

Conduct Unbecoming by an Officer of the Court

**Professionalism
Zealous Advocacy or Unprofessional Conduct**

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**Louisiana Judicial Council/
National Bar Association Seminar Program
July 2005
Negril, Jamaica**

Conduct Unbecoming by an Officer of the Court

There are four core articles in Louisiana Code of Civil Procedure which speak to responsibility of attorneys, the decorum of practicing law and the manner in which attorney is to conduct himself in the practice of law these Code of Civil Procedure Articles are: 371, 863, 864 and 1443. Under Louisiana Code of Civil Procedure Article 371, an attorney is declared “an officer of the court.” This article mandates an attorney conduct himself at all times “with decorum, and in a manner consistent with the dignity and authority of the court...” An attorney is to treat “the court, its officers, jurors, witnesses, opposing party, and opposing counsel with due respect; shall not interrupt opposing counsel, or otherwise interfere... the orderly dispatch of judicial business by the court...” C.C.P. Article 863 states the effect of signing a pleading by an attorney “shall constitute a certification by him that he has read the pleading; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact; that is it warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law...not...to harass or to cause unnecessary delay or needless increase in the cost of litigation.” Any willful violation of the Louisiana Code of Civil Procedure 863 subjects an attorney to disciplinary action under Louisiana Code of Civil Procedure 864. Louisiana Code of Civil Procedure Article 1443 sets forth the tenet by which an attorney is to conduct himself during depositions. Under Louisiana Code of Civil Procedure Article 1443 B regarding objections same shall be “stated concisely and in an non-argumentative and non- suggestive manner.” Further under Louisiana Code of Civil Procedure Article 1443 an attorney shall be

“courteous to each other and to the witness and otherwise conduct themselves as required in open court...”

Against the foregoing we shall examine numerous reported cases, which to say the least, displays unprofessional conduct unbecoming of the stature to which an attorney is to comport him/herself while practicing law.

Carroll v. Jaques 926 F. Supp. 1282 (Texas Eastern District 1996) “The court regrets having to repeat Jaques’s profanity in this opinion, but the court must explain the necessity for drawing on its inherent power to control party’s conduct in a case before the court. Although the court ultimately sanctioned Jaques for particular profane words, it is important to put the words in a question and answer context to that the transcript fairly represents Jaques’s contumacious behavior at the deposition.” Id at 1285.

In Sanders v. Gore 676 So.2d 866 (La. 3rd Cir. 1996) which is a case for damages resulting from alleged breach of contract to marry. The attorney for plaintiffs in this matter was sanctioned by the trial court in the amount of \$1,000.00 fine in a “letter of regrets” to the defendant’s wife. Although the court opinion does not set forth elements of the petition for breach of contract of marriage trial court found under Louisiana Code of Civil Procedure Article 863 the plaintiff’s attorney concluded “scandalous” statements that were not relevant to the disposition of the case. Of interest is the dissent by Judge Cooks who stated “I cannot agree that the mere filing of this suit was a sanctionable offense.” Id. at 878 further Judge Cooks notes that Louisiana Code of Civil Procedure Article 863 is intended for exceptional circumstances and does not “empower a district court to impose sanctions on lawyers simply because a legal argument a ground for relief is sound to be in justified.” Id. at 880.

Gautreux v. Gatreux 57 So.2d 188 (La. 1952) where the Louisiana Supreme Court found the imposition of sanctions for one continuous act of contempt as opposed to several and distinct offenses warranted maximum fine of \$100 and 24 hours of imprisonment. According to the opinion, the relator (attorney for one of the parties which is not identified) sanctioned by the trial court and thereafter found guilty of contempt for again interrupting the court. Instead the supreme court found no evidence of separate and distinct acts but “rather they represented continuing contemptuous and abusive attitude the court during a particular hearing. But one offense was thereby committed...” Id. at 192.

Gautreau v. Gatreau 72 So.497 (La. 1954) C.P. Blanchard was found guilty of contempt of court during divorce proceedings and was fined \$100 and remanded to jail for 24 hours. After 5-1/2 hours in jail the Louisiana Supreme Court granted a writ and stayed the action against the relator. The underlying action relator occurred in a open court when the matter of Gautreau v. Gatreau was called to trial on a petition for change of venue filed by relator on behalf of his client the defendant. When the case was called the relator informed the court of an intention to file an exception against the petition for change of venue and immediately followed by an announcement attention to seek writs of certiorari, prohibition and mandamus regarding the exception to setting the matter for trial. After being informed by the court the application for writs was premature as the relator was walking toward the courtroom's exit at which time the court ordered the relator to "return and take his seat, and he ignored my order and continued to walk towards the exit. It was then that I adjudged him in contempt for refusing to obey my order and imposed sentence upon him and ordered the Sheriff to take him to jail." Id at 498. The Louisiana Supreme Court rejected relator's argument for vacating the sanctions including the claim here of an "abuse outburst from the judge" relator attempted to leave the courtroom in order to avoid provoking an incident.

In Lanoix v. Home Indemnity Co. of New York 16 So.2d 834 (La. 1943) the court sanctioned an attorney for using “language which was insulting and irrelevantly critical of two of the judges” of the appellate court; the supreme court found the attorney violated the appellate rules of court particularly in view of his failure to show “a repentant attitude or disposition.” Id. at 838. The attorney was sanctioned for the pleadings he filed with the Louisiana Supreme Court based upon the Court of Appeals reversal of the district court’s award of \$6,000 for the wrongful death of the plaintiffs’ son. Specifically the writ of certiorari read:

“8. That Judge Dore the organ of the Court is the same person who formed part of the ‘Round Robin Table’, and who took the position that regardless of the law and the evidence, they would not render any impeachment judgment, and that he has taken a similar attitude in this case and refused to consider the evidence, the law or the finding of the trial judge but reversed the trial judgment, on a theory, in violation of the jurisprudence, and even of judgments rendered on the same day.

9. That Judge LeBlanc has a son located in Donaldsonville, Louisiana, practicing law as the junior member of the firm of Blum & LeBlanc, and therefore in competition with petitioners’ attorney, and although the law does not force him to recuse himself, under the circumstances, he should have so recused himself, in order that petitioners who are an old couple, should not be denied justice in violation of jurisprudence of this State.” Id at 837 and 838.

Representing himself before the Louisiana Supreme Court while reiterating his response to the contempt citation the relator stated “he would rather go to jail than to retract them (his salacious statements) or apologize for them and requested the Court, in the event he were found guilty, to grant him sufficient time to adjust his affairs if he were sentenced to serve a period of incarceration.” Id at 835. Addressing the relator’s statement that the supreme court would leap over the restrictions placed upon it by the “Constitution and Statutes, the supreme court stated:

It has always been our policy to be lenient with litigants and members of the Bar who, in the heat of argument or the excitement or disappointment in litigation, have transgressed but later expressed their regrets. This is not the case here because even after the attorney's wrongful act was called to his attention by us, he persisted therein. Under these circumstances, there is no alternative for the Court except to maintain its authority and dignity by imposing upon the defendant a proper punishment for his deliberate and willful acts of contempt of court. *Id.* at 838.

By filing the salacious pleadings with the Supreme Court thereby involving its jurisdictional authority constitutes an act of open contempt for the Court of Appeal.

Parker v. Mouser 24 So.2d 151 (La. 1945) Mr. A. B. Parker, attorney was sentenced to five days in the parish prison in LaSalle Parish for contempt of court which occurred during oral arguments concerning a case pending before the court. Mr. Parker petitioned the Louisiana Supreme Court the writ of certiorari which called for the district court to provide its version of the matter. After the relator had completed his presentation, the counsel for plaintiff arose and began to address the court when he was abruptly interrupted by relator. After the court admonished relator to resist any further interruption relator began to argue with the court that he was representing his client's best interest. Upon being warned by the court any continued interruptions would constitute contempt the relator stated "go ahead and hold me for contempt." Id at 153. The statement of relator prompted the court to find the attorney in contempt and during the court's statement of the record to the nature of the contempt and the sentence the relator stated "if you are going to stick me, go ahead and do it and cut out all that speech making." Id at 153. This prompted the trial court to reevaluate the ten or fifteen dollar fine and impose a five day jail sentence. During the trial judge's presentation into the record about the sentencing the relator sign a check in blank and tossed it to the Clerk which the Court found indictive of relator's "contemptous lack of concern respecting the fine which he anticipated the Court was about to impose." Id at 153. Relators presentation to the Court is 180 degrees opposite to that of the trial court judge. In fact the relator stated it was the judge's own action when relator voiced his objection which caused the Court "wheeled in his chair and commenced hollering and yelling at [the relator] to keep his seat and keep his mouth shut and that he, the Judge would hold your [relator] as being in contempt of court... in truth and in fact your [relator]

was sentenced not for anything done by him but for the Judge's own anger and breach of the quiet and orderliness of the court room..." Id at 154. The Supreme Court noting the wide difference of what occurred between the description by the trial judge and relator noted:

In a situation of this kind, where there is a conflict respecting allegations of fact between relator's application and the return of the judge, the recitals of the judge prevails, unless error in the return clearly appears. Id at 155.

The Supreme Court, in accepting the version given by the respondent judge, as must be "done" affirmed the finding of contempt of court against relator. The court modified the jail sentencing noting that there was only one continuous action of contempt which warranted a jail sentence not to exceed twenty-four hours. Noting "the several remarks or utterances of relator, all of which occurred prior to his being sentenced, were made on a single occasion and manifested but one feeling of contempt. They did not evidence separate and distinct acts of contempt; rather they represented a continuing contemptuous and abusive attitude towards the court during a particular hearing." Id at 155.

Williams v. Tulane University Medical Center 588 So.2d 782 (4th Cir. 1991), in this case the Civil District Court trial judge found the attorney for plaintiff violated Louisiana Civil Code of Procedure Article 863 and ordered the attorney to pay a fine to his opponents of \$250.00 and to deliver to the trial judge “written fifty times legibly, in his own handwriting, and letter perfect, the provisions of Article 863 of the Louisiana Code of Civil Procedure.” The sanctioned attorney appealed to the Fourth Circuit complaining the writing assignment was an abuse of the trial court’s discretion as an inappropriate penalty. In answering the question whether or not a writing assignment is an appropriate sanction, the Fourth Circuit Court of Appeal through Judge Schott held “not in this circuit.” Interesting the judges on this particular case are no longer members of the Fourth Circuit of Appeal and what is the Court of Appeals current feeling regarding written assignments as an appropriate sanction under Code of Civil Procedure Article 863.

Carroll v. Jaques 926 F. Supp. 1282 (Texas Eastern District 1996), Leonard C. Jaques was a named defendant in a case who was sued by a disgruntled client for legal malpractice including a claim for fraud. In the instant at hand, Jaques was a party and thus he was not sanctioned for his conduct as an attorney before the court. During the course of Jaques' deposition, he refused to answer questions and verbally abused counsel for plaintiff. Citing from the transcript:

Plaintiff's counsel: Do you want to make your objection now?

Defendants' counsel: Please. I object to the form of the questions, and it is argumentative and calls for a legal conclusion from the witness. Let me take a short break.

The Witness: More than that, it's not relevant to any issue of this cause. I mean it is stupid. It is out of order. Only an ass would ask those questions.

Q. Well, do you think you wrote Mr. Carroll a letter and told him that the judge had dismissed his case on Forum on Nonconvenience [sic] in 1982?

A. I'm not thinking.

Defendants' counsel: Excuse me. Excuse me. Excuse me. This is repetitious. He's already told you that he doesn't recall.

A. Let him go on. Just let him go on. He's an idiot. Let him go on.

Q. So, this is the document that constitutes your authority? I mean you would be wrong to go file suit for a man or to do something for him if you didn't have the authority to represent him under your state laws, and I assume. That would be [sic] right?

A. Well, you took ethics, too. And is that your understanding of legal ethics?

Q. Are you telling me that I'm right?

A. I'm telling you you're as ass to ask me such a question.

Q. And the place to look for the answer if there is one would be again in the firm's file?

Defendants' counsel: Excuse me.

Q. Correct?

Defendants' counsel: I object to form of the question, misleading, assumes facts not in evidence.

A. Isn't that an asinine question?

Q. We would have to look in the file, wouldn't we? There is no place else that you would look for it, is there?

Defendants' counsel: Nonresponsive.

A. Isn't that an asinine question?

Q. So, you knew you had Mr. Carroll's file in the - -

A. (Interrupting) Where the fuck is this idiot going?

Q. - - winter of 1990/91 or you didn't?

Defendants' counsel: Nonresponsive. Objection, objection this is harassing.

This is ...

The Witness: He's harassing me. He ought to be punched in the goddamn nose.

Q. What about your own net worth, Mr. Jaques? What is that?

Defendants' counsel: Excuse me. Object also that this is protected by a - -

The Witness: (Interrupting) *Get off my back you slimy son-of-a-bitch*

Plaintiff's Counsel: I beg your pardon, sir?

The Witness: *You slimy son-of-a-bitch* [Shouting.]

Plaintiff's Counsel: You're not going to cuss me, Mr. Jaques.

The Witness: *You're a slimy son-of-a-bitch* [Shouting.]

Plaintiff's Counsel: You can cuss your counsel. You can cuss your client. You can cuss yourself. You're not going to cuss me. We're stopping right now.

The Witness: You're damn right.

Plaintiff's Counsel: We'll resume with Judge Schell tomorrow. Thank you.

The Witness: Come on. Let's go.

Plaintiff's Counsel: Good evening, sir.

The Witness: *Fuck you, you son-of-bitch*

Finding no specific rule of law or court the judge in this matter called upon the inherent power of the court to regulate the practice in cases pending before it. Inherent powers created to the jurisprudence which allows the court to control the management of its affairs for a "orderly and expeditious disposition of cases." *Id* at 1288. In order to call upon the inherent power of control, the court must find either a willful disobedience of the court order or "actions taken in bad faith vexatiously, wantonly, or for oppressive reasons." *Id* at 189. Relying on the case of Chambers v. NASCO, Inc. 111 S. Ct. 2123 (1991) the court found Mr. Jaques being in bad faith with his disrupted and abusive behavior at his deposition. Citing his deposition behavior as bad faith for Jaques' use of vulgar and profane words of counsel for plaintiff, physical threat to plaintiff's counsel and according to the video taped deposition shouting his profanities, the court stated:

No Court can effectively dispose of cases when a party engages in such repugnant conduct in the court of pretrial discovery. *Id* at 1289. Although Jaques offered excuses for his outrageous conduct, the court found his

credibility weak notwithstanding his statement “I’ve been a practicing lawyer for many years and I can say that I have an *unblemished record* in more than thirty years as a member of the bar.” *Id* at 1290. Described as a cursory research, the court found Mr. Jaques’ record was not unblemished: The court dismissed one of Jaques’ cases for failing to comply with discovery orders and blatant forum shopping, Jaques was disciplined for vexatious behavior for improperly cancelling depositions, another court sanctioned Jaques for filing a frivolous motion and in 1984, Jaques was held in civil contempt of court for failing to appear for trial and then lying to two separate federal judges regarding his whereabouts. Finding that sanctions is not for punishment or retribution but to restore necessary control that has vested in the courts to manage its “own affairs so as to achieve the orderly and expeditious disposition of cases.” *Id* at 1292. The court entered a sanction in the amount to “to deter Jaques and others from such abusive behavior and assessed a fine of \$7,000. The \$7,000 was figured by examining Jaques deposition language stating:

The \$7,000 amount was calculated by assessing fines of: \$500 for each of the four times Jaques referred to Plaintiff’s counsel as either an “idiot” or an “ass”; \$1,000 for Jaques’s suggestion during the deposition that Plaintiff’s counsel “ought to be punched in the goddamn nose”; \$1,000 for each of the three times Jaques called Plaintiff’s counsel a “slimy son-of-a-bitch”; and \$1,000 for Jaques’s parting words to Plaintiff’s counsel, which were “Fuck you, you son-of-a-bitch.”

Williams v. Tulane University Medical Center 588 So.2d 782 (4th Cir. 1991), in this case the Civil District Court trial judge found the attorney for plaintiff violated Louisiana Civil Code of Procedure Article 863 and ordered the attorney to pay a fine to his opponents of \$250.00 and to deliver to the trial judge “written fifty times legibly, in his own handwriting, and letter perfect, the provisions of Article 863 of the Louisiana Code of Civil Procedure.” The sanctioned attorney appealed to the Fourth Circuit complaining the writing assignment was an abuse of the trial court’s discretion as an inappropriate penalty. In answering the question whether or not a writing assignment is an appropriate sanction, the Fourth Circuit Court of Appeal through Judge Schott held “not in this circuit.” Interesting the judges on this particular case are no longer members of the Fourth Circuit of Appeal and what is the Court of Appeals current feeling regarding written assignments as an appropriate sanction under Code of Civil Procedure Article 863.

Twelve Month's Experience of Unprofessional Conduct

1. Opposing counsel or co-defense counsel will make representation an attorney on the defense team committed to certain items of discovery, stipulation, etc. Typically a case is assigned to a team of a partner, one or two associates and a paralegal. Opposing counsel or co-defense counsel will communicate to all members of the team making incorrect representations and even offering to the court false representation that a member of the team said when same did not occur. Consequently, for any given hearing the entire team will be in the courtroom to verify, clarify or deny representations of opposing counsel or co-defense counsel to the court. Now when this appears to be the *modus operandi* of opposing counsel or co-defense, written correspondence will be forwarded identifying the one team member that will be responsible through the conclusion of the litigation for communication with opposing counsel or co-defense counsel.
2. Opposing counsel contacted an expert witness posing as a representative of Beahm & Green in order to contact the expert.
3. A sitting judge ordered the civil service division of the sheriff's department not to serve legal papers upon an indigent and incompetent patient who required an interdiction and appointment of a curator. This same judge, refused to grant an audience to counsel to present the papers for temporary curatorship appointment requiring the attorney to wait several hours in the court house only to have to return the following day to wait several more hours before the Court granted the temporary curatorship.

4. Opposing counsel ordered his staff not to accept service of legal papers and provided no alternative service mechanism.
5. Unilaterally setting of deposition by opposing or co-defense counsel of parties, employees or representative and then refusing to reschedule causing the need to file a Motion to Quash.
6. Opposing counsel or co-defense counsel being obnoxious on the telephone to the point of becoming personal with accusations and uncalled for language.
7. Opposing counsel or co-defense counsel making accusation of hiding documents.
8. Opposing counsel made representation to the court the need for “emergency” discovery motion date giving just one day to submit an opposition even though the rule had not been served and opposing counsel refused to reschedule to a mutually agreeable date.
9. Exchange of witness list - timing is a problem if the date is mutual to all parties with no opportunity for discovery and the engagement of deposing expert.
10. Opposing counsel scheduling a 10.1 conference before the receipt of the discovery responses based upon a telephone conversation with counsel.
11. Opposing counsel appearing at one’s office unannounced and without an appointment.
12. Minute clerk demanding acceptance of a trial date by all counsel and in absence of agreeing the minute clerk “ordered” counsel to return the following day to explain to the court “i.e. the judge” why the trial date was unagreeable.
13. Opposing counsel refused to attend or send another attorney to attend a

deposition of an out of state witness for perpetuation for a trial scheduled to begin within two (2) weeks and instead filed a Motion to Quash because it interfered with vacation plans. This was a former employee of defendant and the location of the witness had just been discovered.

14. Out of town expert deposition coupled with a request to begin the deposition earlier during the day in order to accommodate return airline flight. The deposition was originally scheduled for 1:00 P.M. and the request was to move the deposition to 11:00 A.M. The witness was not contacted and counsel for plaintiff indicated the deposition would have to go as scheduled at 1:00 P.M. On arriving at the deposition site at 12:20 P.M. The court reporter's office reported the expert and plaintiff's counsel had just left for lunch and would return in time for the 1:00 P.M. deposition.

State of Louisiana v. James Bullock 576 So.2d 453 (La. 1991) in this matter Mr. Bullock was charged with and convicted of an unauthorized entry in a place of business and simple escape along with seven counts of contempt of court which added to the defendant's sentence by an additional three years and six months for the following exchange between the defendant and the court which had just granted the Motion for Appeal:

The Defendant: Fuck you.

The Court: Back here.

The Defendant: Fuck you.

The Court: Back here, padner [sic]. Let the record reflect the defendant judge told the Court twice "fuck you."

The Defendant: Fuck you, asshole.

The Court: No, you, Mr. Bullock.

The Court: Three counts in direct contempt of court consecutive, 18-months. Do you want to go for two years?

The Defendant: Fuck you.

The Court: Two years direct contempt.

The Defendant: Fuck you, asshole.

The Court: Two years, six months.

The Defendant: Fuck you.

The Court: Three years consecutive contempt.

The Defendant: Fuck you, asshole.

The Court: Three and a half years, Mr. Bullock. Thee years, six months, direct

contempt of court consecutive to the 17 years the Court just gave him.

Mr. Johnson [Defense Counsel]: Just for the record, note an objection.

The Court: That will be noted also. Let's go on the record as to James Bullock, so the Court of Appeal [sic] will know what happened. Mr. Bullock twice screamed "fuck you" to the Court after the Court had sentenced him. The Court found both to be in direct contempt and told the sheriff to escort him out of the courtroom. Mr. Bullock continued the entire way being escorted out of the courtroom, even after he was out of the courtroom before the sheriff's [sic] could put him in a holding cell, continued to scream "fuck you" at the Court. The Court finds that each time he did this to be in direct contempt. It is six months on each one consecutive to the 17-year sentence the Court had just gave [sic] him on the other charges.

Finding that the last four insults from the defendant was initiated by colloquy of the trial court which "invited and encouraged" is not contemptuous. Accordingly, the Louisiana Supreme Court reversed the last four contempt convictions while affirming the first three separate acts of contempt. The contempt sentence was to run concurrent with each other but consecutive to the 17 years for the criminal offenses.

Under the doctrine of “*nemo propriam turpitudinem allegare potest* (no one may invoke his own turpitude)”, performance rendered under absolutely no contract will not be recovered by a party who either knew or should have known of a defect that makes the contract null. Civil Code Article 2033. The doctrine was eloquently applied in Boatner v. Yarborough 45 La. Ann. 249 (1857):

But judicial tribune?? should not be called upon to adjust the balance of profit and loss between joint adventures in iniquity... The law, whose mission is to write the innocent and to enforce the performance of licit obligations only, these parties who traffic in forbidden things and then break face with [each] are at _____ the mutual redress as their own standard the honor ?? may award.

Sanders v. Gore 676 So.2d 866, 873, (La. 3rd Cir. 1996)

“There is no place in the law for romantic fiction for a scorned and mistresses’ adulteress conduct.” *Id.* at 872.

“In the supplemental petition, Ms. Sanders did not make any new factual allegations, but merely added allegations of neglect intentional infliction of emotional distress and cause of action.” *Id.* at 873. Which was not a good reason to amend the petition which was denied by the court along with the request for a jury trial.

Paramount Communications Inc. v. QVC Network Inc. 637 A.2d 34 (Del. 1994) action spawn by the proposed acquisition of Paramount Communications Inc. by Viacom Inc. complicated by a competing unsolicited tender by QVC Network Inc., the court noted “serious” deposition misconduct by counsel on behalf of a Paramount director at deposition conducted in Texas and attended by attorneys that were neither licensed by the State of Delaware nor admitted *pro hac vice*. *Sua sponte* the court raised a “serious issue of professionalism involving deposition practice in proceedings in Delaware trial courts.” *Id* at 59. The court noted its supervision is not just related to the conduct of members of the Delaware bar, those admitted *pro hac vice* to practice for the Delaware courts and a “responsibility for supervision if not confined to lawyers who are members of the Delaware Bar and those admitted *pro hac vice*, however.” *Id* at 59. The court’s responsibility extended to out-of-state depositions taken in Delaware litigation and extended to “all lawyers, litigants, witnesses and others.” *Id* at 59.

The deposition in question occurred, as stated in Texas and the deposition was being taken by Delaware counsel of QVC of a Mr. Liedtke one of the directors of Paramount. The deponent was represented at deposition by Joseph D. Jamail a member of the Texas bar. Paramount and other defendants were represented by counsel that was a member of the state bar of New York, Mr. Jamail did not otherwise appear in the proceeding and was not admitted *pro hac vice*. After citing certain excerpts from the Delaware lawyer’s rule of professional conduct, the court set forth portions of the deposition of Mr. Liedtke as follows:

A. [Mr. Liedtke] I vaguely recall [Mr. Oresman’s letter].... I think I did read it, probably.

Q. (By Mr. Johnston [Delaware counsel for QVC]) Okay. Do you have any idea why Mr. Oresman was calling that material to your attention?

Mr. Jamail: Don't answer that.

How would he know what was going on in Mr. Oresman's mind?

Don't answer it.

Go on to your next question.

Mr. Johnston: No, Joe - -

Mr. Jamail: He's not going to answer that. Certify it. I'm going to shut it down if you don't go to your next question.

Mr. Johnston: No. Joe, Joe - -

Mr. Jamail: Don't "Joe" me, asshole. You can ask some questions, but get off of that. I'm tired of you. You could gag a maggot off a meat wagon. Now, we've helped you every way we can.

Mr. Johnston: Let's just take it easy.

Mr. Jamail: No, we're not going to take it easy. Get done with this.

Mr. Johnston: We will go on to the next question.

Mr. Jamail: Do it now.

Mr. Johnston: We will go on to the next question. We're not trying to excite anyone.

Mr. Jamail: Come on. Quit talking. Ask the question. Nobody wants to socialize with you.

Mr. Johnston: I'm not trying to socialize. We'll go on to another question. We're continuing the deposition.

Mr. Jamail: Well, go on and shut up.

Mr. Johnston: Are you finished?

Mr. Jamail: Yeah, you - -

Mr. Johnston: Are you finished?

Mr. Jamail: I may be and you may be. Now, you want to sit here and talk to me, fine. This deposition is going to be over with. You don't know what you're doing. Obviously someone wrote out a long outline of stuff for you to ask. You have no concept of what you're doing.

Now, I've tolerated you for three hours. If you've got another question, get on with it. This is going to stop one hour from now, period. Go.

Mr. Johnston: Are you finished?

Mr. Thomas: Come on, Mr. Johnston, move it.

Mr. Johnston: I don't need this kind of abuse.

Mr. Thomas: Then just ask the next question.

Q. (By Mr. Johnston) All right. To try to move forward, Mr. Liedtke, ... I'll show you what's been marked as Liedtke 14 and it is a covering letter dated October 29 from Steven Cohen of Wachtell, Lipton, Rosen & Katz including QVC's Amendment Number 1 to its Schedule 14D-1, and my question - -

A. No.

Q. - - to you, sir, is whether you've seen that?

A. No. Look, I don't know what your intent in asking all these questions is, but, my God, I am not going to play boy lawyer.

Q. Mr. Liedtke - -

A. Okay. Go ahead and ask your question.

Q. I'm trying to move forward in this deposition that we are entitled to take. I'm trying to streamline it.

Mr. Jamail: Come on with your next question. Don't even talk with this witness.

Mr. Johnston: I'm trying to move forward with it.

Mr. Jamail: You understand me? Don't talk to this witness except by question.

Did you hear me?

Mr. Johnston: I heard you fine.

Mr. Jamail: You fee makers think you can come here and sit in somebody's office, get your meter running, get your full day's fee by asking stupid questions.

Let's go with it.

Noting it had no jurisdictional control over Mr. Jamail the court decided if Mr. Jamail ever sought to be granted *pro hac vice* status in Delaware his conduct would be reviewed and what rules, if any, could be adopted for effectively dealing with misconduct of out of state lawyers involved in pending Delaware matters. Toward the end, the court welcomed a "voluntarily appearance" by Mr. Jamail to explain his conduct and show cause why his conduct should not constitute a bar for any future appearance in Delaware court proceeding. It is cited in a footnote that Paramount Communications Inc. v. QVC Network Inc. 637 A.2nd 34 (Del. 1994) in citing Justice Sandra Day O'Connor's speech to the American Bar Association on December 14, 1993 entitled "Civil Justice Improvements."

"I believe that the 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." *Id* at 60.

Russell v. Illinois Central 686 So.2d 817 (La. 1997) where the Louisiana Supreme Court

held it is:

[A]n ill practice for Plaintiff's attorney to obtain a default judgment without attempting to notify the opposing attorney when the opposing attorney had participated in the litigation proceedings and inadvertently failed to file an answer to Plaintiff's second amended petition. Id at 819.

Although noting the Code of Civil Procedure does not mandate notification of opposing counsel prior to taking a default judgment, does not in and of itself, mean the failure to do so cannot be an ill practice under Louisiana Code of Civil Procedure Article 2004.

Calling upon a case of Kem Search, Inc. v. Sheffield 434 So.2d 1067, 1070 (La. 1983)

in reversing the entry of the default judgment the Court noted:

Louisiana Code of Civil Procedure Article 2004 is not limited to cases of actual fraud or wrongdoing. but is sufficiently broad enough to encompass all situations wherein a judgment is rendered through some improper practice or procedure which operates, even innocently, to deprive the party cast in judgment of some legal right, and where the enforcement of the judgment would be unconscionable and inequitable. Id at 819.

Judge Fred Bowes and a little story about being called a son-of-a-bitch versus an old son-of-a-bitch.

Gardner v. Waterman Steamship Corp. 2002 U.S. Dist. Lexis 17929 (USDC E. Dist. of La. 2002) counsel for defendant filed a Motion for Summary Judgment which is scheduled for hearing one week after plaintiff's counsel's wife was due to undergo surgery. Plaintiff's counsel requested defense counsel to continue the motion which was declined by defense counsel. The Court granted plaintiff's counsel's request for an extension of time to file its opposition, but the motion went off as scheduled. In the reply brief to plaintiff's opposition, defense counsel spent a significant portion of time objecting to the late filed opposition memoranda. Citing the Code of Professionalism for the Eastern District of Louisiana and the ABA Guidelines for Litigation Conduct. The Court considered defense counsel's behavior:

[V]iolative of all of the civility guidelines. Defense counsel are admonished to avoid such unprofessional conduct in the future and are ordered write a letter of apology to opposing counsel, with a copy to the Court. Id at 9.

The cited portions of the code of professionalism included the need of counsel to consult each other when scheduling procedures and for counsel to accommodate previously scheduled matters, to agree to reasonable request for extension of time including waiver of procedural formalities provided it does "not" materially or adversely affect the rights of the clients.