

The Art of Appellate Advocacy - Obsessive rule disorder

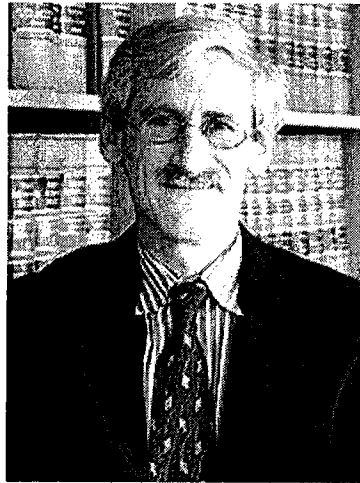
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By ANDREW H. BAIDA,

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Call me crazy, but, after reading a recent decision of the Maryland Court of Special Appeals, I have decided to ask that the American Psychiatric Association formally recognize the disorder that is the title and subject of today's article and include it in the Diagnostic and Statistical Manual of Mental Disorders.

The DSM-IV, as it is more commonly known, is a manual which lists every mental health disorder identified by the association that mental health professionals have used for years in diagnosing and treating the myriad mental illnesses that afflict adults and children. The list of disorders is so long that just to read it can cause a panic attack, which could be symptomatic of one of four panic disorders — or 32 bipolar disorders, 14 major depressive disorders, six adjustment disorders, or any number of personality disorders such as antisocial personality disorder, avoidant personality disorder, borderline personality disorder, dependent personality disorder, histrionic personality disorder, narcissistic personality disorder, obsessive compulsive personality disorder, paranoid personality disorder, schizoid personality disorder, and schizotypal personality disorder.



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The DSM-IV is so comprehensive that it even includes mathematics disorder. Really. Well, if the American Psychiatric Association thinks that the numerically challenged may be eligible for mental health intervention, then surely obsessive rule disorder — to be known in legal circles as "ORD" — merits similar recognition. I may have been turned down previously when, in a futile effort to help certain ailing lawyers, I asked the association to recognize excessive post-it disorder and obsessive highlighting disorder, but not this time. Not after the association's Disorder Review Committee finishes reading *Gonzales v. Boas*.

This case could also be used as a vehicle for asking the association to give formal recognition to obsessive motion disorder — the appellee filed a motion to dismiss the appellant's appeal, a motion to strike the appellant's response to his motion to dismiss, a motion to supplement his brief, and another motion to dismiss after his first one was denied — but that disorder will just have to wait for another day because the multiple motions the appellee filed are mere child's play when compared to the 17 violations of the Maryland Rules that the appellant supposedly committed.

Before proceeding any further, I do not mean to suggest that any of us should ignore the rules of procedure the Court of Appeals has adopted for lawyers to follow. As a general rule, rules are good and an instrumental part of any established and orderly society. But compliance with rules is one thing. Obsession is quite another.

As an illustrative example of the latter, the appellant in this case was accused of failing to comply with Maryland Rule 8-504(a)(7), which provides that a brief shall include the verbatim text of "pertinent" constitutional and statutory provisions, ordinances, rules, and regulations. I have seen a lot of arguments in my career, but this is the first time I ever saw a party take another to task for making the judgment call that a statute or rule was not pertinent and so did not need to be included in the brief. Rather than engage in a philosophical debate with yourself, colleagues or adversaries about what the meaning of "is" is and whether a source of authority relevant to your case is sufficiently pertinent as to merit inclusion in the brief, including such authority is the safer practice to follow, especially if you suspect your opponent may be afflicted with ORD.

Other violations that the appellant was accused of committing include failing to comply with Maryland Rule 8-504(a)(1), which provides that a brief shall include a table of citations, "with cases alphabetically arranged." The court's opinion in this case does not explain how this rule was supposedly breached, but I suspect the truly culpable party was the brief writer's word processing program, some of which automatically alphabetize federal and state cases separately. Of course, the brief writer could have been confused about whether cases with names such as *In re Norman Bates* should be alphabetized under "I" or "B." I have seen this done both ways without any adverse repercussions, thus suggesting that it may be necessary to create different sub-categories of ORD, i.e., obsessive rule disorder with alphabetization mania, obsessive rule disorder with pertinent fixation, and so on.

Another rule violation at issue in *Gonzales v. Boas* involved "the failure to cite to the record for three clauses in the statement of facts section of the brief." Most statements of facts that I have seen contain significantly more than three clauses, so, unless the statement of facts at issue in this case was really, really, really short, we're not talking about an egregious violation of Maryland Rule 8-504(a)(4), which provides that in the statement of the facts "[r]eference shall be made to the pages of the record extract supporting the assertions" of fact that are made. In fairness to the appellee in this case, lawyers routinely fail to comply with the letter and spirit of this rule. Every factual statement in this portion of the brief should be supported by a citation to the record extract. Unless, just as a random example, the paragraph has four clauses and the citation for the last clause is to the same portion of the record extract that supports the prior three, in which case only one citation is necessary.

To avoid being labeled ORD myself, I will refrain from discussing the many other rule violations at issue in *Gonzales v. Boas*, but if you were wondering about the substantive issue giving rise to the appeal, you're in for a real shock. As stated in the opinion's opening sentence, "this appeal arises out of a late response by Corinne Gonzales, appellant, to a request for admission of facts filed by Lawrence Boas, M.D., appellee. See Maryland Rule 2-424."

Maybe I should also contact Ripley's Believe It or Not.

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