The most typical legal bully is an opposing counsel who is berating or threatening your client in a deposition. Or the same attorney baiting you while you depose his client.

Other bullies can be your own client, a judge, or anyone else you have to deal with. In this discussion, we concentrate primarily on opposing counsel issues.

**Outline for attorney decision making**

1. The first question is, What is in my client’s best interest?

2. Second: What am I actually capable of doing about the

bad behavior?

3. Third: What are my boundaries? What am I willing to do?

4. Fourth: How will the record look when the motion is filed?

Judges don’t care who started it!

**The best interests of your client**

Can your client afford another day off? Is your client easily intimidated? If you adjourn the deposition, will your client keep quiet and walk out with you?

**A variety of responses are possible**

1. Don’t respond to bad behavior; stay on your course

a. Say to the deponent, you may now answer the question

b. To your client, there is no question pending so do not speak until a questions is asked

2. Confront and challenge the bully at every turn. Respond to taunts, arguments, bad behavior, out shout him, contradict erroneous statements

3. Be ready to adjourn, walk out, and file a motion for protective order. Do you warn (threaten?) first, or Just Do It?

4. Take a break . . . or two . . . don’t ask permission. State, “I am taking a recess to talk to my client,” then walk out the door with your client in front of you.

5. Watch your record when you speak. Don’t give the bully the “moral equivalency” argument. Have some pre-set comments to keep the record clear, such as “please lower your voice,” “get your pen away from my face,” “ask your next question.”

6. Never make a threat unless you’re ready to carry through

**There is an increase in citable law**

*Matter of Kinney*(2014) 5 Cal State Bar Court Rptr 360, 2014 WL 7046611. The State Bar Court cited with approval, a judge’s label as a “relentless bully.” He pursued numerous meritless lawsuits at trial and on appeal and was labeled a vexatious litigant. Notable for this syllabus was the inclusion of “unmeritorious motions” and “tactics that were frivolous or intended to cause unnecessary delay.” See also *In Re Kinney* (2012) 201 Cal App 4th 951.

*Kim v. Westmoore Partners*  (2011) 201 Cal.App.4th 267, 294. Attorney sanctioned $10,000 for lying, bullying, and indicating he will continue the behavior. He falsely accused the opposing counsel of misconduct, then accused the court of error when told he might be sanctioned for the conduct.

*Russell v Douvan* (2003) 112 Cal App 4th 399. Single incident of one attorney grabbing another attorney not adequate grounds for an anti harassment injunction, since the conduct was isolated, and the evidence indicated that no future contact between the two was likely.

*USA v Wunsch* (9th Cir 1996) 84 F 3rd 1110. While declaring the former disciplinary offense of “offensive personality” unconstitutional, the court distinguished prior cases in which sexist comments affected the administration of justice, were made in front of witnesses, other counsel, and court reporter, and thus reversed the sanction award.

*Lebbos v State Bar* (1991) 53 Cal 3rd 37. Santa Clara County attorney was disbarred for a veritable smorgasbord of unethical deeds. Relevant to this issue, several counts of discipline were upheld because she made false, disparaging comments about a judge in open court. One count was dismissed because she called the judge a dirty name in the court house cafeteria.

***Civility & Professionalism***

*Rule 9.4, California Rules of Court*

“In addition to the language required by Business and Professions Code section 6067, the oath to be taken by every person on admission to practice law is to conclude with the following: ‘As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy, and integrity.’ ”

*State Bar of California Attorney Guidelines of Civility and Professionalism (July 20, 2007)* [*http://ethics.calbar.ca.gov/LinkClick.aspx?fileticket=mPBEL3nGaFs*](http://ethics.calbar.ca.gov/LinkClick.aspx?fileticket=mPBEL3nGaFs)*=*

*Guidelines of Professional Conduct,* San Francisco Superior Court,

<http://www.sfsuperiorcourt.org/general-info/guidelines-professional-conduct>

**Jerome Fishkin** is the 2016 recipient of the ALRP’s Clint Hockenberry Leadership Award. A lawyer since 1971, he has spent the last 25 years advising attorneys and bar applicants on issues of attorney ethics and moral character & fitness. Fishkin & Slatter LLP posts summaries of recent lawyer conduct cases at <http://www.fishkinlaw.com/Whats-New.shtml>