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# MARSHALL & KELLOW, LLP

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## THE MYTH OF THE JUNKYARD DOG LAWYER (When You Lie Down With Junkyard Dogs, You Get Up With Fleas) By Jacob Marshall, Marshall & Kellow, LLP

I occasionally have found myself at a party or professional gathering with non-lawyers (which tends to be a bit more enjoyable than a party with only lawyers) when someone will complain of a terrible wrong that is being done to them or their company. At some point, one listener will give a slow nod of his head, fix the speaker with an understanding look and say, “What you need is a tough, mean lawyer - a real junkyard dog.” Folks around the group will often murmur their agreement with this advice, which seems to have risen to the level of conventional wisdom. Like much conventional wisdom, however, this advice is based on a myth. And if this advice is followed, it often leads to terrible consequences.

Many like the idea of hiring a lawyer who is billed as a “junkyard dog,” and for some understandable reasons. Business disputes and lawsuits can be contentious, threatening and emotionally draining situations. A person or company may have been cheated or may be wrongly accused of harming someone else and the financial stakes can be very high. When faced with this situation, some folks think their best bet is to hire the lawyer who promises to wage a down and dirty, no-holds barred war that will destroy their opponent’s will to fight (and perhaps even live) and make the “bad guy” regret the day he ever met the client. While this strategy may sound perfect when you are feeling threatened and harassed by a lawsuit, it rarely delivers the results it promises.

One myth is that when faced with a mean, nasty lawyer who is making his life difficult, your opponent will simply run off with his tail between his legs. My experience is that this rarely happens. Rather, it more often draws retaliation and results in an escalating legal war. I’m reminded of the movie *The Untouchables*, where the veteran cop (Sean Connery) explains to a youthful FBI agent Elliot Ness (Kevin Costner) how you “get Capone.” “When he pulls a knife, you pull a gun. If he sends one of your guys to the hospital, you send one of his to the morgue. That’s the Chicago Way!” Hiring a Junkyard Dog lawyer who practices the “Chicago Way” of litigating often leads to defeat, or a “victory” that is so costly, you’re left thinking, “one more victory like that and I’ll be ruined.”

### **Fleas on the Junkyard Dog**

Proponents of the Junkyard Dog lawyer often suggest that the bullying, bluffing and blustering of this advocate will deliver astounding results. If you lie down with a Junkyard Dog, however, do not be astounded if you wake up with some of these fleas:

#### **A. Junkyard Dogs Spend A Lot of Your Money**

Junkyard Dogs often use tactics that are designed, in part, to run up unnecessary expense for the other side, make life difficult for the opposing lawyer and party and slow down, to

a crawl, the process of getting to trial. Guess what. This strategy makes the litigating process more expensive for everyone involved, including you. Creating all that unnecessary work for the other side and bickering over unimportant matters takes a lot of your attorney's time – time that the Junkyard Dog is more than happy to bill to you. Also, once your lawyer has caused the other side to perform a bunch of unnecessary work, your opponent will often think “You know, two can play at that game” and return the favor, causing the Junkyard Dog to perform still more unnecessary work, costing you even more money.

**B. Judges Don't Like Unprofessional Tactics, And Can Do Something About It.**

Junkyard Dogs lose credibility with your judge because they frequently file groundless or unnecessary motions, or are called on the carpet for obstructing discovery - the necessary exchange of information before trial. Judges sometimes punish attorneys and clients for these tactics, which punishment can include fines. Also, once your lawyer has lost credibility with the judge, winning many of the numerous discretionary decisions the judge makes before and during trial becomes a real challenge. If your lawyer has been a Junkyard Dog for years, your judge probably already knows about their tactics and your side may start with a credibility deficit – never a good thing.

**C. Juries Don't Like Mean, Nasty Lawyers**

Mean, nasty lawyers are, in a word, unlikeable. It may not matter if the opposing attorney or party likes your lawyer but it does matter if the judge and jury like your lawyer. Juries typically do not like (or trust) mean, nasty lawyers. That is a big handicap for the advocate who is supposed to be convincing the jury that you, his client, are on the side of right and good. Can a slick lawyer fool a jury into thinking he is a good guy? Once in a while. But if a lawyer spends 98% of his time being a professional jerk, it is pretty difficult for him to sell himself to the jury as a person they should listen to and trust. My experience is that effective trial lawyers are genuinely likeable, credible, persuasive people. They use these traits to help convince a jury of 6 or 12 regular people that you and your company are the good guys and your opponents are the bad guys. That's really what it is all about. Even if you never get to trial, your lawyers' ability to perform effectively at trial and communicate with the jury is always a factor in reaching a good resolution, short of trial.

**You Don't Need a Junkyard Dog to *Get Smart, Aggressive, Winning Representation***

The truth is that there is a difference between a lawyer who is tough and one who is belligerent. A lawyer can be aggressive and tenacious without being abusive or unprofessional. Smart, aggressive, professional trial lawyers will help you assess your case, see if it can be reasonably resolved through agreement and prepare to win in the courtroom if a reasonable compromise is not possible. As a contest, litigation is much more like a game of chess than a WWF Smack-down. And I would take a smart, aggressive, likeable lawyer over a blustering bully every time.