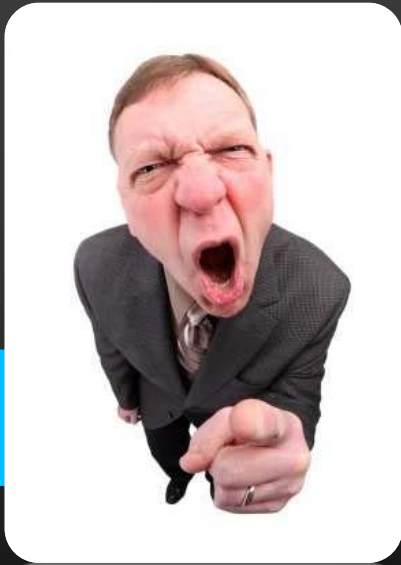




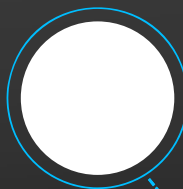
Dealing with Combative and Unscrupulous Lawyers

UT LAW CLE
August 24, 2017

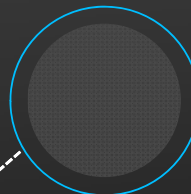
Michael L. Slack

SLACK
DAVIS

The Call for Civility: *Dondi Properties*



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



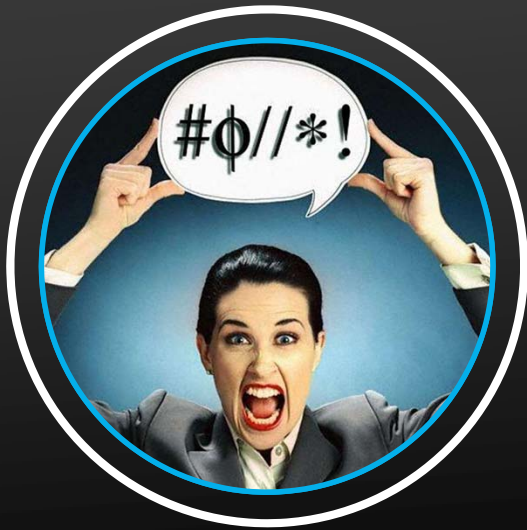
Dondi Properties established:

- 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"

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[eSupplement to the 33rd Annual School Law Conference](#)

First appeared as part of the conference materials for the
2017 Winning at Deposition: Skills and Strategy session
"Dealing with Combative and Unscrupulous Lawyers"