



IN SIGHT

for Oregon Lawyers

IMPROVING THE QUALITY OF YOUR PERSONAL AND PROFESSIONAL LIFE

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Triggers

Page 1

Welcome Doug!

Page 1

Managing Your Anger

Page 3

Coping With Angry Opposing Counsel

Page 3

A "Fixer" Finds Happiness

Page 5

Health Insurance Today, at Sixty-five, and in Retirement

Page 6

Aging and Addiction

Page 7

Lawyers in Transition Calendar

Page 8

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COPING WITH ANGRY OPPOSING COUNSEL

What do you do when opposing counsel screams and insults you during every telephone conversation? You hang up the phone, but first you declare that all further communications must be in writing, unless he or she agrees to be civil.

What do you do when opposing counsel constantly interrupts depositions with ill-founded objections and, when you object, insults you with, "If you can't take it, you shouldn't be practicing law!?" You take a break to allow cooler heads to prevail. If they don't, you create a transcript describing the reasons why you are prematurely terminating the deposition until you can get a court ruling on the appropriateness of opposing counsel's conduct. You also inform the other side that you will ask for costs. If the deposition takes place out of town, you call the judge or magistrate and ask him or her to intervene on your behalf.

What do you do if opposing counsel has a habit of screaming at you while not saying anything inappropriate, such that subsequent review of the transcript would not reveal the nature and severity of the harassment? You explain on the record what opposing counsel is doing, perhaps first going off the record and informing opposing counsel that he or she has one more opportunity to shape up before you make a record for the court's review.

What do you do if opposing counsel swears at you, makes inappropriate and insulting gestures, and/or is similarly abusive to your witnesses or clients? You terminate the deposition and require videotaped depositions from then on, which will either deter the abusive behavior or provide a visual record for the court.

What you must *not* do is respond in kind, as difficult as that may seem at times. If you resort to the same type of conduct, you will expose yourself to countercharges and even potential

discipline.

What should you do if opposing counsel tells you that you don't belong in the practice of law, says you don't know what you are doing, or insults the school where you received your degree? You exude self-confidence and, perhaps with humor or exaggerated humility, you say something like, "Well, you may be right, but I'm here to stay and it's a problem you will have to learn to live with." Tell yourself that your self-esteem does not depend on affirmation by this person. Be self-confident and liberate yourself from fears of your own inadequacy.

Above all, prepare yourself mentally before the deposition, meeting, or telephone conversation to anticipate a potentially inflammatory situation. Thinking about the situation and rehearsing possible replies will allow you to control your emotions so that you do not respond in kind. Remember that such temperamental behavior is intended to manipulate. If opposing counsel provokes a hostile reaction, he or she has achieved the goal of engaging you in verbal warfare. Opting out of the situation and declining to participate is perhaps the most exasperating response that you can provide.

Excerpted from "Beyond Zealous Advocacy: Harassment and Its Remedies," by R. Terri Mandel (Messerli & Kramer, Minneapolis, MN), originally published in Bench & Bar of Minnesota (April/May 1999). <http://www2.>