

SCENARIOS FOR TRIAL COURT JUDGES

THE TOO FAMILIAR LAWYER

At a social event you attend with your spouse over the weekend, you run into lawyer Joe Goodbuddy, who you have not seen since law school. After exchanging a few pleasantries, he mentions he will be seeing you later that week at the courthouse. As you return to the office from lunch the following Tuesday, you spot Joe in the lobby, apparently waiting for opposing counsel to arrive for a pretrial. “Hey there _____,” he says loudly addressing you by your first name. You enter your chambers and shortly after Goodbuddy and opposing counsel, Joe Nobody, are ushered into your office by your bailiff. Opposing counsel begins by saying, “Good afternoon, your Honor.” Goodbuddy follows by saying, “Good afternoon, your Eminence!” with a chuckle. He then immediately follows by saying, “Wasn’t that a great party Saturday? It was great seeing you and your spouse again.”

How do you handle this situation?

- A) The conversation in chambers would not have occurred because I would have corrected Goodbuddy in the hallway as to the proper manner in which to address me;
- B) I would dress-down Goodbuddy in front of his opposing counsel for his unprofessional demeanor;
- C) I would ask to speak with each counselor privately, disclosing the nature of my relationship to opposing counsel, and admonishing Goodbuddy for his indiscretion privately;
- D) I would say nothing and quickly move the conversation to the business of the case before the court.
- E) None of the above.

How does your response to this situation change if Goodbody is a prominent leader in the political party to which you belong?

- A) Not at all.
- B) Slightly.
- C) Significantly.

APATHETIC ATTORNEY

A high profile murder case has been assigned to your docket. At the arraignment the defendant declares he is indigent and requests appointment of counsel. Lawyer Joe Lackadaisical suddenly appears in court and states he has been retained at the request of the defendant's father. At the first pretrial you set a trial date that all parties agree upon. You are concerned by the tone of the defense lawyer who barely speaks, raises no discovery concerns, no representations as to lines of defense, and no attempt at resolving the case. You set another pretrial where you observe the same apparent apathy by defense lawyer Joe. You state to both parties that you intend to go forward as scheduled on the trial date and if there are any issues you want to hear about them now. On the morning of trial, Joe hands your bailiff a motion to continue based on non-payment of funds by the defendant's father, or in the alternative, a request to withdraw and the appointment of new counsel. You have serious doubts as to how prepared the lawyer is to go forward that day.

How do you react, supposing the prosecution objects to continuing the case?

- A) You make a record of what took place leading up to the trial and you order the case to go forward;
- B) You make an inquiry as to what prejudice would be suffered by the state if continued and, if none exists, you allow defense counsel to withdraw and appoint new counsel;
- C) Same as answer B – however you schedule a contempt hearing for Lackadaisical where you intend to impose a hefty fine;
- D) You continue the case and allow Lackadaisical to remain as counsel, deny his motion to withdraw, and tell him this is the last time you will continue this matter.
- E) None of the above.

IN ALL FAIRNESS

You are a judge hearing oral argument on a motion for summary judgment. Defendant is represented by Ron Reliable, an attorney who appears in your court frequently and has established a reputation for submitting trustworthy briefs and making eloquent legal arguments. Plaintiff is represented by Rosemary Nice, a new attorney who recently passed the bar, opened a solo practice, and is making her first oral argument.

Before the argument begins you speak to Ron Reliable from the bench, remarking that it's good to see him again. You ask about his firm's business in these tough economic times. You introduce yourself to Rosemary Nice and ask her how long she has been practicing.

When argument begins, Ron Reliable brings to the court's attention a new case, *Winning v. Losing*, which he insists is on point. He says that it just was released a week ago, and therefore, he did not include it in its brief. Unfortunately, he does not have a copy of the *Winning* case with him, but he cites it confidently in support of his argument. During her argument, Ms. Nice responds that she is not familiar with the *Winning* case and requests additional time post-argument file a supplemental brief. You grant her two weeks to do so.

Ms. Nice files a supplemental brief within the court's two-week timeline and in her brief she notes that the *Winning* case was not on point regarding the matter at hand. One day later, thanks, in part, to the help of a diligent staff attorney you recently hired, Ms. Nice receives your court's decision of the case, ruling in favor of Mr. Reliable's client. The decision is based upon *Winning v. Losing*, and does not mention Ms. Nice's supplemental brief or its reasoning. Ms. Nice promptly files a motion for reconsideration, arguing that the court did not consider her supplemental brief before making its ruling.

How often do you have discussions in the courtroom comparable to the one described above before an oral argument?

- A) All the time. I like to get to know the attorneys who appear in my courtroom.
- B) This type of discussion would not occur in open court. However, I may engage in a conversation like this one in chambers.
- C) I rarely ask attorneys personal questions about themselves and I try to limit the amount of small talk. I am only interested in the issues of a legal matter before me, not the people arguing about the issues. Such discussion also tends to slow down my extremely busy docket.
- D) None of the above.

How would you respond to Ms. Nice's motion for reconsideration?

- A) A motion for reconsideration is a legal nullity at the trial court level, so I would not consider it. The court has ruled in this case in an efficient manner, and if a mistake was made Ms. Nice can file an appeal.
- B) I would consider Ms. Nice's supplemental brief, and only if she had a winning argument would I respond to the motion for reconsideration (and rule in her favor).
- C) I would consider Ms. Nice's supplemental brief, and even if her argument was not persuasive, I would issue a ruling in response to her motion for reconsideration that addressed her supplemental brief.
- D) None of the above.

THE BULLY

You are presiding over a post-decree hearing on the motion of a non-custodial father who is seeking visitation with his two children, a son who is four and a daughter who is six. The parties have been divorced for a couple of years and the father has had little to no contact with the children.

Dad is represented by a rather aggressive attorney, Brad Bully. Mom is *pro se*. Bully's approach to the Rules of Evidence and Civil Procedure is, to say the least, expansive. Many of his questions are objectionable as being argumentative and seek hearsay answers. His direct examination consists of a series of closed-end questions that seek simple yes or no answers. Mom does not understand what is going on. She is lost and overwhelmed.

What do you do?

- A) As there are no objections by Mom, I allow the testimony to continue and consider all of the evidence presented.
- B) As there are no objections by Mom, I allow the testimony to continue. However, as the decision-maker, I constantly screen out testimony that should be inadmissible and make a conscious effort to block it from my resolution of the matter.
- C) I interrupt Bully's line of questioning frequently, when appropriate, and indicate that just because the opposing party is not objecting, the court will not consider testimony that is inadmissible under the Rules of Evidence.
- D) Before the hearing began, I would have tried to prevent this situation by explaining the procedural aspects of the hearing and a giving a very basic primer on the types of questions that are appropriate on direct and cross examination.
- E) None of the above.

Does your approach change if this is the first year of Bully's practice?

- A) Not at all.
- B) Slightly.
- C) Significantly.

Does your approach change if Bully has acted pretty much the same for the twenty years he has practiced in your courtroom?

- A) Not at all.
- B) Slightly.
- C) Significantly.

THE PLEA AGREEMENT

Next Monday you have a serious rape trial set to go forward. The victim, who is now 15 years old, claims that the defendant, her uncle, raped her on two occasions four years earlier when he was out of work and living temporarily with her mother, the defendant's sister. The victim claims that she kept the details of the incidents to herself, but after receiving the encouragement of a teacher, she decided to come forward with the charges.

You meet with the prosecutor and defense attorney who both enter your chambers stating, "Judge, you'll be happy to hear we have reached a resolution." Upon inquiry, the prosecutor states he will move the Court to amend the indictment to one count of felonious assault and, in exchange for a guilty plea, will dismiss all rape charges. He adds that the victim is not exactly thrilled but she understands and is on board – "We'll be advocating for prison time but understand sentencing is totally up to your wise decision." You turn your attention to the defense attorney who says, "Judge, my guy maintains all this stuff never happened but he's not going to roll the dice on a mandatory life sentence. He understands all the potential penalties he faces, and I will be prepared to argue in mitigation at the sentencing hearing."

Do you accept this plea?

A) Yes

B) No

JOHNNY COME LATELY, ESQ.

Johnny Come Lately, a criminal defense attorney, is consistently late for court without explanation. One day Mr. Lately appears in court-- late once again-- but Mr. Lately's client is not present because he is in custody and the Sheriff has not yet brought him over from the jail. Mr. Lately states that he has something in another court and will be back when his client arrives. Mr. Lately leaves without telling the bailiff where he will be so that she can call him when his client appears. Mr. Lately never comes back. It is learned later that the other court he went to was in another county.

Mr. Lately subsequently appears in court with his client and says nothing about what happened on the previous court date. What do you do?

- A) Tell him if it happens again he will be found in contempt;
- B) Find him in contempt and order him to pay a fine to his favorite charity;
- C) Tell him he is banned from your courtroom;
- D) Tell him you would appreciate him being punctual because punctuality preserves peace of mind and leads to a general saving of time, temper and money;
- D) Say nothing and call his case last.
- E) None of the above.

A GOOD FRIEND IS HARD TO FIND

Long before you became a municipal court judge, you were friends with Attorney Goodfriend. You worked together at the same small firm for five years and were groomsmen in each other's weddings. Even after you left, the small firm continued to be one of the most respected law firms in your court's jurisdiction. It's just about Christmastime, and you come to your office one day and find an excellent bottle of bourbon. Apparently it had been left with your administrative assistant with a note saying, "May your spirits be bright this Christmas! Attorney Goodfriend."

On Friday, you have a status report hearing and Attorney Goodfriend is there. Opposing counsel is from out of town, and you have never met her before.

How do you proceed?

- A) Business as usual. You decide you will thank Attorney Goodfriend after the current case is over and feel it will likely settle quickly, anyway.
- B) You discreetly give the gift back to Attorney Goodfriend before the hearing begins and before opposing counsel arrives explaining that you cannot, in good conscience, accept it.
- C) You disclose your friendship and the gift to opposing counsel at the beginning of the status report and see if there is any objection to you remaining on the case.
- D) None of the above.

How does your response to the situation change if instead of a bottle of bourbon, Attorney Goodfriend leaves an assortment of Christmas cookies for you and your staff?

- A) Not at all.
- B) Slightly.
- C) Significantly.

WE'RE ALL "FRIENDS" HERE

Attorney Lovesaparty files a motion for continuance of a bench trial because of a death in her family. You grant a one-week continuance.

That night, as usual, you login to Facebook. As you are about to send your condolences to Attorney Lovesaparty through the social networking site, you are surprised to see a post from five minutes ago that shows Lovesaparty out at a bar drinking from a pitcher of green beer in celebration of St. Patrick's Day. You decide not to send any words of sympathy that night. During the next week you see no posts from Attorney Lovesaparty about a death in her family, although she does post about finally getting over a cold, comments about the winner of the reality television show Top Chef All-Stars, and a guilty admission about eating a pint of Ben & Jerry's ice cream in a single sitting. Also during the week, you receive a friend request on Facebook from Attorney Unfamiliar, who is opposing counsel to Attorney Lovesaparty in the pending case.

At the end of the week, Attorney Lovesaparty does not appear at the pretrial, which is held on the day before the new trial date. Instead, her senior partner appears on her behalf and tells you that Attorney Lovesaparty now actually needs a month-long postponement of the case.

How do you respond to the motion for continuance?

- A) Deny it without explanation
- B) Deny it after sharing what you've seen on Facebook that week
- C) Grant it
- D) Grant it, telling the senior partner that you will send your condolences to Attorney Lovesaparty on Facebook that night
- E) None of the above

How do you respond to Attorney Unfamiliar's friend request?

- A) Accept it right away
- B) Ignore it until the trial is over, then accept
- C) Ignore it indefinitely
- D) Reply to Attorney Unfamiliar that you don't know him all that well and have a policy of limiting the number of friends in your account
- E) None of the above

ATTORNEY SPREADTOOTHIN

As a juvenile magistrate you have been assigned a delinquency case where Joe Minor is charged with a burglary. He is indigent, so he has been assigned attorney Bob Spreadtoothin, a criminal defense attorney known to practice in courts of all levels throughout the county. Consistent with his reputation, Spreadtoothin arrives five to ten minutes late to every pretrial, profusely apologizing and indicating he was tied up in another judge's courtroom across town. The parties indicate they are at an impasse with regards to the charges so you set the matter for trial.

Two days before the scheduled trial, Spreadtoothin calls you on a conference call with the prosecutor and asks for a continuance due to the fact that he will be in trial in Judge Smith's courtroom on a felonious assault. You grant the attorney's request even though you previously had cleared your entire morning to accommodate the trial. On the morning of the original trial date, you call Judge Smith's office to confirm that the attorney is in trial. You learn from the bailiff that although the case was set for trial, all parties fully understood the case would resolve in a plea and that after the case plead, he rushed out the door to attend a scheduled court appearance in municipal court.

- A) Tell Spreadtoothin that you believe he misrepresented himself to the court and that you will never grant a continuance filed by him in the future.
- B) Schedule a contempt hearing to address the attorney's transgression.
- C) Refer the attorney to disciplinary counsel.
- D) Have a private conversation with Spreadtoothin addressing his reputation and suggest ways to improve it.
- E) None of the above

THE PRO HAC VICE LAWYER

Timothy Ohio, local counsel on a civil case, files a motion pro hac vice requesting that James Michigan, Esq. be allowed to appear as co-counsel in the case. In the affidavit attached to the motion, Mr. Michigan states that he is familiar with Ohio law and will follow the Ohio Rules of Civil Procedure as well as the local rules of your court. The local rules state that local counsel shall be designated as co-counsel. The local rules also state that the attorney who has the authority to make decisions with respect to all phases of the litigation shall be designated as "trial counsel" in the case, and that trial counsel shall attend all scheduled court hearings. The court has not been informed as to who is trial counsel.

The motion pro hac vice is granted.

On the date set for a final settlement pretrial, you are in chambers and hear vulgar comments being shouted in the courtroom. It turns out that it is Mr. Michigan who is doing the shouting. Mr. Michigan and opposing counsel come into chambers to discuss the case. Local counsel, Mr. Ohio, is not present. Mr. Michigan proceeds to become argumentative with opposing counsel and will not discuss settlement. He refuses to cooperate with discovery and becomes obstinate about not disclosing the names of his expert witnesses.

What do you do?

- A) Kick Mr. Michigan out of your chambers and tell him to never come back;
- B) Explain to Mr. Michigan that his behavior is unacceptable and that you expect him to conduct himself in a professional manner, and to cooperate with opposing counsel and the court;
- C) Tell Mr. Ohio what happened and tell him that he needs to explain to Mr. Michigan the importance of being professional in your court;
- D) Tell Mr. Ohio he is to be present for all scheduled court appearances;
- E) Deny all future motions for Pro Hac Vice;
- F) All of the above;
- G) None of the above

RAMBO RAY

During the course of discovery on a pending civil case, Plaintiff's counsel, Rambo Ray, takes the deposition of Defendant and Agents over a three-day period.

Throughout the depositions, Mr. Ray constantly uses sarcasm, makes veiled threats, interrupts witnesses, and does not allow completion of answers. He intentionally mispronounces names and asks redundant questions.

Defense counsel moves the court to strike the depositions and issue a protective order. Mr. Ray counters that there are no rules to allow the court to strike depositions.

What do you do?

- A) Review the depositions and if you find the allegations are true, strike the depositions.
- B) Deny the motion, as there has been no evidence that the parties attempted to resolve the issues prior to filing the motion.
- C) Order the attorneys to "clean up" their conduct and warn that if it persists, sanctions may be forthcoming.
- D) Let the attorneys resolve the matter themselves and do not get involved.
- E) None of the above.

EX PARTE HEARING

At an ex parte hearing in support of a temporary injunction, Attorney Blowhard makes a sworn representation that causes the court to issue the order. At a subsequent hearing, you learn that Blowhard's statements are not entirely true.

What do you do?

- A) Have another hearing and assess all costs to Attorney Blowhard.
- B) Issue an order reprimanding Attorney Blowhard for violation of the Rules of Professional Conduct.
- C) Report Attorney Blowhard to your local grievance committee.
- D) Call Attorney Blowhard into your office for a conference to resolve the matter.
- E) None of the above.

MR. INSISTENT

There was an auto-truck accident in which an employee of ABC Corporation struck and killed an innocent driver.

During voir dire, plaintiff's attorney mentions at least three times the fact that ABC Corporation just purchased another company for 4.5 billion dollars. Defense attorney objects.

Plaintiff's attorney continues to make reference to the 4.5 billion dollar purchase. What do you do:

After the first objection?

- A) Sustain the objection and instruct the jury to disregard.
- B) Sustain the objection, call a recess and warn the attorney that to make another reference to the 4.5 billion dollars shall result in a finding of contempt.
- C) Declare a mistrial.
- D) None of the above.

After the second objection?

- A) Sustain the objection and instruct the jury to disregard.
- B) Sustain the objection, call a recess and warn the attorney that to make another reference to the 4.5 billion dollars shall result in a finding of contempt.
- C) Declare a mistrial.
- D) None of the above.

After the third objection?

- A) Sustain the objection and instruct the jury to disregard.
- B) Sustain the objection, call a recess and warn the attorney that to make another reference to the 4.5 billion dollars shall result in a finding of contempt.

- C) Declare a mistrial.
- D) None of the above.

HARDBALL TACTICS

Attorney Hardball had a case before you involving the Demoulas family in which he was not successful. In a subsequent case involving the same family, Hardball files a motion for recusal based on alleged bias in the first case. You deny the motion.

Hardball, not being satisfied, hires a private investigator to investigate a rumor that you have been seen having dinner with the lead attorney for the opposition.

Hardball also learned that your law clerk, Legalbeaver, wrote the original opinion of the case which was upheld on appeal. Hardball then sets up a “sham job interview” with Legalbeaver (using two more investigators) on the pretext of hiring him for a non-existent corporation. During the interview, many questions were asked of Legalbeaver dealing with the Demoulas decision.

Legalbeaver realizes the sham and notifies you. What do you do?:

- A) Recuse yourself and ask the Supreme Court of Ohio to appoint a new judge.
- B) Have a hearing to determine the truth of Hardball’s action.
- C) Report Hardball to Disciplinary Counsel and demand that a new attorney be retained by the Demoulas family.
- D) Report Hardball to Disciplinary Counsel and stay the case.
- E) None of the above.

See *In the Matter of Gary Crossen* (2008) 450 Mass 533

THE MEDIATOR JUDGE

The Honorable Lemmy Settle prides himself in running the most successful final pre-trials in the courthouse. “Trial is nothing more than a breakdown of the negotiation process” he’s often overheard telling the parties in chambers.

Judge Settle conducts a final pre-trial in a particularly contentious civil case, *Joe Plumber vs. Big Company, Inc.* The defense believes strongly they are entitled to summary judgment. A motion has been filed that has been strongly opposed by the plaintiff. The motion is ripe for ruling. Judge Settle, sensing a challenge, decides to withhold ruling until after the final pretrial to see if there is any common ground for settlement. The judge meets with the parties who are hundreds of thousands of dollars apart from any agreement. After some “big picture” discussions about the expense of trial including multiple trial depositions currently scheduled in the upcoming weeks, potential appellate litigation even if the defense receives a favorable ruling, the judge persuades the defense to increase their offer significantly. The amount, however, falls nowhere near the plaintiff’s final demand. During the conference with the agreement of both sides, the judge separates the parties. During the *ex parte* discussions, the judge leads each party to believe in off-handed comments that the ruling would most likely be adverse to their positions. After three hours the parties appear to have reached an impasse and the judge reluctantly concludes the hearing. Settle thinks to himself, “I know those guys will eventually settle!” He decides to hold off on the ruling and see what happens on the trial date. The parties engage in a whirlwind of pretrial preparation. On the eve of trial the parties call the court and tell the judge they have reached an agreement. “My magic worked again!” Judge Settles thinks to himself as he tosses the unruled-upon motion for summary judgment in the clerk’s bin.

What do you think about Judge Settle’s actions?

- A) I have no problem with it. No one forced the parties to settle, and now the case has resolved.
- B) Judge Settle should have ruled on the motions when they were ripe before the final pre-trial engaging in no settlement discussions with the parties.
- C) It was alright for Judge Settle to withhold ruling until the final pre-trial but after the parties had reached an impasse he should have ruled immediately.
- D) It was alright for Judge Settle to withhold the ruling; however, he should not have commented on the merits of the brief and ruled ASAP after the pretrial.

THE UNDER ZEALOUS ATTORNEY

A new program has been implemented in your court designed to process low level felony cases in a speedier fashion. As a result, a criminal defendant, Johnny Norecord, stands before you having entered a plea to a single felony theft charge for stealing three bikes from a local church facility. The case was resolved through a plea agreement where Johnny plead to just one count and was referred for a presentence report. This occurred just five days after one of the bikes was discovered in Johnny's backyard. Johnny admitted his guilt in taking all three bikes at the scene of his arrest.

Johnny's attorney begins the hearing by advocating for a Community Control Sanction where Johnny would serve one year of probation. He indicates that Johnny has apologized to the victim, the local pastor, who has forgiven Johnny even though two of the bikes were never returned. The pastor is present and actually speaks up on Johnny's behalf indicating he has been doing community service at the church. You ask what is owed in restitution and the pastor says that collectively all three bikes that were taken were not worth more than \$150. This revelation forces you to look inquisitively toward the defense attorney knowing the state would have to prove a value greater than \$500 to achieve a felony level conviction. Defense counsel shrugs his shoulders and says, "That's all they would offer judge, it's just not worth it to take this one to trial."

What do you do?

- A) Sentence the defendant to probation and tell him you will consider him for an expungement down the road if he does well.
- B) Vacate the plea and set the matter for trial with the same counsel.
- C) Remove counsel from the case, vacate the plea and set the matter for trial.
- D) None of the above.

ALL ABOUT YOU

As an elected official, you like to remain in-touch with public sentiment and find that the Internet is one of the easiest ways to do this. One night when you are on-line, you run across a blog written by Attorney Newbie, a new, young local criminal defense attorney. The blog is entitled “First Year Defense Attorney – Lessons Learned.” Curious, you begin to read the latest post. It discusses a summary judgment hearing over which recently presided.

After a summary of what occurred in the courtroom, Attorney Newbie concludes, “I’ve been told that Judge _____ is ultraconservative, never grants a motion to suppress, and it’s a waste of time to file something in his court.”

How do you proceed?

- A) You post a comment to Attorney Newbie’s blog that says, “This is a completely inappropriate comment.”
- B) You send Attorney Newbie an email stating that this is a completely inappropriate comment and ask him to remove it from his page.
- C) When you see Attorney Newbie at the courthouse later that week, you take him aside to address this unprofessional behavior. You also lecture him about the many pitfalls of social networking for lawyers.
- D) You do nothing, pretending that you never read anything. You try to rule fairly on Attorney Newbie’s future motions.
- E) You revisit the blog several times to see what, if any, comments are posted in response to Attorney Newbie’s blog, but you never contact Attorney Newbie.
- F) You consider referring to the blog in your upcoming election campaign, as a way to show your supporters that you are truly tough on crime.

AN ATTORNEY WALKS INTO A BAR...

An attorney walks into a bar...

And two hours later appears in your court. Your bailiff, a former police officer, has advised you that there is a noticeable odor of an alcoholic beverage about the lawyer. The hearing should not last a long time and the attorney's performance so far is at least adequate and, but for the heads up from your bailiff, you may not have noticed anything. In your modest sized courtroom, though, even you could tell that someone had been drinking.

What do you do?

- A) Nothing.
- B) Take the attorney aside after the hearing and refer him to OLAP.
- C) Contact disciplinary counsel after the hearing.
- D) Stop the proceedings and have a pretrial with both attorneys and address the matter.
- E) None of the above.

Would it make any difference to you or your handling of the situation if the attorney had a reputation for imbibing?

- A) Yes.
- B) No.

Suppose that another attorney you have known for a long time begins acting differently in your court. In more than one instance, this normally level-headed and polite attorney has become erratic and rude. In his most recent appearance before you, he loses his composure completely, blowing up in court.

What do you do?

- A) Nothing.
- B) Take the attorney aside after the hearing and refer him to OLAP.
- C) Contact OLAP yourself and schedule an intervention

D) Contact disciplinary counsel.

E) None of the above.

A PROSECUTOR'S "BEST FRIEND"

Attorney Good Person is a wonderful person. He does charity work, donates blood, is a Scout Leader and will certainly be at the head of the line when entering Heaven.

This attorney regularly appears as a defense counsel in your court. During trial he never objects to improper questions asked by the prosecutor, seldom effectively cross examines adverse witnesses, and almost never presents a coherent defense. Prosecutors love opposing him in court.

What, if anything, should you do as a trial court judge in this situation?

Would it make a difference if the attorney was a prosecutor?

Would it make a difference if the attorney was court appointed rather than privately retained?

What, if anything, should you do with respect to the prosecutor's conduct?

WHY CAN'T WE ALL JUST GET ALONG?

You have a jury trial involving a prosecutor and defense counsel who do not get along. There is increasing animosity most recently reflected in a contentious jury trial before a different judge in the same court. Two weeks later you conduct a jury trial involving the same attorneys. Their courtroom behavior is professional but you can see that things are becoming personal and increasingly contentious. After the jury has begun to deliberate, the bailiff informs you that defense counsel told him that one of her witnesses heard a different prosecutor making derogatory remarks about defense counsel in the hallway during the jury trial. These remarks referred to counsel as a “slow poke” and generally implied that she is a thorn in their side. The remarks were made to several police officers, one of who was a witness in the case in your court. The prosecutor was allegedly laughing and joking about the situation.

After the trial you speak to the defense witnesses who heard the comments and they allege that these remarks were made in a public area outside the courtroom. They say that the remarks were disparaging and critical of defense counsel and that there was inappropriate laughing and joking about the case and the participants.

What should you do? If you meet with both attorneys the next day and the prosecutor denies making derogatory statements but acknowledges joking with officers about the case he was involved in, what would you do?

After meeting jointly with both attorneys it becomes apparent that the attorneys strongly dislike and distrust each other. What do you tell them about their conduct and attitude? Do you take any other action?

SCENARIOS FOR MAGISTRATES

ALMOST THERE

You require that attorneys attend all status report hearings in person. Local plaintiff's counsel, Attorney Almosthere fails to appear for a status report meeting in a collections case. Opposing counsel has driven two hours to attend, after his request to appear by phone was denied by your office. You know all too well that Attorney Almosthere is disorganized, often late to hearings, and sometimes misses status report hearings altogether. You call his office and his administrative assistant tells you that he should be there in a minute and if he's not, she's not sure where he is.

How do you proceed?

- A) You ask the administrative assistant for Attorney Almosthere's cell phone number, trying to hunt him down quickly.
- B) After waiting 15 minutes past the status report's scheduled time, you apologize to defense attorney for his travel time and issue an order stating that any future failures to appear in this matter will lead to an immediate dismissal of the case for failure to prosecute. You mark the case so as to allow the defense attorney to appear by phone for the court hearing.
- C) Later that day, you happen to bump into Attorney Almosthere as he is running late for another hearing. You review with him what happened and state that this behavior is unprofessional and reflects poorly on him as an attorney.
- D) You complain to a fellow judge about Almosthere later that day; you share stories about this attorney's unprofessional behavior but do nothing else.
- E) None of the above.

NEVER THERE

Columbus Attorney Noshow (defense counsel in a slip and fall case) fails to appear for your status report meeting in Cincinnati. Plaintiff's counsel, Sue Themall, also from Columbus, has driven two hours to attend in-person as your court requires. As you begin dialing Noshow's number on your speaker phone, Sue Themall tells you, "I try cases against this attorney all of the time and she never attends these meetings in person. Every time, she says she forgot or feigns an illness." When Attorney Noshow answers the phone she coughs, explains that she is feeling under the weather, and apologizes for her absence.

How do you react to Sue Themall's statement?

- A) You consider the statement to be made in good faith and out of frustration, so you do not talk to Sue Themall about it.
- B) You consider this an ex parte statement, and privately reprimand Sue Themall for uttering this.
- C) You consider this to be an ex parte statement and disclose it Attorney Noshow at the beginning of the conference call.
- D) None of the above.

How do you proceed with the status report?

- A) You accept Noshow's apology and quickly begin the status report without further comment.
- B) You reprimand Noshow for her failure to call your office and opposing counsel earlier to notify everyone of her illness and request a continuance. You commend Sue Themall's ability to follow court rules and then start the status report.
- C) You repeat to Noshow what Sue Themall said about her past failures to appear for status report and court hearings and ask her to explain herself.
- D) You accept Noshow's apology and quickly begin the status report without further comment. However, at the end of the day, you contact Noshow privately to let her know that a disturbing pattern of behavior was noted by Sue Themall and she needs to begin showing up.
- E) None of the above.

FACEBOOK FRIENDS

You are a magistrate who religiously checks your Facebook page every night before going to bed. On Facebook you have more than 400 “friends,” which include people you know from high school, college, and law school, as well as people you met while working previous jobs you had before attending law school. Also among your Facebook friends are attorneys who you got to know well before or after you were appointed as a magistrate.

One night when you are logged in, you see that one of your Facebook friends, Attorney Goodfriend, has responded to a posting on the wall of Attorney Newbie, a new, young local attorney who is in the midst of a two-day jury trial in your courtroom. Curious, you take a peek and see the following posting on the Attorney Newbie’s wall:

“Finished day one of workers’ comp case and am tired, just like the jury. Doc’s video nearly put everyone to sleep. Hope to win this one (opposing counsel is an idiot attorney who has smoked so much weed that it has killed half his brain cells) – so wish me luck!”

How do you proceed?

- A) You post to Attorney Newbie’s wall the following words, “This is a completely inappropriate comment.”
- B) You send Attorney Newbie a message to his Facebook email stating that this is a completely inappropriate comment and ask him to remove it from his page.
- C) Before reconvening the jury the next day, you talk to Attorney Newbie & opposing counsel about the matter in chambers, noting that this is unprofessional behavior. You use this opportunity to take it upon yourself to lecture Attorney Newbie about the many pitfalls of social networking for lawyers.
- D) Before beginning trial, you poll the jury to make sure no one has seen any postings on Facebook related to the case. You resolve to alter your initial jury instructions so that, in the future, jurors are told to stay away from Facebook during the duration of a trial.
- E) You do nothing, pretending that you never read anything.
- F) None of the above.

KEEPING TABS

You are a magistrate in juvenile court who oversees detention and adjudication hearings. You and your colleagues have discussed the need for monitoring juveniles on social networking sites. You have concluded that juveniles don't realize the damage they are doing to the rest of their lives when they make inappropriate posts. You encourage offenders' parents to monitor their children's pages although very few of the parents actually do. Some parents insist that they have blocked their child's Internet access at their house, but the kids easily gain access elsewhere.

In response to this problem, you and your colleagues consider adopting the following:

Proposal #1: - Begin requiring alleged juvenile offenders who appear in your court to post only "age appropriate" material on their online social networking pages as part of the terms of their probation. If a juvenile probationer posts content that involves sex, drugs, or gangs, for example, you require them to return to court for a compliance hearing. In such cases, the juveniles are told to remove the offensive materials or stay in detention until it is removed.

Proposal #2 - You model the example of a juvenile court referee in Texas who has required, over the past two years, all juveniles under her court's jurisdiction to become her "friend" on Facebook or MySpace, thereby allowing her to view their postings (and them to view hers) or to fix their online settings so that all members may view the juveniles' pages, not just friends. The Texas referee prefers that the juveniles "friend" her out of concern for their privacy.

Do you vote to adopt proposal #1?

- A) Yes.
- B) No.
- C) Our court already has adopted this measure, although it's rarely enforced.
- D) Our court already has adopted this measure, and it's frequently enforced.
- E) None of the above

Do you vote to adopt proposal #2?

- A) No. There are too many juveniles for you to keep up with and the potential for problems here is great
- B) No. You feel that juvenile offenders do not relinquish their First Amendment rights just because they are at court
- C) Yes. Monitoring reduces the chances that the juveniles in your court will post comments or photos they will regret as adults.
- D) None of the above.

DEAL OR NO DEAL?

You are a magistrate in juvenile court. Most of the juveniles who have an attorney are represented by the public defender's office, though there are some whose parents can afford to hire private counsel for their children.

A juvenile with private counsel is scheduled for a pretrial on delinquency charges of underage consumption and disorderly conduct as well as an unruly charge for incorrigibility. For the non-criminally inclined, the underage consumption charge would be a first-degree misdemeanor and the disorderly conduct a fourth-degree misdemeanor if committed by an adult. The unruly charge (a status offense) is one that only applies to a juvenile. The most serious possible consequence (disposition) for any delinquency offense is up to ninety days in detention, along with other less severe dispositions including probation, house arrest, community service, drivers license suspension, etc.

A brief summary of the facts are that the sixteen year old juvenile came home after midnight intoxicated, got into an argument with his parents, who then called the police. When the officers arrived the juvenile and his parents were in the driveway and the teenager was shouting obscenities and being argumentative. The juvenile would not stop after having been warned by the police and his arrest soon followed.

You receive a pretrial report form that has been signed by the assistant prosecutor and the juvenile's attorney, as well as the youth and his father. The juvenile is to admit to the underage consumption with the other charges being dismissed. The recommendation is that the youth receive 90 days in detention with 85 days suspended on the condition that he submit to a substance abuse assessment and comply with its recommendations, and that he have no violations of law for six months. This is the youth's first offense and there are no particularly egregious facts.

At your court no one goes to detention under these circumstances and the assistant prosecutor knows never to make this type of recommendation. Do you have any concerns, and, if so, what do you do about them?

FRUSTRATING FIDUCIARY

You are a probate magistrate and a case on your docket is an estate for which there have been a series of contempt citations issued to the fiduciary for his failure to file his account. Not only does the fiduciary fail to appear or file his account but the attorney for the estate also has repeatedly failed to appear or contact the court.

This is not an inconsequential estate so not only are you put off by the fact that the case is clogging your docket and the attorney is disregarding the court but you are also genuinely concerned as to whether there is an impropriety in the administration of the estate.

How do you gain the attorney's attention?

- A) Personally telephone the lawyer.
- B) Send more threatening letters.
- C) Report him to the Office of the Disciplinary Counsel.
- D) None of the above

A SETTLEMENT PROPOSAL

You are a probate magistrate and an application to settle a minor's claim is set for hearing on your schedule. It appears to be a fairly straightforward matter. The child was seriously injured in a traffic accident that was entirely the tortfeasor's fault. His medical bills are in the tens of thousands of dollars and he suffered substantial scarring.

The attorney handling the case is known locally for very actively soliciting personal injury cases. The parents retained him within a month of the accident. They signed a representation agreement that provided for a one-third fee if a lawsuit is not filed and forty percent if there is litigation. The attorney filed suit a month after being retained.

The proposed settlement is for the \$100,000. Court costs and the medical report total \$500.00. The proposed attorney's fees are \$40,000, which the parents have consented to.

How do you proceed?

- Is the amount of the fee any of your concern? If so, how do you measure what is fair and appropriate?
- What if the parents insist that they are satisfied with the arrangement?

FAST AND FURIOUS

West Virginia attorneys Imma Phast and Heeza Furious are licensed in Ohio. They filed a complaint for “P & F Credit Card Services” in your court. The plaintiff’s address in the caption is “c/o Phast and Furious Attorneys, LLC.,” with their law office address in West Virginia.

At the pretrial hearing, the defendant, Ino I. Ohyou and her attorney, Elder Statesmen, III, appear before the magistrate, but the plaintiff and the plaintiff’s attorney fail to appear. All calls to the Phast and Furious firm are answered by a machine with the disclaimer: “This is a debt collection company. Any information we obtain will be used to collect your debt!” The message requires callers to leave a message and await a return call.

Attorney Statesmen advises that Phast & Furious paralegal, Dawn Askme, responded to his calls demanding full payment to settle the case. When Statesmen asked to speak to the attorney on the case regarding a long arm statute issue, Paralegal Askme advised that a lawyer might return Statesman’s call later. Statesman attempted to schedule a deposition, but Paralegal Askme advised that the only dates she could accept required that the deposition occur in West Virginia. The magistrate issued an order rescheduling the matter for pretrial hearing and requiring that “plaintiff’s counsel of record appear.”

Three days prior to the second hearing, Phast and Furious file a motion for summary judgment supported by a slightly blurred photocopy of a one paragraph affidavit signed 18 months earlier by “D. Askme” who avers that “I am the keeper of the records and authorized witness of P & F Collection Services,” and that the “defendant owes the sum demanded in the complaint which is current, correct and accurate.” Counsel’s signature on the motion is illegible and does not match any prior signature in the case.

You conduct the second pretrial hearing. Youngstown-area lawyer I. Doan No, appears on behalf of the plaintiff advising that Phast & Furious, LLC retained him two days earlier solely for the purposes of the pretrial hearing. Attorney No advises that he has no knowledge about the case. Attorney Statesman is visibly upset and demands judgment dismissing the complaint for lack of prosecution, and holding the Phast and Furious firm in contempt for unprofessional conduct toward him and the court.

How do you proceed?

DISCUSSION QUESTIONS FOR APPELLATE JUDGES

1. In general, how would you describe how the judges on your court relate to one another?
 - A. Consistently collegial
 - B. Somewhat aloof but for the most part, collegial
 - C. Everyone tolerates everyone
 - D. A battleground of egos
 - E. None of the above

2. When you experience discord with fellow judges, what is the most frequent culprit?
 - A. We never experience discord
 - B. Frustration with some aspect of an opinion (content/time/etc.)
 - C. Philosophical differences on how to do the job
 - D. Frustration with an administrative matter or procedure
 - E. Clash in personalities

3. When you have a difference of opinion or some frustration with one or more colleagues, how do you resolve the matter?
 - A. It works itself out over time
 - B. I address the judge personally
 - C. I talk about it with my staff or another colleague
 - D. I go to the administrative judge
 - E. None of the above

4. How often do you observe behavior by a colleague that you feel is unprofessional?
 - A. Often
 - B. Sometimes
 - C. Rarely
 - D. Never

5. During oral argument, the presiding judge warns appellant's counsel that she only has three minutes remaining if she still plans on saving five minutes for rebuttal. You think that counsel's first 10 minutes have already expired. Do you
 - A. Verbally correct the presiding judge
 - B. Write a note informing him/her that time has expired

- C. Whisper to the presiding judge that time has expired
 - D. Do nothing.
- 6. Your spouse needs to be picked up from the airport and you will be tied up with hearings and meetings all day. Is it inappropriate to ask your law clerk to get your spouse and drive him/her home?
 - A. Yes
 - B. No, not necessarily
 - C. No, as long as you do not make running errands a habit
 - D. Depends on the relationship you have with the clerk
- 7. How often do you observe behavior by appellate counsel that you feel is unprofessional?
 - A. Often
 - B. Sometimes
 - C. Rarely
 - D. Never
- 8. Have you ever addressed during a hearing an attorney's unprofessional conduct set forth in a brief or oral argument?
 - A. Yes
 - B. No
 - C. Yes, but I wish I had not done so
 - D. No, but I wish I had done so
- 9. How often do you see unprofessional comments or arguments in the briefs submitted to your court?
 - A. Often
 - B. Sometimes
 - C. Rarely
 - D. Never
- 10. Have you ever addressed in a written opinion an attorney's unprofessional conduct set forth in a brief or oral argument?
 - A. Yes
 - B. No

- C. Yes, but I wish I had not done so
- D. No, but I wish I had done so

11. Which behavior, if any, do you find most inappropriate?

- A. Asking a lawyer during oral argument how long he/she has been in practice.
- B. Asking a lawyer during oral argument the name of the trial court judge who handled the case below.
- C. Asking a lawyer during oral argument the name of trial counsel.
- D. During oral argument, referring to the state, law enforcement, or any other non-judicial government actor as “we.”
- E. None of the above.

12. Do you identify the name of the trial court judge in your written opinions?

- A. No, never
- B. Sometimes, when it is appropriate
- C. Yes, always

13. How do you feel about the use of scholarly materials (law review articles, treatises, journals, etc.) in written opinions?

- A. Perfectly acceptable
- B. Inappropriate
- C. Not sure
- D. I have no opinion one way or the other

14. How do you feel about the use of non-scholarly materials (newspaper and magazine articles, web site links, etc.) in written opinions?

- A. Perfectly acceptable
- B. Inappropriate
- C. Not sure
- D. I have no opinion one way or the other

15. Do you feel that it is appropriate to include a graphic (picture, drawing, photo) in an opinion?

- A. Yes
- B. No
- C. Undecided

16. With which one of these statements do you most agree?

- A. Judges set the tone of professionalism for the entire legal system
- B. Lawyers set the tone of professionalism for the entire legal system
- C. Judges more so than lawyers set the tone of professionalism for the entire legal system
- D. Lawyers more so than judges set the tone of professionalism for the entire legal system
- E. Both lawyers and judges equally set the tone of professionalism for the entire legal system

The scenarios below are excerpts from trial court transcripts. Discussion: Should these excerpts be addressed in the written opinion? If so, in what way (tongue-in-cheek, in a reprimanding way, simply call attention to them, remind the judge of ethical/professional responsibility) (address in body of text or footnote). Should disciplinary counsel be notified?

1. Prior to sentencing, the trial court remarked to the jurors, “Okay boys and girls. It’s playtime again. First I just got to tell you that I’m sorry you had to waste your time on this case. This is the second time I’ve had to try this defendant because those idiots down the street reversed this case based on some cockamamie interpretation of the law that, quite frankly, was just plain out wrong. I don’t know what they were thinking when reviewing this case, or maybe they weren’t thinking at all. That’s what you get when you elect a bunch of (insert your favorite political, religious, gender, ethnic, ageist, or disparaging comment category) to the appellate court.
2. The court stated to trial counsel, “What law school did you graduate from? This issue is criminal law 101. You must’ve had someone else take the bar exam for you. That’s the most idiotic remark I’ve ever heard come from the mouth of an attorney. You sound like an imbecile. I ought to hold you in contempt for being stupid.”
3. A dissenting opinion opening paragraph.

I dissent. The majority decision in this case defies any rational understanding of the law. It is even questionable whether my colleagues actually read anything regarding this case. For reasons that will be explained herein, the majority’s resolution of assignment of error two manifests an obvious lack of understanding of what an easement is. I would suggest a crash course on property law or to run to the nearest CLE seminar on the subject. With regard to assignment of error four, unless my colleagues are on the take, the resolution of this assigned error simply makes no sense. Talk about an abuse of discretion. Any thinking person ought to feel abused by this analysis.

SCENARIOS FOR PROSECUTORS

HOUSTON, WE HAVE A PROBLEM

You are the lead prosecutor for a criminal case in which the defendant has been charged with murder, carrying a concealed weapon, and having a weapon while under a disability. After the state has rested its case in chief, the defendant chooses to testify. During your cross-examination, you attempt to rattle the defendant, but he is unshakable. The more questions you ask, the more consistent and plausible his story becomes. You are slightly frustrated and your sense is that the jury may be persuaded by the defendant's version of events.

You ask for a moment to consult with your co-counsel on whether you will ask an additional question. After consultation, you ask the defendant, "All right. This is the first time you have said anything about what happened in that evening, is that correct?" Before defense counsel can object, the defendant answers, "Yes, correct." Immediately thereafter, defense counsel objects and asks to approach the bench. Defense counsel argues that the last question violates the defendant's right to remain silent after invoking his right to counsel. What should be your response to defense counsel's position?

- A. Point out to the court that the defendant muttered to the police, "I didn't do anything to that man," thus waiving his right to remain silent, and that you can ask him a question about that statement to cure the issue raised by defense counsel.
- B. Argue that the Court can sustain the objection, strike the question and answer from the record and then give a curative instruction.
- C. Realize that your question violates the defendant's constitutional right to remain silent and expect that defense counsel will ask for a mistrial, which you will not oppose.
- D. Prepare for rebuttal witnesses and closing arguments once the defense rests its case – this one is going to the jury!
- E. None of the above.

STAR WITNESS

During discovery in a bank fraud case you notify defendant's counsel that your star witness, an unindicted co-conspirator, has been promised that she would not be prosecuted. But that is not strictly true: although you decided not to prosecute the witness, you never told her that. You don't realize your error until defense counsel's opening statement, which highlights the non-prosecution agreement as the reason why the state's main witness will not be credible.

What do you do?

- A. Admit your mistake right then and join in the defense's request for a mistrial, but without prejudice to a re-trial.
- B. Admit your mistake right then and join in the defense's request for a mistrial, with prejudice to a re-trial.
- C. Admit your mistake right then and oppose a mistrial because there has been no prejudice.
- D. Stay silent and wait for your opponent to embarrass himself on cross-examination of the witness.
- E. Stay silent and send a text message to your secretary to order your victory cigar.

READ ALL ABOUT IT

As a prosecutor, you like to remain in-touch with public sentiment and find that the Internet is one of the easiest ways to do this. One night when you are on-line, you run across a blog written by Attorney Newbie, a new, young local criminal defense attorney. The blog is entitled “First Year Defense Attorney – Lessons Learned.” Curious, you begin to read the latest post. It discusses your current case against Attorney Newbie, which just concluded its first day of trial in front of Judge Goodbuddy. After a summary of what occurred in the courtroom, Attorney Newbie concludes, “I’ve been told that Judge Goodbuddy is ultraconservative, never grants a motion to suppress, and it’s a waste of time to file something in his court. From what I’ve seen, Prosecutor _____ (your name) certainly has an easy time of things in his courtroom.”

How do you proceed?

- A) Post a comment to Attorney Newbie’s blog that says, “This is a completely inappropriate post.”
- B) Send Attorney Newbie an email stating that this is a completely inappropriate post and ask him to remove it from his blog.
- C) Talk to Attorney Newbie about his unprofessional behavior before court the next morning. Advise him about the many pitfalls of social networking for lawyers that his generation may not realize.
- D) The next morning, tell the bailiff that before the jury is brought back into the courtroom, you would like to bring a matter to the attention of Judge Goodbuddy. You trust that the judge will handle the matter appropriately.
- E) Pretend that you never read anything. Continue to act professionally on cases where Attorney Newbie is defense counsel.
- F) None of the above.

YOU WOULDN'T DARE!

You are the lead prosecutor in a criminal case involving an allegation of Felonious Assault. During the trial, you and defense counsel have had long, and most times, contentious conversations about what evidence would be presented. The Court and counsel are aware that the defendant is on probation in another case and has instructed counsel that no references should be made, and no evidence should be presented, demonstrating this fact. You anticipated playing an audio recording of the defendant's jail calls but are not completely confident that you could play the recordings without the jury becoming aware of the fact that the defendant is on probation. (Defense counsel has advised you that defendant will not testify.)

Because you are not comfortable with whether your technology will cooperate, you decide to call the lead investigator for the case as your last witness. The investigator prepared the recordings, has been present for the entire trial, and is aware of the court's ruling regarding the defendant's other case and probation supervision. Your plan is to use the investigator to "tie up" any loose ends associated with the State's presentation of evidence and to discuss the audio recordings with him.

In one of the recordings, the defendant makes reference to "25 days remaining before I'm done". After that call is played, you ask the following question, "And what did the defendant mean when he mentioned 25 days, if you know? If you don't know, then don't say. But what did he mean by 25 days?" The witness pauses and then responds, "Well, I think he was counting the number of days remaining on his probation". There is an immediate objection from defense counsel. How do you respond to your investigator's answer?

- A. My jaw hits the floor. I instructed the witness in no uncertain terms that this information could not be brought out during the trial. I expect that after the objection, there will be a request for a mistrial.
- B. I am surprised and taken aback by the investigator's response. When I think about it, however, I remember that I griped about the judge's ruling on this issue and the investigator was probably confused about whether he could mention anything about the defendant's criminal history.
- C. I am not worried. I mentioned the judge's ruling to the witness and did not plan on it coming out during testimony. But somehow, it did. I will request a curative instruction. After all, nobody wants to retry a case with 17 witnesses from the State and hear testimony that lasted from 8:30am to 5:00pm every day over the past 5 days!
- D. I chuckle to myself. I deliberately solicited the testimony and calculated the likelihood of the judge declaring a mistrial. Since the judge is fairly new to the

bench, I knew the judge would not have the courage or nerve to do it, so I hoped for the best.

E. None of the above.

AN UNRELIABLE CHALLENGE

The identity of the defendant in your murder case is based on eyewitness testimony. The thrust of the defense is that eyewitnesses – especially where they don't know the defendant, which is the situation here – are unreliable. The defense calls an expert witness on the unreliability of eyewitness testimony. While cross-examining the expert you ask the following question:

Doctor, on the subject of memory, would it surprise you to learn that the defense attorney was in the hallway outside with a bunch of different witnesses telling them what to testify to?

There is no evidence that the defense attorney was telling witnesses what to say and the defense objects. What should you do?

- A. Admit the question was improper, agree the objection should be sustained, and go to the next subject on cross-examination.
- B. Admit the question was improper, agree to a curative instruction to the effect that there is no evidence of improper witness coaching by the defense, and go to the next subject on cross-examination.
- C. Oppose the objection and, if it is overruled, continue to the end of that line of questioning.
- D. Oppose the objection, but if it is overruled go to the next subject on cross-examination and don't mention it again.
- E. Oppose the objection and challenge the defense attorney to prove she wasn't coaching witnesses.

HOME-FIELD ADVANTAGE

You have been an assistant county prosecutor in northeast Ohio for twenty years. At a social event you attend over the weekend, you run into Judge Goodbuddy. You have tried more cases in front of him than you can count. Over drinks you exchange the usual pleasantries and laugh at a few jokes together. Both diehard Cleveland Browns' fans, you also discuss the chances of the Browns winning their game against the Steelers in Cleveland on Sunday. Later that week when you arrive at court for a pretrial, you see Judge Goodbuddy walking through the lobby. "Hey there _____," he says, addressing you by your first name.

A bailiff leads you into Judge Goodbuddy's chambers along with defense attorney, Joe Nobody. Joe Nobody has his practice in a county at the other end of the state and has never been to this court. When Judge Goodbuddy enters the room, Joe Nobody says, "Good afternoon, your Honor" and politely introduces himself.

What do you do?

- A) Say, "Good afternoon, your Honor," and smile as you think of all the subtle yet significant advantages you have in this case, as opposing counsel does not know the first thing about Judge Goodbuddy or his court.
- B) Say, "Good afternoon, your Honor," introduce yourself to opposing counsel, and then ask Judge Goodbuddy if he saw the Browns beat the Steelers on Sunday.
- C) Tell Joe Nobody that you have been a prosecutor in this county for more than twenty years and assure him that his client will receive a fair trial in Judge Goodbuddy's court.
- D) Participate in the pretrial as you normally would. After Joe Nobody leaves, ask Judge Goodbuddy whether he watched the Browns' game on Sunday.
- E) None of the above.

A few days after the pretrial, you receive a friend request from Judge Goodbuddy on Facebook. How do you respond?

- A) Immediately accept. If a judge asks you to do something, you do it.
- B) Wait until the conclusion of this particular case with Joe Nobody and then accept the request.
- C) Choose not to accept the request, hoping that Judge Goodbuddy, who has more than one thousand Facebook friends, will not even notice. You like

to keep your Facebook account strictly personal. Instead, you send Judge Goodbuddy a request to connect on LinkedIn.

- D) You never receive a request from Judge Goodbuddy because you do not have a Facebook account.
- E) None of the above.