



September 2014
Letters to the Editor

Re: June 2014 Article: "Anger: A Frontal Approach"

Although I do not disagree with anything explicitly stated in the piece, I have some concern for what it may imply to a budding lawyer-that one might be led to believe that anger has no place in the practice of law, should be buried, and only creates a disadvantage when acted upon. We cannot forget that the practice of law, at least litigation, is rooted in the dispute-two combatants squaring off on a contested issue. As lawyers, we are the hired guns. The best litigators I know are very professional and polished. But when the fight turns to the street, watch out!

Imagine a scenario where your opposing counsel calls you to say that a third-party deposition has been cancelled, but then proceeds to "interview" the would-be deponent (with a court reporter), who appeared in response to the subpoena. This is a challenge to the profession and to you as an adversary. Your client is watching closely to see how you will respond. Do you politely remind your opposing counsel of the relevant rules and how they have been violated?

Absolutely not. You let him have it. This statement needs some qualification and boundaries:

First, never respond in the heat of the moment. If you are a successful litigator with passion in your veins, your anger will compel you to immediately compose an email or set of choice words in response to your opponent. Afterwards, wait at least an hour, then revisit what you have said, and if you have not been in practice for long, talk to a seasoned litigator for input.

Next, make sure that every word said in anger is warranted, not *ad hominem*, and benefits your client. In your anger, remain professional and extend respect to your opponent. "This underhanded move is not befitting of a lawyer with your experience and reputation," might be a statement to make your point and still convey a level of respect.

The point here is to welcome anger, embrace it. This emotion, and other related ones, fuels good litigators. But manage it when it comes-use it wisely to help your case.

Is there ever an appropriate time to raise your voice at opposing counsel? Yes, but only when his or her conduct is so obnoxious that no other response is appropriate-and only when what comes out of your mouth is something you would be proud to read in a transcript a month later.

If clients never see your passionate side, it won't be long before you have none.

- John F. Domingue, San Jose