

# A Lesson in Civility, Over Coffee

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I strive to be as civil as possible with my fellow attorneys. After all, as litigators, we are all officers of the court. This is why a recent article regarding a case in the Northern District of California involving allegations of trade secret sharing caught my eye. During the course of discovery in the case, Magistrate Judge Ryu, ordered Plaintiff's counsel to pay opposing counsel for "coffee stains inflicted at a deposition." Judge Ryu had previously issued a ruling that the same attorney had coached deposition witnesses, among other things, and sanctioned the attorney. The transcript from the deposition provides a primer in how to conduct yourself if you are in a situation involving opposing counsel who is less than civil. For example, the deposition transcript states:

MR. WALLERSTEIN: Sir, I think you should take five and think about it.

MS. HEALY: No. I think you should take a f\*\*\*\*\*g break. You should take—

(Interruption in proceedings.)

MR. WALLERSTEIN: Oh, my goodness.

MS. HEALY: Take a f\*\*\*\*\*g break.

MR. WALLERSTEIN: I need help. She just threw her coffee at me. She's going crazy. Sir, you should get a lawyer. You're a witness. Oh, my God. Sorry about that. We're going to go off the record.

You have to admire Mr. Wallerstein for his seemingly calm narration of events. He says, "I need help." Presumably, he is looking for someone to bring him napkins or a paper towel. That statement is merely reactive to the situation. But the next sentence shows impressive foresight. Mr. Wallerstein says, "She just threw her coffee at me." It seems that he knows that what just happened will be significant someday and the act of throwing coffee may be denied later. Experienced lawyers know that there is a need to put on the record those things which are not otherwise captured by the record. For example, a lawyer might say, "let the record reflect that counsel for the witness has just shown the witness a note written on counsel's legal pad." The observation that opposing counsel is "going crazy" underscores how far beyond the pale of appropriate behavior opposing counsel has gone.

Mr. Wallerstein's reaction and description of opposing counsel's actions create a clear account and record of Ms. Healy's coffee attack on Mr. Wallerstein. Predictably, Ms. Healy denied throwing the coffee saying that she "very simply slammed it on the table causing the remains of my coffee to spill on the table." Everyone else at the incident ultimately said that Ms. Healy threw the coffee. Of course, the immediate recitation into the record of events helps insure the accuracy of after the fact recollections as well. And kudos to the court reporter for staying on task through the fray and keeping the record going.

This tawdry story provides a helpful pointer to lawyers in any deposition that is not being videotaped or where conduct takes place off-camera. It is critical to stay calm. Only with calm reflection in the heated moment can a lawyer create for the record a description of events not otherwise captured on the record. This is one of the job duties that makes the life of a litigator challenging. And one can only hope that this incident provides a lesson to ill-mannered litigators that there are consequences to incivility.