TRIAL PRACTICE AND COURTROOM PROCEDURES
BEFORE
THE HONORABLE SARAH EVANS BARKER

GENERAL MATTERS

1. Counsel are expected to be fully familiar with the Local Rules of the United States District Court for the Southern District of Indiana and with the Final Report of the Committee on Civility of the Seventh Federal Judicial Circuit. The former is available from the Clerk of the Court; a copy of the latter is attached.
2. Stand when speaking for the record and when addressing the Court. Use the lectern except for brief objections interposed during testimony.
3. Colloquy or argument between attorneys is not permitted. Address all remarks to the Court unless off of the record, with permission of the Court.
4. Do not exhibit familiarity with witnesses, jurors or opposing counsel. The use of first names is to be avoided. During argument to the jury, no juror shall be addressed individually or by name.
5. Do not ask the reporter to mark testimony or label exhibits. Counsel is responsible for labeling exhibits and all requests for re-reading of questions or answers shall be addressed to the Court.
6. After trial has begun, copies of documents docketed electronically should be tendered to the courtroom deputy for transmission to the Court.
7. **CELL PHONES AND RECORDING DEVICES OF ALL SORTS AND DESCRIPTIONS ARE TO BE TURNED OFF (NOT JUST SILENCED) DURING PROCEEDINGS AND NOT USED WHILE COURT IS IN SESSION IN ANY WAY. (Such devices often interfere with the courtroom amplification system if left on.)**

FACILITIES

1. Counsel should expect to bring with him/her whatever personal computer he/she expects to use during a trial or proceeding. Counsel should familiarize himself/herself with the Court's electronic evidence display system in advance of the proceeding to avoid any missteps or awkwardness.
2. There is a witness room, Room 221, down the east hallway from the courtroom. It is open and available during trial. Witnesses should generally be asked to report to that room rather than to the courtroom, which is numbered 216.

3. The facilities of the chambers, including the telephones and the copier, are not available to counsel during trial. Counsel should enter chambers during trial only by invitation of the Court's staff. A copier is available in the Court's library, at a per-page fee.
4. Counsel should advise clients and witnesses to avoid accessing the third floor of the courthouse during a jury trial. The entrance to the jury room is on the third floor, and jurors are instructed to enter and leave via the elevators to the third floor.

COURT HOURS AND PROMPTNESS

1. The Court makes every effort to commence proceedings at the time set. Promptness is expected from counsel and witnesses. The clerk should be informed of any anticipated scheduling problems, and will attempt to work with counsel to resolve them.
2. If a witness was on the stand at a recess or adjournment, have the witness on the stand ready to proceed when Court is resumed.
3. Have your next witness in the courtroom and ready to take the stand after a recess or adjournment. If a witness' testimony is expected to be brief, have the next witness immediately available, perhaps in the hallway outside the courtroom.
4. Don't run out of witnesses. If there is a substantial delay between witnesses, the Court may deem that you have rested.
5. The Court attempts to cooperate with the busy schedules of doctors and other professional witnesses and will, except in extraordinary circumstances, make every effort to accommodate them by permitting them to testify out of sequence. Anticipate any such possibility and discuss it with opposing counsel. If there is an objection, confer with the Court in advance.

THE VENIRE AND VOIR DIRE

1. A list of the venire, a seating chart and copies of questionnaires which the venire have completed will be given to counsel on the morning of trial. Blank copies of the forms are attached.
2. The Court will conduct the *voir dire.* Ordinarily, all potential jurors will be placed before you and questioned in a single session. Counsel are encouraged to submit in writing prior to trial any questions which the Court would not routinely ask. At a sidebar at the conclusion of the Court's *voir dire,* counsel may request follow-up questions and interpose any objections or requests for strikes for cause.
3. Jury selection takes place at a sidebar conference at the bench while the entire venire remains seated in and around the jury box. In criminal cases, the government goes first with one strike, the defendant(s) next with two, repeating

alternately in turn with the government last with one preemptory challenge. In civil cases, the sides exercise individual strikes alternately starting with the plaintiff. Those not chosen for the jury are then excused from the courtroom.

4. Counsel may request additional challenges if additional jurors are selected to serve. In civil cases, when the original jury is larger than six persons, all jurors remaining at the conclusion of the evidence and argument will deliberate on the verdict.

OPENING STATEMENT AND CLOSING ARGUMENT

1. Counsel should stand at the lectern during opening statement and argument. Confine opening statements to what you expect the evidence to show. It is not proper to use the opening statement to argue the case or instruct as to the law.
2. The Court will honor counsel's reasonable and balanced requests concerning the amount of time for opening statements and closing arguments, and expects counsel to confer to resolve any discrepancies.
3. During the argument of opposing counsel, remain seated at the counsel table and be respectful. Never divert the attention of the Court or the jury. Counsel should so instruct their clients and witnesses.

EXAMINATION OF WITNESSES

1. All witnesses are to be treated with fairness and consideration. They shall not be shouted at, ridiculed, or otherwise abused.
2. Counsel should conduct examination of witnesses from the lectern.
3. Rise when addressing the Court and when making objections. This calls the Court's attention to you and allows you to be heard more readily.
4. Request the permission of the Court to approach a witness ONLY when you wish to consult privately with the witness.
5. When the purpose of approaching the witness is to work with an exhibit, prior permission of the Court need not be sought. During a jury trial, the witness as well as counsel and the exhibit (if enlarged) should be facing the jury so that you can be seen and heard. Counsel should resume the examination of the witness from the lectern when finished with the exhibit, which should be as soon as possible.
6. When the trial begins, please provide the Court and the court reporter with a list of the witnesses you expect to call. Please attempt to have the correct spellings for the court reporter.

OBJECTIONS TO QUESTIONS

1. When rising to make an objection, state only that you are objecting and specify the ground or grounds for that objection.
2. Do not use objections for the purpose of making a speech, recapitulating testimony or attempting to guide the witness.
3. Argument upon the objection will not be heard until permission is given or argument is requested by the Court.
4. Where more than one attorney appears for a given party, the attorney who handles the direct examination of a witness shall also interpose objections when the witness is being examined by other counsel. The attorney who will cross-examine a witness shall interpose any objections during direct testimony.
5. No person shall ever by facial expression or other conduct exhibit any opinion concerning any testimony which is being given by a witness or any particular ruling by the Court. Counsel should admonish their clients and witnesses to avoid such behavior. Visitors who cannot abide by this requirement will be asked to leave the courtroom.
6. The usual trial schedule begins at 9:30 a.m. and continues after a convenient midmorning break until at or near noontime. After the lunch hour, the afternoon session normally continues until 5:15 p.m. with one midafternoon recess intervening. Times for recess and adjournment will vary slightly, to permit the conclusion of a witness's testimony, to allow counsel to finish with direct or cross-examination, or if the Court has been required to attend to other court-related business.

EXHIBITS

1. Exhibits should be marked for identification before trial and a list provided to the Court and the court reporter. Plaintiff's exhibits should be designated by numbers; defendant's by letters (i.e., A-Z, AA, AB, AC-AZ, BA-BZ, etc.) Where several exhibits are contained within an envelope, package or box, mark the container as exhibit AB, for example, and the contents as exhibit AB-1, AB-2, etc.
2. In cases involving large numbers of documentary exhibits which counsel hope to display to the jury, preparation of individual notebooks for the jurors and the Court is not necessary since the exhibits will be displayed on the DOAR unit. Counsel should ensure that electronically stored exhibits are easily retrievable for use at trial so as to not delay the proceedings.
3. Exhibits which have been introduced into evidence are kept on the table in front of the clerk's bench during the trial. Each counsel is responsible for exhibits taken from the table. At each recess or adjournment, return all exhibits to the table. Exhibits which have been offered but not admitted are also part of the record of the case and are kept by the clerk.

4. Each counsel shall keep a list of admitted exhibits. Counsel and the clerk shall confer at the close of the evidence to insure that only admitted exhibits are sent to the jury. Controlled substances, counterfeit currency and firearms or other dangerous material are generally not sent to the jury; counsel are asked to substitute photographs.
5. If an exhibit must be marked for identification in open court, counsel should state for the record what they are doing and describe briefly the nature of the exhibit. Counsel should not expect the Court to provide exhibit labels.
6. Counsel should confer before trial to reach as many stipulations as possible concerning authenticity and admissibility of exhibits. Counsel may move the admission of stipulated exhibits at the onset of trial.
7. Whenever possible, have photocopies of exhibits for the Court, opposing counsel and the witness. A descriptive list of the exhibits counsel intend to introduce is a helpful tool for counsel, the Court, the court reporter and the clerk.
8. Ordinarily, exhibits should be offered in evidence when they become admissible, rather than at the end of a witness's testimony or counsel's case.
9. Ordinarily, exhibits admitted into evidence may be displayed electronically to the jury at the time of admission or in conjunction with other exhibits at the conclusion of the witness' examination by the "offering" counsel.
10. When counsel or witnesses refer to an exhibit, make mention of the exhibit number so that the record will be clear.
11. Where maps, diagrams, pictures or similar materials are being used as exhibits, and locations or features on such documents are being pointed out by witnesses or counsel, such locations should be indicated by appropriate markings on the documents if they are not readily apparent from the exhibits themselves. Unnecessary markings should be avoided. Permanent marking on exhibits should only be made after considering the views of opposing counsel and receiving the Court's permission. Counsel should then describe the markings for the record.
12. Where there has been extensive discovery and counsel expect to offer answers to interrogatories or requests for admissions extracted from several separate documents, prepare copies of the individual materials rather than thumbing through extensive files while the Court and the jury sit waiting for counsel to locate the particular items.

DEPOSITIONS

1. Depositions to be used at trial, either as evidence or for impeachment, must be available in the courtroom.
2. Depositions to be used as evidence at trial shall be distilled and summarized in writing prior to trial and exchanged with opposing counsel, to permit a counterdesignation to be similarly distilled and summarized.
3. Confer with opposing counsel to edit both written and videotaped depositions which are to be used at trial and remove unnecessary material.
4. The summaries of depositions which are to be used at trial may include specific excerpts of testimony when the deponent's own words are significant and relevant. Those summaries, rather than the text of the deposition, may be read to the jury.

JURY INSTRUCTIONS

1. File and serve your proposed jury instructions three working days prior to trial, unless a different schedule has been ordered by the Court.
2. Focus on instructions addressing issues specific to your case as the Court is familiar with the standard instructions that are included in every case. Each tendered instruction must include a citation to the authority on which counsel relied.
3. When possible, tender your proposed instructions via email to the courtroom deputy for transmission to the Court, in Microsoft® Word or similar.
3. The Court will convene an instructions conference at the conclusion of all the evidence.

DIFFICULT QUESTIONS—ADVANCE NOTICE

If counsel have reason to anticipate that any question of law or evidence is complex or will require an extensive argument or require a proffer outside the presence of the jury, and counsel have conferred and been unable to resolve the matter, advance notice to the Court should be given to allow for appropriate scheduling arrangements.

FINAL REPORT
OF THE
COMMITTEE ON CIVILITY
OF THE
SEVENTH JUDICIAL CIRCUIT

Hon. Marvin E. Aspen, U.S. District Judge, Northern District of Illinois
Chairman

William A. Montgomery, Schiff Hardin & Waite, Chicago, Illinois
Secretary

David E. Beckwith, Foley & Lardner, Milwaukee, Wisconsin

George N. Leighton, Earl L. Neal & Associates, Chicago, Illinois

Hon. Larry J. McKinney, U.S. District Judge, Southern District of Indiana

Bernard J. Nussbaum, Sonnenschien Nath & Rosenthal, Chicago, Illinois

Nancy Schaefer, Schaefer, Rosenwein & Fleming, Chicago, Illinois

Hon. John C. Shabaz, U.S. District Judge, Western District of Wisconsin

Stephen W. Terry, Jr., Baker & Daniels, Indianapolis, Indiana

Committee Members

Cornelia H. Tuite
Cole, Grasso, Fencl & Skinner, Ltd.
Chicago, Illinois
Reporter

Page

June 9, 1992

Honorable William J. Bauer
Chief Judge
United States Court of Appeals
219 South Dearborn Street
Room 2754
Chicago, Illinois 60604

Dear Chief Judge Bauer,

I am pleased to submit the Final Report of the Committee on Civility of the Seventh Judicial Circuit. Your mandate to the Committee was to determine whether there is a civility problem in litigation in the Seventh Circuit and, if so, what should be done about it. This Final Report and the Committee's April 22, 1991 Interim Report are in response to this mandate.

In our Interim Report, we stated that a majority of lawyers and judges responding to our survey reported that civility in litigation has eroded in our circuit. Our Interim Report proposed several ways to address this problem and requested comments from the bench and the bar.

Our Final Report reviews a substantial number of comments from within and without the Seventh Circuit and, based on them, revises the tentative recommendations included in our Interim Report.

On behalf of the Committee, I wish to express our appreciation for your support and encouragement. We are grateful for your direction to us to determine the scope of our project without any prejudgment as to what the results ought to be. I am also appreciative of the hard-working lawyers and judges whom you have appointed to this Committee. In addition to the participation of the United States District Court Judges John C. Shabaz and Larry J. McKinney, and lawyer members David E. Beckwith, George N. Leighton, William A. Montgomery, Bernard J. Nussbaum, Nancy Schaefer, and Stephen W. Terry, Jr. during the past three years, the stellar contributions of our talented Reporter, Cornelia Honchar Tuite, were vital to the completion of our Final Report.

Although the Committee's mandate has now been accomplished, the efforts required of the leaders of our profession are just beginning. Our Committee hopes this Report will be a catalyst for the judiciary, the bar, and our law schools to work together to stem the erosion of civility. This task will remain as one of the most important challenges in the 1990s for the courts and the legal profession.

Sincerely,

Marvin E. Aspen

MEA:ss Enclosure

FINAL REPORT

I. INTRODUCTION

In April 1991, the Committee on Civility of the Seventh Federal Judicial Circuit released its 6S-page Interim Report, outlining the results of more than eighteen months of study and investigation into litigation practices and the attending relationships among lawyers, among judges, and between lawyers and judges in the federal courts in Indiana, Illinois, and Wisconsin. Every federal judge in the United States received the Interim Report, as did bar associations and law school deans in all three states as well as scores of lawyers, judges, and legal scholars across the nation.

Both the legal and general circulation print media discussed and debated the Interim Report's findings. See, e.g., Marvin E. Aspen, From the Bench: Doing Something About Civility in Litigation, 18 Litig. 3 (1992). Requests for copies came from every corner of America, and from abroad.

The Interim Report was discussed in national professional and bar association seminars throughout the nation, as well as within the Seventh Circuit and at workshops in some of the other federal circuits. It has been cited in court opinions, see, e.g.. Castillo v. St. Paul Fire & Marine Ins. Co., 938 F.2d 776 (7th Cir. 1991), and in reports of other professional groups examining these issues. See, e.g., Professionalism and the Legal Profession (Boston Bar Association) (April 1992). Law firms in the Seventh Circuit invited Committee members to discuss the Report and distributed it to new associates and summer interns.

In January 1992, the Chicago Bar Association instituted a Pathways Mentoring Program matching volunteer lawyers with students from Chicago's law schools. Mentors and students will attend a year of seminars, the first of which centered around a discussion of

the Committee's Report. Additionally, the Program is designed to offer second and third year law students an opportunity to attend contested motions, trials, and depositions with their mentors to learn lawyering skills based on principles of civility and to have a resource in forming professional career plans. The widespread interest in the Interim Report strongly indicates that the decline of civility standards in litigation practice is among the most important and universally discussed issues facing the legal community today.

One of the Committee's primary goals in issuing the Interim Report was to stimulate thoughtful discussion of litigation behavior throughout the bench and bar. In this respect, the Interim Report has clearly achieved one of its major purposes as a catalyst for change.

The Committee would like to express its thanks for the thoughtful comments on the Interim Report submitted to it by judges, lawyers, and bar associations. Not only did the many and passionate voices we heard from help the Committee reach its final conclusions, but, most importantly, they reconfirmed the legal community's dedication to the development and enhancement of high professional standards.

II. COMMENTS ABOUT THE INTERIM REPORT

On the whole, the comments enthusiastically supported the Interim Report's timely appearance and provision of a framework to stimulate discussion and analysis.

None of the comments questioned the Informal Survey's findings showing a decline in civility in larger jurisdictions, such as the Northern District of Illinois located in Chicago, but fewer problems in smaller Districts in downstate Illinois, Wisconsin, and Indiana, nor that discovery, billing demands, and the increased size of the bar are among the fuels igniting uncivil litigation practices.

Incivility as a Societal Problem

One judge observed that the Interim Report did not refer to the decline of civility in society generally and wrote:

> Today our talk is coarse and rude, our entertainment is vulgar and violent, our music is hard and loud, our institutions are weakened, our values are superficial, egoism has replaced altruism and cynicism pervades. Amid these surroundings none should be surprised that the courtroom is less tranquil. Cardozo reminds us that "judges are never free from the feelings of the times . . . ."

While the Interim Report did not discuss the complex causes or manifestations of incivility in society at large, the Committee believes these observations are apt and are no doubt contributing factors to the civility problems plaguing our profession.

Costs to the Client

A lack of civility can escalate clients' litigation costs while failing to advance their interests or bring them closer to their ultimate goal of ending disputes. Time expended in "Rambo"-style discovery can hinder or prevent litigation parties from getting to the heart of the important contested issues. Furthermore, with today's overcrowded dockets, judicial time is wasted resolving needless (often petty) disputes, which, in turn, deprives those litigants who are ready for trial of the opportunity for a more expeditious hearing. Everyone is harmed.

As one large firm litigation lawyer observed:

> When a lawyer behaves uncivilly, contentiously opposing everything his opponent proposes, both litigants suffer because they must pay even higher attorneys' fees and the disposition of the case is delayed. It is no secret that a lawyer's contentiousness causes more work for the lawyers on both sides and slows down the progress of the litigation. And I have not seen a shred of evidence that such conduct advances the client's interests one iota.

Since discovery is the area in which uncivil conduct is most likely to arise, the Committee notes recent proposed changes in the Federal Rules of Civil Procedure, particularly the proposed amendments to Rule 26. The changes are aimed, in part, at minimizing the adversarial character of the discovery process. The most controversial provision would require voluntary disclosure of core information. The Committee expresses no opinion on the proposed discovery rules, other than to observe that a need for systemic change is suggested by its findings.

Greater Judicial Leadership

Several commentators turned a critical eye to the bench, urging the judiciary to assume a leadership role and serve as the principal example of courtesy, dignified courtroom conduct, restraint, and tolerance --attributes most would agree are important in fostering civility.

Judicial leadership, like civility itself, cannot be legislated or mandated. If change is to come, it must stem from the individual effort of each participant in the litigation process as part of a personal obligation assumed equally by lawyers and judges.

Standards For Professional Conduct

The Proposed Standards for Professional Conduct, of all the Committee's recommendations, generated the most comments.

The greatest concern centered on the possibility that, when adopted, the Standards could create the potential for satellite litigation similar to that surrounding Federal Rule of Civil Procedure 11. Others suggested that no Standards be adopted at all, recommending, instead, stronger enforcement of existing statutory sanctions.

First, as the Preamble clearly states, the Standards "shall not be used as a basis for litigation or for sanctions or penalties." With this Preamble, the risk that the Standards will generate additional litigation is nonexistent.

The Committee concluded that the Standards should be adopted to clarify and to articulate important values held by many members of the bench and the bar. These values should be voluntarily assumed and implemented by judges and lawyers alike as a commitment to improving the administration of justice throughout the Seventh Circuit.

Furthermore, written and adopted Standards serve as a valuable teaching and discussion guide, gathering in one text a set of principles designed to improve litigation practice.

The Committee's review of similarly adopted standards and codes in other jurisdictions shows they have not generated satellite litigation, but have stimulated discussion and new proposals for litigation practice, all of which result in subtle, gradual improvement.

Consequently, the Committee affirmed its decision to recommend adoption of the Standards. However, incorporating comments submitted in response to the Interim Report, the Committee has revised certain of the Standards.

Mediation

Several commentators suggested the use of professional mediators, other than judges or magistrate judges, to resolve discovery disputes, a practice that is gaining some currency in other federal circuits and seems to relieve some of the acrimony that otherwise is noted in discovery disputes. The Committee made no recommendations regarding private discovery mediation.

Expanded Bar Activities

Finally, some commentators recommended that the Committee *revise* its recommendation that lawyers and judges participate in the American Inns of Court, noting that membership in the Inns is limited to a relatively small number of practitioners, judges, and students, and then by invitation only.

They suggested, as alternatives, greater participation in bar association activities, open to all members of the legal community, and the creation of mentoring programs through bar associations to expand discussion of civility questions and increase collegiality, goals similar to those of the American Inns of Court.

The Committee concurred in these observations and accordingly expanded its recommendations in this area.

III. FINAL RECOMMENDATIONS

After consideration of all the comments and suggestions submitted following the release of the Interim Report, the Committee adopts the following Final Recommendations:

1. The Proposed Standards for Professional Conduct within the Seventh Federal Judicial Circuit, as amended and set forth in Appendix A, should be adopted.

2. Each lawyer admitted to practice (or appearing pro hac vice) in any court in the Seventh Federal Judicial Circuit should receive a copy of the Standards for Professional Conduct. Each court within the Circuit should consider adoption of a local rule requiring each lawyer admitted to practice (or appearing pro hac vice) to certify, as a precondition to admission and to filing an appearance in any court within the Seventh

Federal Judicial Circuit, that he or she has read and will abide by the Standards.

3. Civility training, including education regarding the Standards for Professional Conduct, should be implemented by public law offices, private law firms, and corporations with in-house counsel. This training should also be available at federal judicial workshops.

4. All lawyers and judges within the Seventh Federal Judicial Circuit should consider participation in civility, professionalism, or mentoring programs in professional legal associations and bar associations as well as participation in one of the American Inns of Court.

5. If a professional legal organization or bar association does not have a civility, professionalism, or mentoring program, or an American Inn of Court does not exist in a particular area, lawyers and judges should consider establishing such a program or an Inn of Court.

6. Law schools should encourage discussion of the Standards of Professional Conduct in the classroom and, especially, in clinical training programs, and should encourage discussion among faculty members.

APPENDIX A

PROPOSED STANDARDS FOR PROFESSIONAL CONDUCT

WITHIN THE SEVENTH FEDERAL JUDICIAL CIRCUIT

Preamble

A lawyer's conduct should be characterized at all times by personal courtesy and professional integrity in the fullest sense of those terms. In fulfilling our duty to represent a client vigorously as lawyers, we will be mindful of our obligations to the administration of justice, which is a truth-seeking process designed to resolve human and societal problems in a rational, peaceful, and efficient manner.

A judge's conduct should be characterized at all times by courtesy and patience toward all participants. As judges we owe to all participants in a legal proceeding respect, diligence, punctuality, and protection against unjust and improper criticism or attack.

Conduct that may be characterized as uncivil, abrasive, abusive, hostile, or obstructive impedes the fundamental goal of resolving disputes rationally, peacefully, and efficiently. Such conduct tends to delay and often to deny justice.

The following standards are designed to encourage us, judges and lawyers, to meet our obligations to each other, to litigants and to the system of justice, and thereby achieve the twin goals of civility and professionalism, both of which are hallmarks of a learned profession dedicated to public service.

We expect judges and lawyers will make a mutual and firm commitment to these standards. Voluntary adherence is expected as part of a commitment by all participants to improve the administration of justice throughout this Circuit.

These standards shall not be used as a basis for litigation or for sanctions or penalties. Nothing in these standards supersedes or detracts from existing disciplinary codes or alters existing standards of conduct against which lawyer negligence may be determined.

These standards should be reviewed and followed by all judges and lawyers participating in any proceeding in this Circuit. Copies may be made available to clients to reinforce our obligation to maintain and foster these standards.

Lawyers' Duties to Other Counsel

1. We will practice our profession with a continuing awareness that our role is to advance the legitimate interests of our clients. In our dealings with others we will not reflect the ill feelings of our clients. We will treat all other counsel, parties, and witnesses in a civil and courteous manner, not only in court, but also in all other written and oral communications.

2. We will not, even when called upon by a client to do so, abuse or indulge in offensive conduct directed to other counsel, parties, or witnesses. We will abstain from disparaging personal remarks or acrimony toward other counsel, parties, or witnesses. We will treat adverse witnesses and parties with fair consideration.

3. We will not encourage or knowingly authorize any person under our control to engage in conduct that would be improper if we were to engage in such conduct.

4. We will not, absent good cause, attribute bad motives or improper conduct to other counselor bring the profession into disrepute by unfounded accusations of impropriety.

5. We will not seek court sanctions without first conducting a reasonable investigation and unless fully justified by the circumstances and necessary to protect our client's lawful interests.

6. We will adhere to all express promises and to agreements with other counsel, whether oral or in writing, and will adhere in good faith to all agreements implied by the circumstances or local customs.

7. When we reach an oral understanding on a proposed agreement or a stipulation and decide to commit it to writing, the drafter will endeavor in good faith to state the oral understanding accurately and completely. The drafter will provide the opportunity for review of the writing to other counsel. As drafts are exchanged between or among counsel, changes from prior drafts will be identified in the draft or otherwise explicitly brought to the attention of other counsel We will not include in a draft matters to which there has been no agreement without explicitly advising other counsel in writing of the addition.

8. We will endeavor to confer early with other counsel to assess settlement possibilities. We will not falsely hold out the possibility of settlement as a means to adjourn discovery or to delay trial.

9. In civil actions, we will stipulate to relevant matters if they are undisputed and if no good faith advocacy basis exists for not stipulating.

10. We will not use any form of discovery or discovery scheduling as a means of harassment.

11. We will make good faith efforts to resolve by agreement our objections to matters contained in pleadings and discovery requests and objections.

12. We will not time the filing or service of motions or pleadings in any way that unfairly limits another party's opportunity to respond.

13. We will not request an extension of time solely for the purpose of unjustified delay or to

14. We will consult other counsel regarding scheduling matters in a good faith effort to avoid scheduling conflicts.

15. We will endeavor to accommodate previously scheduled dates for hearings, depositions, meetings, conferences, vacations, seminars, or other functions that produce good faith calendar conflicts on the part of other counsel. If we have been given an accommodation because of a calendar conflict, we will notify those who have accommodated us as soon as the conflict has been removed.

16. We will notify other counsel and, if appropriate, the court or other persons, at the earliest possible time when hearings, depositions, meetings, or conferences are to be canceled or postponed. Early notice avoids unnecessary travel and expense of counsel and may enable the court to use the previously reserved time for other matters.

17. We will agree to reasonable requests for extensions of time and for waiver of procedural formalities, provided our clients' legitimate rights will not be materially or adversely affected.

18. We will not cause any default or dismissal to be entered without first notifying opposing counsel, when we know his or her identity.

19. We will take depositions only when actually needed to ascertain facts or information or to perpetuate testimony. We will not take depositions for the purposes of harassment or to increase litigation expenses.

20. We will not engage in any conduct during a deposition that would not be appropriate in the presence of a judge.

21. We will not obstruct questioning during a deposition or object to deposition questions unless necessary under the applicable rules to preserve an objection or privilege for resolution by the court.

22. During depositions we will ask only those questions we reasonably believe are necessary for the prosecution or defense of an action.

23. We will carefully craft document production requests so they are limited to those documents we reasonably believe are necessary for the prosecution or defense of an action. We will not design production requests to place an undue burden or expense on a party.

24. We will respond to document requests reasonably and not strain to interpret the request in an artificially restrictive manner to avoid disclosure of relevant and non-privileged documents. We will not produce documents in a manner designed to hide or obscure the existence of particular documents.

25. We will carefully craft interrogatories so they are limited to those matters we reasonably believe are necessary for the prosecution or defense of an action, and we will not design them to place an undue burden or expense on a party.

26. We will respond to interrogatories reasonably and will not strain to interpret them in an artificially restrictive manner to avoid disclosure of relevant and non-privileged information.

27. We will base our discovery objections on a good faith belief in their merit and will not object solely for the purpose of withholding or delaying the disclosure of relevant information.

28. When a draft order is to be prepared by counsel to reflect a court ruling, we will draft an order that accurately and completely reflects the court's ruling. We will promptly prepare and submit a proposed order to other counsel and attempt to reconcile any differences before the draft order is presented to the court.

29. We will not ascribe a position to another counsel that counsel has not taken or otherwise seek to create an unjustified inference based on counsel's statements or conduct.

30. Unless specifically permitted or invited by the court, we will not send copies of correspondence between counsel to the court.

Lawyers' Duties to the Court

1. We will speak and write civilly and respectfully in all communications with the court.

2. We will be punctual and prepared for all court appearances so that all hearings, conferences, and trials may commence on time; if delayed, we will notify the court and counsel, if possible.

3. We will be considerate of the time constraints and pressures on the court and court staff inherent in their efforts to administer justice.

4. We will not engage in any conduct that brings disorder or disruption to the courtroom. We will advise our clients and witnesses appearing in court of the proper conduct expected and required there and, to the best of our ability, prevent our clients and witnesses from creating disorder or disruption.

5. We will not knowingly misrepresent, mischaracterize, misquote, or miscite facts or authorities in any oral or written communication to the court.

6. We will not write letters to the court in connection with a pending action, unless invited or permitted by the court.

7. Before dates for hearings or trials are set, or if that is not feasible, immediately after such date has been set, we will attempt to verity the availability of necessary participants and witnesses so we can promptly notify the court of any likely problems.

8. We will act and speak civilly to court marshals, clerks, court reporters, secretaries, and law clerks with an awareness that they, too, are an integral part of the judicial system.

Courts' Duties to Lawyers

1. We will be courteous, respectful, and civil to lawyers, parties, and witnesses. We will maintain control of the proceedings, recognizing that judges have both the obligation and the authority to insure that all litigation proceedings are conducted in a civil manner.

2. We will not employ hostile, demeaning, or humiliating words in opinions or in written or oral communications with lawyers, parties, or witnesses.

3. We will be punctual in convening all hearings, meetings, and conferences; if delayed, we ""ill notify counsel, if possible.

4. In scheduling all hearings, meetings and conferences we will be considerate of time schedules of lawyers, parties, and witnesses.

5. We will make all reasonable efforts to decide promptly all matters presented to us for decision.

6. We will give the issues in controversy deliberate, impartial, and studied analysis and consideration.

7. While endeavoring to resolve disputes efficiently, we will be considerate of the time constraints and pressures imposed on lawyers by the exigencies of litigation practice.

8. We recognize that a lawyer has a right and a duty to present a cause fully and properly, and that a litigant has a right to a fair and impartial hearing. Within the practical limits of time, we will allow lawyers to present proper arguments and to make a complete and accurate record.

9. We will not impugn the integrity or professionalism of any lawyer on the basis of the clients whom or the causes which a lawyer represents.

10. We will do our best to insure that court personnel act civilly toward lawyers, parties, and witnesses.

11. We will not adopt procedures that needlessly increase litigation expense.

12. We will bring to lawyers' attention uncivil conduct which we observe.

Judges' Duties to Each Other

1. We will be courteous, respectful, and civil in opinions, ever mindful that a position articulated by another judge is the result of that judge's earnest effort to interpret the law and the facts correctly.

2. In all written and oral communications, we will abstain from disparaging personal remarks or criticisms, or sarcastic or demeaning comments about another judge.

3. We will endeavor to work with other judges in an effort to foster a spirit of cooperation in our mutual goal of enhancing the administration of justice.

APPENDIX A

PROPOSED STANDARDS FOR PROFESSIONAL CONDUCT

WITHIN THE SEVENTH FEDERAL JUDICIAL CIRCUIT

Preamble

A lawyer's conduct should be characterized at all times by personal courtesy and professional integrity in the fullest sense of those terms. In fulfilling our duty to represent a client vigorously as lawyers, we will be mindful of our obligations to the administration of justice, which is a truth-seeking process designed to resolve human and societal problems in a rational, peaceful, and efficient manner.

A judge's conduct should be characterized at all times by courtesy and patience toward all participants. As judges we owe to all participants in a legal proceeding respect, diligence, punctuality, and protection against unjust and improper criticism or attack.

Conduct that may be characterized as uncivil, abrasive, abusive, hostile, or obstructive impedes the fundamental goal of resolving disputes rationally, peacefully, and efficiently. Such conduct tends to delay and often to deny justice.

The following standards are designed to encourage us, judges and lawyers, to meet our obligations to each other, to litigants and to the system of justice, and thereby achieve the twin goals of civility and professionalism, both of which are hallmarks of a learned profession dedicated to public service.

We expect judges and lawyers will make a mutual and firm commitment to these standards. Voluntary adherence is expected as part of a commitment by all participants to improve the administration of justice throughout this Circuit.

These standards shall not be used as a basis for litigation or for sanctions or penalties. Nothing in these standards supersedes or detracts from existing disciplinary codes or alters existing standards of conduct against which lawyer negligence may be determined.

These standards should be reviewed and followed by all judges and lawyers participating in any proceeding in this Circuit. Copies may be made available to clients to reinforce our obligation to maintain and foster these standards.

Lawyers' Duties to Other Counsel

1. We will practice our profession with a continuing awareness that our role is to advance the legitimate interests of our clients. In our dealings with others we will not reflect the ill feelings of our clients. We will treat all other counsel, parties, and witnesses in a civil and courteous manner, not only in court, but also in all other written and oral communications.

2. We will not, even when called upon by a client to do so, abuse or indulge in offensive conduct directed to other counsel, parties, or witnesses. We will abstain from disparaging personal remarks or acrimony toward other counsel, parties, or witnesses. We will treat adverse witnesses and parties with fair consideration.

3. We will not encourage or knowingly authorize any person under our control to engage in conduct that would be improper if we were to engage in such conduct.

4. We will not, absent good cause, attribute bad motives or improper conduct to other counselor bring the profession into disrepute by unfounded accusations of impropriety.

5. We will not seek court sanctions without first conducting a reasonable investigation and unless fully justified by the circumstances and necessary to protect our client's lawful interests.

6. We will adhere to all express promises and to agreements with other counsel, whether oral or in writing, and will adhere in good faith to all agreements implied by the circumstances or local customs.

7. When we reach an oral understanding on a proposed agreement or a stipulation and decide to commit it to writing, the drafter will endeavor in good faith to state the oral understanding accurately and completely. The drafter will provide the opportunity for review of the writing to other counsel. As drafts are exchanged between or among counsel, changes from prior drafts will be identified in the draft or otherwise explicitly brought to the attention of other counsel We will not include in a draft matters to which there has been no agreement without explicitly advising other counsel in writing of the addition.

8. We will endeavor to confer early with other counsel to assess settlement possibilities. We will not falsely hold out the possibility of settlement as a means to adjourn discovery or to delay trial.

9. In civil actions, we will stipulate to relevant matters if they are undisputed and if no good faith advocacy basis exists for not stipulating.

10. We will not use any form of discovery or discovery scheduling as a means of harassment.

11. We will make good faith efforts to resolve by agreement our objections to matters contained in pleadings and discovery requests and objections.

12. We will not time the filing or service of motions or pleadings in any way that unfairly limits another party's opportunity to respond.

13. We will not request an extension of time solely for the purpose of unjustified delay or to

14. We will consult other counsel regarding scheduling matters in a good faith effort to avoid scheduling conflicts.

15. We will endeavor to accommodate previously scheduled dates for hearings, depositions, meetings, conferences, vacations, seminars, or other functions that produce good faith calendar conflicts on the part of other counsel. If we have been given an accommodation because of a calendar conflict, we will notify those who have accommodated us as soon as the conflict has been removed.

16. We will notify other counsel and, if appropriate, the court or other persons, at the earliest possible time when hearings, depositions, meetings, or conferences are to be canceled or postponed. Early notice avoids unnecessary travel and expense of counsel and may enable the court to use the previously reserved time for other matters.

17. We will agree to reasonable requests for extensions of time and for waiver of procedural formalities, provided our clients' legitimate rights will not be materially or adversely affected.

18. We will not cause any default or dismissal to be entered without first notifying opposing counsel, when we know his or her identity.

19. We will take depositions only when actually needed to ascertain facts or information or to perpetuate testimony. We will not take depositions for the purposes of harassment or to increase litigation expenses.

20. We will not engage in any conduct during a deposition that would not be appropriate in the presence of a judge.

21. We will not obstruct questioning during a deposition or object to deposition questions unless necessary under the applicable rules to preserve an objection or privilege for resolution by the court.

22. During depositions we will ask only those questions we reasonably believe are necessary for the prosecution or defense of an action.

23. We will carefully craft document production requests so they are limited to those documents we reasonably believe are necessary for the prosecution or defense of an action. We will not design production requests to place an undue burden or expense on a party.

24. We will respond to document requests reasonably and not strain to interpret the request in an artificially restrictive manner to avoid disclosure of relevant and non-privileged documents. We will not produce documents in a manner designed to hide or obscure the existence of particular documents.

25. We will carefully craft interrogatories so they are limited to those matters we reasonably believe are necessary for the prosecution or defense of an action, and we will not design them to place an undue burden or expense on a party.

26. We will respond to interrogatories reasonably and will not strain to interpret them in an artificially restrictive manner to avoid disclosure of relevant and non-privileged information.

27. We will base our discovery objections on a good faith belief in their merit and will not object solely for the purpose of withholding or delaying the disclosure of relevant information.

28. When a draft order is to be prepared by counsel to reflect a court ruling, we will draft an order that accurately and completely reflects the court's ruling. We will promptly prepare and submit a proposed order to other counsel and attempt to reconcile any differences before the draft order is presented to the court.

29. We will not ascribe a position to another counsel that counsel has not taken or otherwise seek to create an unjustified inference based on counsel's statements or conduct.

30. Unless specifically permitted or invited by the court, we will not send copies of correspondence between counsel to the court.

Lawyers' Duties to the Court

1. We will speak and write civilly and respectfully in all communications with the court.

2. We will be punctual and prepared for all court appearances so that all hearings, conferences, and trials may commence on time; if delayed, we will notify the court and counsel, if possible.

3. We will be considerate of the time constraints and pressures on the court and court staff inherent in their efforts to administer justice.

4. We will not engage in any conduct that brings disorder or disruption to the courtroom. We will advise our clients and witnesses appearing in court of the proper conduct expected and required there and, to the best of our ability, prevent our clients and witnesses from creating disorder or disruption.

5. We will not knowingly misrepresent, mischaracterize, misquote, or miscite facts or authorities in any oral or written communication to the court.

6. We will not write letters to the court in connection with a pending action, unless invited or permitted by the court.

7. Before dates for hearings or trials are set, or if that is not feasible, immediately after such date has been set, we will attempt to verity the availability of necessary participants and witnesses so we can promptly notify the court of any likely problems.

8. We will act and speak civilly to court marshals, clerks, court reporters, secretaries, and law clerks with an awareness that they, too, are an integral part of the judicial system.

Courts' Duties to Lawyers

1. We will be courteous, respectful, and civil to lawyers, parties, and witnesses. We will maintain control of the proceedings, recognizing that judges have both the obligation and the authority to insure that all litigation proceedings are conducted in a civil manner.

2. We will not employ hostile, demeaning, or humiliating words in opinions or in written or oral communications with lawyers, parties, or witnesses.

3. We will be punctual in convening all hearings, meetings, and conferences; if delayed, we ""ill notify counsel, if possible.

4. In scheduling all hearings, meetings and conferences we will be considerate of time schedules of lawyers, parties, and witnesses.

5. We will make all reasonable efforts to decide promptly all matters presented to us for decision.

6. We will give the issues in controversy deliberate, impartial, and studied analysis and consideration.

7. While endeavoring to resolve disputes efficiently, we will be considerate of the time constraints and pressures imposed on lawyers by the exigencies of litigation practice.

8. We recognize that a lawyer has a right and a duty to present a cause fully and properly, and that a litigant has a right to a fair and impartial hearing. Within the practical limits of time, we will allow lawyers to present proper arguments and to make a complete and accurate record.

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