

How do you handle a pro se litigant that keeps misconstruing everything?

Good afternoon Everyone!

Has anyone ever had a pro se litigant that twist everything you say or do into something it is not and then says your acting in "bad faith?"

How have you handled these types of situations or these kinds of litigants?

Thank you!

I limit my direct communication with pro se litigants by sending written correspondences: short, clear, and direct to the point.

William M. Driscoll, Massachusetts

All communications in writing. If they call tell them you will respond via letter.

Erin Schmidt

Only communicate in writing. Do not take any calls.

Document all telephone calls received (but not taken, of course) from the pro se. In your writings, do not offer even the slightest bit of guidance as to how the system works. That will only be turned against you as "legal advice" that you gave the person. If unethical conduct is alleged in pleadings, defend yourself with an affidavit. Also do not let oral allegations before the court go unresponded to. It is all part of the record.

Brian J. Hughes, Massachusetts

Immediately move to putting everything in writing. Work on making things very clear. Treat things as if you are writing to a seven year old. Then expect the pro se keep things going exactly the same way that s/he is currently going. This is the way that you will continue through the rest of your litigation experience.

I forgot to mention, always record any phone messages the pro se leaves you. Hang onto them in case you need them.

Frank J. Kautz, II, Massachusetts

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As others have said, limit communication to the written word.

Fun story time:

A year or so ago, I failed to take my own advice and engaged a hostile pro se in several phone calls. This was a pretty contentious divorce/child custody action, and I knew I shouldn't have done it. Well, the other shoe finally dropped during discovery. OP refused to answer my discovery. He actually said in an email (and on the phone) that he "would be happy to provide the requested information to the judge for his own review, but he will absolutely not provide me directly with the information, because it is none of my business and it's an invasion of privacy." So, I follow up with basically a Rule 11 letter, walking the fine line between trying to save him from his own ignorance, but also at the same time not "providing legal advice." He continued to refuse, and after several lengthy and unproductive phone calls and emails, I finally filed a motion to compel.

At the hearing on the motion to compel, OP changed his stance and basically said, "Okay, yeah, I should answer the discovery and I promise I will."

But then he says, "Oh, but Mr. Phillips also agreed/promised on the phone that he wouldn't seek attorney's fees for this, but now he's seeking them today! It's unfair and he's lying and he's a bad person who kills puppies for fun."

Judge asks, "Is that true, Mr. Phillips?"

Me: "No, Your Honor, it isn't. And anyway, even if I had said that (which I didn't), it would be merely an offer of settlement, and besides, every written correspondence I've sent him and filed with the court has indicated the intent to seek fees and costs."

Judge looks at OP and OP says, "I recorded our phone conversation where he said it!"

Judge looks at me again, and I say, "Your Honor, I didn't know I was being recorded, but it doesn't matter; I didn't say that."

Judge says, "Okay, here's what I'll do. I'm going to grant the motion to compel. OP has 15 days to comply. But, to be fair to the pro se litigant, I am going to schedule another hearing in 10 days, before me, and OP shall bring in a copy of the recorded phone conversation. We will put it on the record, and I will decide attorney's fees at that time."

Long story short, I knew I didn't waive fees, so I didn't sweat it. But here's the kicker. The portion that OP played for the judge went something like this:

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OP: "You're just calling me and filing all this paperwork to try to run me into the ground and bankrupt me, and I won't let you do it! You're just trying to rack up more fees from my wife!"

Me: "My client's fees are none of your concern. You're not paying her fees to me, and we're not discussing her bill."

Judge listens and says, "Well, clearly fees were not waived for this motion. But, I will say that Mr. Phillips may have inartfully phrased his response about fees. So, I'm granting fees for the original motion to compel hearing, but not for this follow up hearing."

Oh well, I learned my lesson -- haven't communicated with a pro se on the phone ever since.

Ryan Phillips, South Carolina

Ah, so you do kill puppies for fun, which makes you a bad person, but you're not a liar. Interesting. '-)

James S. Tyre, California

Also, when in the courthouse, do not engage the pro se unless ordered by the court. My usual line in these cases is, "if you have something to say, tell it to the judge."

Brian J. Hughes

Anytime I have a prose on the other side I immediately call them and have them either give me an email or text number and then I tell them I only communicate with proses is writing. Ever. I then send a text or email confirming out brief conversation and tell them this protects both of us. Then I stick to it. Paper trail.

Micah G. Guilfoil, Kentucky

Yeah, I successfully argued that the question of my attitudes toward puppies wasn't properly before the court, so the judge declined to consider it. Big time *WHEW* for me.

Ryan Phillips

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When that happens, tell the pro se litigant that all future communications will be in writing.

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

I go one step further. Insist on email. Respond by interlineation. They ramble, can't connect ordnaty response. In extreme situation, respond to each point by a separate email. ALWAYS MAKE SUBJECT LINE DETAILED/PRECISE--usually means add to theirs when you reply.

Like a drunk, they want banter, become uncomfortable when you stay strictly on point.

John Page, Florida

1. Breathe deeply; Relax.
2. Do a lawful credit investigation, hope s/he has assets.
3. Consider whether there is an appropriate fee shifting provision for your case.
4. Document in case sanctions, and some money award, might be feasible.
5. Hope your client can go the distance necessary for decision on the merits and sanctions.
6. Consider whether your court has a good, free, mediation program-- a third-party comment might help temper, or even resolve the case.
7. Research handling vampires and other injury/death resistant creatures.
8. Re-read the Book of Job.

Cf.

Ptak. Ptak Bros. Jewelry, Inc. v Gary Ptak and G. Ptak, Llc, 83 USPQ2d 1519 (SD NY, Judge Denny Chin). Broad preliminary injunction granted against Internet and other use of surname and deceptive trade practices, 2011 WL 253424 (SD NY 25Jan 2011, Judge Colleen McMahon). Rule 60 motion denied.

Daniel Kegan, Illinois

I saw this thread this morning, but didn't get to respond before lunch. I agree with the others to insist on everything being in writing. If there's even the slightest chance, assume that any oral conversation you have with them will be recorded like in Ryan's story.

I'll also add this:

1. Pro se litigants are more and more common now. Usually they are people who have nothing better to do -- often this means they have no job or were forcibly retired.
2. Pro se litigants act the way they do for numerous reasons --

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sometimes it is out of revenge, sometimes it is to save property, sometimes it is because they're mentally ill. Knowing the reason why they are acting the way they are can often tell you how to react.

3. The way you react will depend on what your goal is. I had a pro se litigant in an eviction case from 2011 who was dumber than donuts but fancied himself a genius. A lot of times, my reaction to him was purposely formulated to piss him off even more along the lines of "giving him more rope to hang himself".

4. Along this same line of giving more rope, deny all of the pro se's accusations that you plausibly can deny. Make him or her do the work to prove what they say.

5. The complicating factor is the judge. Even the strictest judge will cut a pro se some slack. A lax judge will cut a pro se a huge amount of slack and refuse to order sanctions, fees, etc even though it is blatantly freaking obvious the pro se hasn't a leg to stand on.

6. Make sure you guard yourself. It is a short leap for some pro se litigants to take out their frustration on you in real life as well. If the pro se is bigger or intimidating, ask the court baliffs to escort you. If you have an office, make sure you're never alone there. Make sure the pro se doesn't know where you live. If you see the pro se hanging around your house or office, call the police, etc.

The good thing is that very few pro se litigants are sufficiently organized intellectually, mentally, and emotionally to really do much harm. When they do try to act, it's often very amateurish and they usually skate by b/c of the judge's pity. Once you figure out what makes a pro se tick (a la Criminal Minds -- excellent show, BTW), they become very easy to deal with.

That actually gives me an idea for a blog post.

Andy I. Chen, California

Memorialize all your oral statements in writing.

Susan K. Ashabraner, California

Thank you everyone for your great responses!

I will certainly take heed to everything that has been said.

Thanks again!

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You've gotten good advice, and I agree with it - especially the part about putting things in writing. I would only add that you should PUT IN WRITING the fact that everything is going to be put in writing. For example:

"Please understand that lawyers make a standard practice of putting all of our substantive conversations in writing. Even when we have a telephone conversation, we will typically follow up that conversation with written correspondence detailing any agreements, disagreements, requests, etc. That way, there is never a misunderstanding about our respective positions. Even though you are not a lawyer, I will still follow this same protocol with you. I request that you do the same. Please communicate with me only in writing, and I will return the favor."

David Allen Hiersekorn, California

I cannot recall any other thread on Solosez where the recommendations have been so consistent. Clearly, this is a common problem for lawyers. I have encountered it myself.

Tonya should feel very encouraged by this.

Norm Solberg, Japan

My favorite: the negative pregnant.

Paul Hogan, California

Funny this should come up. I just finished up a divorce case with a pro se litigant from Nigeria. That was tough because we were dealing with unfamiliarity with not only the legal system, but also many cultural concepts.

In my experience, every pro se litigant views everything you do to advocate for your client as objectionable/ in bad faith. some of this is simply because they don't understand. My advice is to get it in front of a judge ASAP. Mediation will likely not work because either they will continue to want what is not reasonable or will renege on the agreement shortly after.

Also, limit contact and made sure to document everything meticulously. I have also used Rule 68 offer in settlement and contempt motions to get responses to requests that don't get answered.

Best of luck!!!!

Tracy Laaveg, North Dakota

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I have to say, I was glad but not happy to see this on the listserv today. Glad because it reaffirms that I am not the only attorney dealing with this; not happy since so many of us deal with it. I definitely converse only in writing unless the court orders otherwise in my cases.

I have one ridiculous pro se litigant who files everything he can regularly including things clearly outside the issues before the court, i.e., it's custody matter and he will file for getting the house back (no, they were never married) or to have cameras installed in my client's home. He always says to the judge he doesn't understand anything that's happening and that everything is my client's fault or mine. He even recently THREATENED the expert witness to recant her testimony to the court or he was filing for defamation, reporting the expert to their licensing board, among other things. Even bringing this to the court's attention, all we got was an order saying "the parties" were not to do that. Frustrating.

Lisa M. Hopkins
