

# FROM MY SIDE OF THE BENCH

## *Don't Be That Guy Who. . .*

BY HON. RANDY WILSON

**O**NE OF MY COLLEAGUES WAS PREPARING a presentation in which the title was “Don’t be THAT guy.” First, what is a “that guy?” One college paper defined “that guy” as:

That Guy: n, 1. Any person who, by virtue of ignorance, idiocy or bumbling, becomes a caricature of him- or herself. 2. Any person whose actions inspire onlookers to say “she/he/it’s That Guy.”<sup>1</sup>

In preparation for the seminar, my colleague sent an email to other judges here asking for their contributions. The responses are too good not to share. Don’t be that guy who:

- Files “Plaintiffs’ Plea to the Jurisdiction.”
- Files “Cross-Defendant Big Mega Corporation’s Rejoinder and Supplemental Sur Response to Cross-Plaintiff Little Guy LLC’s Amended Sur Reply to Cross-Defendant’s Amended Supplemental Response to Cross-Plaintiff’s Reply to Cross-Defendant’s Response and Petition for Equitable Relief in Response to Plaintiff JoJo Co.’s Motion for Extension of Time to Respond to Third-Party Defendant Bozo International L.P.’s Requests for Admissions.”
- Says the hearing will only last 30 minutes and then spends two hours presenting.
- Doesn’t know whether the expert he’s about to call is a man or a woman.
- Files summary judgment evidence with his No Evidence Motion for Summary Judgment.
- Tells the jury he’d love to tell them some things but the judge ordered him not to discuss them.
- Sends an email containing a privileged client communication via “Reply All” when “All” includes opposing counsel, the mediator and miscellaneous others.
- Appears in court wearing house slippers.
- Engages in the following Q&A:
 

**Lawyer A:** “ I shouldn’t be denied my discovery just because the other side had a fire.”

**Lawyer B:** “Your honor, the records were all stored in the World Trade Center.” Judge: “As I recall, the World Trade Center had more than just a fire. Two jets flew into the buildings and everything and everyone was incinerated”

**Lawyer A:** “Perhaps”
- Files a motion in limine that has nothing to do with the case.
 

**Lawyer:** “Please issue an order precluding the other side from mentioning any criminal conviction of my client.”

**Judge:** “What has he been convicted of and when?”

**Lawyer:** “Uh, I’m not aware of any.”
- In a bench trial, never bothers to show the judge any exhibit.
- Files the sur-reply brief the morning of the hearing but doesn’t have a copy of the brief to give to the judge or opposing side.
- Files a motion in limine in a bench trial.
- In a bench trial, reads a paragraph from a document and then asks, “Did I read that correctly?”
- Requests an emergency hearing over whether the deposition will be held in plaintiff’s office or defendant’s office.

- Is astonished that the judge in a TRO hearing asks if the other side has been given notice.
- In trial, objects to an answer as “nonresponsive” but then asks a question without awaiting a ruling.
- In trial, objects to a question by simply saying, “Objection, form.”
- Forgets the client’s name when introducing yourselves to the jury.
- Uses a Sharpie on the projector screen.
- Cites to a voluminous exhibit, such as a 60 page contract, for a particular fact without giving a page or other pinpoint reference.
- Tells the judge that the document camera doesn’t work without first checking to see if the lens cap is on.
- Berates, yells at, or speaks rudely to Court staff and then ask for help getting a hearing expedited.
- Asks for a mistrial after your motion in limine is denied.
- Claim that your client did not have reasonable anticipate litigation until months after an accident if your client’s in house counsel sent an email to its consulting expert just days after the accident stating that the client was engaging the expert because the client anticipated litigation.
- Cites to an exhibit, such as “Exhibit C,” and then files as Exhibit C a page that says, “Please see Exhibit G of Defendant’s Response to Plaintiff’s Motion for Summary Judgment,” which was filed a year ago.
- Files a motion to quash a notice of deposition that challenges the time or location of a deposition without including:
  - A certificate of conference showing you have conferred with opposing counsel, and
  - An alternative time and place for the deposition.
- Rolls his eyes at every comment by opposing counsel
- Insists upon sanctions for the most minor of infractions (unless of course you want those same rules to apply to you).

- Refuses to agree to a continuance when the trial date is during opposing counsel’s maternity leave.
- Smells.

In short, don’t be That Guy.

*Judge Randy Wilson is judge of the 157<sup>th</sup> District Court in Harris County, Texas. Judge Wilson tried cases at Susman Godfrey for 27 years and taught young lawyers at that firm before joining the bench. He now offers his suggestions of how lawyers can improve now that he has moved to a different perspective. ★*

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<sup>1</sup> The Pitt News, May 14, 2004. [http://www.pittnews.com/news/article\\_2e71436a-e9c4-50ec-9228-1d65fa1da548.html?mode=jqm](http://www.pittnews.com/news/article_2e71436a-e9c4-50ec-9228-1d65fa1da548.html?mode=jqm)