IN THE TWELFTH JUDICIAL CIRCUIT COURT FOR DESOTO, MANATEE AND SARASOTA COUNTIES, FLORIDA

Administrative Order: 2010-22.2
(Rescinding and Superseding
Administrative Order 99-04.2)

IN RE: STANDARDS OF PROFESSIONALISM

_____/

WHEREAS, in May 1990 the Board of Governors of The Florida Bar approved guidelines known as the Ideals and Goals of Professionalism, and in 1994, the Executive Council of the Trial Lawyers Section of The Florida Bar approved Guidelines for Professional Conduct, which were endorsed by the Florida Conference of Circuit Judges in September 1995; and,

WHEREAS, in 1998, the Directors of the Sarasota County, Manatee County, DeSoto County and Venice-Englewood Bar Associations approved Standards of Professional Courtesy, to educate attorneys about customary practices in the Twelfth Judicial Circuit, and these Standards were endorsed by the judges of the Twelfth Judicial Circuit; and,

WHEREAS, in 2009, the Twelfth Circuit Professionalism Committee reviewed these Standards and compiled revisions to the Standards of Professionalism; and,

WHEREAS, in 2010, these Standards of Professionalism, as revised, have been endorsed and adopted by the voluntary bar associations of the Twelfth Judicial Circuit, and are approved by the judges, magistrates, and hearing officers of this Circuit, who expect professionalism from all attorneys practicing in this Circuit;

WHEREFORE, the Twelfth Judicial Circuit hereby adopts the Standards of Professionalism, as revised. All attorneys practicing in this Circuit shall be familiar with and shall comply with these Standards. Copies of the Standards of Professionalism and the Twelfth Circuit Peer Review Program guidelines may be accessed on the websites of the Sarasota County Bar Association at www.sarasotabar.com, the Manatee County Bar Association at www.manateebar.com, and the Twelfth Judicial Circuit at www.jud12.flcourts.org.

DONE AND ORDERED in Chambers in Sarasota County, Florida, this 20 day of October, 2010.

LEE E. HAWORTH
CHIEF JUDGE

Distribution list:

Original to: Clerk of Court, Sarasota County

Copies to: Judges of the Twelfth Judicial Circuit
Walt Smith, Court Administrator, Twelfth Judicial Circuit
Clerk of Court, Manatee County
Clerk of Court, DeSoto County
Sarasota County Bar Association
Manatee County Bar Association

STANDARDS OF PROFESSIONALISM

PREAMBLE

The following standards of professionalism describe the conduct preferred and expected by attorneys practicing in the Twelfth Judicial Circuit. The standards are not meant to be exhaustive, but are intended to set a tone or guide for conduct. The practice of law is a privilege, not a right. In exercising this privilege, attorneys must not pursue victory at the expense of justice nor at the risk of loss of reputation for honesty and professionalism. Clients are best represented by attorneys who exhibit professional conduct at all times and, as such, attorneys must work to enhance communication, respect, honesty, and courtesy among members of the Bar and in their daily interaction with the judiciary, other attorneys, clients, witnesses and the public.

For most attorneys, these standards will simply reflect their current practice. However, it is hoped that the widespread dissemination and implementation of these standards will result in an overall increase in the level of professionalism of attorneys practicing law in the Twelfth Judicial Circuit. The hope is that these standards will give direction to attorneys, judges, magistrates and hearing officers as to the manner in which attorneys should conduct themselves in all phases of practice.

Every attorney practicing law or appearing in judicial proceedings within the Twelfth Judicial Circuit is expected to be entirely familiar with, and practice according to, these standards of professionalism, The Rules of Professional Conduct of the Rules Regulating The Florida Bar, The Florida Bar Trial Lawyers Section Guidelines for Professional Conduct, The Handbook of Discovery Practice published by The Florida Bar, the Local Rules of the Twelfth Judicial Circuit, and the Twelfth Judicial Circuit Peer Review Program.

These standards of professionalism are intended to be followed in coordination with the Peer Review Program of the Twelfth Judicial Circuit. The Peer Review Program is intended to be an educational, voluntary, informal, and nonpunitive program designed to correct and enhance behavioral performance. Participation in the Peer Review Program is strongly encouraged in the Twelfth Judicial Circuit.

These standards have received the approval of the voluntary bar associations of the Twelfth Judicial Circuit and have been endorsed by the judges, magistrates and hearing officers of the Twelfth Judicial Circuit who expect professional conduct by all attorneys who appear and practice in this circuit. By his or her appearance or practice in the Twelfth Judicial Circuit, each attorney so appearing or practicing shall be deemed, by that appearance or practice, to certify his or her familiarity with these standards and all documents referred to within the standards.

A. SCHEDULING, CONTINUANCES AND EXTENSIONS OF TIME

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

2. An attorney 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 attorney. Further, attorneys should cooperate with one another regarding all reasonable rescheduling, cancellations, extensions and postponement requests that do not prejudice the client or unduly delay a proceeding.

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

4. Attorneys should endeavor to provide opposing attorneys, parties, witnesses, and other affected persons sufficient notice of depositions, hearings and other proceedings, except upon agreement of attorney, in an emergency, or in other circumstances compelling more expedited scheduling. As a general rule, actual notice should be given that is no less than five (5) business days for in-state depositions, ten (10) business days for out-of-state depositions, and five (5) business days for hearings.

5. Attorneys should communicate with opposing attorneys prior to scheduling depositions, hearings and other proceedings so as to schedule them at times that are mutually convenient for all interested persons. In scheduling depositions upon oral examination, an attorney should allow enough time to permit the conclusion of the deposition, including examination by all parties, without adjournment. In scheduling hearings, attorneys should note on their notice of hearing(s) whether or not the time has been cleared with the opposing attorney and, if not, include a brief statement indicating why the matter has not been cleared. Further, sufficient time should be reserved to permit a complete presentation by attorneys for all parties. Attorneys should not add on or "piggyback" motions without notification to the opponent and without clearing the additional motion with the court.

6. The first request for a reasonable extension of time to respond to a litigation deadline, whether related to pleadings, discovery or motions, should ordinarily be granted between attorneys as a matter of courtesy when such an extension will not prejudice the client, unduly delay a proceeding or when time is not of the essence.

7. After a first extension, any additional requests for time should be dealt with by balancing the need for expediency against the deference one should ordinarily give to an adversary, and whether it is likely a court would grant the extension if asked to do so.

8. An attorney should not request rescheduling, cancellations, extensions or postponements without legitimate reasons and never solely for the purpose of delay or obtaining an unfair advantage.

9. An attorney should always notify the opposing attorney of dates and times obtained from the court for future hearings on the same day that the hearing date is obtained from the court.

10. Attorneys should not file a notice of hearing regarding any motion or objection without the motion or objection having either previously been filed or been filed contemporaneously with the notice of hearing.

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

B. SERVICE OF PAPERS

1. 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 on the day preceding a secular or religious holiday.

2. Service should be made personally, by courtesy copy, or by facsimile or email transmission when it is likely that service by mail, even when permissible, will prejudice the opposing party or will not provide the opposing party with a reasonable time to respond.

3. Papers and memoranda of law should not be served at court appearances without advance notice to the opposing attorney and should not be served so close to a court appearance as to inhibit the ability of the opposing attorney to prepare for that appearance or to respond to the papers. Should an attorney do so, the court is urged to take appropriate action in response, including continuing the matter to allow the opposing attorney to prepare and respond.

C. COMMUNICATION WITH ADVERSARIES

1. Attorneys should at all times be civil and courteous in communicating with adversaries, whether in writing or orally. Attorneys should refrain from disparaging personal remarks or acrimony toward the opposing attorney and should not be influenced by ill feelings or anger between clients in their conduct, attitude or demeanor toward the opposing attorney.

2. 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.

3. Attorneys should not attach to a pleading or send a copy of any communication with opposing attorneys to the court unless reasonably necessary under the circumstances of the pending matter or otherwise requested by the court.

4. Attorneys should adhere strictly to all expressed promises to and agreements with opposing attorneys, whether oral or in writing, and should adhere in good faith to all agreements implied by the circumstances or by local custom.

5. During the course of representing a client, attorneys should not communicate directly or indirectly on the subject of the representation with a party who is known to be represented by an attorney with regard to the subject matter without the prior consent of the attorney representing such other party unless authorized by law to do so.

6. Attorneys should promptly respond to telephone calls, letters or emails from an opposing attorney.

7. Attorneys should not knowingly make statements of fact or law that are untrue.

D. COMMUNICATION WITH THE COURT

1. 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.

2. Attorneys should avoid ex parte communication about a pending case with the judge, magistrate or hearing officer before whom such case is pending.

3. Even where applicable laws or rules permit an ex parte application to or communication with the court, attorneys should make diligent efforts to notify the opposing party or the attorney known to represent the opposing party in order to permit the opposing party to be represented in connection with the application or communication. Attorneys should not make such application or communication unless there is a bona fide emergency and the client will be materially prejudiced if the application or communication is made on regular notice.

4. Attorneys should notify the opposing attorneys of all oral or written communications with the court or other tribunal, except those involving only scheduling matters. In instances where time is of the essence (i.e., consistent with the policy of Section B.2 herein), copies of any submissions to the court (such as correspondence, memoranda of law, case law, etc.) should simultaneously be provided to the opposing attorney by substantially the same method of delivery by which they are provided to the court.

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

6. Attorneys should draft stipulations, proposed orders and other documents properly so as to fairly reflect the true intent of the parties or the ruling(s) of the court.

E. DISCOVERY

1. General

(a) Attorneys should pursue discovery requests that are reasonably related to the matter at issue. Attorneys should not use discovery for the purposes of causing undue delay, obtaining an unfair advantage, or harassing, embarrassing, or causing the adversary to incur unnecessary expenses.

(b) Attorneys should ensure that responses to reasonable discovery requests are timely, organized, complete, and consistent with the obvious intent of the parties.

(c) Before filing a discovery-related motion, the attorney for the moving party shall confer or make a reasonable good faith effort to confer with the attorney for the opposing party in a good faith effort to resolve the issues raised. When a motion is filed, a statement certifying that the attorney has conferred with the opposing attorney and that they have been unable to resolve the dispute shall also be filed.

(d) Motions to compel discovery shall quote in full each interrogatory, question on deposition, request for admission, or request for production to which the motion is addressed and the objection and grounds given by the opposing party.

(e) Attorneys shall file motions for protective orders as soon as possible and notice them for hearing as soon as practicable. Absent an agreement or court order, a deposition shall not be deemed canceled due to the pending motion.

2. Depositions

(a) Attorneys should not engage in any conduct during a deposition that would not be allowed in the presence of a judicial officer.

(b) While a question is pending, an attorney should not, through objections or otherwise, coach the deponent or suggest answers. Should any attorney 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.

(c) Attorneys defending at depositions should limit objections to those that are well founded and permitted by the Rules of Civil Procedure or applicable case law. Attorneys 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, attorneys 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 be stated succinctly and only the necessary grounds should be stated. Attorneys should refrain from self-serving speeches during depositions.

(d) Attorneys should not conduct questioning in a manner intended to harass the witness by repeating questions after they have been answered, by raising the questioner's voice, by pointing at or standing over the witness, or by appearing angry at the witness.

(e) Attorneys should not interrupt the answer of the witness once the question has been asked merely because the answer is not the one that the attorney was seeking, or the answer is not responsive to the question. The witness should be allowed to finish his or her answer.

(f) Attorneys should arrive timely to the scheduled deposition and be respectful and mindful of the other participants' time and/or time constraints.

3. Document Demands

(a) In responding to document demands, attorneys should not strain to interpret the request in an artificially restrictive manner just to avoid disclosure.

(b) Attorneys should not produce documents in a disorganized or unintelligible fashion or in a way calculated to hide or obscure the existence of other relevant documents.

(c) Document production should not be delayed to prevent opposing attorneys from inspecting documents prior to scheduled depositions or for an improper tactical reason.

4. Interrogatories

(a) Interrogatories should not be read by attorneys in a strained or an artificial manner designed to assure that answers are not truly responsive.

(b) Interrogatories should be answered by the party and not solely by the party's attorney.

(c) 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.

F. MOTIONS

1. Attorneys should, whenever possible, prior to filing or upon receiving a motion, contact the opposing attorney to determine if the matter can be resolved in whole or in part. This may alleviate the need for filing the motion or allow submission of an agreed order in lieu of a hearing.

2. Before setting a motion for hearing, an attorney should make a reasonable effort to resolve the issue with opposing attorneys.

3. An attorney should not force his or her adversary to make a motion and then not oppose it.

4. 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 proposed orders to the opposing attorney for approval prior to submitting them to the court. The opposing attorney should then promptly communicate any objections to the proposed order. Thereafter, 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 the opposing attorney. The proposed order must fairly and adequately represent the ruling of the court.

5. Attorneys should not submit controverted orders to the court with a copy to the opposing attorney for "objections within ___ days." Courts prefer to know that the order is either agreed upon or opposed.

6. Attorneys should not use post-hearing submissions of proposed orders as a guise to re-argue the merits of the matter.

G. CONDUCT TOWARD ATTORNEYS, THE COURT AND PARTICIPANTS

1. Attorneys should refrain from criticizing or denigrating the court, opposing attorneys, parties or witnesses before their clients, the public or the media, as it brings dishonor to the profession.

2. Attorneys should respect and abide by the spirit and letter of all rulings of the court.

3. Attorneys should be, and should impress upon their clients and witnesses to be, courteous and respectful. No one should be rude or disruptive with the court, opposing attorney, parties, witnesses or court staff.

4. Attorneys should make an effort to explain to witnesses the purpose of their required attendance at depositions, hearings or trials. Attorneys should further attempt to accommodate the schedules of witnesses when setting or resetting their appearance and promptly notify them of any cancellations or postponements.

H. TRIAL CONDUCT AND COURTROOM DECORUM

1. Attorneys should be punctual and prepared for any court appearance.

2. Attorneys should stand when court is opened, recessed or adjourned and when the jury enters or retires from the courtroom. Unless directed by the court to remain seated, attorneys should stand when addressing or being addressed by the court.

3. Attorneys should refer to all adult persons, including witnesses, other attorneys, and the parties by their surnames and not by their first or given names.

4. Attorneys should request permission before approaching the bench. Any documents an attorney wishes to have the court examine should be handed to the clerk or bailiff.

5. In making objections, attorneys should not make speaking objections and should only state the legal grounds for the objection. Any further comment should be withheld unless elaboration is requested by the court.

6. Attorneys should address objections, requests or observations to the court, not to the opposing attorney. In other words, attorneys should not engage in undignified or discourteous conduct which is degrading to court procedure.

7. Attorneys should examine jurors and witnesses from a suitable distance. Attorneys should not crowd or lean over the witness or jury and should avoid blocking the opposing attorney's view of the witness.

8. 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 the opposing attorney.

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

10. Attorneys shall admonish all persons at counsel table that gestures, facial expressions, audible comments, or manifestations of approval or disapproval during the testimony of a witness or at any other time is prohibited.

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

12. Attorneys should not mark or alter exhibits, charts, graphs or other diagrams without the opposing attorney's knowledge or leave of court.

13. An attorney's word should be his or her bond. Attorneys should not knowingly misstate, distort or improperly exaggerate any fact or opinion and should not improperly permit the attorney's silence or inaction to mislead anyone.

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

15. In non-criminal cases, attorneys should stipulate to all facts and principles of law which are not in dispute.

16. Attorneys should agree to reasonable requests for waivers of procedural formalities when the client's legitimate interests are not adversely impacted.

17. In opening statements and in arguments to the jury, attorneys should not express personal knowledge or opinion concerning any matter at issue.

18. In appearing in his or her professional capacity before a tribunal, an attorney 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 or that is intended to degrade a witness or other person; (c) assert one's personal knowledge of the facts at 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 attorney's analysis of the evidence, for any position or conclusion with respect to the matter or matters stated herein.

19. Attorneys 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.

I. EFFICIENT ADMINISTRATION

1. Attorneys should refrain from actions intended primarily to harass or embarrass and should refrain from actions which cause unnecessary expense or delay.

2. Attorneys should, whenever appropriate, stipulate to all facts and legal authority not reasonably in dispute.

3. Attorneys should encourage and engage in principled negotiations and efficient resolution of disputes on their merits.

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

5. In every case, attorneys 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.

J. TRANSACTIONAL

1. An attorney should use boilerplate contract provisions only if they apply to the subject of the document.

2. If an attorney modifies a document, the attorney should clearly identify the change(s) and bring it (them) to the attention of other involved attorneys.

3. An attorney should avoid negotiating tactics that are abusive, that are not made in good faith, that threaten inappropriate legal action, that are not premised on truth, that set arbitrary deadlines, that are intended solely to gain an unfair advantage or to take unfair advantage of a superior bargaining

position, that do not accurately reflect the client's wishes, or that do not accurately reflect previous oral agreements.

4. An attorney should not prepare a document that is intended to circumvent or violate applicable laws or rules.