

Death by Email: The Case of Terminal One-Upmanship



one-up•man•ship (wŭn-ŭp'mən-shĭp) also
one-ups•man•ship (-ŭps'-) *n. Informal* The art of
outdoing or showing up a rival or competitor.

— *The American Heritage Dictionary of the
English Language* 1230 (4th ed. 2000)

From: Joe Savage
Sent: Friday, April 18, 2008 9:42 AM
To: Alistair Pennington Lodge III
Subject: Wilson v. Food Mart, Inc.

Alistair:

I just received another notice purporting to schedule Plaintiff's deposition. I am not sure at this point what the communication problem is. Yesterday you unilaterally noticed the Plaintiff's deposition for 5/15/08 without ever even consulting us, in direct violation of the requirements of the local rules (and the common courtesy that is both implicit and explicit thereunder), in response to which we notified you that although that date was not open, two other dates—5/19 and 5/21—might work but that we would need to check with our client. Apparently, you didn't find it important to get back to us.

Sincerely,

Joe

The Savage Law Group, P.A.
515 North Main Street, Suite 201
River City, FL

From: Alistair Pennington Lodge III
Sent: Friday, April 18, 2008 10:02 AM
To: Joe Savage
Subject: Wilson v. Food Mart, Inc.

According to my law clerk, you did not consult us when you set the depositions of my clients. Now you complain about us. We picked one of the two dates that you said might work. Your client is not a lawyer, medical professional, or teacher. While we certainly would respect a legitimate and substantial excuse for his being “unavailable,” he is a plaintiff in a lawsuit and will have to make himself available on reasonable notice.

My friend, this is a petite case. It can be efficiently and smoothly handled, or it can be unpleasant. I prefer the former and find it easier to accomplish if I do not pretend to be riding a high horse. If I have the facts wrong, I would appreciate a correction. If I have the facts right, climb off and let’s just get the case over with.

Alistair Pennington Lodge III

Alistair Pennington Lodge III
Attorney and Counselor at Law

Pennington & Lodge PLLC

One Big Bank Plaza, Suite 3700
River City, FL

From: Joe Savage
Sent: Friday, April 18, 2008 10:12 AM
To: Alistair Pennington Lodge III
Subject: Wilson v. Food Mart, Inc.

Alistair:

I just telephoned your office and was told by your assistant that you instructed her to inform me that you “have no intention of speaking to me, either in this life or in any other life.” Your conduct is astounding. Such nonsense is utterly unproductive and not benefiting anyone, as are the mischaracterizations that you continue to perpetuate in emails.

Sincerely,

Joe
The Savage Law Group, P.A.
515 North Main Street, Suite 201
River City, FL

From: Alistair Pennington Lodge III
Sent: Friday, April 18, 2008 10:24 AM
To: Joe Savage
Subject: Wilson v. Food Mart, Inc.

For substantial reasons, I prefer to communicate with you by email.

To make this simple so you can understand it: We intend to take your client's deposition on May 19, 2008, absent a court order directing otherwise. I am sure that you would like to lecture me some more about how little I know about these kinds of cases. Thanks all the same, but that won't be necessary.

Alistair Pennington Lodge III

Alistair Pennington Lodge III
Attorney and Counselor at Law

Pennington & Lodge PLLC

One Big Bank Plaza, Suite 3700
River City, FL

From: Joe Savage
Sent: Friday, April 18, 2008 10:33 AM
To: Alistair Pennington Lodge III
Subject: Wilson v. Food Mart, Inc.

Alistair:

First, I do not know you, rather you are a lawyer whom I've never met in person but who has elected to conduct himself in an inappropriate manner for months. Your conduct in this case is a black mark on all attorneys, and the fact that you are not even ashamed is amazing. Your refusal to speak to me by telephone is a childish and unprofessional tactic that I fortunately can say I have never witnessed (or even heard of) outside of this case.

Second, you do have your facts mistaken. Our office reviewed proposed depositions dates with your office, and those depositions were set only after that we had done so.

[*cont'd*]

[cont'd]:

Third, you can write whatever self-serving assertions you'd like, but it doesn't change the fact that the only person who has conducted themselves in an inappropriate manner is you. Maybe you are simply not accustomed to practicing in federal court, or maybe I am simply unaware of how deplorable the behavior of attorneys has become in state court litigation since most of our practice is in federal court, but your actions are the epitome of what is wrong with lawyers today.

Sincerely,

Joe

The Savage Law Group, P.A.
515 North Main Street, Suite 201
River City, FL

From: Alistair Pennington Lodge III
Sent: Friday, April 18, 2008 11:08 AM
To: Joe Savage
Subject: Wilson v. Food Mart, Inc.

I have again confirmed with my assistants that no contact was made with our office regarding deposition dates.

It is true that you do not know me. I had to laugh when I read that you consider me a black mark on all attorneys. I will surely share your remarks with my fellow members of the Standing Committee on Professionalism. They appreciate levity.

Finally, I am sure you will agree that your email demonstrates that speaking to you on the telephone would be futile. Now I am thinking of changing my email address.

Alistair Pennington Lodge III

Alistair Pennington Lodge III

Attorney and Counselor at Law

Pennington & Lodge PLLC

One Big Bank Plaza, Suite 3700

River City, FL

From: Joe Savage
Sent: Friday, April 18, 2008 11:18 AM
To: Alistair Pennington Lodge III
Subject: Wilson v. Food Mart, Inc.

Alistair:

You're beyond hope. I'm filing a motion with the court and attaching this email string to demonstrate your unwillingness to cooperate in scheduling.

Sincerely,

Joe

The Savage Law Group, P.A.
515 North Main Street, Suite 201
River City, FL



So, why do lawyers behave so unprofessionally?



Competitiveness?



Greed?



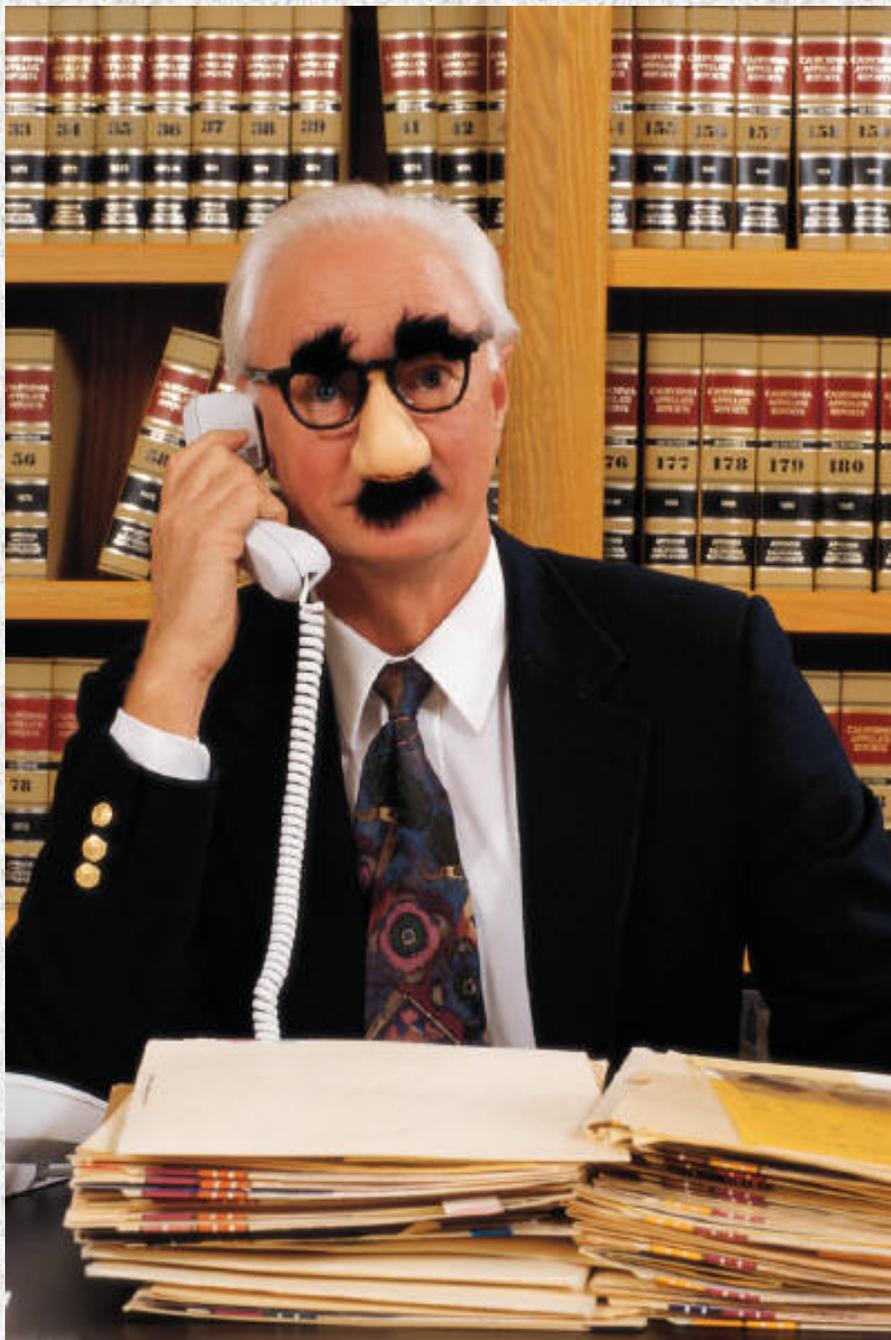
Stress?



Vulnerability to judgment by hindsight?

We live in a blame-the-lawyers world





Uh-oh!

*Guess who the Bar
is calling . . .*



Or just plain old conceit?

How do we respond to the jerk?



Resurrect the lost art of face-to-face—or at least voice-to-voice—communication



Life is short—Get over it.



“In Hell there will be lawyers without clients or law.”

off the mark.com by Mark Parisi



— Susan P. Koniak & George M. Cohen, *In Hell There Will Be Lawyers Without Clients or Law*, 30 Hof. L. Rev. 129 (2001)

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