GUIDELINES FOR PROFESSIONAL CONDUCT BY THE TRIAL SECTION OF THE FLORIDA BAR [ALL-IN-ONE DOCUMENT]

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FOREWORD

In 1993, the **Executive Council of the Trial Lawyers Section of The Florida Bar** (which represented 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 and 2008 editions of the Guidelines were the result of that effort, and the Section has updated and revised those editions. These revised Guidelines are promulgated by the Trial Lawyers Section of **The Florida Bar**. It is hoped that dissemination of these revised 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 2017 edition supersedes 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.

SECTION 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 (whether orally or in writing) 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 any 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, and whether in or out of court, 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 in accordance with these Guidelines.

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.

SECTION 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. And unless there is an extraordinary circumstance to unilaterally schedule a deposition, hearing or other proceeding, attorneys should not unilaterally schedule any depositions, hearings or other proceedings,

2. On receipt of 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. As soon as they become apparent to the lawyer or the lawyer's office, a lawyer should call to the attention of those affected, including the opposing lawyer, court or tribunal, potential scheduling conflicts or problems, and the lawyer should not wait until the eve of the conflicted date to notify the opposing lawyer, court or tribunal of the conflict.

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 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. 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, and unless the Court or rules of procedure require a motion and order as to the requested extension, counsel should agree to extensions of time via email or other correspondence to create efficient and cost effective litigation, and to avoid unnecessary motion practice.

10. A lawyer should advise clients against the strategy of not granting time extensions for the sake of appearing "tough."

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

12. 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.

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

14. Attorneys should promptly notify the court or other tribunal of any resolution between parties that renders a scheduled court appearance unnecessary or otherwise moot.

15. A lawyer should not impose arbitrary or unreasonable deadlines for action by others.

SECTION C | SERVICE OF PAPERS

1. For purposes of serving counsel with "papers" (i.e. written documents filed or served in case) in accordance with the rules of procedure and judicial administration, attorneys should maintain at all times, and provide opposing counsel with, an active email address, facsimile number, and mailing address, and attorneys should not tum off or deactivate their email or facsimile equipment/systems.

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

1. Copies of any submissions to the court (i.e. correspondence, proposed orders, filings, memoranda of law, case law, or anything else that is being provided to the court) should be emailed to opposing counsel at the same time that the submission is being sent to the Court. By way of example, if the submission is being submitted to the court via email or via facsimile, attorneys should email a copy of the entire submission to opposing counsel at the same time the email or facsimile is being sent to the court. If the submission is being provided to the court in hard copy form via hand delivery, federal express or U.S. mail, attorneys should email a copy of the entire submission to opposing counsel at the same time the hard copy submission leaves the attorney's office.

2. Papers, including memoranda of law, case law, or any other authority that attorneys may be relying upon for any court appearance or hearing, should not be provided to opposing counsel immediately before any court appearance or hearing, unless the proponent agrees to give opposing counsel reasonable time before the court appearance or hearing to review the legal authorities.

3. Neither written submissions nor oral presentations should disparage the intelligence, ethics, morals, integrity, or personal behavior of one's adversary or judge, unless those characteristics or actions are directly and necessarily in issue that must be included in the written submission or oral presentation to the court.

SECTION E | COMMUNICATION WITH ADVERSARIES

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

2. Letters or email 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, or unless the communications are relevant for purposes of attaching to certain filings, letters or email, between counsel should not be sent to judges.

4. Written or oral requests to opposing counsel for an immediate response as to a pending litigation matter should not be made to take advantage of an opposing counsel's known absence from the office or at a time or in a manner designed to inconvenience opposing counsel, such as after hours, weekends, or on secular or religious holidays

5. Counsel should also make themselves reasonably available for purposes of engaging in telephone meet and confer conferences that may be required by any rule or procedure, local rule, or court procedure.

SECTION F | DEPOSITIONS

1. Depositions should be taken only when actually needed to ascertain relevant facts or information that is reasonably calculated to lead to the discovery of admissible evidence, or to perpetuate testimony evidence. Depositions never should be used as a means of harassment or to generate expense. For example, unless a rule of procedure or court limits the length of time for a deposition to be taken, the length of time for depositions should be limited to as much time as is reasonably needed by counsel to take the deposition, and counsel should refrain from taking long depositions for the sole purpose of harassing the deponent or to generate expense.

2. When scheduling dates and times of 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, and counsel should also be courteous to not only opposing counsel and the deponent, but also to the court reporter, and counsel should be courteous when handing exhibits to the deponent and opposing counsel.

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, only the underlying legal basis for the objection should be stated and nothing more (i.e. counsel should not coach the witness or suggest any answers).

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.

11. Attorneys should not state on the deposition record events that are not accurately taking place in the deposition. For example, counsel should not state on the record that an opposing counsel, party, or deponent is raising his or her voice or making inappropriate face gestures, or the like, if in fact the opposing counsel, party, or deponent is not raising his or her voice or making inappropriate face gestures, or the like, during the deposition.

SECTION 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, and instead the document demands should be tailored to be reasonably calculated to lead to the discovery of admissible evidence

4. After becoming aware that an action has been initiated or likely to be 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.

5. In order to accommodate opposing counsel, attorneys should provide their opposing counsel with copies of their requests for documents in word.doc or WordPerfect format (or the like) so that their opposing counsel does not need to re-type the requests for documents in their response (if they so choose)

6. When producing documents, and subject to the rules of procedure, documents should be made available to opposing counsel in the most cost effective and efficient manner possible. For example, if documents can be produced in electronic format, they should be produced in that format instead of producing the documents in hard copy format or instead of having the opposing counsel or party search through original documents to find and duplicate the responsive documents.

7. Attorneys should ensure that responses to reasonable discovery requests are timely, organized, complete and consistent with the obvious intent of the request. Attorneys should not produce documents in a way calculated to hide or obscure the existence of documents. A response to a request to produce should refer to each of the items in the request and the responsive documents should be

produced as they correspond to each request or as they are kept in the usual course of business.

8. Objections to the document demands should be based on a good faith belief and not be made for the purpose of withholding relevant information. If a document demand is objectionable only in part, the unobjectionable documents should be produced.

SECTION 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. Instead the interrogatories should be tailored to be reasonably calculated to lead to the discovery of admissible evidence.

4. In order to accommodate opposing counsel, attorneys should provide opposing counsel with copies of their interrogatories in word.doc or WordPerfect format (or the like) so that their opposing counsel does not need to re-type the interrogatories in their response (if they so choose)

SECTION 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, and if the court ruled orally in open court, counsel should not disagree with the language of a proposed order for the sole purpose of re-arguing the matter before the court.

4. Before submitting a proposed order to the court, attorneys should provide the proposed order to opposing counsel in word.doc or WordPerfect format (or the like) for their review, approval, or proposed redline edits. Opposing counsel should then promptly provide counsel with either their approval of the proposed order or their proposed redline edits to the proposed order. If there is an agreement to the form of the proposed order, counsel should advise the court of the same when submitting the proposed order to the court. If counsel cannot agree on the form of the proposed order, counsel should immediately submit copies of both competing proposed orders for the court's consideration.

SECTION J | EX PARTE COMMUNICATIONS WITH COURTS AND OTHERS

1. A lawyer should avoid ex parte communication 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.

SECTION K | SETTLEMENT AND ALTERNATIVE DISPUTE RESOLUTION

1. An attorney should raise and explore the issue of settlement in every case as is in the best interests of his or her client.

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.

SECTION 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 of witnesses, duration of witnesses anticipated to be called that day and the following day, and the order in which they will be called to testify, 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, and an attorney should not object during opening or closing statements, or during the questioning of witnesses, for the sole purpose of disrupting opposing party's trial presentation.

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.

12. In regard to trial exhibits, a lawyer should make a reasonably good-faith effort to identify those exhibits that the lawyer believes will be proffered into evidence.

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

14. A lawyer should stipulate all facts and principles of law which are not in dispute.

APPENDIX

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