Conferences of Circuit Judges and County Court Judges
and
Trial Lawyers Section of

The Florida Bar

Guidelines for Professional Conduct

(2008 Edition)

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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 on professional conduct for trial lawyers. After reviewing the numerous aspirational and model guidelines from Florida and around the country, the professionalism committee determined that, with minor modifications, the guidelines that 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 then sought the endorsement of the Guidelines from the Florida Conference of Circuit Court Judges; at its meeting held in September 1995, the Conference approved the Guidelines. In so doing, the Conference asserted that the Guidelines do not have the force of law and that trial judges still have the right and obligation to consider on a case-by-case basis issues raised by the Guidelines. Since their endorsement by the Conference, the Guidelines have been followed by lawyers throughout the state and have been endorsed by administrative order in many circuits.

Beginning in 1999, the Trial Lawyers Section undertook to rewrite the Guidelines to clarify certain provisions, to make certain provisions consistent with current law, and to eliminate certain provisions considered unnecessary because they were redundant of either a rule of civil procedure or a rule of professional conduct, which lawyers are expected to follow as minimum standards of professionalism. The 2001 edition of the Guidelines was the result of that effort, and the Section has updated and revised that initial edition. These revised Guidelines are promulgated jointly by the Conference of Circuit Court Judges, the Conference of County Court Judges, and the Trial Lawyers Section of The Florida Bar. It is hoped that dissemination of these Guidelines will give direction to both lawyers and judges concerning how lawyers should conduct themselves in all phases of trial practice. The adoption of the Guidelines by the Trial Lawyers Section also is intended to express support for trial judges who require that lawyers conduct themselves professionally.

For most lawyers, these Guidelines simply will reflect their current practice. However, it is hoped that the use of these Guidelines will continue to increase the level of professionalism in trial practice in Florida.

This 2008 edition supercedes the previous editions of the Guidelines.

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. In striving to fulfill that duty, a lawyer always must be 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 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, the following Guidelines for Professional Conduct are adopted. It is recognized that these Guidelines must be applied in keeping with the advocacy of the interests of one's client and the long tradition of professionalism among and between members of the Trial Lawyers Section of The Florida Bar. These Guidelines are subject to the Florida and Federal Rules of Civil Procedure, the Florida Rules of Professional Conduct, and the specific requirements of any standing or administrative order, local court rule, or order entered in a specific case. Although we do not expect every lawyer to agree with every guideline, these standards reflect our best effort to encourage decency and courtesy in our professional lives without intruding unreasonably on each lawyer's choice of style or tactics.

A. GENERAL PRINCIPLES

1. A lawyer is both an officer of the court and an advocate. As such, the lawyer always should strive to uphold the honor and dignity of the profession, avoid disorder and disruption in the courtroom, and maintain a respectful attitude toward the court.

2. A lawyer's word should be his or her bond.

3. A lawyer should adhere strictly to all express promises and agreements with other counsel, whether oral or in writing.

4. A lawyer should be courteous and civil in all professional dealings with other persons. Lawyers should act in a civil manner regardless of the ill feelings that their clients may have toward others. Lawyers can disagree without being disagreeable. Effective and zealous representation does not require antagonistic or acrimonious behavior. Whether orally or in writing, lawyers should avoid vulgar language, disparaging personal remarks, or acrimony toward other counsel, parties, or witnesses.

5. Lawyers should require that persons under their supervision conduct themselves with courtesy and civility.

6. When consistent with their clients' interests, lawyers should cooperate with opposing counsel to avoid litigation and to resolve litigation that already has commenced.

7. A lawyer must not use any aspect of the litigation process, including discovery and motion practice, as a means of harassment or to unnecessarily prolong litigation or increase litigation expenses.

B. SCHEDULING, CONTINUANCES, AND EXTENSIONS OF TIME

1. Attorneys must, except in extraordinary circumstances, communicate with opposing counsel before scheduling depositions, hearings, and other proceedings -- to schedule them at times that are mutually convenient for all interested persons.

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

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

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

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

6. Attorneys must, except in extraordinary circumstances, provide opposing counsel, parties, witnesses, and other affected persons sufficient notice of depositions, hearings, and other proceedings.

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

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, ordinarily should 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 addressed by balancing the need for expedition against the deference one ordinarily should 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 that 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, when granting extensions, a lawyer should not seek to preclude an opponent's substantive rights, such as the 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.

C. SERVICE OF PAPERS

1. Papers should not be served 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 before a secular or religious holiday. A "paper" is any written material that is to be filed with a court or other tribunal.

2. Service should be made personally, by facsimile transmission, or by electronic mail when it is likely that service by mail, even when allowed, will not provide the opposing party with adequate time to review the paper before a court appearance.

3. Facsimile equipment and email systems should not be turned "off" during counsel’s usual working hours in order to prevent opposing counsel from communicating or serving papers.

D. WRITTEN SUBMISSIONS TO COURTS, INCLUDING BRIEFS, MEMORANDA, AFFIDAVITS, AND DECLARATIONS

1. Copies of any submissions to the court (correspondence, memoranda of law, case law, and so forth) should be provided simultaneously 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, a copy should be hand-delivered or faxed to opposing counsel at the same time. If asked by the court to prepare an order, counsel should furnish a copy of the order, and any transmitted letter, to opposing counsel when the material is submitted to the court. Sending an additional copy by electronic mail also is encouraged, if possible.

2. Papers, including memoranda of law, should not be served at court appearances unless the proponent agrees to give opposing counsel reasonable time following the court appearance in which to respond to the papers. If papers, including memoranda of law, are served before a court appearance, those papers should not be served so close in time to the court appearance as to inhibit the ability of opposing counsel to prepare for that appearance or to respond to the papers.

3. Neither written submissions nor oral presentations should disparage the intelligence, ethics, morals, integrity, or personal behavior of one's adversary, unless those characteristics or actions are directly and necessarily in issue.

E. COMMUNICATION WITH ADVERSARIES

1. Counsel always should be civil and courteous in communicating with an adversary, whether in writing or orally.

2. Letters or electronic mail should not be written to ascribe to one's adversary a position that the adversary has not taken or to create "a record" of events that have not occurred.

3. Unless specifically permitted or invited by the court, letters and electronic mail, between counsel should not be sent to judges.

F. DEPOSITIONS

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

2. When scheduling depositions, reasonable consideration should be given to accommodating schedules of opposing counsel and deponents, when it is possible to do so without prejudicing the client's rights.

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

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

5. Counsel should not inquire into a deponent's personal affairs or integrity when that inquiry is not relevant to the subject matter involved in the pending action.

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

7. Counsel defending a deposition should limit objections to those that are well founded and permitted by the Florida or Federal Rules of Civil Procedure or applicable case law. Counsel should remember that most objections are preserved and need be interposed only when the form of the question is defective or when privileged information is sought. When objecting to the form of a question, counsel simply should 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 requested, they should be stated succinctly.

8. While a question is pending, counsel should not coach the deponent nor suggest answers, through objections or otherwise.

9. Counsel should refrain from self-serving speeches during depositions.

10. Counsel should not engage in any conduct during a deposition that would not be allowed in the presence of a judicial officer, including disparaging personal remarks or acrimony toward opposing counsel, and gestures, facial expressions, audible comments, or the like as manifestations of approval or disapproval during the testimony of the witness.

G. DOCUMENT DEMANDS

1. When responding to unclear document demands, receiving counsel should attempt to discuss the demands with propounding counsel so that the demands can be complied with fully or appropriate objections can be raised.

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

3. A lawyer should never use document demands for the purpose of harassing or improperly burdening an adversary or to cause the adversary to incur unnecessary expense.

4. After becoming aware that an action has been initiated and to the extent practicable, a lawyer should become generally familiar with the client’s records and storage systems, including electronic media, so that the lawyer may properly advise the client on production, preservation, and protection of relevant data, records, and the treatment of privileged or private information during litigation.

H. INTERROGATORIES

1. In responding to interrogatories whose meaning is unclear, receiving counsel should attempt to discuss the meaning with propounding counsel so that the interrogatories can be answered fully or appropriate objections can be raised.

2. Objections to interrogatories should be based on a good faith belief 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.

3. A lawyer should never use interrogatories for the purpose of harassing or improperly burdening an adversary or to cause the adversary to incur unnecessary expense.

I. MOTION PRACTICE

1. Lawyers should avoid unnecessary motion practice or other judicial intervention by negotiating and agreeing with other counsel whenever practicable. For example, before setting for hearing a nondispositive motion, counsel shall make a reasonable effort to resolve the issue.

2. A lawyer should not force an adversary to make a motion and then not oppose it.

3. After 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 be submitted immediately to the court. The order fairly and accurately must represent the ruling of the court.

4. Before submitting a proposed order to the court, attorneys should provide the order to opposing counsel for approval, either orally or in writing. Opposing counsel then promptly should communicate any objections. As soon as objections are made, the drafting attorney immediately should submit a copy of the proposed order to the court and advise the court whether the proposed order has been approved by opposing counsel.

J. EX PARTE COMMUNICATIONS WITH COURTS AND OTHERS

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

2. Before making an authorized ex parte application or communication to the court, a lawyer should make diligent efforts to notify the opposing party or a lawyer known or likely to represent the opposing party and to accommodate the schedule of that lawyer to permit the opposing party to be represented on the application. A lawyer should make an ex parte application or communication (including an application to shorten an otherwise applicable time period) only when there is a bona fide emergency that will result in serious prejudice to the lawyer's client if the application or communication is made on regular notice.

3. Attorneys should notify opposing counsel of all oral or written communications with the court or other tribunal, except those involving only scheduling matters.

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

K. SETTLEMENT AND ALTERNATIVE DISPUTE RESOLUTION

1. 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.

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

3. In every case, counsel should consider whether the client's interest could be served adequately and the controversy disposed of more quickly and economically by expedited trial, voluntary trial resolution, arbitration, mediation, or other forms of alternative dispute resolution.

L. TRIAL CONDUCT AND COURTROOM DECORUM

1. A lawyer always should interact with parties, counsel, witnesses, jurors or prospective jurors, court personnel, and judges with courtesy and civility, and should avoid undignified or discourteous conduct that is degrading to the court or the proceedings.

2. 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, absolutely are prohibited.

3. During trials and evidentiary hearings, the lawyers mutually should 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.

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

5. A lawyer should not knowingly misstate, distort, or improperly exaggerate any fact or opinion nor permit the lawyer's silence or inaction to mislead anyone.

6. 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 a personal knowledge or opinions concerning the facts in issue, except when testifying as a witness;

d. assert a personal opinion concerning the justness of a cause, the credibility of a witness, the culpability of a civil litigant, or 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 at issue.

7. A question should not be interrupted by an objection unless the question is patently objectionable or there is a reasonable ground to believe that information is being included that should not be disclosed to the jury.

8. When a judge already has made a ruling about 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 the lawyer may make a record for later proceedings of the ground for urging the admissibility of the evidence in question. This does not preclude efforts by the lawyer to have the evidence admitted through other, proper means.

9. A lawyer scrupulously should 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.

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

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