

## Legal Alert

November 30, 2015

Michael R. King  
[mking@gbllaw.com](mailto:mking@gbllaw.com)  
602-256-4405

**QUESTION: Have You Heard the One About the Judge and the Lawyer?**

**ANSWER: Show-Stopper: Courtroom Jokes Can Bomb!**

During *voir dire* questioning of jurors, Judge Stanley Goodfarb asked me to which religious order my client, a Catholic nun, belonged. He wanted to be able to properly introduce my client to the jury. I explained that my client, Sister Madonna (who appeared in court in full religious habit) was a member of the Sisters of Mercy. Judge Goodfarb exploded: “Mr. King, that would be reversible error by itself if I introduce your client as the Sisters of Mercy!”

We don’t know if Judge Goodfarb’s humorous retort was correct, because no appeal was taken. (No one really wants to face a rosary wielding nun in full religious garb in any court, trial or appellate!) Nevertheless, sometimes a judge’s attempts at humor are not at all amusing to trial lawyers and appellate judges.

### ***No joking matter!***

You need to know when to leave the comedy to the comics! For example, in a California employment discrimination case, the judge’s attempts at humor during the trial were so “egregious” that the appellate court called it “misconduct” that deprived the plaintiffs of a fair trial. *Haluck v. Ricoh Electronics, Inc.*, 151 Cal. App. 4<sup>th</sup> 994 (2007).

### ***Court in the twilight zone?***

One of the claims in the case was for emotional distress. On cross-examination the defense lawyer asked one of the plaintiffs: “Have you ever heard of The Twilight Zone?” The defense lawyer then “sang” The Twilight Zone theme song. The defense lawyer then said: “You’re traveling through another dimension, a dimension not only of sight and sound, but of mind, a journey into a wondrous land, whose boundaries are that of imagination; that’s a signpost up ahead, your next stop, The Twilight Zone.” He then “sang” some more of the theme song. Throughout the sequence of questions, the defense lawyer hummed The Twilight Zone theme song at least three times with the plaintiffs’ lawyer objecting repeatedly and culminating with: “I request that counsel stop singing. As entertaining as it is for the jury, it’s mocking my client and mocking the trial.”

Finally, on appeal, plaintiffs concerns were upheld. The appellate judge noted that “the judge instigated and encouraged” many of the antics by the defense lawyer. “He also allowed, indeed helped create, a circus atmosphere, giving defendants’ lawyer free rein to deride and make snide remarks at will and at the expense of plaintiffs and their lawyer.”

### ***Objections overruled “until I die.”***

Plaintiffs’ lawyer requested a “running objection” to what was ultimately ruled to be an improper line of questioning by the defendants. The court agreed the objection would apply to every question “until I die.”

Later, when counsel raised another objection, the judge overruled it, noting, “Objection, 187.” In response to defendants’ lawyer’s facetious question about Penal Code section 187, the court stated, “Murder.”

This exchange seems to have been an inside joke between the judge and defense counsel. The California court of appeals didn’t get the joke:

[W]hile humor may have a legitimate place in a trial, it should not be used to belittle litigants or their counsel. Here the judge and defendants’ lawyer had fun by making plaintiffs’ lawyer the butt of their jokes. They took turns providing straight lines and punch lines to each other in a way that could only convey to the jury that they were a team and plaintiffs’ counsel was an outsider.

***Unusual signals for ruling on objections are overruled.***

The judge started overruling plaintiffs’ objections by holding up a hand-lettered sign stating “overruled.” The next day, defendants’ attorney gave the judge “a much nicer version.” Plaintiffs’ attorney objected to defense counsel giving the judge an “overruled” sign. Instead, the judge said: “The court will await receiving a “sustained” sign from plaintiff so we can split the benefits here.”

Later in the trial, the judge told the clerk:

[W]e’re going to the soccer style method here. Red card, 50 bucks each. Okay. If I say, red card plaintiff, write it down, 50 bucks. Red card defense, 50 bucks. We’ll keep a running tab. End of trial, we’ll collect it from them and we may take you guys [presumably the jury] to lunch at a very nice place.

Not surprisingly, the appellate court found the “soccer-style red card” procedure “glaringly inappropriate.” The court of appeals said that the use of the “red cards” gave the impression that the judge was aligned with the defendants. “A trial is not a sporting event.”

***Not at all amused!***

It is obvious that much of the judge’s conduct was not malicious but rather a misguided attempt to be humorous, and defendants’ lawyer played into it, often acting as the straight man. But a court room is not the Improv and the president’s role model is not Judge Judy.

The case was remanded for a new trial before a new trial judge.

***Punch line.***

Don’t take your jokes to court! Call me, instead.

This article may be distributed with attribution but may not be excerpted or modified without the permission of the author. Copyright © 2015.