



# Dealing with Combative and Unscrupulous Lawyers

UT LAW CLE  
August 26, 2016

Michael L. Slack

**SLACK**  
**DAVIS**

## The Call for Civility: *Dondi Properties*



District judges of the Northern District of Texas convened *en banc*



*Dondi Properties* established:

- A duty of courtesy to and cooperation with opposing counsel
- A duty of personal and professional integrity
- A duty to reject client demands for abusive or offensive conduct
- Prohibition for using discovery for harassment
- A mandate to cooperate in scheduling of case matters



Abusive litigation tactics were rampant within the district and in Texas

## Examples of Incivility in Depositions: Profanity



*Carroll v. The Jaques  
Admiralty Law Firm,  
P.C., 110 F.3d 290  
(5th Cir. 1997)*

- The sanctioned lawyer was a witness in fraud suit against him
- Once sworn, the lawyer-witness unleashed profanity and abusive language
- Deposition terminated by taking lawyer
- The district court sanctioned Jaques \$7,000, affirmed by Fifth Circuit

## Examples of Incivility in Depositions: Obstruction



*In re Harvest Communities  
of Houston, 88 S.W.3d 343  
(Tex. App.-San Antonio  
2002, orig. proceeding)*

- Heated exchange during deposition of defendant's designated expert between counsel
- Defense counsel unilaterally terminated the deposition
- Earlier defense counsel had unilaterally cancelled the deposition of its other experts
- The discovery deadline ran a week later
- The trial court judge refused to continue the case and struck defendant's experts for discovery abuse

## Examples of Incivility in Depositions: Obstruction



### The Court of Appeals found that:

- Defense counsel had repeatedly interrupted the deposition by long, argumentative objections
- Defense counsel had engaged in obstruction in the scheduling of its experts' depositions
- Defense counsel unilaterally terminated the deposition
- Defense counsel engaged in discovery abuse and sanctions were appropriate
- The trial court failed to consider a less severe sanction than the "death penalty" sanction and remanded for the trial court to consider a lesser sanction

## Examples of Incivility in Depositions: Bullying and Combative Behavior - New York Style



*In re First City  
Bancorporation of Texas,  
Inc., 270 B.R. 807  
(N. D. Tex. 2001).*

- Attorney from New York made abusive and threatening remarks to opposing counsel
- Lesser sanctions had failed and attorney continued his bullying
- Attorney was eventually sanctioned \$25,000
- The district court found that the conduct violated *Donadi Properties* and affirmed the sanctions
- The district court concluded that the bankruptcy judge erred, if at all, on the side of "patience and restraint"



Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Dealing with Combative and Unscrupulous Lawyers

Also available as part of the eCourse

[2016 Winning at Deposition: Skills and Strategy eConference](#)

First appeared as part of the conference materials for the

2016 Winning at Deposition: Skills and Strategy session

"Dealing with Combative and Unscrupulous Lawyers"