OCBA Standards of Professionalism

Orange County Bar Association Standards of Professionalism, Professional Courtesy and Courtroom Decorum

Preamble

The practice of law is largely an adversarial process and Attorneys are ethically bound to zealously represent and advocate in their clients' interest.

Lawyers are officers of the court and they are responsible to the judiciary for the propriety of their professional activities. Within that context, the legal profession has been granted powers of self-regulation which help maintain the legal profession's independence from undue government domination by the legislative and executive branches. Supervision by an independent judiciary, and conformity with the rules the judiciary adopts for the profession, assures both the independence and the responsibility of the legal profession.

In addition to Attorneys' professional responsibilities prescribed by substantive and procedural law, Attorneys are also guided by personal conscience and the approbation of professional peers;

In Orange County, Florida, there have developed certain community standards of legal professionalism, professional courtesy, and courtroom decorum previously acknowledged and recognized through the adoption in 1990 of the Orange County Bar Association Standards of Professional Courtesy and in 2003 through entry of Administrative Order 2003-07 establishing the Orange County Courtroom Decorum Policy;

Attorneys should strive to attain certain ideals of professionalism and demonstrate a minimum level of professional courtesy necessary to lend dignity to the practice of law in our community and instill public confidence in the justice system.

In order to promote and perpetuate the long tradition of professionalism among and between members of the Orange County Bar Association and the bench and to assist in the efficient administration of justice, the following Standards of Professionalism, Professional Courtesy and Courtroom Decorum, "Standards", are hereby adopted.

Introduction

The Standards set forth herein are those expected of Attorneys practicing in the Courts of the Ninth Judicial Circuit in and for Orange County. While not meant to be exhaustive, the Standards also set a tone or guide for conduct that might not be specifically covered by these Standards. The overriding principles promoted by the Standards are communication and civility between counsel, as well as cooperation with the Courts and other participants in the justice system.

The Standards have been codified with the hope that their dissemination will educate new Attorneys and others who may be unfamiliar with the Orange County legal community's expectations regarding legal professionalism, professional courtesy, and courtroom decorum.

They have received the approval of the Executive Council of the Orange County Bar Association. They have also been approved by the Judges of the Ninth Judicial Circuit. These standards should be read consistently with the Ideals and Goals of Professionalism adopted by the Board of Governors of The Florida Bar in 1990 and the Conference of Circuit Judges and County Court Judges and Trial Lawyers Section of the Florida Bar Guidelines for Professional Conduct, (2008 Edition).

I. Discovery, Litigation Practice, and Scheduling

1. Attorneys shall refrain from discovery requests not reasonably related to the matter at issue. Attorneys shall not use discovery for the purpose of harassing, embarrassing, causing needless duplication of effort, or causing the adversary to incur unnecessary expenses.

2. Attorneys shall not propound or object to discovery for the purpose of causing undue delay, needless vexation or obtaining unfair advantage.

3. Attorneys shall ensure that responses to reasonable discovery requests are timely, complete, and consistent with the obvious intent of the request. Attorneys shall not, and must counsel their clients not to produce documents in a way calculated to hide or obscure the existence of documents.

4. Attorneys shall, whenever appropriate, discuss and coordinate discovery planning with counsel for each party to the action. (e.g., counsel should cooperate in scheduling and coordinating depositions after requested documents pertaining to the deponent have been disclosed.)

5. When setting hearings, conferences, and depositions, Attorneys shall not schedule any matter without first making a good faith effort to coordinate the date and time with counsel for each party to the action. Depositions and hearings shall only be set, with less than one week's notice, by agreement of counsel or when a genuine emergency exists. When scheduling hearings Attorneys shall reserve sufficient time to permit a complete presentation by counsel for all parties.

6. Upon receiving a scheduling inquiry concerning a proposed time for a hearing, deposition, meeting, or other proceeding, Attorneys shall promptly agree to the proposal or offer a counter suggestion that is as close in time as is reasonably possible. When scheduling changes are absolutely necessary and requested due to professional or family commitments or emergencies, Attorneys shall cooperate with each other in agreeing to calendar changes when rescheduling will not have a material adverse effect on the rights of the client.

7. Reasonable extensions of time should be granted where such extensions will not have a material adverse effect on the rights of the client or result in undue delay (e.g., permitting a deadline for a response to discovery to be extended or not objecting to a first-time motion for extension of time in which to file an appellate brief or reply etc.).

II. Conduct toward the Court, Attorneys, and Other Participants

1. Attorneys shall refrain from disrespectful and disruptive behavior towards the Court and likewise refrain from rude and offensive behavior towards opposing counsel, parties, and witnesses.

2. Attorneys shall abide by the spirit and letter of all rulings of the Court and instruct their clients to do the same.

3. Attorneys shall be, and shall impress upon their clients and witnesses the need to be, courteous and respectful towards the Court, opposing counsel, parties, and witnesses.

4. Attorneys shall make an effort to explain to non-party witnesses the purpose of their required attendance at depositions, hearings, or trials. Absent compelling circumstances, Attorneys shall give adequate notice to non-party witnesses before the scheduling of their depositions and make a reasonable effort when possible to provide advance notice of a subpoena for a deposition, hearing, or trial. Attorneys shall, when possible, accommodate the schedules of non-party witnesses when scheduling their appearance and promptly notify them of any cancellations.

5. Attorneys shall act and speak civilly to courtroom deputies, clerks, court reporters, judicial assistants, and other court personnel and recognize that they are an integral part of the judicial system. Attorneys shall be selective in inquiries posed to judicial assistants to avoid wasting their time. Attorneys shall endeavor to be knowledgeable about the Court administrative orders, local rules, and each Judge's published or posted practices and procedures.

6. Attorney shall endeavor to operate under these Standards when dealing with unrepresented litigants.

III. Candor and Fairness to the Court, Counsel, and Others

1. In all matters litigation or not, Attorneys shall not knowingly misstate, misrepresent, or distort any fact or legal authority to the Court or to counsel for any party to the action. Further, if this occurs unintentionally and is later discovered, it shall immediately be disclosed or otherwise corrected.

2. Attorneys shall notify opposing counsel of all oral or written communications with the Court or other tribunal, except those involving only scheduling matters. Attorneys shall simultaneously provide to counsel for each party to the action by substantially similar mode of delivery, copies of any submissions, correspondence, memoranda or law, case law, etc. to the Court (e.g., if a memorandum of law is hand-delivered to the Court, a copy shall simultaneously either be hand-delivered or faxed to each party). If the Court requests the parties to submit a proposed order, written closing argument, or statement of a party's legal position, unless otherwise specified by the Court, the submission shall be in

the form of a pleading, memoranda, or proposed order and not in the form of a letter.

3. Attorneys shall draft proposed orders promptly, and the orders shall fairly and adequately represent the ruling of the Court. Attorneys shall promptly provide, either orally or in writing, proposed orders to counsel for each party to the action for approval. Any objections to entry of the proposed order shall promptly be communicated. The drafting Attorney shall clearly advise the Court as to whether or not the proposed order has been approved by opposing counsel.

4. In drafting agreements and other documents, Attorneys shall use their knowledge, training, skill, and integrity to ensure that the agreements and documents fairly reflect the true intent of the parties. Where revisions are made to an agreement or other document, Attorneys shall point out or otherwise highlight any such additions, deletions, or modifications to counsel for each party to the action.

IV. Efficient Administration of Justice

1. Attorneys shall not use the Court system for the primary purpose of harassing, embarrassing, causing needless duplication of effort, or causing an adversary to incur unnecessary expenses.

2. Attorneys shall endeavor to stipulate to all facts and legal authority not reasonably in dispute.

3. Attorneys shall encourage principled negotiations and efficient resolution of disputes on their merits.

4. Attorneys shall make a good faith effort to contact counsel for each party to the action prior to filing and upon receiving a motion to determine, first, whether the matter can be resolved without the necessity of Court hearing, or second, whether there are any matters raised to which all parties can stipulate. Adequate communication between Attorneys may alleviate the need for filing a motion and may allow entry of an agreed upon order in lieu of hearing. Adequate communication may further serve to narrow the issues that need to be litigated and reduce the amount of hearing time necessary to resolve a matter.

5. Attorneys shall promptly notify the Court or other tribunal of any resolution between parties that renders a scheduled Court appearance unnecessary or otherwise moot.

6. Attorneys shall notify counsel for each party to the action and the Court of a scheduling conflict and make efforts to ensure that others impacted by a scheduling conflict are notified as soon as it becomes apparent. Further, Attorneys shall cooperate with one another regarding all reasonable rescheduling requests that do not prejudice their clients or unduly delay a proceeding.

V. Courtroom Decorum

1. When appearing in Court, unless excused by the presiding Judge, it is expected that the Attorneys shall stand when Court is opened, recessed, or adjourned; when addressing, or being addressed by the Court; and when the jury enters or retires from the courtroom.

2. When making opening statements, closing arguments, or examining witnesses, Attorneys shall not approach either the jury or the witness without the Court's permission. Attorneys shall remain at the lectern unless using exhibits or charts.

3. Attorneys shall address all remarks to the Court and not to opposing counsel or the opposing party.

4. Attorneys shall avoid making disparaging personal remarks or showing acrimony toward opposing counsel and remain detached from any ill feeling between the litigants or witnesses.

5. Attorneys shall refer to all persons (including witnesses, other counsel, and the parties) by their surnames and not by their first or given names unless the permission of the Court is sought in advance.

6. Unless the court grants permission, only one Attorney for each party shall conduct the direct examination or cross examination each witness. The Attorney stating objections, if any, during direct examination, shall be the Attorney recognized for cross examination.

7. Attorneys shall request permission before approaching the bench. Any documents counsel wishes to have the Court examine should be handed to the clerk. 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 during examination. Any exhibit offered in evidence should, at the time of such offer, be handed to opposing counsel.

8. Attorneys shall not hold or place in any position in the courtroom that would allow the jury to see, any exhibit, whether marked for identification or not, unless the exhibit has been admitted into evidence and permission to publish the exhibit to the jury has been obtained from the Court.

9. In making objections, Attorneys shall state only the legal grounds for the objection, withholding all further comment or argument unless elaboration is requested by the Court. In examining witnesses, Attorneys questions should not be echoing the witness's response.

10. Attorneys shall make all offers of settlement or requests for a stipulation privately and not within the hearing of the jury.

11. In opening statements and in arguments to the jury, Attorneys shall not express personal knowledge or opinions concerning any matter in issue.

12. It is inappropriate for any person present in Court to make gestures, facial expressions, a nodding or shaking of the head, outbursts, audible comments or the like manifesting approval or disapproval of witness testimony or whatever else is occurring during Court proceedings. Attorneys certainly shall not engage in this type of conduct and shall instruct their clients not to engage in this type of behavior. Attorneys shall further endeavor to inform those observers appearing supportively for their client or witness not to engage in this type of behavior. This behavior is strictly prohibited.

13. Attorneys shall refrain from making re-argument after the Court has ruled.

14. Attorneys shall ensure that their clients are adequately informed of any settlement proposals.

15. Attorneys shall cooperate with counsel for each party to the action during trials and evidentiary hearings by disclosing the identities of all witnesses reasonably expected to be called and the length of time needed to present their entire case. Attorneys should cooperate with a request to call a witness out of turn when the circumstances justify it, unless a client's material rights would be adversely affected.

16. In the courtroom, Attorneys shall not use tobacco in any form, chew gum, or bring bottles, beverage containers, paper cups, or edibles, except as permitted by the Court.

17. Attorneys shall turn off or place in silent mode all cell phones and pagers. Attorneys shall further turn off or mute the audio of any computers brought into or used in Court, unless specifically permitted by the Court as part of the proceedings.

Committee notes:

Section I. 3. Producing requested discovery documents in the middle of one of several boxes of unindexed, unorganized materials with no clue or annotation may be obstructionist or vexatious. Any misleading response obscuring the existence of discoverable material, of course, should as well be deterred. It would be in the interest of professionalism to deter both the “needle in the haystack” document production and a response to discovery calculated to mislead.

Section III. 1. See Boca Burger, Inc v. Forum, 912 So.2d 561 (Fla. 2005).