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# 5 Ways to Manage Unreasonably Aggressive People in Litigation While Maintaining a Healthy Emotional Balance

**By Nancy Pritikin**

ALL LITIGATORS FACE aggressive behavior from bullying opponents, witnesses, and sometimes even their own clients. At times, judges can be bullies too. Indeed, several courts have openly acknowledged the problem of incivility in the legal profession. In 1992, the Seventh Circuit's Committee on Civility observed that "the decline of civility standards in litigation practice is among the most important and universally discussed issues facing the legal community today." See Final Report of the Committee on Civility of the Seventh Federal Judicial Circuit, 143 F.R.D. 441, 444 (1992). Despite sincere efforts to "restore" civility, the problem remains. In California, for example, the Court of Appeal for the Fourth District fairly recently lamented that the legal profession is "rife with cynicism" and "awash in incivility." *Kim v. Westmoore Partners , 201 Cal. App. 4th 267, 293 (2011).*

Confronted with this reality, many attorneys are simply told, "Get a thicker skin," and "Don't let it bother you." While well-intentioned, such facile advice can have adverse consequences. In particular, it can lead many attorneys to simply mask their feelings while anger and frustration boil up inside, resulting in stress, unhappiness, and self-destructive behavior. Attorneys desperately need strategies to manage difficult people and situations that are both healthy and in furtherance of their client's interests.

**Nancy Pritikin**

*Courtesy photo*

There are several important reasons why attorneys must learn how to effectively deal with and respond to bullies. One of the most important is grounded in our adversarial system. As the Supreme Court explained in Penson v. Ohio , 488 U.S. 75 (1988), our system of justice is premised on the principle that truth and fairness are best discovered by powerful partisan advocacy on both sides of a case. Thus, our legal system works best when both sides are able to present their best cases, testing their opponent and the limits of the judicial system. To be the most effective advocate for your client, you must be prepared, focused, and clear in your arguments, questions, and presentations. Unfortunately, too many attorneys believe that in order to be an advocate, they must also be a jerk, by bullying, yelling, demeaning and insulting their opponents. Such conduct is not only unnecessary, but it also undermines our legal system by attempting to intimidate an opponent into silence instead of meeting an opponent's arguments head on. To fulfill your role in our adversarial system, attorneys must ensure that the merits of their client's position are not overshadowed by the bullying behavior or sharp litigation tactics of others.

Unfortunately, even intensely focused attorneys can become derailed when faced with bullying,

belittling, and demeaning behavior by opposing counsel and others. Instead of keeping perspective on the overall case and the interests of their clients, many attorneys make "getting even" or personally besting their opponent a paramount concern. In addition to this being a personally unhealthy approach for the lawyer, it is a disservice to the adversarial system. It also is almost always unsuccessful. Judges are quick to cast aspersions on both parties when they view both sides as behaving in an uncivil and contentious manner. The fact that the other side "started it" usually falls on deaf ears. In *Davis v. Los Angeles West Travelodge*, for instance, the Central District of California ordered attorneys on both sides of a dispute to participate in 20 hours of continuing legal education for civility and professionalism due to their "uncivil and unprofessional behavior" in filing multiple improper sanctions motions and in engaging in "inappropriate communications" that wasted judicial resources and "clearly distracted from the substantive issues in the case." See Order Denying Mot. for Sanctions, *Davis v. Los Angeles West Travelodge*, No. 2:08-cv-08279-CBM-CT (C.D. Cal. Nov. 19, 2009), ECF No. 165. When one of the attorneys requested reconsideration, the court acknowledged that although his conduct was "less egregious and less disrespectful" than the other attorneys, he and his peers were all at fault for "allow[ing] their hostility for each other to escalate to a point in which it interrupted the trial and interfered with the orderly and efficient administration of the Court." *Davis v. Los Angeles West Travelodge*, No. 2:08-cv-08279-CBM-CT, 2010 WL 623657, at *3 (C.D. Cal. Feb. 3, 2010).

When highly charged emotional confrontations occur—whether in deposition, over the telephone, via email, or in court—consider your own reaction and ask yourself whether you are serving the best interests of your client. Additionally, consider how your behavior and interactions at work affect those you care about outside of work, your family and your friends. Angry aggressive behavior at work often spills over to your private life. Acting with integrity and purpose at work counteracts this result and allows you to preserve your emotional well-being while still very effective for your client.

Of course, the question still remains: how does one effectively deal with a bully? Below are five steps for managing difficult people and situations without compromising your client's interests or your personal well-being.

### Step One: Create Space

When you feel yourself reacting with anger or emotion, create space. This can be done physically, as by taking a step back, standing up, walking to another part of the room, or by simply breathing while you take a moment to consider your reaction. This physical action creates room for consideration and deliberate action or reaction. Almost everything that occurs in litigation is "on the record," so keep that in mind. Speaking without thinking creates a poor record, will make a poor impression before a judge or a jury, and does not further your client's interest. Creating space may also help counteract the paralysis that many people suffer confronted with angry, inappropriate bullying can be counteracted by this simple step. When you react, do it purposefully and with integrity.

It is also important to create space mentally by not allowing the bully to set the pace or tone of your interactions. Stop interactions that involve raised voices by refusing to participate and requiring the other person to speak in an understandable appropriate tone of voice. The purpose of bullying is to dominate and control. Bullies rarely get satisfaction when dealing with individuals who stand their ground and refuse to engage in a shouting match.

Take proactive steps to protect your client and witnesses from inappropriately aggressive behavior by removing them from the situation and seeking court assistance if appropriate. Even if your client or witness wants to engage in debate or argument with opposing counsel, it is not in their interests and is not going to help your side win your case.

### Step Two: Make a Record

A lot of bullying and inappropriate behavior occurs away from the courtroom or is off the record during depositions. It is very important to call the behavior out and get it on the record, either by putting it on the official record of a proceeding or by putting it in writing.

I have heard many stories about a particularly aggressive lawyer (who is no longer in practice) who had a habit of whispering obscenities in the ear of young, usually female, attorneys just before important court appearances. Those off-the-record remarks were usually tolerated or brushed off. However, no attorney is required to accept this kind of behavior in the course of performing his or her job. If another attorney engages in this kind of conduct, the behavior should be recorded and any evidence, such as a deposition transcript, deposition video, or any contemporaneous notes, should be secured. Using this information, make an immediate demand for the attorney to stop the inappropriate conduct. Write up the interaction in clear, objective terms and not as an emotional ranting. The writing, even if addressed to opposing counsel, is for an eventual judge, so the tone should be appropriate for that audience.

By immediately addressing inappropriate behavior, you may be successful in making it stop, and/or the

record and evidence will support the imposition of disciplinary charges and/or court intervention. See, e.g., Mullaney v. Aude , 730 A.2d 759 (Md. Ct. Spec. App. 1999) (holding that protective order could be issued and attorney fees awarded based on sexist comments made by one attorney to another during deposition, including referring to a female attorney as a "babe" and a "bimbo"); *In re Williams*, 414 N.W.2d 394 (Minn. 1987) (upholding public reprimand of attorney who made an anti-Semitic comment to opposing counsel during a deposition). Do not be embarrassed or worry that you appear overly sensitive or not "tough enough;" make sure that improper behavior is recorded and proven so that at the appropriate juncture, it can be part of a record to bring to a judge. This benefits you, your client, and the legal profession.

When you get the opposing counsel who acts one way on the telephone and writes letters or emails that are totally inconsistent with the interaction, you must respond promptly and in writing to set the record straight. Make sure you take the time to respond clearly and objectively. Prompt does not mean immediately, but as soon as you can respond unemotionally.

**Step Three: Get Perspective**

The worst moment for lawyers is to be called out for a mistake. Smart bullies recognize this and exploit mistakes so that their opponent starts focusing on covering up their mistakes instead of advancing the merits of their client's position. Time and time again, good lawyers end up hiding from their mistakes instead of addressing them head on. Often these situations result in lawyers engaging in self-destructive behavior.

Avoid the echo chamber where everyone will agree with you and instead, get an objective perspective on what the issue is and how to counteract it. Trusted colleagues are an important resource. Both state and federal procedural rules provide avenues to address and correct mistakes. When you take ownership of the situation, you will find better ways to address it, both legally and emotionally.

The other reason to get perspective is to find out whether you are creating the problem with the other side and whether there is a better, more effective approach. Most bullies are not self-aware and may believe they are just being tough. Find your style and approach and get valid objective feedback.

**Step Four: Deal With Your Own Stuff**

The most effective litigators have self-confidence that they can rely on in confrontational situations. While some litigators may be born with self-confidence, most develop it over time and with experience. The fastest way to develop self-confidence is to be prepared for each situation and to consider in advance how you will address the situation in whatever way it develops. Where unanticipated issues arise, take a break and, if possible, call someone who can give you perspective, and maybe a substantive solution.

Every litigator has to deal with stress. It is part of the job. How you manage it depends on you and how you choose to address it. Look for healthy ways to manage stress, such as exercise, meditation, and good friends. If those healthy methods elude you or are not enough, get professional help. You will be a better lawyer and a better person for finding sustainable ways to manage your stress.

**Step Five: Take the High Road**

Litigation is a long process. You may have to change gears several times during that process, as facts, witnesses, and circumstances for your client change and evolve. Personally insulting your opponent won't help you if you reach a point where you have to consider settling the case. I have repeatedly seen lawyers go out of their way to personally belittle and antagonize the very people who will decide whether the case will settle. In short, winning little battles won't help you win the war if the case goes to trial.

At trial, "the high road" is your best friend, as your chances of getting a court or a jury to listen to your perspective and perhaps provide some relief in favor of your client depend greatly on your personal integrity—you have to behave and communicate in a manner that shows that you did all you could to set the record straight and request civil appropriate behavior from the other side. Regrettably, too many attorneys interpret their duty to zealously advocate on their client's behalf as requiring "scorched earth" litigation. But as the Appellate Division of one California Superior Court reminded one of the attorneys appearing before it: "The practice of law is not a boxing match. . . . [S]ome of the most passionate and effective advocates for their clients also hold their adversaries, the Court, and its judicial officers in the highest regard. Passion can easily coexist with respect, dignity, and civility." *People v. Whitus*, 209 Cal. App. 4th Supp. 1, 14 (Cal. App. Dep't Super. Ct. 2012).

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