

## Favorite Type of Opposing Counsel

Okay, probably sarcastic.

Mine is the guy who threatens litigation, threatens litigation, and then walks away from the case. Like, if you are going to threaten litigation, at least have the cajones to go through with it.

What is your "favorite" type of opposing counsel?

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My favorites are the adversaries who are much more experienced than I am (without actually confirming that I have practiced law longer than them) and tell me how the case is going to go and that it's better to just do what they say because they know the outcome before we ever see a judge.

Currently, my favorite adversary in this category did this to me in May 2017. Called me on the phone, told me how my client's company was totally screwed and that it would be shut down in 2 weeks by his client (minority

shareholder) and that he may even consider reporting me for ethical violations. It's nearly 4 years later, the resulting litigation hasn't even completed discovery yet and the adversary never appeared in the case (he was a NY admitted attorney in another state and hired local counsel in NY).

So, I'm glad I didn't listen to him...

Andrew Ayers, New York

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I had a case several years ago that made the local paper (because opposing counsel called a press conference). When word came out that I was representing the defendants, I received calls from about seven different lawyers (some of whom were friends of mine and some I did not know) telling me to "watch my back" as the plaintiff's lawyer was, as one of his former co-counsel put it, "he is the most unethical lawyer I have ever encountered." He is a lawyer based in southern California. This all bore out during the lawsuit and trial. In one deposition I was asking the 30(b)(6)

designee about whether the board of directors approved a particular action; opposing counsel objected and told the witness not to answer. He then told me I had committed an ethical violation by asking about information covered by the attorney client communication privilege. At that point I walked over, grabbed the telephone and gave him the number for the State Bar of Texas and told him to report me. He did not. I asked the exact same questions at trial with no objection. I have other vignettes such as discovery abuse/fraud and blatant lies to the court, but I digress.

To this day, he was the WORST. OPPOSING COUNSEL. EVER.  
ENCOUNTERED.

Walter D. James III, Texas

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I'm no longer a litigator, so I don't see quite so many jackasses, but one guy did take the cake. He was a DC attorney, admitted in federal court in Virginia but clearly not familiar with the local rules. He propounded discovery on my client, and when he got my objections (which are/were required under the local rules two weeks before responses are due), he called me on the phone, cursed up a storm about how unethical I was, then proceeded to file a motion to compel and a motion for sanctions--and got a hearing the day before discovery was actually due.

The best part was watching him make his argument to Judge Bradberry, who just sat there staring at him and not saying a word (always a bad sign).

When DC guy got done, the judge said "Thank you Mr. X. Kevin?" (also a bad sign as this Judge NEVER gave out any home cooking). I responded "Your honor, discovery is due tomorrow, and I've got a stack of documents about a foot high ready to go out in the mail." The judge said "Mr. X, maybe you should go back to your office and see what you get in the mail next week."

And he stood up and walked out of the room.

Other than the guy who objected a motion to compel solely on the basis that I had cited the wrong rule number (he had an old copy of the local rules, which were renumbered a couple of years before), that was probably my best "just deserts" moment as a litigator.

Kevin Grierson, Virginia

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One of the worst opposing counsels that I ever had was one who demanded that my client pay for her client's expert witness's "travel expenses." I asked what those were and she said that he had had to walk around the corner to go to the court reporter's office. She actually raised this argument with the judge and he started laughing.

Cindy D. Salvo, New Jersey

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Now that is funny – we may need to set up a judging panel to determine which one of the stories makes for the worst opposing counsel . . . . 

Walter D. James III

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There are some nuts out there practicing law. The best opposing counsel is one who is courteous, accommodating, knowledgeable about the law you are engaged in, and will talk straight with you about the possible outcomes, why they are possible, and what the lawyers see as the most likely outcome. Then, the lawyers can help direct their clients to a resolution with a trial.

Robert "Robby" W. Hughes, Jr., Georgia

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I once had an opposing counsel (I had the defendant) with whom I fought tooth and nail on a case. Never beyond ethical or professional courtesy boundaries, but it was a hard-fought case. After the case settled, the attorney and I went out, had a drink, and have been good friends ever since. 20 years ago...

Scott I. Barer, California

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This one requires a bit of a set up.

I practiced law for 20 (+/-) years before I moved to California (and took the Bar exam here, for the second time). In California, Bar numbers are issued in numerical order, so my Bar number corresponds to someone admitted in 2000.

At any rate, a year or two after I moved here, I was working for a BigLaw firm, handling an asset sale for a client. Opposing counsel was quite a jerk—condescending, overbearing, you name it. We finally got the deal done. I didn't give him any further thought.

About six months or a year later, I got a call from him, and he was so sweet and innocent butter wouldn't melt in his mouth. He was trying to get a rating from Martindale-Hubbell, and he needed recommendations from other counsel—preferably those who had good ratings from M-H themselves, and he asked if I would provide one. Apparently, he had previously assumed I was a young associate that he could walk all over. But when he realized I was not that new, and had the power to help him out, he was suddenly my best friend.

Brian Cole, California

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I had an opposing counsel years ago who worked with me and was extremely cordial. He told me that he would be my best friend up until the case was called for trial and then he would be my worst enemy/nightmare.

Fortunately, we were able to settle the case through his co-operation but my colleagues have advised me that he was indeed your worst nightmare once the case was on trial.

John Martin Miles, Georgia

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My "favorite" are the ones that make your case while being jerks and condescending (like Brian Cole, I have a "higher" California bar number too that doesn't match my years in practice and have seen that a bit). You know, the ones that just can't help themselves and end up being hoisted with their own petard.

A somewhat local attorney here appears nice as pie but stabs you in the back and is often condescending. He once accidentally attached as an exhibit to a trial brief a printout from software that he claimed he could not locate in discovery (even after a motion to compel). That worked well for my client in terms of sanctions, attorney's fees and valuation of the business at issue. After a continued trial, of course, so I could go through the "lost and now found!!" software in detail.

In a different trial with the same attorney, I had my client, the wife, on the stand in a divorce matter. One of my questions drew a hearsay objection, to which I responded with an exception without thinking. You know, one of those moments when you think about it afterwards and hope you are right? OC responded with, and I quote: "Great!!! Now Cook is making up exceptions to the hearsay rule!" The judge asked for a cite and I gave her the Federal Rule off the top of my head (I was new in California at the time) and said "just a sec" and quickly found the corresponding California rule (under the table on my phone no less). After looking at the bench book, the objection was overruled. But the best part was OC's unnecessary condescending outburst reinforced that I was right and knew what I was talking about and OC did not. It turned the trial in my client's favor.

Bret Cook, California

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Had a case, years ago, where every time we got it dismissed, opposing counsel's demand increased by one million dollars, and his complaint grew by 50 pages.

Same guy came into court one time and complained that the several defense counsel were illegally "conspiring" against his clients because we would meet for lunch to strategize about once a month and he found out about it.

Same guy was arguing a motion in federal court and was saying slanderous things about myself and my client. After several minutes of such slanders, I finally stood up and said, "Your honor, I never interrupt an opposing counsel during argument, but..." At this point, the judge interrupted me, and said, "That's OK, counsel. I've got it from here," and he proceeded to rip opposing counsel to shreds while everyone else in the courtroom tried not to laugh out loud.

I could tell you more stories about this guy, but it would take a couple of hours and a few beers. He finally left town when his wife was disbarred for falsifying documents which, of course, he did to at least one of the main exhibits in our case.

BTW, he is the only lawyer who I ever thought was going to slug me in the courtroom. The judge thought so, too, but told me that he wasn't worried as the bailiffs would break it up.

Timothy A. Gutknecht, Illinois

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I have learned to watch carefully when opposing counsel makes a big deal of how ethical they are in a case. It foreshadows the opposite in my experience. I also watch carefully when opposing counsel is what I call a chestbeater, talking up skills and accomplishments and how they never lose. The only litigator who never loses only takes cases that are easy, like defaults. Some manage to screw defaults up as well.

One that I still get a chuckle out of thinking about was an attorney that kept bragging to the jury he had done 27 trials. Since I used to do about thirty a year, I found that amusing. However, I made no comment to the jury. His case had so much merit that the jury was back in about ten minutes. They elected a jury foreperson and then took a vote. He lost.

Another who was interesting, was a high dollar sale of a business where the business broker sued later for an additional commission. The broker liked to use a particular attorney, who appealed every adverse ruling. I found both lawyer and his client to have rather elastic concepts of truth and ethics, to say the least. My client paid me about 90 grand to eventually get him out on a summary judgment, after multiple appeals prior to any trial. This case also taught me that local judiciary will go to great lengths to avoid granting sanctions.

I also had some Rio Grande Valley cases where the opposing counsel, his client, the judge and other county officials later went to jail. Other cases in the same area had counsel and others talking about how cheap it was to put out a contract on opposing parties and their counsel, with hitters that came across the border. I apparently had a bounty on me. There are other South Texas cases of interest, but the inquiry was about opposing counsel in particular.

Darrell G. Stewart, Texas

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This thread seemed to evolve to a best and worst type of OC.

My favorite OC is the one that is respectful, intelligent, willing to listen and appreciate the counter arguments, and most importantly does not take the case personally. Many OCs I have dealt with act like it is them that are the party, etc.

Sadly, only one OC comes to mind that fits the bill. He was great to work opposite. Everything about the process was easy. Discovery, scheduling, etc. He readily acknowledged his client's case had issues, but one never knows how a trial will go, and that his client is adamant in its position. I can respect his client's position. At the end of the day he lost at trial, but practices in a geographic area I do not focus on so our paths do not cross.

The more typical attorney I have been encountering, and always adds more stress to the cases, is the one that does not understand the issues, the law, the court rules/process, and (IMO) as a result are not serving their clients well. If you are going to "play the game" you need to know the field, equipment, players, etc.

Many of my cases are family law (but even in the general civil cases) I tend to take a minimalist approach to certain aspects of the case. Recognize early the issues, what is needed, outcome, and focus on a path to achieve those results without getting sidetracked by what I describe to clients as shiny objects being used to distract everyone from the real issues.

I had one OC earlier in my career that thought because I was younger and less experienced, I may be less knowledgeable and a pushover. They made references throughout the case that "it will all be put to the judge and the judge will set it their way, I will see." I knew that much of what they wanted to present was irrelevant and wouldn't be admissible. Much of what was desired to be presented would not have made it in evidence based on the applicable rules here. It seems that OC was not well versed in the applicable rules regarding evidence. OC made these statements in front of their client. I told my client not to be concerned and explained what would likely happen.

At trial, I objected to much of what was attempted to be presented. Each objection sustained. OC was getting visibly frustrated by this as was the client. OC also forgot to introduce key evidence from its client was prevented from doing so based on my objection. On redirect, OC started its first question with "I forgot to ask earlier ..." I objected at that point and at first scolded slightly for not allowing the question to be asked, but the judge allowed me to explain how I could make an objection without hearing the question. Since redirect cannot be outside the scope of cross, it was clear

from the introductory statement that any question that follows HAD to be outside the scope of cross. The rest of the trial went as one can predict based what I described. The other party appeared to realize that its attorney may have led it down a bad path, or sold it a bill of goods that could not be delivered (they rejected a great settlement offer). At one point the judge called chastised OP and the client for the manner of questioning (leading on direct but I was not concerned so I did not object and the judge looked at me puzzled at times expecting an objection) and then having an inability to remember what the judge considered basic facts that should be known when I crossed.

The judge threatened to dismiss the case if the memory didn't improve when I started my questioning again commenting that because of all the leading questions that I let be asked. Another example of knowing the players involved. The answers to the leading questions would have made it into evidence, so I was not concerned, but because of my experience with the other party during the pretrial stage (and from what I my client told me) I had a strong feeling that the other party would act as it did when questioned and it led to the result I wanted: have the judge question the party's credibility.

Phil A. Taylor, Massachusetts

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