IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
IN AND FOR MARTIN COUNTY, FLORIDA

IN RE: STANDING ORDER ON GUIDELINES FOR PROFESSIONAL CONDUCT

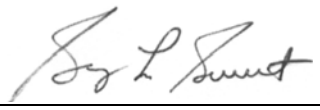
_____/

WHEREAS, the Guidelines for Professional Conduct, a copy of which are attached hereto, were approved in 1994 by the Executive Council of the Trial Lawyers' Section of The Florida Bar and in 1995 by the Florida Conference of Circuit Court Judges, and

WHEREAS, the purpose of the Guidelines for Professional Conduct is to discourage unprofessional conduct by attorneys and to enhance the practice of law and the administration of justice, it is hereby

ORDERED that the Guidelines for Professional Conduct are specifically adopted by this Court and the attorneys and parties are placed on notice of the Court's intention to enforce the Guidelines as rules of practice in this division. Failure to abide by these Guidelines may result in the imposition of sanctions.

DONE AND ORDERED in chambers on this 13th day of October, 2009.



Gary L. Sweet
Circuit Judge

Guidelines for Professional Conduct

Foreword

In 1993 the Executive Council of the Trial Lawyers Section of The Florida Bar (which represents over 6,000 trial lawyers in Florida) formed a professionalism committee to prepare practical guidelines for professional conduct for trial lawyers. After reviewing the numerous aspirational and model guidelines from both Florida and around the country, the professionalism committee determined that, with minor modifications, the guidelines which had been prepared by the Hillsborough County Bar Association were the best model for the entire state. Therefore, in 1994, at the request of the professionalism committee, the Executive Council of the Trial Lawyers Section unanimously approved the Guidelines for Professional Conduct. The Trial Lawyers Section sought the endorsement of the Guidelines from the Florida Conference of Circuit Judges, and at its meeting held in September 1995, the Conference approved the Guidelines. In so doing, the Conference wishes to make clear that the Guidelines do not have the force of law and that trial judges will still have the right and obligation to consider issues raised by the Guidelines on a case by case basis. Nevertheless, both the Trial Lawyers Section and the Florida Conference of Circuit Judges hope that publication and widespread dissemination of these Guidelines will give direction to both lawyers and judges as to how lawyers should conduct themselves in all phases of trial practice. The adoption of the Guidelines by the Trial Lawyers Section is also intended to express support for trial judges who require that lawyers conduct themselves professionally.

For most lawyers, these Guidelines will simply reflect their current practice. However, it is hoped that the widespread dissemination and implementation of these Guidelines will result in an overall increase in the level of professionalism in trial practice in Florida.

Preamble

The effective administration of justice requires the interaction of many professionals and disciplines, but none is more critical than the role of the lawyer. In fulfilling that role, a lawyer performs many tasks, few of which are easy, most of which are exacting. In the final analysis, a lawyer's duty is always to the client. But in striving to fulfill that duty, a lawyer must be ever conscious of his or her broader duty to the judicial system that serves both attorney and client. To the judiciary, a lawyer owes candor, diligence and utmost respect. To the administration of justice, a lawyer unquestionably owes the fundamental duties of personal dignity and professional integrity. Coupled with those duties, however, is a lawyer's duty of courtesy and cooperation with fellow professionals for the efficient administration of our system of justice and the respect of the public it serves.

In furtherance of these fundamental concepts, in recognition that they must be applied in a manner consistent with the interests of one's client and the Rules of Professional Conduct, and in keeping with the long tradition of professionalism

among and between members of the Trial Lawyers Section of The Florida Bar, the following Guidelines for Professional Conduct are hereby adopted. Although we do not expect every lawyer will agree with every guideline, these standards reflect our best effort at encouraging decency and courtesy in our professional lives without intruding unreasonably on each lawyer's choice of style or tactics.

A. SCHEDULING, CONTINUANCES, AND EXTENSIONS OF TIME.

Scheduling and Continuances

1. Attorneys are encouraged to communicate with opposing counsel prior to scheduling depositions, hearings and other proceedings, in order to schedule them at times that are mutually convenient for all interested persons. Alternatively, if an attorney does not communicate with opposing counsel prior to scheduling a deposition or hearing, the attorney should be willing to reschedule that deposition or hearing if the time selected is inconvenient for opposing counsel.

2. Upon receiving an inquiry concerning a proposed time for a hearing, deposition, meeting, or other proceeding, a lawyer should promptly agree to the proposal or offer a counter suggestion that is as close in time as is reasonably possible.

3. A lawyer should call potential scheduling conflicts or problems to the attention of those affected, including the court or tribunal, as soon as they become apparent to the lawyer.

4. Attorneys should cooperate with each other when conflicts and calendar changes are necessary and requested.

5. Counsel should never request a calendar change or misrepresent a conflict in order to obtain an advantage or delay. However, in the practice of law, emergencies affecting our families or our professional commitments will arise which create conflicts and make requests inevitable. We should be cooperative with each other whenever possible in agreeing to calendar changes, and should make such request of other counsel only when absolutely necessary.

6. Attorneys should endeavor to provide opposing counsel, parties, witnesses, and other affected persons, sufficient notice of depositions, hearings and other proceedings, except upon agreement of counsel, in an emergency, or in other circumstances compelling more expedited scheduling.

7. When scheduling hearings and other adjudicative proceedings, a lawyer should request an amount of time that is truly calculated to permit full and fair presentation of the matter to be adjudicated and to permit equal response by the lawyer's adversary.

Extensions

8. A lawyer should accede to all reasonable requests for scheduling, rescheduling, cancellations, extensions, and postponements that do not

prejudice the client's opportunity for full, fair and prompt consideration and adjudication of the client's claim or defense.

9. First requests for reasonable extensions of time to respond to litigation deadlines, whether relating to pleadings, discovery or motions, should ordinarily be granted between counsel as a matter of courtesy unless time is of the essence.

10. After a first extension, any additional requests for time should be dealt with by balancing the need for expedition against the deference one should ordinarily give to an opponent's schedule of professional and personal engagements, the reasonableness of the length of extension requested, the opponent's willingness to grant reciprocal extensions, the time actually needed for the task, and whether it is likely a court would grant the extension if asked to do so.

11. A lawyer should advise clients against the strategy of granting no time extensions for the sake of appearing "tough."

12. A lawyer should not seek extensions or continuances or refuse to grant them for the purpose of harassment or prolonging litigation.

13. A lawyer should not attach to extensions unfair and extraneous conditions. A lawyer is entitled to impose conditions such as preserving the right to seek reciprocal scheduling concessions. However, a lawyer should not, by granting extensions, seek to preclude an opponent's substantive rights, such as his or her right to move against a complaint.

14. A lawyer should not request rescheduling, cancellations, extensions, or postponements without legitimate reasons and never solely for the purpose of delay or obtaining unfair advantage.

B. SERVICE OF PAPERS.

15. The timing and manner of service should not be used to the disadvantage of the party receiving the papers.

16. Papers and memoranda of law should not be served at court appearances without advance notice to opposing counsel and should not be served so close to a court appearance so as to inhibit the ability of opposing counsel to prepare for that appearance or to respond to the papers.

17. Papers should not be served in order to take advantage of an opponent's known absence from the office or at a time or in a manner designed to inconvenience an adversary, such as late on Friday afternoon or the day preceding a secular or religious holiday.

18. Service should be made personally or by courtesy copy facsimile transmission when it is likely that service by mail, even when allowed, will prejudice the opposing party.

C. WRITTEN SUBMISSIONS TO A COURT, INCLUDING BRIEFS, MEMORANDA, AFFIDAVITS AND DECLARATIONS.

19. Written briefs or memoranda of points of authorities should not rely on facts that are not properly part of the record. A litigant may, however, present historical, economic or sociological data if such data appear in or are derived from generally available sources but only if these would be subject to judicial notice and if sufficient backup data and its sources are presented contemporaneously.

20. Neither written submissions nor oral presentations should disparage the intelligence, ethics, morals, integrity or personal behavior of one's adversaries, unless such things are directly and necessarily in issue.

D. COMMUNICATION WITH ADVERSARIES.

21. Counsel should at all times be civil and courteous in communicating with adversaries, whether in writing or orally.

22. Letters should not be written to ascribe to one's adversary a position he or she has not taken or to create "a record" of events that have not occurred.

23. Letters intended only to make a record should be used sparingly and only when thought to be necessary under all the circumstances.

24. Unless specifically permitted or invited by the court, letters between counsel should not be sent to judges.

25. A lawyer should adhere strictly to all express promises to and agreements with opposing counsel, whether oral or in writing, and should adhere in good faith to all agreements implied by the circumstances or by local custom.

26. During the course of representing a client, a lawyer should not communicate on the subject of the representation with a party known to be represented by a lawyer in that matter without the prior consent of the lawyer representing such other party unless authorized by law to do so.

E. DEPOSITIONS.

27. Depositions should be taken only when actually needed to ascertain facts or information or to perpetuate testimony. They should never be used as a means of harassment or to generate expense.

28. In scheduling depositions, reasonable consideration should be given to accommodating schedules of opposing counsel and of the deponent, where it is possible to do so without prejudicing the client's rights.

29. In scheduling depositions upon oral examination, a lawyer should allow enough time to permit the conclusion of the deposition, including examination by all parties, without adjournment.

30. When a deposition is noticed by another party in the reasonably near future, counsel should ordinarily not notice another deposition for an earlier date without the agreement of opposing counsel.

31. Counsel should not attempt to delay a deposition for dilatory purposes but only if necessary to meet real scheduling problems.

32. Counsel should not inquire into a deponent's personal affairs or question a deponent's integrity where such inquiry is irrelevant to the subject matter of the deposition.

33. Counsel should refrain from repetitive or argumentative questions or those asked solely for purposes of harassment. Counsel should not conduct questioning in a manner intended to harass the witness, such as by repeating questions after they have been answered, by raising the questioner's voice or by appearing angry at the witness.

34. Counsel defending a deposition should limit objections to those that are well founded and permitted by the Rules of Civil Procedure or applicable case law. Counsel should bear in mind that most objections are preserved and need be interposed only when the form of a question is defective or privileged information is sought. When objecting to the form of a question, counsel should simply state "I object to the form of the question." The grounds should not be stated unless asked for by the examining attorney. When the grounds are then stated they should by stated succinctly and only what is necessary to state the grounds should be stated.

35. While a question is pending, counsel should not, through objections or otherwise, coach the deponent or suggest answers. Should any lawyer do so, the courts are urged to take stern action to put a stop to such practices and to serve as a deterrent to others.

36. Counsel should not direct a deponent to refuse to answer questions unless they seek privileged information.

37. Counsel for all parties should refrain from self-serving speeches during depositions.

38. Counsel should not engage in any conduct during a deposition that would not be allowed in the presence of a judicial officer.

F. DOCUMENT DEMANDS.

39. Demands for production of documents should be limited to documents actually and reasonably believed to be needed for the prosecution or defense of an action and not made to harass or embarrass a party or witness or to impose an inordinate burden or expense in responding.

40. Demands for document production should not be so broad as to encompass documents clearly not relevant to the subject matter of the case. If a document request is objectionable only in part, the documents responsive to the unobjectionable portion should be produced in a timely manner.

41. In responding to document demands, counsel should not strain to interpret the request in an artificially restrictive manner in order to avoid disclosure.

42. Documents should be withheld on the grounds of privilege only where appropriate. Where documents are withheld, the withholding party should immediately provide a list of the privileged documents showing the

date, author and general description and a statement of the basis for withholding the document.

43. Counsel should not produce documents in a disorganized or unintelligible fashion, or in a way calculated to hide or obscure the existence of particular documents.

44. Document production should not be delayed to prevent opposing counsel from inspecting documents prior to scheduled depositions or for any other tactical reason.

G. INTERROGATORIES.

45. Interrogatories should be used sparingly and never to harass or impose undue burden or expense on adversaries.

46. Interrogatories should not be read by the recipient in an artificial manner designed to assure that answers are not truly responsive.

47. Objections to interrogatories should be based on a good faith belief in their merit and not be made for the purpose of withholding relevant information. If an interrogatory is objectionable only in part, the unobjectionable portion should be answered.

48. A lawyer should never use discovery for the purpose of harassing or improperly burdening an adversary or causing the adversary to incur unnecessary expense.

H. MOTION PRACTICE.

49. Before setting a motion for hearing, counsel should make a reasonable effort to resolve the issue.

50. A lawyer should not force his or her adversary to make a motion and then not oppose it.

51. Following a hearing, the attorney charged with preparing the proposed order should prepare it promptly, generally no later than the following business day, unless it should immediately be submitted to the court. Attorneys should promptly provide, either orally or in writing, proposed orders to opposing counsel for approval prior to submitting them to the court. Opposing counsel should then promptly communicate any objections and at that time, the drafting attorney should immediately submit a copy of the proposed order to the court and advise the court as to whether or not it has been approved by opposing counsel. The order must fairly and adequately represent the ruling of the court.

I. DEALING WITH NON-PARTY WITNESSES.

52. Counsel should not issue subpoenas to non-party witnesses except in connection with their appearance at a hearing, trial or deposition or to obtain necessary documents in the possession of a non-party witness.

53. Deposition subpoenas should be accompanied by notices of deposition with copies to all counsel.

54. Where counsel obtains documents pursuant to a deposition subpoena, copies of the documents should be made available as soon as possible to the adversary at his or her expense even if the deposition is canceled or adjourned.

J. EX PARTE COMMUNICATION WITH THE COURT AND OTHERS.

55. A lawyer should avoid ex parte communication on the substance of a pending case with a judge before whom such case is pending.

56. Even where applicable laws or rules permit an ex parte application or communication to the court, before making such an application or communication, a lawyer should make diligent efforts to notify the opposing party or a lawyer known to represent or likely to represent the opposing party and should make reasonable efforts to accommodate the schedule of such lawyer to permit the opposing party to be represented on the application. A lawyer should make such an application or communication (including an application to shorten an otherwise applicable time period) only where there is a bona fide emergency such that the lawyer's client will be seriously prejudiced if the application or communication is made on regular notice.

57. Attorneys should notify opposing counsel of all oral or written communications with the court or other tribunal, except those involving only scheduling matters. Counsel should always notify opposing counsel of dates and times obtained from the court for future hearings on the same day that the hearing date is obtained from the court. Copies of any submissions to the court (such as correspondence, memoranda of law, case law, etc.) should simultaneously be provided to opposing counsel by substantially the same method of delivery by which they are provided to the court. For example, if a memorandum of law is hand-delivered to the court, at the same time a copy should be hand-delivered or faxed to opposing counsel. If asked by the court to prepare an order, counsel should furnish a copy of the order, and any transmitted letter, to opposing counsel at the time the material is submitted to the court.

58. A lawyer should be courteous and may be cordial to a judge but should never show marked attention or unusual informality to a judge, uncalled for by their personal relations. A judge should be referred to by surname in court. A lawyer should avoid anything calculated to gain, or having the appearance of gaining, special personal consideration or favor from a judge.

K. SETTLEMENT AND ALTERNATIVE DISPUTE RESOLUTION.

59. Except where there are strong and overriding issues of principle, an attorney should raise and explore the issue of settlement in every case as soon as enough is known about the case to make settlement discussions meaningful.

60. Counsel should not falsely hold out the possibility of settlement as a means for adjourning discovery or delaying trial.

61. In every case, counsel should consider whether the client's interest could be adequately served and the controversy more expeditiously

and economically disposed of by arbitration, mediation or other forms of alternative dispute resolution.

L. PRE-TRIAL CONFERENCE.

62. A lawyer should carefully read the order setting trial and complete the pre-trial conference statement in full to the extent it can be agreed to by the parties.

63. A lawyer should be familiar with the evidence in the case.

64. A lawyer should be sure discovery is completed or address the need for additional discovery with opposing counsel well in advance of the pre-trial conference. All counsel should use due diligence in preparing the case for trial and should file a motion for continuance of the pre-trial conference or of the trial only if counsel has been unable to complete preparations in spite of diligent efforts.

65. A lawyer should evaluate the case and have a figure in mind at which the case could reasonably settle with authorization from the client to do so.

66. A lawyer should determine if the court needs to, and agrees to, hear any motions at the pre-trial.

67. The attorney who will try the case must appear at the pre-trial conference, unless excused by the court.

68. A lawyer should not ask for a continuance unless the client agrees and signs the motion.

M. TRIAL CONDUCT AND COURTROOM DECORUM.

69. A lawyer should always deal with parties, counsel, witnesses, jurors or prospective jurors, court personnel and the judge with courtesy and civility and avoid undignified or discourteous conduct which is degrading to the court.

70. Be punctual and prepared for any court appearance.

71. Stand as court is opened, recessed or adjourned; when the jury enters or retires from the courtroom; and when addressing, or being addressed by, the court.

72. Examination of jurors and witnesses should be conducted from a suitable distance. A lawyer should not crowd or lean over the witness or jury and during interrogation should avoid blocking opposing counsel's view of the witness.

73. Counsel should address all public remarks to the court, not to opposing counsel.

74. A lawyer should avoid disparaging personal remarks or acrimony toward opposing counsel.

75. Counsel should refer to all adult persons, including witnesses, other counsel, and the parties by their surnames and not by their first or given names.

76. Only one attorney for each party shall examine, or cross examine each witness. The attorney stating objections, if any, during direct examination, shall be the attorney recognized for cross examination.

77. Counsel should request permission before approaching the bench. Any documents counsel wish to have the court examine should be handed to the clerk.

78. Have the clerk pre-mark the potential exhibits.

79. Any paper or exhibit not previously marked for identification should first be handed to the clerk to be marked before it is tendered to a witness for examination. Any exhibit offered in evidence should, at the time of such offer, be handed to opposing counsel.

80. In making objections, counsel should state only the legal grounds for the objection and should withhold all further comment or argument unless elaboration is requested by the court.

81. Generally, in examining a witness, counsel shall not repeat or echo the answer given by the witness.

82. Offers of, or requests for, a stipulation should be made privately, not within the hearing of the jury, unless the offer or knows or has reason to believe the opposing lawyer will accept it.

83. In opening statements and in arguments to the jury, counsel shall not express personal knowledge or opinion concerning any matter in issue.

84. Counsel shall admonish all persons at counsel table that gestures, facial expressions, audible comments, or the like, as manifestations of approval or disapproval during the testimony of witnesses, or at any other time, are absolutely prohibited.

85. During trials and evidentiary hearings the lawyers should mutually agree to disclose the identities, and duration of witnesses anticipated to be called that day and the following day, including depositions to be read, and should cooperate in sharing with opposing counsel all visual-aid equipment.

86. A lawyer should not mark on or alter exhibits, charts, graphs, and diagrams without opposing counsel's permission or leave of court.

87. A lawyer should abstain from conduct calculated to detract or divert the fact-finder's attention from the relevant facts or otherwise cause it to reach a decision on an impermissible basis.

88. A lawyer's word should be his or her bond. The lawyer should not knowingly misstate, distort, or improperly exaggerate any fact or opinion and should not improperly permit the lawyer's silence or inaction to mislead anyone.

89. A charge of impropriety by one lawyer against another in the course of litigation should never be made except when relevant to the issues of the case.

90. A lawyer should not pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of his testimony or

the outcome of the case. A lawyer, however, may advance, guarantee or acquiesce in the payment of:

a. expenses reasonably incurred by a witness in attending or testifying;

b. reasonable compensation to a witness for his lost time in attending or testifying;

c. a reasonable fee for the professional services of an expert witness.

91. In appearing in his or her professional capacity before a tribunal, a lawyer should not:

a. state or allude to any matter that he or she has no reasonable basis to believe is relevant to the case or that will not be supported by admissible evidence;

b. ask any question that he or she has no reasonable basis to believe is relevant to the case and that is intended to degrade a witness or other person;

c. assert one's personal knowledge of the facts in issue, except when testifying as a witness;

d. assert one's personal opinion as to the justness of a cause, as to the credibility of a witness, as to the culpability of a civil litigant, or as to the guilt or innocence of an accused; but may argue, on the lawyer's analysis of the evidence, for any position or conclusion with respect to the matters stated herein.

92. A question should not be interrupted by an objection unless the question is patently objectionable or there is reasonable ground to believe that matter is being included which cannot properly be disclosed to the jury.

93. A lawyer should address objections, requests and observations to the court and not engage in undignified or discourteous conduct which is degrading to court procedure.

94. Where a judge has already made a ruling in regard to the inadmissibility of certain evidence, a lawyer should not seek to circumvent the effect of that ruling and get the evidence before the jury by repeated questions relating to the evidence in question, although he is at liberty to make a record for later proceedings of his ground for urging the admissibility of the evidence in question. This does not preclude the evidence being properly admitted through other means.

95. A lawyer should not attempt to get before the jury evidence which is improper.

96. A lawyer should scrupulously abstain from all acts, comments and attitudes calculated to curry favor with any juror, by fawning, flattery, actual or pretended solicitude for the juror's comfort or convenience or the like.

97. A lawyer should never attempt to place before a tribunal, or jury, evidence known to be clearly inadmissible, nor make any remarks or statements which are intended to improperly influence the outcome of any case.

98. A lawyer should accede to reasonable requests for waivers of procedural formalities when the client's legitimate interests are not adversely affected.

99. Attorneys should not knowingly misstate, misrepresent or distort any fact or legal authority to the court or to opposing counsel and shall not mislead by inaction or silence.

Further, if this occurs unintentionally and is later discovered, it should immediately be disclosed or otherwise corrected.