

Chapter 7

Dealing With Courtroom Hostility

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It All Starts at the Beginning

Litigation is, by its very nature, adversarial. Even though you should always follow the Rules of Civil Procedure and Evidence, the heat of the courtroom battle can easily cause one to do and say things that later are seen to be beyond the Rules. Sometimes it is a mistake when made, and sometimes it is a calculated and deliberate action.

Litigation is not a game, but it is not life and death either; it is about being fair and allowing the truth to come out, in the belief that "right" will win out in the end. As long as your actions and demeanor are always professional and courteous, hostility will likely be minimal.

If you set a professional tone from the beginning, in all your dealings with your opponent and the Court, you are likely to encounter greater respect in the process. But sometimes, it just does not work out that way.

When that happens, there are some things you can do.

Know the Law

You should be the "expert" on Consumer law in the courtroom.

At all times, state the law accurately. That way when your opponent or the Judge checks your research, and they will, they will see that your statement was correct, without exaggeration or embellishment. Accuracy earns respect. Inaccuracy earns contempt.

When your position is not clearly based on black letter law, make sure your argument is clearly and simply stated and well supported. Make it in writing, where possible.

This is where use of a "Law Book" at trial will be useful. In it put a copy of every statute and important court case that you intend to argue or rely upon, but not every statute or court case that exists.

One of the best ways to keep up on the changing case law is to call on other attorneys, or the Attorney General's office, for help when you need it. There are few attorneys who really do a large amount of consumer litigation in Ohio; most of them would be glad to share court decisions, pleading forms, strategies and tactics with you.

Share your information with others. If you have a tactic or pleading form that works, willingly share it with other attorneys.

Maintain a solid Consumer law library. That should be easy since there are relatively few books that deal exclusively with Consumer Law.

At the very least, you should have National Consumer Law Center's *Consumer Credit and Sales Legal Practice Series*. The entire set is worth getting but the vehicle related volumes are titled *Automobile Fraud, Unfair and Deceptive Acts and Practices, Consumer Law Pleadings With Disk; Consumer Class Actions: A Practical Litigation Guide, Sales of Goods and Services, Repossessions, and Odometer Law*. They also publish a series of topic-specific NCLS Reports. Another good book (although a little defense-oriented) is *Handling Automobile Warranty Repossession Cases*, authored by Roger Billings.

Know Cars

If you know little about motor vehicles, or just would like to be able to print out clear drawings of vehicle parts or assemblies and how they work, an extremely useful (and entertaining) computer program is *Auto Insight* published by Informative Graphics, 706 E. Bell Rd. #207, Phoenix, AZ 85022 and available at some computer software stores. A similar program, with a similar name, does exist from another software publisher, but I have not used it.

When your opponent begins to talk about the minor nature of the transmission's defects, you can then explain with authority what is really going on and why it is not minor after all (assuming your expert has explained it to you). Being able to hand out diagrams of transmission, or other defective parts, always helps, too.

Be Prepared

You may have seen attorneys go into court and "shoot from the hip" in handling a case. Be careful, though, you could shoot yourself in the foot.

Prepare for every court conference or status report as if it were a final pretrial, because you never know when the Judge will want to ask about the facts

or the law, or the defense attorney will try to poke holes in your case.

A good way to prepare your case early is to do Jury Instructions at the beginning of handling the case, or at least know the basic ones you will probably use. It will help you focus in on the claims and the evidence you need to garner as the case progresses.

Be ready to go to trial and make sure your opponent knows it. A great incentive for the other side to settle a case is for them to see that you are ready to try the case. Besides, that way if the case does not settle you really are ready to go to trial.

The first few times you go to trial, leave nothing to chance. You can not bill a client for unreasonable work done by over preparing for a case, but you will not like the feeling of losing a case by under preparing, either.

Accommodate the court in every way possible, and all courtroom personnel: advance jury instructions, an exhibit book for the Judge to use during trial, an Exhibit list for the bailiff or clerk, along with the simple courtesies of normal trial conduct.

Go to Trial

When all else fails, go to trial. Experience is the best teacher, they say. While your opponent may believe they know you well, and even the Judge well, the one thing that is truly unpredictable is the Jury. We have all seen or heard of the case that was strong that they could not lose, but they did. As the saying goes, "you just never know what a Jury will do."

However, never go to trial on a loser if you can avoid it. You can make a reputation by losing cases, but you gain respect by winning them.

Appeal

When the case has been lost at trial, because of what you genuinely believe to be error, do not hesitate to recommend an appeal to your client if you think there is a reasonable chance of reversal.

Even if your client does not win the appeal, you can gain the respect of the trial Judge because you did appeal. While it may not have much influence on future cases in that courtroom, it does not hurt to have the trial judge know that you are willing to appeal what you honestly believe is an erroneous decision.

Never Give up (Never)

Consumer law is the "black sheep" of jurisprudence, or, as Rodney Dangerfield might put it, "Consumer law don't get no respect." You can expect to have to earn it and anticipating hostility will help you learn to deal with it.

Many Judges have little experience with handling a Consumer law case. It is human nature not to want to deal with the unknown, so you need to make it clear to all concerned that you will not settle for less than what is fair and you will not give up the fight just because it may get difficult.

We have all seen those times when an opponent or a Judge turns hostile. No one enjoys being the target of the hostility, but sometimes it is necessary to deal with it effectively.