Pam Vergara
CIRCUIT COURT JUDGE
FIFTH JUDICIAL CIRCUIT of FLORIDA
Hernando County Courthouse
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Brooksville, FL 34601

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
HERNANDO COUNTY, FLORIDA

STANDARDS OF PROFESSIONAL COURTESY AND CONDUCT FOR LAWYERS FOR THE HONORABLE PAM VERGARA CIRCUIT CIVIL DIVISION

Effective Jan. 5th, 2021

In accordance with Florida Rule of Judicial Administration 2.215(e), these Standards of Professional Courtesy and Conduct are hereby adopted and apply to all attorneys practicing law before the Honorable Pam Vergara in the Fifth Judicial Circuit.

A. Interpretation

i. The purpose of this local rule is to establish standards of professional conduct and courtesy for all lawyers appearing in the Fifth Judicial Circuit, consistent with local custom and the laws and rules governing the practice of law.

ii. Nothing in this local rule will be interpreted to supersede, modify or amend any statute, rule of practice or procedure adopted by the Florida Supreme Court, the Rules Regulating the Florida Bar, the Florida Rules of Professional Conduct, the Florida Bar's Professionalism Expectations, or judicial decisions governing the practice of law, all of which govern to the extent of any inconsistency with this local rule.

iii. Where a provision restates an obligation provided for in the Rules of Professional Conduct, the Florida Bar's Professionalism Expectations or the Guidelines for Professional Conduct adopted by the Trial Lawyers Section of the Florida Bar, a citation to the appropriate provision is noted. Where a provision is coextensive with a lawyer's ethical duty, the provision is stated as an imperative, cast in the terms of "must" or "must not." Where a provision is drawn from a professional custom that is not directly provided for in the Rules Regulating the Florida Bar, the provision is stated as a recommendation of correct action, cast in terms of "should" or "should not."

B. Enforcement

i. Lawyers appearing before the court must adhere to the Rules Regulating the Florida Bar, the Creed of Professionalism, the Florida Bar's Professionalism Expectations, and administrative orders of the court governing division specific practice requirements.

ii. A judge may refer an attorney to either the local professionalism panel or The Florida Bar, depending on the severity, for a violation of this rule.

iii. Each judge may announce and enforce additional requirements or may excuse compliance with any provision(s) of this local rule the judge deems appropriate.

C. Conduct and Communications Toward Other Attorneys, the Court and Participants

i. Candor and civility must be used in all oral and written communications, Lawyers must avoid disparaging personal remarks or acrimony toward opposing parties, opposing counsel, third parties, witnesses or the court. (See R. Regulating Fla. Bar 4-8.4(c); Fla. Bar Professionalism Expectation 2.2, 2.3).

ii. Lawyers should impress upon their clients and witnesses to be, courteous and respectful to opposing counsel, opposing parties, witnesses or the court.

iii. Lawyers, and non-lawyer personnel under their supervision, must avoid substantive ex parte communications in a pending case with a presiding judge and must notify opposing counsel of all communications with the court, except those that involve only scheduling or clerical matters, but motions that properly seek ex parte relief under applicable law, and related communications with the court, are permitted. (See R. Regulating Fla. Bar 4-3.5; Fla. Bar Professionalism Expectation 3.5).

iv. Lawyers should not show marked attention or unusual informality to any presiding judge, except if outside of court and supported by a personal relationship.

v. Lawyers should avoid any conduct calculated to gain, or having the appearance of gaining, special consideration or favor from a presiding judge.

vi. Lawyers must provide opposing counsel with a copy of any document or written communication submitted to the court contemporaneously or sufficiently in advance of any related hearing to avoid any prejudice or delay to the opposing party. (Fla. Bar Professionalism Expectation 2.4, 3.6).

vii. Lawyers must not knowingly misstate, misrepresent, distort, or exaggerate any fact, opinion, or legal authority to the court, to opposing counsel, or to any party or person connected with the proceeding and must not mislead by inaction or silence. Further, the discovery of additional evidence or unintentional misrepresentations must immediately be disclosed or otherwise corrected. (See R. Regulating Fla. Bar 4-3.3, 4-8.4; Fla. Bar Professionalism Expectation 2.10).

viii. A lawyer should not write letters 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.

ix. Letters to one's adversary intended only to make a record should be used sparingly and only when necessary under all the circumstances.

x. Unless specifically permitted or invited by the court, copies of letters between counsel should not be sent to the presiding judge except in connection with a motion or other request for relief from the court.

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

xii. A lawyer should explain to witnesses the purpose of their required attendance at depositions, hearings or trials, attempt to accommodate the schedules of witnesses when setting or resetting their appearance, and promptly notify them of any cancellations.

xiii. A lawyer must not threaten opposing parties with sanctions, disciplinary complaints, criminal charges, or additional litigation to gain a tactical advantage. (Fla. Bar Professionalism Expectation 3.18).

D. Scheduling

i. A lawyer should not make scheduling decisions that limit opposing counsel's ability to prepare or respond. (Fla. Bar Professionalism Expectation 3.2).

ii. Except in emergencies, lawyers should provide opposing counsel, parties, witnesses, and other affected persons, sufficient notice of depositions, hearings and other proceedings. Generally, in cases other than criminal cases, notice should be provided (not including time for service) no less than 5 business days for in-state depositions, 10 business days for out-of-state depositions and 5 business days for hearings.

iii. Except in emergencies, lawyers should make a good faith effort to communicate with opposing counsel prior to scheduling depositions, hearings and other proceedings, to schedule them at a mutually convenient time for all interested persons. Further, a sufficient time should be reserved to permit a complete presentation or examination by counsel for all parties. (Fla. Bar Professionalism Expectation 3.12).

iv. A lawyer should promptly agree to a proposed time for a hearing, deposition, meeting or other proceeding or make his or her own counter proposal of time. (Fla. Bar Professionalism Expectation 6.5).

v. Lawyers should notify opposing counsel of any hearing time reserved as soon as practicable, and promptly prepare and serve all counsel of record with notice of the hearing. (Fla. Bar Professionalism Expectation 3.13). If the lawyer has been unable to coordinate the hearing

with opposing counsel, the notice should state the specific good faith efforts the lawyer undertook to coordinate or why coordination was not obtained.

vi. A lawyer should not use hearing time obtained by opposing counsel for other motion practice (cross-noticing), without the consent of the court.

vii. A lawyer should notify opposing counsel, the court, and others affected, of scheduling conflicts as soon as they become apparent. (Fla. Bar Professionalism Expectation 6.6).

viii. A lawyer should avoid last-minute cancellations of hearings, depositions, meetings or other proceedings. (Fla. Bar Professionalism Expectation 6.7).

ix. A lawyer should promptly notify the court of any resolution between the parties that renders a scheduled court appearance unnecessary, and promptly file a notice canceling the hearing.

x. A lawyer should make requests for scheduling changes only when necessary and should not request rescheduling, cancellations, extension or postponements solely for the purpose of delay or obtaining unfair advantage.

xi. Lawyers should cooperate with one another, and should grant, all reasonable rescheduling requests that do not prejudice their clients or unduly delay a proceeding.

xii. A lawyer should grant reasonable requests by opposing counsel for extensions of time within which to respond to pleadings, discovery and other matters when such an extension will not prejudice their client or unduly delay a proceeding. (Fla. Bar Professionalism Expectation 6.4.). Generally, first requests for reasonable extensions of time should be granted as a matter of courtesy unless time is of the essence or other circumstances prohibit. (Fla. Bar Professionalism Guideline B.9).

xiii. A lawyer should not attach unfair or extraneous conditions to extensions. However, a lawyer may impose conditions required to preserve a client's rights and may seek reciprocal scheduling concessions. When considering an extension request, a lawyer should not seek to prohibit an adversary's assertion of substantive rights. (Fla. Bar Professionalism Guideline B. 13).

xiv. A lawyer should advise clients against the strategy of granting no time extensions for the sake of appearing "tough," especially when such extensions will not prejudice their client or unduly delay the proceeding. (Fla Bar Professionalism Guideline B. 11).

xv. A lawyer should not seek ex parte relief or designate a hearing as an emergency unless there is a bona fide emergency and the client will be seriously prejudiced if the application or communication is made on regular notice to the adversary.

E. Service of Documents

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

ii. Documents should not be served at court appearances without advance notice to opposing counsel and should not be served so close to a court appearance to inhibit the ability of opposing counsel to prepare for that appearance or to respond to the documents. Should a lawyer do so, the presiding judge may take appropriate action in response, including continuing the matter to allow opposing counsel to prepare and respond.

iii. Documents 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 either Friday afternoon or the day preceding a secular or religious holiday.

F. Discovery

i. Generally

a. Discovery requests should be reasonably tailored to the matter at issue. (Fla. Bar Professionalism Expectation 4.8).

b. Discovery should not be used to cause undue delay, undue burden or obtain unfair advantage. (R. Regulating Fla Bar 4-4.4; Fla. Bar Professionalism Expectation 4.7). A lawyer should not use depositions, document requests or interrogatories for the purpose of harassing or improperly burdening an adversary or to cause the adversary to incur unnecessary expense. (Fla Bar Professionalism Guideline F.1, G.3, H.3).

c. Lawyers should file motions for protective orders as soon as possible and notice them for hearing as soon as practicable. When possible, motions for protective orders should be filed sufficiently in advance of any scheduled deposition to permit the deposition to proceed should the motion be denied.

ii. Depositions

a. Depositions should be taken only when actually needed to ascertain facts or information or to perpetuate testimony. They should never be used as a means of harassment or to generate expense. (Fla. Bar Professionalism Guideline F. 1).

b. When scheduling a deposition, a lawyer should make a good faith effort to schedule enough time to complete the deposition without adjournment, unless otherwise stipulated with opposing counsel. (Fla. Bar. Professionalism Expectation 3.12; Fla. Bar Professionalism Guideline F.3).

c. Notices of deposition should accompany deposition subpoenas with copies to all counsel.

d. If the parties are unable to agree on the location for a deposition, then it is presumed that a court reporter's office or conference center (such as a hotel conference room, temporary conference facility or other similar location customarily used by court reporters), located in the same county of residence as the witness is a reasonable location if it is within 15 miles of the witnesses' residence or place of employment or if the deponent is the Plaintiff, within a 15 mile radius of the courthouse. This provision is not intended to require depositions to occur at a court reporter's office or conference facility, but only if parties cannot agree on the location. The location of depositions in criminal cases must comply with Fla. R. Crim. P. 3.220.

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

f. A lawyer should not attempt to delay a deposition for dilatory purposes. Delays should occur only if necessary to meet real scheduling problems.

g. A lawyer should not inquire into a deponent's personal affairs or finances or question a deponent's integrity where such inquiry is outside the legitimate scope of discovery for the subject matter of deposition.

h. A lawyer should not conduct questioning in a manner intended to harass the witness, such as by repeating questions after they have been answered, by raising the questioner's voice, by pointing at or standing over the witness, or by appearing angry at the witness. (Fla. Bar Professionalism Guideline F.6).

i. A lawyer should not interrupt the answer of the witness once the question has been asked because the answer is not the one that counsel was seeking or the answer is not responsive to the question. The witness should be allowed to finish his or her answer.

j. A lawyer defending a deposition should limit objections to those that are well founded and permitted by the rules of procedure or applicable case law. Most objections are preserved and need to be interposed only when the form of a question is defective or privileged information is sought. When objecting to the form of a question, counsel should simply state "I object to the form of the question." The grounds should not be stated unless asked for by the examining attorney. When the grounds are then stated they should be stated succinctly. (Fla. Bar Professionalism Guideline F.7).

k. While a question is pending, a lawyer should not, through objections or otherwise, coach the deponent or suggest answers. (Fla. Bar Professionalism Guideline F.8).

l. A lawyer should not direct a deponent to refuse to answer questions unless necessary to preserve a privilege, to enforce a limitation on evidence directed by the court, or to present a motion to terminate or limit examination. (*See* Fla. R. Civ. P. 1.310(c), Fla. R. Crim. P. 3.220(h)(l), Fla. Prob. R. 5.080(a)(4), Fla. R. Juv. P. 8.060(d)(2)(E) and 8.245(g)(2)(D), and Fla. Fam. L.R.P. 12.310(c)).

m. Lawyers should refrain from self-serving speeches during depositions. (Fla. Bar Professionalism Guideline F.9).

n. A lawyer should not engage in any conduct during a deposition that would not be allowed in the presence of a judicial officer. (Fla. Bar Professionalism Guideline F. 10).

iii. Document Requests

a. Document requests should not be so broad as to encompass documents clearly not relevant to the subject matter of the case.

b. In responding to document requests, counsel should not strain to interpret the request in an artificially restrictive manner just to avoid disclosure.

c. A lawyer 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. (Fla. Bar Professionalism Expectation 4.10).

d. Document production should not be delayed to prevent opposing counsel from inspecting documents prior to scheduled depositions or for an improper tactical reason. (Fla. Bar Professionalism Guideline G.2).

e. Where counsel obtains documents pursuant to a non-party subpoena, copies of the documents should be made available as soon as possible to the adversary upon request, at his or her expense, even if no deposition is taken or the deposition is cancelled or adjourned.

iv. Interrogatories

a. Interrogatories should not be read by lawyers 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 lawyer.

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.

G. Motion Practice

i. *See* Standing Motion Practice Order.

ii. Written briefs or memoranda should not rely on facts that are not properly part of the record. A litigant may, however, present historical, economic or sociological data, if such data appear in or are derived from generally available sources.

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

iv. Lawyers should not use post-hearing submissions of proposed orders as a means to reargue the merits of the matter.

v. Unless otherwise instructed by the court, or agreed to by counsel, all proposed orders must be provided to other counsel with a reasonable time for approval or comment before submission to the court. Opposing counsel should promptly communicate any objections to the proposed order. Thereafter, the drafting attorney should promptly submit a copy of the proposed order to the court and advise the court as to whether or not it has been approved by opposing counsel.

vi. Orders prepared by counsel must fairly and adequately represent the ruling of the court, and counsel must make a good faith effort to agree upon the form of the order prior to submitting it to the court. Attorneys should not submit controverted orders to the court with a copy to opposing counsel for "objections within 5 days." Courts prefer to know that the order is either agreed upon or opposed.

H. Trial Conduct and Courtroom Decorum

i. Lawyers should always deal with parties, counsel, witnesses, jurors or prospective jurors, court personnel and the judge with courtesy and civility and avoid undignified or discourteous conduct. (Fla. Bar Professionalism Guideline L. 1).

ii. A lawyer should not issue subpoenas to non-party witnesses except in connection with their appearance at a hearing, trial or deposition, in a good faith request for documents from a records custodian or investigative subpoenas in accordance with section 27.04, Florida Statutes.

iii. Lawyers should cooperate with each other 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, except when a client's material rights would be adversely affected. They should also cooperate with the calling of witnesses out of turn when the circumstances justify it.

iv. A lawyer should stand as court is opened, recessed or adjourned; when the jury enters or retires from the courtroom; and when addressing, or being addressed by the court.

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

vi. A lawyer should address all public remarks to the court, not to opposing counsel. (Fla. Bar Professionalism Expectation 5.9).

vii. A lawyer should refer to all adult persons, including witnesses, other counsel, and the parties by their surnames and not by their first or given names. (Fla. Bar Professionalism Expectation 5.4).

viii. Only one lawyer for each party will examine, or cross-examine each witness. The lawyer stating objections, if any, during direct examination, will be the lawyer recognized for cross-examination.

ix. A lawyer should request permission before approaching the witness or bench. Any documents counsel wishes to have the court examine should be handed to the clerk or bailiff. (Fla. Bar Professionalism Expectation 5.5).

x. When possible, a lawyer should have the clerk pre-mark potential exhibits.

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

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

xiii. Generally, in examining a witness, a lawyer should avoid repeating or echoing the answer given by the witness.

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

xv. A lawyer will admonish all persons at counsel table that gestures, facial expressions, audible comments, manifestations of approval or disapproval during the testimony of a witness, or at any other time, is prohibited. (Fla. Bar Professionalism Expectation 5.7; Fla. Bar Professionalism Guideline L.2).

xvi. A lawyer should not mark on or alter exhibits, charts, graphs and diagrams without opposing counsel's knowledge or leave of court (Fla. Bar Professionalism Expectation 3.17).

xvii. A lawyer should abstain from conduct that diverts the fact-finder's attention from the relevant facts or causes a fact-finder to reach a decision on an impermissible basis. (Fla. Bar Professionalism Expectation 5.8).

xviii. A question should not be interrupted by an objection unless the question is patently objectionable or there is reasonable ground to believe that matter is being included which cannot properly be disclosed to the jury. (Fla. Bar Professionalism Guideline L. 7).

xix. Where a judge has already made a ruling in regard to the inadmissibility of certain evidence, a lawyer should not seek to circumvent the effect of that ruling and get the evidence before the jury by repeating questions relating to the evidence in question, although he is at liberty to make a record for later proceedings of his ground for urging the admissibility of the evidence in question. This does not preclude the evidence being properlyy admitted through other means. (Fla. Bar Professionalism Guideline L.8).

xx. A lawyer should scrupulously abstain from all acts, comments and attitudes calculated to curry favor with any juror, by fawning, flattery, actual or pretended solicitude for the juror's comfort or convenience or the like. (Fla. Bar Professionalism Expectation 4.15; Fla. Bar Professionalism Guideline L.9).

xxi. A lawyer should stipulate to all facts and principles of law that are not in dispute and should promptly respond to requests for stipulations of fact or law. (Fla. Bar Professionalism Expectation 4.11).

xxii. A lawyer should accede to reasonable requests for waivers of procedural formalities when the client's legitimate interests are not adversely affected. (Fla. Bar Professionalism Expectation 4.5).

xxiii. In opening statements and in arguments to the jury, counsel should not express personal knowledge or opinion concerning any matter in issue. (Fla. Bar Professionalism Expectation 4.16).

xxiv. A lawyer should never attempt to place before a tribunal, or jury, evidence known to be clearly inadmissible, nor make any remarks or statements that are intended to improperly influence the outcome of any case. (Fla. Bar Professionalism Guideline L. 10).

DONE AND ORDERED, in Chambers, Brooksville, Hernando County this 5th day of January, 2021.

Pam Vergara

Pam Vergara, Circuit Judge