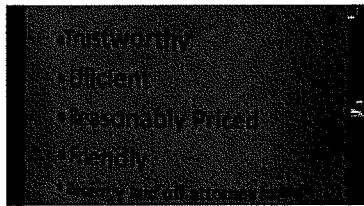
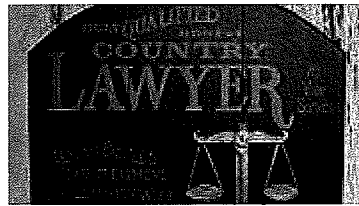




Lawyer of the Day: Anne Bremner
'I represent Seattle police, you



This Week's Sign That Lawpocalypse is Upon Us



Priorities Are a Big Deal When Moving to a Small Firm



Does This Look Like My Ass

Norman Tugwater Fantasy Sports Law **it's time to co** roll

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11 Aug 2010 at 3:07 PM / **ATTORNEY MISCONDUCT, DEPOSITIONS, LEGAL ETHICS, PARALEGALS, WEIRDNESS**

Will Footsies During a Deposition Lead to Sanctions?

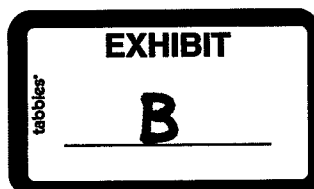
By KASHMIR HILL

A pair of motions are bouncing around email inboxes this week, thanks to the "foot-tapping lawyer." (This has nothing to do with Larry Craig, so read on without fear.)

It all started in July, when Florida law firm Rasco Klock sent a paralegal to Wilmington for a deposition. The firm is representing a plaintiff suing an insurance company, but one of their lead attorneys, Juan Carlos Antorcha, had to remain in Miami and conduct the deposition by video, with the paralegal handling the exhibits in person.

During the deposition of a witness for the defense, a strange noise caught the attention of the Perceptive Paralegal. After hearing clicking, he peeked beneath the table and saw a defense attorney's foot tapping the foot of the deponent. He snapped a photo with his smartphone and sent it to Antorcha, who confronted the defense and halted the deposition. Rasco Klock then filed a very angry motion for sanctions, accusing the defense attorney of coaching the witness through foot tapping.

From the motion:



The alleged foot tapper

15 tweets

retweet

62

Share



Before accusing a lawyer of acting in an unethical and unprofessional fashion, a fellow lawyer must think long and hard. Was the breach intentional? What were the circumstances? Was there any sense of contrition? Could the offending lawyer believe that his conduct had been appropriate?

The lawyer accused of foot-tapping is Brown Sims shareholder Kenneth Engerrand. On every single page of the 13-page motion for sanctions against him is the incriminating footsie photo...

Here's the photo:



In their motion, the Florida attorneys note how awkward this looks. They clarify that the "pink foot belongs to [the deponent], the attacking black shoe to Mr. Engerrand."

The Florida lawyers write:

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How can INA justify this petty, irresponsible, unethical, and dishonest behavior and just launch a barrage of detritus unbecoming of anyone who has taken an oath as a lawyer. Look at the materials contained on the second page of INA's response as INA talks of the "foot brushing" caused by the close quarters under the table. Compare that to the photo, about which INA was unaware, that speaks volumes about INA's candor and truthfulness with the Court. What one sees is not close quarters, ones sees a Rosemary Wood-like stretch of Mr. Engerrand's foot, as he apparently repeatedly taps the foot of the witness while questions are being asked.

INA's answer to this really bad acting is to assault the plaintiffs for "once again manufactur[ing] a controversy." There is nothing to discuss. What needs to be done is that the deposition needs to be re-taken with a bundling board installed between whoever INA sends this time to take the deposition of Ms. Dennis as well as this Court's determination of how INA is to be punished.

What is ironic is that had INA chosen to simply apologize, perhaps this appalling behavior might have been capable of solution. But, INA has chosen to display its full colors like a male peacock on a mating dance. And, what one sees is a client and its lawyers bent on obfuscation, displaying an appalling lack of candor with the Court, and the immediate, carefully-planned strategy to cover-up.

For the young'uns (like me — I had to Google), Rose Mary Woods is this woman.

You can read the full outraged motion here: Part 1 [PDF] and Part 2 [PDF]. Enjoy the over-the-top language.

Brown Sims says this is an unfair attack, and filed a reply [PDF] to the motion. Included is the conversation that took place after the tapping was alleged:

MR. ANTORCHA: Hey, Peter, let me interrupt you for a second. Ms. Dennis, who is sitting to your left?

THE WITNESS: Mr. Engerrand.

MR. ANTORCHA: Mr. Engerrand, are you tapping Ms. Dennis' foot during any of these questions?

MR. ENGERRAND: Tapping her foot?

MR. ANTORCHA: Are you touching her foot, tapping her foot, or in any way rubbing up against her foot?

MR. ENGERRAND: *I will make sure that I'm away from her. I haven't been in the middle.*

MR. ANTORCHA: Well, if you were to send me a picture of your foot tapping hers, would that be incorrect?

MR. ENGERRAND: I don't know that I've been tapping her foot. *I assumed there was a pillar next to me, so I'll move down.*

MR. ANTORCHA: You tapped her feet; is that what you're saying?

MR. ENGERRAND: I'm moving down. I didn't realize I was tapping her foot.

MR. ANTORCHA: Ms. Dennis?

THE WITNESS: Yes.

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MR. ANTORCHA: Has he been tapping your foot? And you're under oath here.

THE WITNESS: Yes.

MR. ANTORCHA: Yes, he has?

THE WITNESS: Yes. *I didn't know it was his foot.*

MR. ANTORCHA: That's fine. I didn't ask you that. Has he been tapping your foot?

THE WITNESS: Yes.

MR. ANTORCHA: Thank you. *We're concluding this deposition.*

MR. ENGERRAND: Let me ask her --

MR. ANTORCHA: No, no, Mr. Engerrand. *Coaching the witness.*

MR. ENGERRAND: I did not --

MR. ANTORCHA: *We're going to seek sanctions before Judge Brown.*

MR. ENGERRAND: Did you know I was tapping your foot?

THE WITNESS: *I didn't know you were tapping my foot.*

MR. ENGERRAND: That's what I wanted to make sure she said. We're sitting next to each other.

MR. ANTORCHA: You're under oath right now.

MR. ENGERRAND: Yes, under oath.

THE WITNESS: *I didn't know he knew he was tapping my foot.*

MR. ANTORCHA: Your foot's been tapped the entire time and you didn't know?

THE WITNESS: *It hasn't been tapped the entire time. It was tapped a couple times, and I'm assuming he thought it was a pillar or something underneath the table. We can't see through the table.*

MR. ANTORCHA: Peter, how do you want to handle this?

MR. HALMOS: You decide.

MR. ENGERRAND: Get the Judge on the phone. He can ask anything he wants.

MR. ANTORCHA: Oh, we're going straight to Judge Brown on this one, thank you very much. Peter, how do you want to continue? Do you want to continue or to seek sanctions before Judge Brown?

MR. HALMOS: I'd like to -- we're off for lunch?

MR. ANTORCHA: Peter, let's talk. We're going to take a break for lunch now.

Brown Sims maintains that nothing improper occurred and that this was a "natural position for parties sitting for hours of cross examination."

Some depositions are boring. Some are exciting. Some are really weird. Regardless, sound advice is not to put your foot in your mouth... or on the deponent.