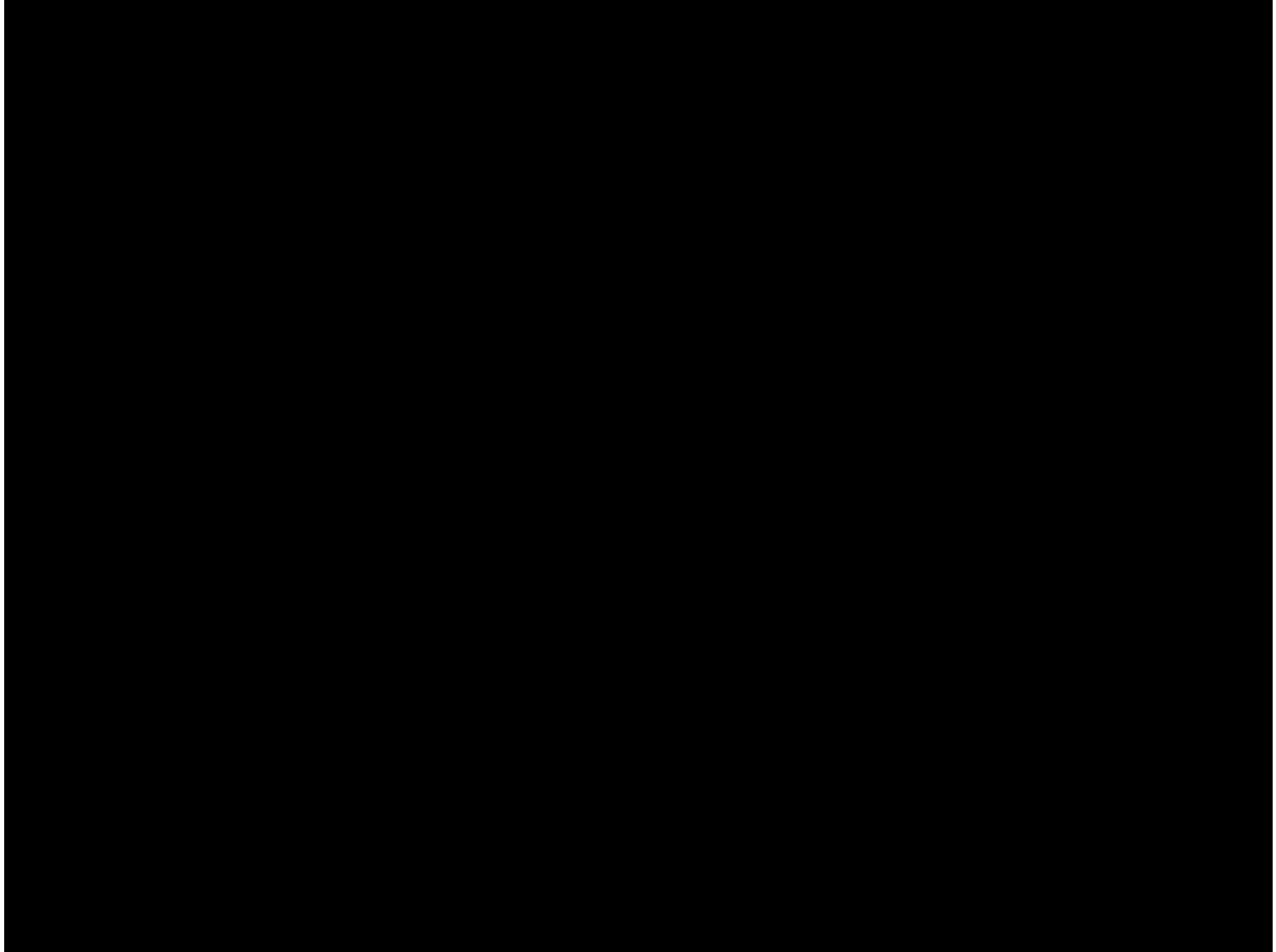
16 **Δ Counsel:** I share that view of you, based on your statements.

17 **π Counsel:** \$6,000 in sanctions for your nonsense of wasting my client's time because you or  
18 someone in your stupid company --

19 **Δ Counsel:** An attorney is entitled to that testimony. I don't know where you went to law  
20 school.

21 **π Counsel:** Pay your damn sanctions.





# **ABOTA Principles of Civility, Integrity and Professionalism**



During a deposition, never engage in conduct which would not be appropriate in the presence of a judge

The duty to refrain from disruptive conduct applies to any proceeding of a tribunal, **including a deposition.**

W. Va. Rule of Professional Conduct  
3.5, comment 4

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**What do you do if your client is uncivil to your opponent during a deposition?**

5 **Q:** How about your own net worth, Mr. Jaques? What is that?

6 **Defendant's Counsel:** Excuse me. Object also that this is protected by a —

7 **A:** Get off my back, you slimy son-of-a-b\_\_\_\_\_.

8 **Q:** I beg your pardon, sir?

9 **A:** You slimy son-of-a-b\_\_\_\_\_.

10 **Q:** You're not going to cuss me, Mr. Defendant.

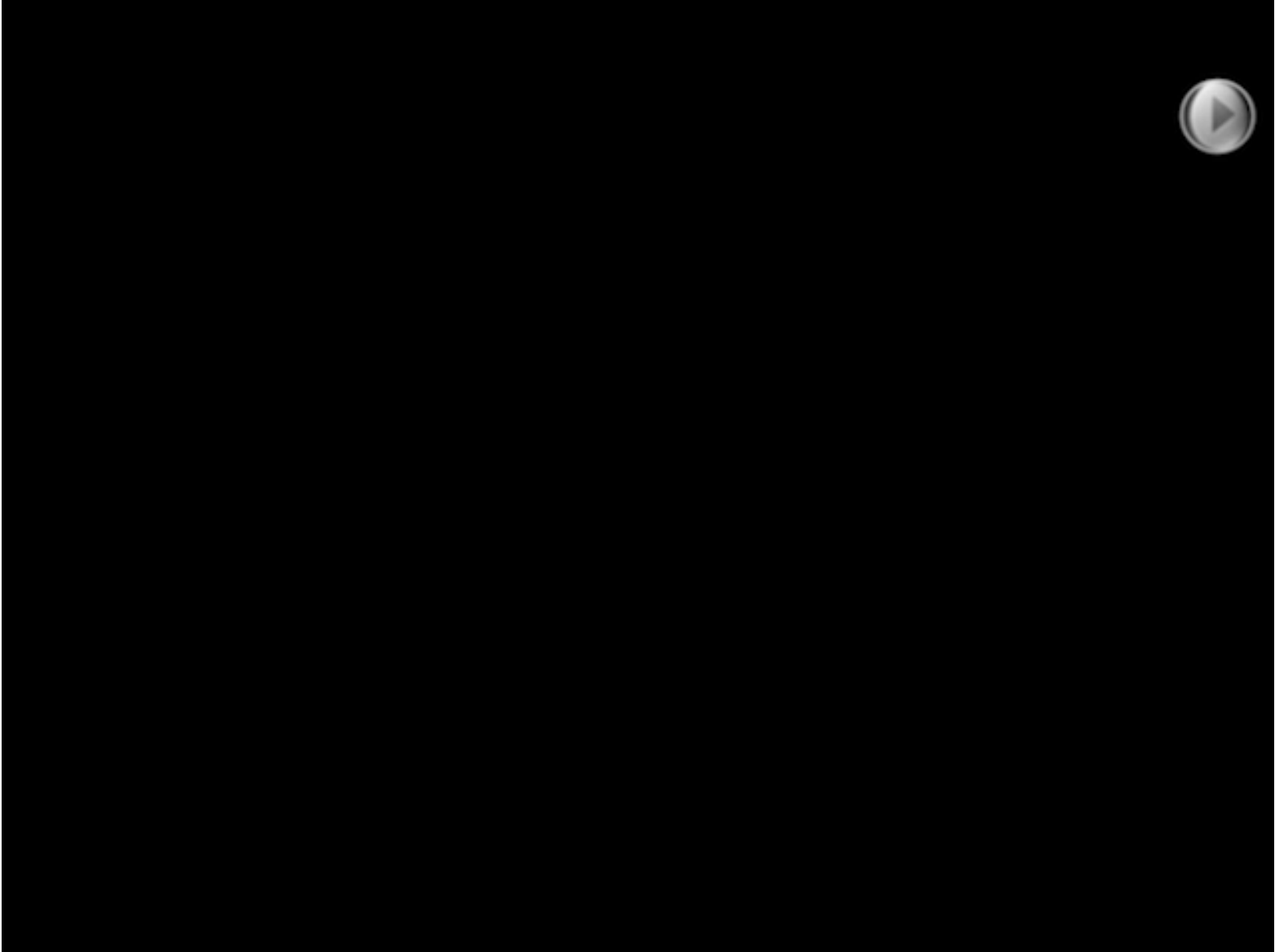
11 **A:** You're a slimy son-of-a-b\_\_\_\_\_.

12 **Q:** You can cuss your counsel. You can cuss your client. You can cuss yourself.

13 You're not going to cuss me. We're stopping right now.

14 **A:** You're damn right . . . F\_\_\_\_\_ you, you son-of-a-b\_\_\_\_\_.








**ABOTA**  
**Principles of**  
**Civility, Integrity**  
**and**  
**Professionalism**


During a deposition, never engage in conduct which would not be appropriate in the presence of a judge







**What should you do if you receive argumentative, nasty emails, letters, or voicemails from your opponent?**

- 
- Jason:
  - I hate your f&#ing existence. What you did to my property was a vicious attack against the sumac cover planted by Irene Poulsen . . . .
  - . . . More importantly, as far as I'm concerned, in the twenty-six years that I have practiced law, I have never met, in a limited basis, a more despicable self-made f%#\$ing slime-bag and I piss on your existence. What I want to tell you specifically is to take this letter and jam it up you're a#%hole, resulting in severe paper cuts. You are a used condom of the highest order.
  - Marvin Jones of Urbana, IL

November 25, 2008

[REDACTED]  
Gibson & Sharps, PSC  
703 Market Street, Suite 1504  
San Francisco, CA 94103

Re: Arbitration Name [REDACTED]  
Arbitration Number [REDACTED]

To: The Extortionist:

Attached are my objections to the discovery you sent me. My response should, in no way, be taken as a sign that I am somehow stipulating to use your friend and co-conspirator, [REDACTED]. The ONLY reason I am responding at all is because I have no doubt that if I do not respond, you will tell [REDACTED] to "rule against me" and I will not have a fair opportunity to establish the fact that **you are a thief and an extortionist**. Rather, this in no way should indicate that I am waiving my right to privacy, which I am not. As a result, if you run whining and crying to [REDACTED] regarding any of my objections, I will sue you personally for violating my right to privacy, among many other things, though I can tell your extreme greed and stupidity will probably cause you to do something underhanded, as you have in the past on many occasions.

[REDACTED]

# **DeRose v. Heurlin (2002) 100 Cal.App.4th 15**

DeRose retained attorney Heurlin to represent him in a dental malpractice claim. Heurlin decided to change lawyers to a firm known as Day and Day and informed Heurlin who filed an attorneys' fee lien of \$22,797. For a period of approximately 3 months, Mr. Day repeatedly wrote Heurlin for his file and an itemization of his lien. Day finally told Heurlin that his lack of cooperation was unprofessional. Heurlin responded with a letter that included the following:

**DeRose v.  
Heurlin  
(2002) 100  
Cal.App.4th  
15**

“I plan on disseminating your little letter to as many referring counsel as possible, you diminutive shit ... educate yourself about attorney liens and the work product privilege ... see you in Court.”

# DeRose v. Heurlin (2002) 100 Cal.App.4th 15

## Day responded in part as follows:

“I do not want your work product. You told me in our telephone conversation your \$20,000 plus lien was incurred obtaining and reviewing medical records. Those records are not work product. I take it from your letter you do not have any such records.

My client has requested an itemization of your lien, and we again respectfully request that itemization. ***John, what in the world would prompt you to write a letter like that?*** All we wanted was the medical records you told me you reviewed. If you don't have any, all you had to do was say so.”

# Name calling does not work

\$5,000 sanctions upheld against an attorney for writing a letter to the Court stating that his opponent's manner of practicing law "indicates that she fits more as a clown in a circus than an attorney in a court of law."

Note: The same lawyer had been disbarred from the U.S. Supreme Court after filing a petition for certiorari calling the Chief Judge of the Second U.S. Circuit Court of Appeals "Chief Injustice."

**Nachbaur v. American Tansit Insurance Co.**  
752 N.Y.S.2d 605, 2002 N.Y. App. Div. (1st  
Dept, 2002).





# **ABOTA Principles of Civility, Integrity and Professionalism**

Advance the legitimate interests of my clients, without reflecting ill will they may have for their adversaries, even if called on to do so, and treat all other counsel, parties and witnesses in a courteous manner.



**ABOTA**  
**Principles of**  
**Civility,**  
**Integrity and**  
**Professionalism**

Never, without good cause, attribute to other counsel bad motives or improprieties.

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**How can civility or lack thereof affect the outcome of a mediation?**

# Civility in the courtroom



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**What do you do when your trial judge is uncivil?**

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*Haluck v. Ricoh  
Electronics, Inc. (2007)  
151 Cal. App. 4<sup>th</sup> 994*

1 **DEFENSE:** Have you ever heard of The Twilight Zone?

2 **A:** Yes sir.

3 **Q:** Goes kind of like this, do do, do do.

4 **PLAINTIFF:** Your Honor, I would just object. This is argument.

5 **COURT:** Your objection's on the record, ma'am.

6 **DEFENSE:** You're traveling through another dimension, a dimension not only of sight and  
7 sound, but of mind, a journey into a wondrous land, whose boundaries are that of  
8 imagination[;] that's a sign post ahead, your next stop, The Twilight Zone. Do do,  
9 do do. Do do, do do.

10 **COURT:** That was terrible. Get to the question, please.

11 **PLINTIFF:** Noting for the record, counsel was singing The Twilight Zone theme song.

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*Haluck v. Ricoh  
Electronics, Inc. (2007)  
151 Cal. App. 4<sup>th</sup> 994*

12 **DEFENSE:** Endless white room with no doors or windows. Is that where you got your idea of  
13 this white room theory?

14 **A:** From where?

15 **COURT:** Twilight Zone. That's his question.

16 **A:** No sir.

17 **DEFENSE:** Do do, do do. Do do, do do.

18 **PLAINTIFF:** I request that counsel stop signing. As entertaining as it is for the jury, it's  
19 mocking of my client and mocking the trial.

20 **DEFENSE:** Ever hear of The Twilight Zone, the show?

21 **A:** Yes sir.

22 **COURT:** For the record, he hit a few notes of The Twilight Zone theme song which I don't  
23 see as mocking. He was off color [sic].

24 **DEFENSE:** I go through life tone deaf and colorblind. This is tough.

***Haluck v.  
Ricoch  
Electronics,  
Inc. (2007)  
151 Cal.  
App.  
4th 994***

The remainder of the court's conduct set out above was also improper. Judicial ethics require a judge to “be patient, dignified, and courteous to litigants ... [and] ... lawyers ... and ... require similar conduct of lawyers ... under the judge's direction and control.” (Cal. Code Jud. Ethics, canon 3(B)(4).) The delineated exchanges between the court and counsel are the antithesis of judicial decorum and courtesy. They cannot in any sense be characterized as “tempered miscellaneous comments,” as defendants suggest. (Bold, capitalization, and underscoring omitted.)



***Haluck v.  
Ricoch  
Electronics,  
Inc. (2007)  
151 Cal.  
App.  
4th 994***

We are not persuaded by defendants' assertion that many of the exchanges between the judge and defendants' lawyer, such as the Twilight Zone colloquy, cannot be judicial misconduct because they were made by counsel, not the judge. That misses the point. Although some of these comments were counsel's, the judge instigated and encouraged many of them. He also allowed, indeed helped create, a circus atmosphere, giving defendants' lawyer free rein to deride and make snide remarks at will and at the expense of plaintiffs and their lawyer. That was misconduct. (Cal. Code Jud. Ethics, canon 3(B)(3) ["A judge shall require order and decorum in proceedings"].)

***Haluck v.  
Ricoh  
Electronics,  
Inc. (2007)  
151 Cal.  
App.  
4th 994***

The court and defendants' lawyer may just have been having a good time; defendants comment in their brief that the Penal Code reference was “[o]bviously ... a humorous question.” But while humor may have a legitimate place in a trial, it should not be used to belittle litigants or their counsel. Here the judge and defendants' lawyer had fun by making plaintiffs' lawyer the butt of their jokes. They took turns providing straight lines and punch lines to each other in a way that could only convey to the jury that they were a team and plaintiffs' counsel was an outsider.



**What can happen if you are not civil in the courtroom?**

## Adam Reposa Can't Beat the Rap

Infamous defense attorney currently in custody for contempt of court

BY CHASE HOFFBERGER, PH.D., OCT. 13, 2017

Share 252 Tweet print write a letter



Screenshot from Adam Reposa's "Lawyer Patriot Champion" YouTube video

Bombastic DWI attorney **Adam Reposa** is currently in custody of the **Travis County Sheriff's Office**, held in solitary confinement after being found guilty on five charges of contempt of court last month for defying a court order issued in March by County Judge **Nancy Hohengarten**. (She found him to be both defiant and disrespectful to the gathered jury and the court.) On Sept. 20, Reposa was sentenced to 180 days in jail by Hon. **Paul Davis**, the retired judge of the 200th District Court brought back to oversee the case. His attorneys filed a motion requesting a personal recognizance, which Davis denied on Oct. 2.

Things got sort of wild after that. Davis issued an order for Reposa to turn himself in to TCSO, but apparently never served Reposa with that order. Reposa skirted off to Williamson County, where he filed a motion for leave and stay of sentence with that county's 368th District Court, pending a hearing. Judge **Rick Kennon** granted the motion and issued Reposa a personal recognizance bond on Monday, Oct. 2. Reposa and I spoke on the phone the following Thursday. He said he'd been effectively swept out of Travis County until TCSO published a warrant, and that Davis had ordered that office to not do so. Reposa was arrested outside of a **Waco YMCA** on Friday, Oct. 6 – picked up by Williamson County deputies at

**Austin American-Statesman**  
SERVING OUR COMMUNITY SINCE 1871

Austin criminal defense lawyer Adam Reposa, who was found in contempt of court for making a gesture simulating masturbation before a Travis County judge in 2008, has accepted a three-year probation of his law license.

Reposa, 35, whose nickname is listed as "Bulletproof" on the State Bar of Texas website, remains eligible to practice law during his probation, which began March 1, according to a recent memo by the State Bar.

He made the gesture in County Court-at-Law Jan Breland's court on March 11, 2008, while representing a client in a DWI case. Reposa has said that the gesture was directed at a prosecutor.

Last month, Reposa completed a 90-day sentence for contempt. After some judges testified this year that Reposa's conduct had improved while he was appealing, he was allowed to serve about 10 days in jail and to discharge the rest in home confinement and in a sheriff's office weekend work program.

“When asked to examine the propriety of **personalized attacks on opposing counsel and witnesses** during closing argument, courts have had little difficulty determining that such attacks exceed the scope of permissible argument.

\* \* \* \*

“[I]nvective and derogation are outside the bounds of summation.....”

*Jones v. Setser*, 224  
W.Va. 483, 686 S.E.2d  
623 (2009)

- **Improper to refer to defendant as a “city slicker” who got rich “selling Cadillacs and Oldsmobiles.”**
  - *Boden v. Rogers*, 249 S.W.2d 707, 710 (Ky. App. 1952)
- **Improper for counsel to point to defendant’s counsel and say “You killed their Santa Claus..... In the name of God, I ask you to fill their stockings on Christmas Eve night, and I ask it for Jesus’ sake.”**
  - *Chesapeake & Ohio Railway Co. v. Shirley’s Administratrix*, 291 S.W. 395, 399 (Ky. App. 1926)
- **Reference to conversations with children of the decedent and crying at grave site which was not in evidence. Cumulative effect “crossed the line between advocacy and appeals to bias and prejudice.”**
  - *Draper v. Airco, Inc.*, 580 F.2d 91 (3d Cir. 1978)

Robert Lawrence, Thoughts on Closing (ABA 2005)

[http://www.americanbar.org/content/newsletter/publications/law\\_trends\\_news\\_practice\\_area\\_e\\_newsletter\\_home/closingarguments.html](http://www.americanbar.org/content/newsletter/publications/law_trends_news_practice_area_e_newsletter_home/closingarguments.html)



## ABAJOURNAL

Federal judge says motion is littered with 'unnecessary potshots and hyperbole,' offers chance to refile

BY DEBRA CASSENS WEISS

MARCH 20, 2023, 5:10 PM CDT

**“With all due and maximum respect”**— a point that counsel underlined, lest it be lost – “irrespective of **whether this Court or someone else on behalf of this busy Court wrote the Order** –this is **unacceptable, and unfair, and this is the main reason why an honest Court of Appeal [sic] should not have a second of hesitation in reversing this Court’s ruling.**”

**The Court invites counsel to reread the draft**, with the benefit of the passage of time, and maybe a good night’s sleep. And more specifically, this Court **invites counsel to have a moment of quiet reflection, and revisit the tone of the filing**. Counsel should ponder whether she would say it differently, on a second go-around. If so, counsel has leave to file an amended motion by one week from the date of this Order.



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Indianapolis Bar Association

GETTING  
ALONG  
*is not*  
WRONG

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# Question

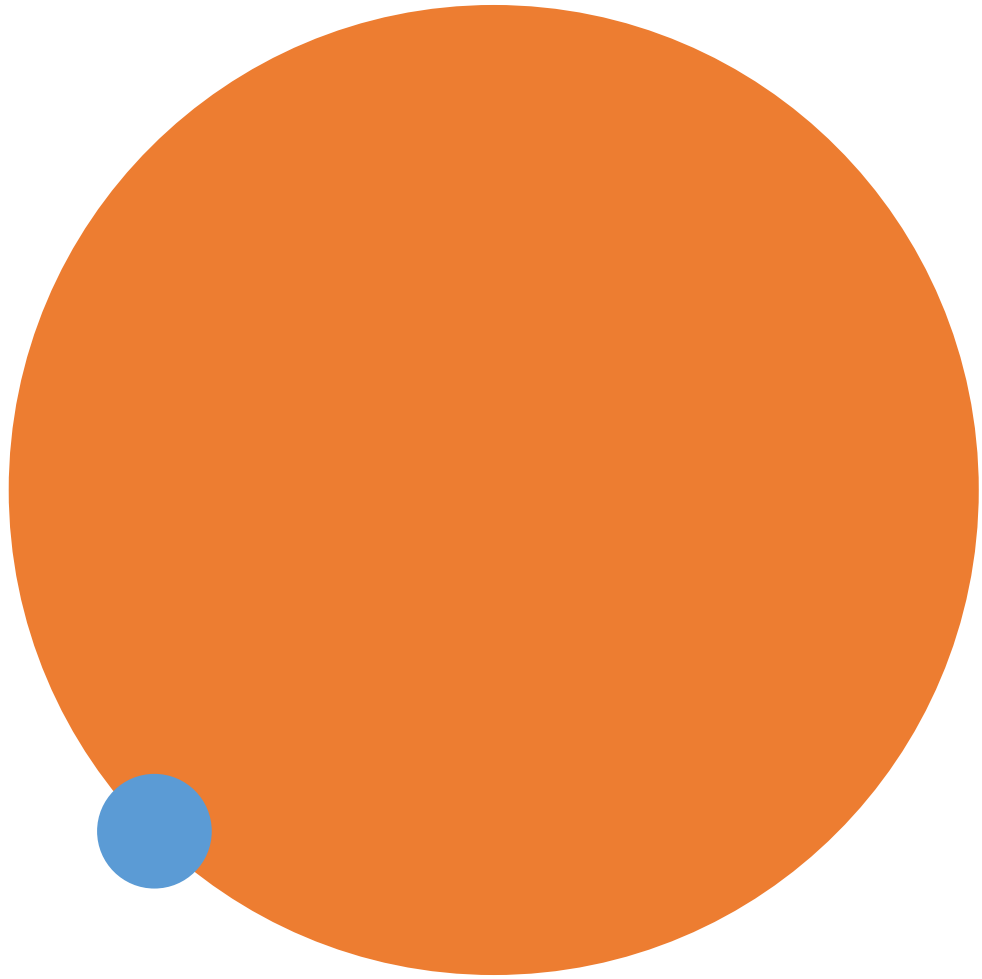
**Robby J Aliff**

**Jackson Kelly PLLC**

**Secretary/Treasurer, WV ABOTA Chapter**

*Thank you to those  
who have supported  
Civility Matters*





**Thank you!**

