By Joseph J. Ortego and Lindsay Maleson

incivility

An Insult to the Professional and the Profession

If you do not already know from personal experience, unprofessional behavior comes in many different forms.

Consider the following anecdotes. Several years ago, a lawyer in Illinois was criticized by that state's review board for writing letters to opposing counsel and others using words such as "fool, idiot, punk, boy, honey, sweetheart, sweetie pie and baby cakes."[1] This same lawyer also asked correspondents to place their letters "in that bodily orifice into which no sun shines."[2] There are also cases where lawyers have made racist remarks as well as remarks insulting and degrading certain religions.[3] In a deposition in New York, a female associate was called "little lady," "little girl," and a "little mouse," and told to "pipe down," "be quiet," and to "go away" when she merely was doing her job representing a fourth-party defendant.[4]

For many years now, there has been a perception that incivility, rudeness, and the use of offensive tactics among lawyers are on the rise.[5] Many courts,[6] columnists, legal journal authors, and conference organizers recently have focused on professionalism and civility, or the lack thereof, in the practice of law. In addition, several aspirational "civility codes" have been adopted,[7] indicating that the "legal profession deems itself to be in crisis."[8]

illustration by Liisa Guida

While both professional and unprofessional behavior can be readily identified when witnessed, various authors have attempted to define professionalism, which is also known as civility. One author, struggling with the difference between ethics and professionalism, states that "the basic distinction between ethics and professionalism is that rules of ethics tell us what we must do and professionalism teaches us what we should do."[9] The U.S. District Court for the Southern District of New York explained that "[c]ivility refers to 'more than surface politeness; it is an approach that seeks to diminish rancor, to reconcile, to be open to nonlitigious resolution.'"[10] Civility is inconsistent with "Rambo" lawyering, which includes:

- a mindset that litigation is war and that describes trial practice in military terms;
- a conviction that it is invariably in your interest to make life miserable for your opponent;
- a disdain for common courtesy and civility, assuming that they are ill-suited for the true warrior;
- a wondrous facility for manipulating facts and engaging in revisionist history;
- a hair-trigger willingness to fire off unnecessary motions and to use discovery for intimidation rather than fact finding; and
- an urge to put the trial lawyer on center stage rather than the client or his [or her] cause.[11]

It seems to be easier to define incivility rather than to define civility or professionalism. Incivility has been quite concisely described as "[a]ll manner of adversarial excess. Personal attacks on other lawyers, hostility, boorish behavior, rudeness, insulting behavior, and obstructionist conduct all fall under the general rubric of incivility."[12]

The question is, then, what are the boundaries of civility? When does incivility rise to the level of the unethical, and when is it just harmless rudeness or acceptable behavior? What behavior is so egregious that it is sanctionable, and, on the other hand, what can lawyers "get away with" under the rubric of zealous representation?[13] According to one commentator, "The courtroom is marked by a variety of boundaries that delineate sanctionable misconduct, but only some of them are bright lines. Others become visible only once crossed."[14]

Indeed, courts do not have an easy time determining what behavior is sanctionable and what behavior should be touted as zealous representation. As the U.S. Court of Appeals for the Second Circuit has remarked:

> We are cognizant of the unique dilemma that sanctions present. On the one hand, a court should discipline those who harass their opponents and waste judicial resources by abusing the legal process. On the other hand, in our adversarial system, we expect a litigant and his or her attorney to pursue a claim zealously within the boundaries of the law and ethical rules. Given these interests, determining whether a case or conduct falls beyond the pale is perhaps one of the most difficult and unenviable tasks for a court.[15]

The Second Circuit also noted in another case that the language and conduct of attorneys must be considered in the context of what is currently acceptable in public discourse, which is difficult to identify as well.[16]

This article, through example, highlights conduct that is on the borderline between civil, zealous representation and inappropriate, unprofessional conduct. While courts or review boards disagree on exactly where the line should be drawn, it is important that we use these examples and this discussion to decide what level of conduct we expect of ourselves and others. The reader should put herself in the position of the judge or the jury who is presented with the obstructive, abusive, and insulting tactics discussed below. This will inevitably lead to the conclusion that unprofessional tactics do not work, i.e., they will never help your client.[17]

Our first set of examples comes from the area of discovery abuse, especially insulting and obstructive tactics used during depositions. Depositions are significant, and oftentimes pivotal, to the process of developing the facts in a case and identifying the theory of liability or the defense that should be adopted. However, "[v]irtually all litigators know that depositions are the forum where lawyer incivility is often the rule, rather than the exception."[18] Thus, unprofessional conduct during depositions is an extremely important topic to consider.

Second, we discuss threats. Threats may be used to obtain settlement or some other desired result. Reputation or publicity may be inappropriately threatened. The examples

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Joseph J. Ortego *is a partner in Nixon Peabody LLP's New York, New York, and Long Island, New York, offices. He is the national chairman in the firm's products liability, toxic and complex tort practice group, with particular expertise in mass tort litigation and business litigation. He can be reached at jortego@nixonpeabody.com.* **Lindsay Maleson** *is an associate in the firm's health services practice group, practicing in the Long Island, New York, office. She can be reached at lmaleson@nixonpeabody.com.*

A previous version of this article was published in the ALI–ABA publication, The Practical Litigator *(July 2004). It is reprinted courtesy of that publication.*

presented show that it is difficult to identify when threatening language actually becomes unprofessional.

Third, we review some cases involving bad-faith litigation through the assertion of baseless claims, inappropriate accusations, and name-calling. This is an area where lack of professionalism seems slightly easier to identify.

After focusing on certain instances of abusive tactics, we discuss whether we can or should live with these attacks. Finally, we review some solutions that have been proposed to keep invective and abuse to a minimum, or even to eliminate them completely.

Vicious and Obstructive Depositions

Probably the most infamous example of vituperative speech and abuse during discovery is the statements, threats, and insults made by a well-known Houston plaintiffs lawyer in the high-profile case of *Paramount Communications Inc. v. QVC Network Inc.*[19] In an addendum to its opinion on the merits of the case, the Delaware Supreme Court, raising the issue sua sponte "as part of [its] exclusive supervisory responsibility to regulate and enforce appropriate conduct of lawyers appearing in Delaware proceedings,"[20] scolded the Texas attorney for "an astonishing lack of professionalism and civility that is worthy of special note."[21]

The attorney, who was neither a member of the Delaware bar nor admitted *pro hac vice*, personally represented one of the directors of Paramount, who was a witness in a deposition that took place in Texas.[22] As noted by the Delaware Supreme Court, depositions are the "factual battleground" where much of the litigation actually occurs.[23] As depositions are the device for revealing and challenging all of the factual allegations central to the case, much injustice can result from the abuse of depositions. There are several examples of the criticized attorney's abusive and unprofessional conduct throughout the deposition.

First, the attorney attempted to obstruct his adversary's ability to question the witness and peppered his attacks with obscenities and personal insults. When the witness was asked a question, the examining attorney was told that the attorney was going to "shut it down if [he] didn't go on to [the] next question." The attorney at issue then proceeded to call the examining attorney an "asshole" and warned: "You can ask some questions but get off of that. I'm tired of you. You could gag a maggot off a meat wagon."[24] After the attorneys went back and forth, the attorney told his opponent to "shut up," and that the deposition was going to end in one hour, "period."[25] He attacked his adversary's skills, commenting that he had "no concept" of what he was doing. He eventually admonished the examining attorney not to question the witness further: "Don't even talk with this witness."[26] Such abusive behavior was not new for this attorney, who once shoved another attorney into the wall outside a courtroom.[27]

The Delaware Supreme Court, viewing the Houston attorney's behavior as "outrageous and unacceptable"[28] and with "gravity and revulsion,"[29] found that he "abused the privilege of representing a witness in a Delaware proceeding" by "improperly direct[ing] the witness not to answer certain questions," being "extraordinarily rude, uncivil and vulgar," and "obstruct[ing] the ability of the questioner to elicit testimony to assist the Court in this matter."[30] Since he was not a member of the Delaware bar and was not admitted *pro hac vice*, he was not subject to Delaware disciplinary rules or Delaware's rules of conduct.[31] Left without a clear remedy, the court invited the scolded attorney to voluntarily appear before it to explain his conduct and to show cause regarding why his conduct should not be considered as a bar to any future appearance by him in a Delaware proceeding.[32] He responded in the press with vulgarities and insults, stating, "I'd rather has [sic] a nose on my ass than go to Delaware for any reason," since, he believes, the Delaware Supreme Court has animosity for "exceptional lawyers" like himself.[33]

The reader should put herself in the position of the judge or the jury who is presented with the obstructive, abusive, and insulting tactics discussed here.

Coercion and Threats

According to *National Law Journal* journalist Richard F. Ziegler, the well-known "'maggot' rhetoric has now been displaced by a new classic in incivility."[34] The U.S. District Court for the Southern District of New York ordered a New York litigator to pay $50,000 in sanctions for

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his conduct during a case, most notably, for his presuit letter threatening the prospective defendant (who was an attorney) with the "legal equivalent of a proctology exam" and a "tarnish[ing]" of his reputation if the claims were not settled prior to filing the complaint.[35]

In addition to these threats, the district court found that this attorney made a sham offer to settle; threatened to add a RICO claim; threatened to sue the defendant individually and to seek discovery of his personal finances; threatened to send a letter to the court accusing the defendant of criminal conduct if he did not submit to plaintiff's demands; made good on his threat to "tarnish" defendant's reputation by contacting a reporter before trial and supplying the reporter with documents and information; and repeatedly attacked defendant's reputation as an attorney, calling him "a lawyer who . . . has acted in a manner that shames all of us in the profession," "a disgrace to the legal profession," and "slimy."[36]

The attorney at issue argued that his tactics were examples of proper zealous and aggressive representation and that he always acted reasonably and appropriately. The court disagreed:

> A lawyer's duty to represent his client zealously does not permit him to treat his adversary or parties in an offensive and demeaning manner or to engage in a course of conduct intended to coerce a settlement through improper threats and harassment. Although a lawyer must represent his client zealously, he must do so within the bounds of the law. An attorney is a professional and an officer of the court, not a hired gun or mercenary whose sole motivation is to win or an attack dog whose sole purpose is to destroy.[37]

On appeal, the Second Circuit reversed the district court's holding, concluding that the attorney's conduct was not sanctionable.[38] The circuit court found that to impose sanctions under the authority of 28 U.S.C. § 1927 or under the court's inherent power, the "trial court must find clear evidence that (1) the offending party's claims were entirely meritless and (2) the party acted for improper purposes."[39] Regarding the "proctology exam" letter, the court held that although this letter was harsh, and the reference to proctology was "repugnant," it is "reflective of a general decline in the decorum level of even polite public discourse," and, therefore, less than sanctionable.[40]

The Second Circuit also found that the attorney's threat to "tarnish" the defendant's reputation was not sanctionable. According to the court, "An attorney is entitled to warn the opposing party of his intention to assert colorable claims, as well as to speculate about the likely effect of those claims being brought."[41] Moreover, the circuit court held that the subject attorney's characterizations of the defendant as, among other things, a disgrace to the legal profession were mere "colorful tropes" and "not necessarily injudicious discourse."[42]

In a similar case, also involving an effort to induce settlement, this time by threatening adverse publicity, the Second Circuit also reversed a district court judge's $50,000 sanction against a Washington, D.C., attorney.[43] In a presuit letter, the attorney at issue wrote:

> This is a matter of extreme urgency because, in the absence of any satisfactory resolution of our differences, the lawsuit will be filed in New York within the next ten days. . . . If this controversy erupts into public view

> with the filing of our lawsuit and the inception of the Israeli proceeding, it will not only result in a grave injustice to individuals who have been among Israel's most constant and generous supporters, but will seriously damage foreign investment in Israel in the future.[44]

The court of appeals found that "[i]t is hardly unusual for a would-be plaintiff to seek to resolve disputes without resorting to legal action; prelitigation letters airing grievances and threatening litigation if they are not resolved are commonplace, sometimes with salutary results, and do not suffice to show an improper purpose if nonfrivolous litigation is eventually commenced."[45]

Finally, it should be noted that in addition to threats of reputation damage and adverse publicity, threats of physical violence unfortunately arise more often than we would like to think. In one case, an examining attorney in a deposition told the deponent that he would like "to be locked in a room with [her] naked with a sharp knife," and that he needed "a big bag" to put her in "without the mouth cut out."[46] The South Carolina Supreme Court publicly reprimanded this attorney for his conduct.[47]

Tactics Used in Bad Faith

Another area of interest in this review is when attorneys engage in the assertion of baseless claims, groundless accusations, and name-calling. In *Nachbaur v. American Transit Insurance Co.*, a Queens attorney was sanctioned $5,000 for disparaging remarks made about his adversary in a letter to the court, plus an additional $5,000 and attorney fees for filing a frivolous appeal.[48] In referring to his adversary in a letter to the judge, the sanctioned attorney noted that the adversary's conduct "indicates that she fits more as a clown in a circus than an attorney in a court of law."[49] Under the totality of the circumstances, the appellate division held that the motion court's imposition of sanctions was proper: the attorney made "repetitive and meritless motions," the complaint was frivolous, and the motion papers submitted were "utterly useless."[50]

The appellate division imposed further sanctions and an award of attorney fees for the prosecution of the appeal, where the "appellate briefs submitted by plaintiff's attorney, completely devoid of relevant discussion, [were] vividly reflective of the appeal's utter lack of even arguable merit."[51] In addition, the sanctioned attorney also repeated the insult made about his adversary, made "baseless, serious accusations against the motion court, [made] unsupported accusations against defendant, seriously mischaracterize[d] the record and [made] no reference to recent adverse authority."[52]

This New York attorney was disbarred from the Appellate Division, Second Department, as well as from the Southern District of New

York.[53] These disciplinary actions followed disbarment from the United States Supreme Court, which occurred when the attorney called the Second Circuit chief judge "chief injustice" in his petitions for certiorari.[54]

Still another lawyer was suspended for making unfounded accusations in a personal dispute he had with a former employer. The attorney was suspended for filing a motion containing vulgar language and false accusations of bribery; calling and sending faxes to clients of his former employer calling her a fraud, a thief, and a liar, and alleging that she did not pay her bills; and in a deposition, accusing her of giving him a venereal disease.[55]

Calling the judge and opposing attorneys names or making unfounded, irrelevant, or inappropriate remarks about them seems to be sanctionable or worthy of discipline in many instances. As the U.S. District Court for the Southern District of New York noted, "In the ordinary litigated matter, the court and counsel are not involved except in their professional capacities, and irrelevant personal or ad hominem attacks on them merely distract from the merits of the litigation."[56] Thus, where an attorney told a judge, "you are corrupt and you stink," he was sanctioned.[57] Another attorney in New York was disciplined for speculating that opposing counsel was involved in organized crime.[58]

Incivility Hurts the Professional and the Profession

Can we live with discovery abuse, threats, bad-faith claims, accusations, and name-calling? Is it a necessary evil and a mere byproduct of the adversary system? We do not believe so. Zealousness is no excuse for vulgar, insulting, and unprofessional actions. Even attempting to label such actions and words as zealous advocacy cheapens and mocks the true meaning of this concept. In *Paramount*, the Delaware Supreme Court explained that zealousness ends where the client's cause is no longer advanced:

> Staunch advocacy on behalf of a client is proper and fully consistent with the finest effectuation of skill and professionalism. Indeed, it is a mark of professionalism, not weakness, for a lawyer zealously and firmly to protect and pursue a client's legitimate interests by a professional, courteous, and civil attitude toward all persons involved in the litigation process. A lawyer who engages in the type of behavior exemplified by Mr. Jamail on the record of the Liedtke deposition

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> is not properly representing his client, and the client's cause of action is not advanced by a lawyer who engages in unprofessional conduct of this nature.[59]

Where language or tactics have no identifiable purpose other than to threaten, embarrass, delay, criticize, or attack opposing counsel, the client's interests have been abandoned. Judge Chin, the district court judge who wrote opinions in the *Revson* and *Sussman* cases discussed above, aptly stated, "Although an attorney must represent his client zealously, he cannot be a 'zealot.'"[60]

Some believe that we should not and cannot live with the professional misconduct that occurs around the nation. In the words of the Honorable Sandra Day O'Connor:

> [T]he justice system cannot function effectively when the professionals charged with administering it cannot even be polite to one another. Stress and frustration drive down productivity and make the process more time-consuming and expensive. Many of the best people get driven away from the field. The profession and the system itself lose esteem in the public's eyes.
>
> . . . In my view, incivility disserves the client because it wastes time and energy—time that is billed to the client at hundreds of dollars an hour, and energy that is better spent working on the case than working over the opponent.[61]

Short-Term and Long-Term Solutions

It seems that most of us would agree that the legal profession would be more enjoyable and effective without threats, name-calling, and Rambo tactics. But how do we get control over the invective, abuse, and vituperative speech that seems to plague our legal system? There are several "Band-Aids" that can fix a problem as soon as it occurs. While many of these remedies may be the fastest and best way to solve individual problems, they probably do not do much in the way of deterrence or prevention. Thus, as possible solutions are reviewed below, it is important to question whether the remedy is a short-term Band-Aid or a mechanism of protection against future attacks.

Report bullies. The examining attorney in the *Paramount* deposition stated that while he was "gratified" that the court addressed the abuse, it was not his intention to "seek relief" from the court.[62] Lawyers are not as willing to report unprofessional behavior as they should be.[63] As one law professor has advised:

> Lawyers must stop their passivity about Rambo depositions. Not only should they report name-calling, demeaning gestures, and personal threats occurring during depositions to judges and bar disciplinary committees, but they should create an atmosphere in their firm where young associates will feel comfortable to complain about their mistreatment by opposing attorneys in depositions.[64]

In *Paramount* the court had to raise the issue of the Texas attorney's uncivil behavior sua sponte. Lawyers should help the courts and the bar associations make their litigation environments livable. Some suggest that every attorney should keep a "Rambo file," documenting all instances of unprofessional conduct in a case.[65] Such a file could be used at fee hearings to impose sanctions and penalties.[66] According to the professor quoted above, "When Rambo behavior begins to cost money, then it will stop."[67]

Communicate with the court. Some authors advocate for the "judge on call" system to help lawyers when they find themselves engaged in a deposition or other out-of-court proceeding that has gone wrong.[68] This service can be provided by magistrates,[69] but in other areas, judges would be rotated, just like on-call physicians.[70] The judge on call would be available for on-the-spot telephone hearings in which he would have the authority to make immediate rulings.[71]

The Delaware Supreme Court specifically subscribed to such a solution in *Paramount*. The court advised that when misconduct occurs outside its presence, "the aggrieved party should recess the deposition and engage in a dialogue with the offending lawyer to obviate the need to call the trial judge. If all else fails and it is necessary to call the trial judge, sanctions may be appropriate against the offending lawyer or party, or against the complaining lawyer or party if the request for court relief is unjustified."[72] The court reminds attorneys that "Delaware trial courts are 'but a phone call away' and would be responsive to the plight of a party and its counsel bearing the brunt of such misconduct."[73] The court could then turn to the discovery rules for the proper remedy, whether a protective order or the imposition of sanctions.[74]

Record the abuse. The abusive tactics displayed in *Paramount* spawned a multitude of discussions over the obstructive and abusive tactics used during depositions.[75] In an interview conducted by *Inside Litigation*, litigators were asked to identify the most difficult situations in conducting and defending depositions.[76] Attorneys said that the biggest problems from the perspective of the examining attorney are various forms of obstruction, including speaking objections and instructing the witness not to answer questions.[77] From the perspective of defending depositions, attorneys said that the biggest prob-

lem is "attempts to lure deponents into inconsistencies through broad and tiresome questioning."[78] Such tactics are still considered uncivil behavior and also cannot be justified in the name of zealous advocacy.[79] One commentator explains that when she puts such abuses on the record, she is able to stop them from recurring.[80]

Conclusion

Finally, we submit that while standing up to bullies, asking courts for assistance, and putting invective on the record are ways to Band-Aid the problem of attacks and verbal abuse, the true panacea is education, awareness, self-monitoring, and conscience. An expansive reflection on civility suggested:

The true panacea is education, awareness, self-monitoring, and conscience.

> As lawyers and judges, we live out who we are by our actions. Professionalism is not something to don at the office or take off with our suits and our robes; our behavior continuously demonstrates who we are. We can improve our own lives and spirits, those of our clients, opposing counsel and parties and the community as a whole, if we simply remember that our part in the system gives us tremendous power, to make life better for every citizen . . . . If every lawyer and judge . . . would analyze every action she or he takes in light of the goal of ensuring that the system works fairly and efficiently for everyone, questions about professionalism would simply disappear—and tremendous good would result for our community.[85]

As one commentator so aptly stated, we will know when professionalism returns to the practice of law when we begin to hear, in common usage, the phrase "ethical as a lawyer."[86] This is a worthy challenge for our profession and a profound concept to carry with us at all times. ■

Early and continuing education. While standing up to bullies, reporting Rambo behavior, putting uncivil behavior on the record, and involving the court are ways to defuse uncivil situations already in progress, education may help to prevent unprofessional behavior. One author suggests that rather than enacting a written civility code, "what is needed is the reemergence of the unwritten, but universally accepted, code of conduct adhered to by an earlier generation of lawyers."[81] Such an unwritten code would encourage the bar and lawyers to return to self-regulation of lawyers' conduct. Bar associations could promote discussions about uncivil behavior by hosting events that encourage participation among the attendees.[82] In this way, lawyers could become educated or reeducated in the significance of civil conduct. Continuing legal education programs could also be useful forums for educating lawyers on civility.[83] Finally, law schools should discuss the problem of uncivil behavior and the use of invective and abusive tactics.[84] Students should begin to think about their own conduct and what they expect of themselves and others before they even become attorneys.

Notes

1. Thomas P. Sukowicz & Thomas P. McGarry, *Feathers May Fly for Using Foul Language*, CHI. LAW., Dec. 2002, at 14.

2. *Id.*

3. *See id.* (giving examples of an attorney who was suspended for 18 months after referring to courtroom deputies as "'honkies'" and "'white pigs'" and another attorney who was reviewed after making anti-Semitic remarks in a letter to opposing counsel).

4. Jean M. Cary, *Rambo Depositions: Controlling an Ethical Cancer in Civil Litigation*, 25 HOFSTRA L. REV. 561, 568 (1996) (referring to Principe v. Assay Partners, 586 N.Y.S.2d 182, 184 (Sup. Ct. 1992)).

5. Sukowicz & McGarry, *supra* note 1.

6. *See* Revson v. Cinque & Cinque, 70 F. Supp. 2d 415, 434 (S.D.N.Y. 1999) ("In recent years, much concern has been expressed by the bench and the bar over the rise of 'Rambo' tactics in litigation and the lack of civility in the practice of law.").

7. *Id.* at 435. Links to over 100 of these codes are available at www.abanet.org/cpr/professionalism/profcodes.html.

8. James A. George, *The "Rambo" Problem: Is Mandatory CLE the Way Back to Atticus?*, 62 LA. L. REV. 467, 472 (2002).

9. *Id.* at 472 (quoting Frank X. Neuner, Jr., *Professionalism: Charting a Different Course for the New Millennium*, 73 TUL. L. REV. 2041, 2042–43 (1999)).

10. *Revson*, 70 F. Supp. 2d at 434 (quoting Jerome J. Shestack, *Defining Our Calling*, 83 A.B.A. J. 8, 8 (Sept. 1997)).

11. *Id.* (quoting Robert N. Sayler, *Why Hardball Tactics Don't Work*, 74 A.B.A. J. 78, 79 (Mar. 1988)).

12. Douglas R. Richmond, *The Ethics of Zealous Advocacy: Civility, Candor and Parlor Tricks*, 34 TEX. TECH. L. REV. 3, 7 (2002) (quoting Kohlmayer v. Nat'l R.R. Passenger Corp., 124 F. Supp. 2d 877, 879 (D.N.J. 2000)).

13. Courts have justified their sanctions against unprofessional and uncivil lawyers under the Federal Rules of Civil Procedure (Rules 30 and 37), 28 U.S.C. § 1927, and courts' inherent power to

regulate conduct. Cary, *supra* note 4, at 588–94. In addition, uncivil lawyers can be subject to discipline under a particular state's version of the Code or Rules of Professional Responsibility. For example, in New York, the Code of Professional Responsibility "prohibits a lawyer from acting in an uncivil, demeaning, or harassing manner." *Revson*, 70 F. Supp. 2d at 435 (citing Canon 7). Various disciplinary rules prohibit tactics that merely "harass or maliciously injure another." *Id.* While a number of "civility" codes have been adopted around the nation, they are merely aspirational in nature, providing guidance to courts. *Id.*

14. Richard F. Ziegler, *The Price of Incivility*, NAT'L L.J., Feb. 7, 2000, at A16.

15. Schlaifer Nance & Co., Inc. v. Estate of Andy Warhol, 194 F.3d 323, 341 (2d Cir. 1999).

16. Revson v. Cinque & Cinque, 221 F.3d 71, 79 (2d Cir. 2000) (noting that an attorney's reference to a proctology exam was "offensive and distinctly lacking in grace and civility" but "reflective of a general decline in the decorum level of even polite public discourse").

17. *See Revson*, 70 F. Supp. 2d at 435 ("The bar should take note, as this case well shows, that Rambo tactics do not work. Judges and juries do not like them.").

18. J. Stratton Shartel, *Abuses in Depositions: Litigators Describe Response Strategies*, INSIDE LITIG., July 1994.

19. 637 A.2d 34 (Del. 1994).

20. *Id.* at 52 n.23.

21. *Id.* at 52.

22. *Id.* at 53.

23. *Id.* at 55 n.34 (quoting Hall v. Clifton Precision, 150 F.R.D. 525 (E.D. Pa. 1993)).

24. *Id.* at 53–54

25. *Id.* at 54.

26. *Id.* at 54.

27. Brenda Sapino, *Jamail Unfazed by Delaware Court's Blast*, TEX. LAW., Feb. 14, 1994, at 11.

28. *Paramount*, 637 A.2d at 55.

29. *Id.* at 56.

30. *Id.* at 53.

31. *Id.* at 53, 56.

32. *Id.* at 56.

33. Sapino, *supra* note 27.

34. Ziegler, *supra* note 14.

35. *Revson*, 70 F. Supp. 2d at 420–21.

36. *Id.* at 417.

37. *Id.* at 417–18.

38. *Revson*, 221 F.3d at 78.

39. *Id.* at 79.

40. *Id.*

41. *Id.* at 80.

42. *Id.* at 82.

43. Sussman v. Bank of Israel, 56 F.3d 450 (2d Cir. 1995).

44. *Id.* at 453.

45. *Id.* at 459.

46. Richmond, *supra* note 12, at 9.

47. *Id.*

48. 752 N.Y.S.2d 605, 2002 N.Y. App. Div. LEXIS 12029 (1st Dep't 2002).

49. Anthony Lin, *Queens Attorney Hit with Sanctions over Insult*, N.Y. L.J., Dec. 11, 2002, at 1.

50. *Nachbaur*, 2002 N.Y. App. Div. LEXIS 12029 at *3–4.

51. *Id.* at *4.

52. *Id.* at *5. The court was particularly disapproving of this attorney's failure to cite adverse authority since he was involved in a case addressing many of the same issues only weeks earlier, and was aware of such adverse authority.

53. Lin, *supra* note 49; *In re* Teddy I. Moore, 177 F. Supp. 2d 197 (S.D.N.Y. 2001).

54. Lin, *supra* note 49; *In re* Teddy I. Moore, 529 U.S. 1127 (2000). Mr. Moore's motion for vacation of disbarment and reinstatement to the Bar of the Supreme Court was denied in 2007. 127 S. Ct. 1904; 2007 LEXIS 3776 (March 26, 2007).

55. Sukowicz & McGarry, *supra* note 1.

56. *Revson*, 221 F.3d at 82.

57. *In re* Dinhofer, 257 A.D.2d 326, 328 (1st Dep't 1999).

58. *In re* Kavanagh, 189 A.D.2d 521, 522–23 (1st Dep't 1993).

59. *Paramount*, 637 A.2d at 54.

60. *Revson*, 70 F. Supp. 2d at 442.

61. *Paramount*, 637 A.2d at 52 n.24 (alteration in original) (quoting The Honorable Sandra Day O'Connor, Civil Justice System Improvements, Speech to American Bar Association at 5 (Dec. 14, 1993)).

62. Sapino, *supra* note 27.

63. *See* Cornelia Honchar, *Putting Up with Abuse May Only Perpetuate It*, CHI. DAILY L. BULL., Mar. 4, 1994, at 6 ("Perhaps, it's the belief that real lawyers and real men expect and put up with rudeness and to protest would be a sign of weakness. . . . This is the true weakness: the lack of courage to stand up to rude lawyers.").

64. Cary, *supra* note 4, at 596.

65. *Id.* at 595–96.

66. *Id.*

67. *Id.* at 596.

68. *Id.* at 593.

69. *See* Shartel, *supra* note 18 (noting that one commentator stopped a deposition to call the Magistrate when her opponent began abusing a client).

70. Cary, *supra* note 4, at 593–94.

71. *Id.*

72. *Paramount*, 637 A.2d at 55 n.31.

73. *Id.* at 55.

74. *Id.* "Sanctions could include exclusion of obstreperous counsel from attending the deposition, . . . ordering the deposition recessed and reconvened promptly in Delaware, or the appointment of a master to preside at the deposition." *Id.*

75. Honchar, *supra* note 63.

76. Shartel, *supra* note 18.

77. *Id.* A speaking objection is a "lengthy objection on the record by the defending attorney during which the attorney in some way improperly attempts to send a message to or 'coach' his client, the deponent." *Id.*

78. *Id.*

79. Richmond, *supra* note 12, at 20.

80. Shartel, *supra* note 18.

81. Cary, *supra* note 4, at 597.

82. *Id.* at 597–98. *See* George, *supra* note 8, at 491–92, for a discussion of how a bar association's attempts to force attorneys to "make nice" could violate a lawyer's duty of zealous advocacy.

83. Cary, *supra* note 4, at 599.

84. *Id.* at 600; George, *supra* note 8, at 497–502.

85. *Revson*, 70 F. Supp. at 436 (alterations in original) (quoting Wallace P. Carson, Jr. & Barrie J. Herbold, *Why "Kill All the Lawyers"?*, 59 OR. ST. B. BULL. 9, 12 (Jan. 1999)).

86. George, *supra* note 8, at 507 (quoting Judge Howard Markey).