

Popular Threads on Solosez

Should I Be Snide In My Reply Brief?

OK, thought I'd get the firm's opinion on this one. We've just received a rather frivolous objection to our Motion for leave to amend a complaint. The defendants had previously filed a MTD which has been denied but no answer is actually yet due nor has one been filed. The defendants filed a rather haughty objection to our motion to amend the complaint claiming that we have not been very diligent, and basically bad mouthing us Plaintiff's lawyers. This is the first amendment. Rule 15 clearly allows a Plaintiff at least one free amendment before an answer is filed.

I'm pretty pissed off at their attitude about my lawyering - especially when they didn't even bother to read Rule 15 (this is federal court btw). So I drafted a reply but haven't filed it yet saying that if Defense Counsel had bothered to check Rule 15 he would have seen the very first sentence in it give us a right to amend before a responsive pleading is made and wouldn't have filed this motion. But then I thought maybe I should just let the court see their incompetence without being too snippy and simply point out Rule 15. But then I also thought about adding a request for sanctions: make the Defense lawyer write on the blackboard twenty times the first sentence in Rule 15!! Nahhh that's a bit much.

Point out their error, but do it professionally. The court will see what the problem is.

Take the high road.

Scott I. Barer

I would just lay out the facts and the law. Federal Court judges can be pretty snide in their comments without much coaching.

Raymond L. Stuehrmann, Thousand Oaks, California

I have often been tempted to be snide. There is something that feels so right about self-righteous indignation. However, I have learned through experience that this approach often backfires. Judges tend to cringe at this approach (unless it's a family law case), and if your opposing counsel is "a ass" this allows him to paint you as a hot head. Best to be professional, cool headed, and impeccable in the conciseness of your argument.

David A. Silverstone



Subscribe to Solosez

First Name

Last Name

E-mail Address

Submit (input element)



Unsubscribe from Solosez

E-mail Address

Submit (input element)



Books

Click on the book for more info



I refuse to be snide when an attorney sneers at my legal skills, as opposed to making obnoxious comments about my client. That I am at the least competent will become obvious in time. Before then, why alert OC that he or she should at least learn the rules of contest...besides, being underestimated by OC has NEVER in the end been at all painful.

Alan Bernstein

I know nothing of federal rules but it's been my experience that letting OC rant and behave miserably while just proceeding diligently and refusing to get in a food fight lets the judge get the clearest distinction between you.

Jay S. Goldenberg, Chicago, Illinois

.....federal judges, especially, don't want to deal with arguing and pettiness between parties. That's why they send all discovery disputes to magistrates. Take the high road, make clear that rule 15 says what it says and sit back. OC will get it in the end.

Steven Satter

I agree. I have, however, in the past been known to sneak in (what I consider at least) an obscure reference to something from Shakespeare, Cicero or others which would indicate my contempt for OC's benighted contentions.

Richard O'Connor

Have you called opposing counsel to point out the rule and ask for withdrawal of the motion or a pass on the hearing?

If that fails, include a detailed certificate of attempt to settle the issue in the responsive pleading (which responsive pleading would ask for attorney's fees incurred in responding to the motion) and which response would refrain from tacky comments per the advice of prior posters.

Robert Robertson, Round Rock, Texas

Yes, definitely - but only in the one that you prepare as a vent for your own frustration & then throw away. In the brief that you submit to the court, play it straight, take the high road & professionally state your case. You'll not only gain the respect of the court on this issue & this case, but you'll no doubt help build a good relationship for future cases. Rod Klafehn, Laurens, New York

I would respond simply and ask for de minimus Rule 11 sanctions

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

NO.

Witty if you're good at it, passionate goes without saying, but snide, no.

James P. Moriarty, Cresco, Iowa

Take the high road--never crowded and you always look good there.
Simply state that your motion is supported by the first sentence of the rule and that it is not unreasonable for the court to charge the defendant with knowledge of the rule.

John P. Page, Tampa, Florida

[Back to Popular Threads](#)