WORKERS' COMPENSATION SECTION GUIDELINES FOR PROFESSIONAL CONDUCT

Adopted by:
Florida Bar
Workers' Compensation Section
June 27, 1997
Endorsed by:
Florida Conference of Judges of Compensation Claims
September 17, 1997
Amended May 20,2012

Introduction

By its nature, the practice of law requires the interaction of lawyers, as well as other professionals and disciplines. The lawyer's role in the administration of justice is a critical one. Although a lawyer's duty is always to the client, lawyers must be conscious of their duty to the adjudicatory system that serves both the lawyer and the client. Additionally, lawyers have the fundamental duties of personal dignity and professional integrity, not only to clients and adversaries, but to the mediators and judges as well. The efficient administration of the workers' compensation adjudication system, coupled with the self-executing nature of this system, requires courtesy and cooperation with fellow professionals.

In order to "form a more perfect union," the following Guidelines for Professional Conduct have been adopted. These Guidelines are intended to promote and ensure a tradition of professionalism among and between members of the Workers' Compensation Section of The Florida Bar. Civility and professionalism can only enhance the efficient administration of the workers' compensation adjudication system, promote a self-executing nature of the system within which we practice, and afford to all parties full protection of their rights. Not all lawyers will agree with every Guideline, but all lawyers should agree that civility and professionalism are required. It is hoped that these Guidelines will promote these concepts, but at the same time allow lawyers their personal style and approach to the practice of law in Workers' Compensation.

A. Scheduling, Continuances, and Extensions of Time

Scheduling and Continuances

1. Lawyers are expected to comply with the workers' compensation rules of procedure, Chapter 60Q, Florida Administrative Code.
2. Lawyers are encouraged to communicate with opposing counsel prior to scheduling depositions, hearings and other proceedings, in order to schedule them at times that are mutually convenient for all interested persons. Alternatively, if a lawyer does not communicate with opposing counsel prior to scheduling a deposition or hearing, he should be willing to re-schedule that deposition or hearing if the time selected is inconvenient for opposing counsel. Counsel should remain cognizant of time constraints for trial and plan their discovery early to avoid the urgencies that can result from tardy efforts to obtain depositions in the days immediately prior to trial.
3. Upon receiving an inquiry concerning a proposed time for a hearing, deposition, meeting, or other proceeding, a lawyer should promptly agree to the proposal or offer a counter suggestion that is as close in time as is reasonably possible.
4. A lawyer should call potential scheduling conflicts or problems to the attention of those affected, including the judge or tribunal, as soon as they become apparent to the lawyer.

5. Lawyers should cooperate with each other when conflicts and calendar changes are necessary and requested.
6. Counsel should never request a calendar change or misrepresent a conflict in order to obtain an advantage or delay. However, in the practice of law, emergencies affecting our families or our professional commitments will arise which create conflicts and make requests inevitable. We should be cooperative with each other whenever possible in agreeing to calendar changes, and should make such request of counsel only when absolutely necessary.
7. Lawyers should endeavor to provide opposing counsel, parties, witnesses, and other affected persons, sufficient notice of depositions, hearings and other proceedings, except upon agreement of counsel, in an emergency, or in other circumstances compelling more expedited scheduling. Lawyers should never characterize their own failure to plan as an emergency.
8. When scheduling hearings and other adjudicative proceedings, a lawyer should request an amount of time that is truly calculated to permit full and fair presentation of the matter to be adjudicated and to permit equal response by the lawyer's adversary.

Extensions

9. A lawyer should comply with the requirements of chapter 440 and the Rules of Workers' Compensation, Chapter 60Q, Florida Administrative Code, when seeking any extension.
10. A lawyer should accede to all reasonable requests for scheduling, rescheduling, cancellations, extension, and postponements that do not prejudice the client's opportunity to full, fair, prompt consideration and adjudication of the client's claim or defense.
11. First requests for reasonable extensions of time to respond to litigation deadlines, whether relating to pleading, discovery or motions, should ordinarily be granted between counsel as a matter of courtesy unless time is of the essence.
12. After a first extension, any additional requests for time should be dealt with by balancing the need for expedition against the deference one should ordinarily give an opponent's schedule of professional and personal engagements, the reasonableness of the length of extension requested, the opponent's willingness to grant reciprocal extensions, the time actually needed for the task, and whether it is likely a judge will grant the extension if asked to do so.
13. A lawyer should advise clients against the strategy of granting no time extensions for the sake of appearing "tough."
14. A lawyer should not seek extensions or continuances or refuse to grant them for the purpose of harassment or prolonging litigation.
15. A lawyer should not attach to an extension unfair and extraneous conditions. A lawyer is entitled to impose conditions, such as preserving rights that an extension might jeopardize, and to seek reciprocal scheduling concessions. A lawyer should not, by granting extensions, seek to preclude an opponents' substantive rights.
16. A lawyer should not request rescheduling, cancellations, extensions, or postponements without legitimate reasons and never solely for the purpose of delay or obtaining unfair advantage.

B. Service of Papers

1. The timing and manner of service should not be used to the disadvantage of the party receiving the papers. Parties should attempt to use the same timing and manner of service. If a pleading is electronically filed with the Office of Judges of Compensation Claims, it should be served on opposing parties in the same or a substantially similar manner.
2. Papers and memoranda of law should not be served at trial or hearing appearances without advance notice to opposing counsel and should not be served so close to a trial or hearing appearance so as to inhibit the ability of opposing counsel to prepare for that appearance or to respond to the papers.

3. 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 the day preceding a secular or religious holiday.
4. Service should be made personally or by electronic mail, or by courtesy copy facsimile transmission when it is likely that service by U.S. mail, even when allowed, will prejudice the opposing party.
5. A lawyer should strictly adhere to rules regarding the method and timing of service of papers.

C. Written Submission to a Judge, Including Briefs, Memoranda, Affidavits and Declarations

1. 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 but only if these would be subject to judicial notice and if sufficient backup data and its sources are presented contemporaneously.
2. 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.

D. Communication with Lawyers, Judicial Staff, and Lawyer Staff

1. Counsel should at all times be civil and courteous in communicating with adversaries, judges, and their respective staff whether in writing, orally or by telephone.
2. Letters should not be written to ascribe to one's adversaries or to the court, a position he or she has not taken or to create "a record" of events that have not occurred.
3. Letters intended only to make a record should be used sparingly and only when thought to be necessary under all the circumstances.
4. Unless specifically permitted or invited by a judge, letters between counsel should not be sent to judges.
5. A lawyer should adhere strictly to all expressed promises to, and agreements with opposing counsel, whether oral, or in writing, or by telephone, and should adhere in good faith to all agreements implied by the circumstances or by local custom.
6. During the course of representing a client, a lawyer and his or her staff should not communicate on the subject of the representation with a party known to be represented by a lawyer in the matter without the prior consent of the lawyer representing such other party unless authorized by law to do so.
7. Lawyers should treat opposing counsel's staff and judicial staff with the same professionalism and courtesy afforded opposing counsel and judges. If a conflict arises, a lawyer should attempt to arrange a conference with the opposing counsel if it involves his or her staff), or the judge (if it involves judicial staff) and express concerns directly to the opposing counsel or the judge, so as to avoid arguments with opposing counsel's and judicial staff. Of course counsel staff and judicial staff should afford each other the same professionalism and courtesy as afforded by lawyers and judges to each other.
8. Lawyers should instruct their staff to act in a professional manner, not only in their dealings with judicial staff, but also with staff from other lawyers offices.

E. Depositions

1. 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.
2. In scheduling depositions, reasonable consideration should be given to accommodating schedules of opposing counsel and of the deponent, where it is possible to do so without prejudicing the client's rights. To facilitate this, counsel should be diligent in scheduling depositions well in advance of trial, hearings, or mediation at which such testimony will be used.
3. In scheduling depositions, upon oral examination, a lawyer should allow enough time to permit the conclusion of the deposition, including examination by all parties, without adjournment.

4. Counsel should not attempt to delay a deposition for dilatory purposes but only if necessary to meet real scheduling problems.
5. Counsel should not inquire into a deponent's personal affairs or question a deponent's integrity where such inquiry is irrelevant to the subject matter of the deposition.
6. Counsel should refrain from repetitive or argumentative questions, or those asked solely for purposes of harassment. Counsel should not conduct questioning in a manner intended to harass the witness, such as by repeating questions after they have been answered, by raising the questioner's voice or by appearing angry at the witness.
7. Counsel defending a deposition should limit objections to those that are well founded and permitted by the 60Q-6 Rules of Procedure for Workers' Compensation Adjudication, Florida Rules of Civil Procedure or applicable case law. Counsel should bear in mind that 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 by the examining lawyer. When the grounds are then stated they should be stated succinctly and only that which is necessary to state the grounds should be stated.
8. While a question is pending, counsel should not, through objection or otherwise, coach the deponent to suggest answers.
9. Counsel should not direct a deponent to refuse to answer questions unless they seek privileged information.
10. Counsel for all parties should refrain from self-serving speeches during depositions.
11. Counsel should not engage in any conduct during a deposition that would not be allowed in the presence of a judicial officer.
12. All parties when coordinating depositions are to comply with the requirements set out by section 60Q-6.113(7) of the Rules of Procedure for Workers' Compensation Adjudications which section reads:

> "No discovery shall be permitted within 10 days of the final hearing absent prior approval by the judge for good cause shown or by agreement of the parties."

F. Document Demands

1. Demands for production of documents should be limited to documents actually and reasonably believed to be needed for the prosecution or defense of an action and not made to harass or embarrass a party or witness or to impose an inordinate burden or expense in responding.
2. Demands for document production should not be so broad as to encompass documents clearly not relevant to the subject matter of the case. If a document request is objectionable only in part, the documents responsive to the unobjectionable portion should be produced in a timely manner.
3. Demands for documents should be precise and succinct enough for the opposing lawyer to accurately respond. Vague or overbroad demands for documents that do not allow a party to draw conclusions as to documents that are requested make compliance impossible and should not be made.
4. Documents should be withheld on the grounds of privilege only where appropriate. Parties should comply with The Florida Rules of Civil Procedure when raising privilege and preparing their privilege log.
5. Counsel should not produce documents in a disorganized or unintelligible fashion, or in a way calculated to hide or obscure the existence of particular documents. Document production should comply with The Florida Rules of Civil Procedure.
6. Document production should not be delayed to prevent opposing counsel from inspecting documents prior to scheduled depositions or for any other tactical reason. However, counsel should make such requests to allow reasonable time for opposing counsel to produce the requested documents prior to depositions or other proceedings, giving consideration to time periods allowed in the appropriate Rules of Procedure.

7. A lawyer should never use discovery for the purpose of harassing or improperly burdening an adversary or causing the adversary to incur unnecessary expense.

G. Motion Practice

1. Before requesting hearing on a motion, counsel should make a reasonable effort to resolve the issue, including personal communication with opposing counsel, as required by the appropriate Rule of Procedure for Workers' Compensation Adjudications.
2. A lawyer should not force opposing counsel to make a motion and then not oppose it.
3. Following a hearing, the lawyer 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 judge. Lawyers should promptly provide proposed orders to opposing counsel for approval prior to submitting them to the judge. Opposing counsel should then promptly communicate any objections and at that time, the drafting lawyer should immediately submit a copy of the proposed order to the judge and advise the judge as to whether or not it has been approved by opposing counsel. The order must fairly and adequately represent the ruling of the judge.
4. A lawyer should first obtain the judge's permission to appear by telephone at motion hearings, and if permission is granted, shall extend the same opportunity to opposing counsel.

H. Dealing with Non-Party Witnesses

1. Counsel should not issue subpoenas to non-party witnesses except in connection with their appearance at a hearing, trial, or deposition, or to obtain necessary documents in the possession of a non-party witness. Subpoenas issued should be served well in advance of the scheduled appearance, with time afforded for the recipient to arrange their personal schedule. Attorneys should recognize and respect that witnesses have schedules and commitments just as attorneys do.
2. Deposition subpoenas should be accompanied by notices of deposition with copies to all counsel.
3. Where counsel obtains documents pursuant to a deposition subpoena, copies of the documents should be made available as soon as possible to the adversary, at his or her expense, even if the deposition is canceled or adjourned.
4. If the deposition or hearing is continued or canceled, the non-party witness should be promptly notified and released from the obligation to appear. Courtesy of attorneys in respecting the rights and obligations of deponents will enhance the public perception of attorneys generally.

I. Ex Parte Communications with the Judge and Others

1. A lawyer should avoid ex parte communication on the substance of a pending case with a judge before whom such case is pending.
2. Even where applicable laws or rules permit an ex parte application or communication to the judge, before making such an application or communication, a lawyer should make diligent efforts to notify the opposing party or a lawyer known to represent or likely to represent the opposing party and should make reasonable efforts to accommodate the schedule of such lawyer to permit the opposing party to be represented on the application or involved in the communication. A lawyer should make such an application or communication (including an application to shorten an otherwise applicable time period) only where there is bona fide emergency such that the lawyer's client will be seriously prejudiced by a failure to make the application or communication on regular notice.
3. Lawyers should notify opposing counsel of all oral or written communications with the judge or other tribunal, except those involving only scheduling matters. Counsel should always notify opposing counsel of dates and times obtained from the judge for future hearings on the same day that the hearing date is obtained from the judge. Copies of any submissions to the judge (such as correspondence, memoranda of law, case law, etc.), should simultaneously be provided to opposing counsel by substantially the same method of delivery by which they are provided to the judge. For example, if a

memorandum of law is hand-delivered to the judge, at the same time a copy should be hand-delivered or faxed to opposing counsel. If a document is electronically filed, it should be served on opposing counsel in the same or a substantially similar manner. If asked by the judge to prepare an order, counsel should furnish a copy of the order, to opposing counsel at the time the material is submitted to the judge.
4. A lawyer should be courteous and may be cordial to a judge but should never show marked attention or unusual informality to a judge. A judge should be referred to by surname during any official proceedings. A lawyer should avoid anything calculated to gain, or having the appearance of gaining, special personal consideration or favor from a judge.

J. Settlement and Alternative Dispute Resolution

1. Except where there are strong and overriding issues of principle, a lawyer should raise and explore the issue of settlement in every case as soon as enough is known about the case to make settlement discussion meaningful.
2. Counsel should not falsely hold out the possibility of settlement as a means for adjourning discovery or delaying trial.
3. In every case, counsel should consider whether the client's interest could be adequately served and the controversy more expeditiously and economically disposed of by mediation.
4. Counsel Shall be punctual and prepared for mediation conference.
5. Counsel shall participate, and encourage their client to participate, in mediation in good faith.
6. Counsel shall immediately notify the judge's office of any settlement or resolution of a matter that no longer requires a merits or motion hearing.

K. Pretrial Conference

1. The pretrial stipulation should be fully completed as per the requirement of Rule of Procedure for Workers' compensation 60Q-6.113.
2. Counsel should have an understanding of the discovery requirements of case in advance of preparing the pretrial stipulation. Counsel for the parties should specifically describe in the pretrial stipulation the issues, claims, defenses, discovery necessary and a reasonable estimate of the time required for presenting the case at final hearing.
3.Upon agreement of counsel, submission of a written pretrial stipulation in lieu of a live pretrial conference may be more efficient. Counsel for the parties should attempt to discuss each issue of the pretrial stipulation prior to its submission to the judge, or at a live pretrial hearing. Counsel for the parties should complete the applicable portions of the pretrial stipulation with the specificity required to give opposing counsel adequate notice of the claims and defenses to be litigated, witnesses, and documentary evidence to be used at trial. Submission of the written pretrial stipulation to opposing counsel should be accomplished expeditiously so as to provide opposing counsel sufficient time to complete it fully and effectively, and to timely file it with the judge.

L. Trial, Conduct and Hearing Room Decorum

1. A lawyer should always deal with parties, counsel, witnesses, judge's staff, and the judge with courtesy and civility and avoid undignified or discourteous conduct which degrades the adjudicatory process and proceedings.
2. A lawyer should always be punctual and prepared for any appearance before the judge.
3. Counsel should always be appropriately dressed when appearing before a judge or mediator to reflect the importance and formality of the proceedings. Counsel should remain aware that their appearance and demeanor will be perceived by their clients and the public as a sign of their respect for the process and their client.

4. Counsel should stand when the judge enters the hearing room, recesses or adjourns the proceedings.
5. Counsel should address all public remarks to the judge, not to opposing counsel.
6. A lawyer should avoid disparaging personal remarks or acrimony toward opposing counsel.
7. Counsel should refer to all persons, including witnesses, other counsel, and the parties by their surnames and not by their first or given names.
8. Only one lawyer for each party shall examine, or cross examine each witness, unless otherwise approved by the judge. The lawyer stating objections, if any, during direct examination, shall be the lawyer recognized for cross examination.
9. Any exhibit offered in evidence should, at the time of such offer, be handed to opposing counsel. If any exhibit or authority is tendered to the judge or mediator during a proceeding, a courtesy copy shall be provided to opposing counsel.
10. In making objections, counsel should state only the legal grounds for the objection and should refrain from further comment or argument unless elaboration is requested by the judge.
11. Generally, in examining a witness, counsel shall not repeat or echo the answer given by the witness.
12. Counsel shall admonish all persons at counsel table that gestures, facial expressions, audible comments, or the like, as manifestations of approval or disapproval during the testimony of witnesses, or at any other time, are absolutely prohibited.
13. During trials and evidentiary hearings, the lawyers should mutually agree to disclose the identities, timing, and duration of witnesses' testimony.
14. A lawyer should mark on or alter exhibits, charts, graphs, and diagrams without opposing counsel's permission or leave of the Judge.
15. A lawyer should abstain from conduct calculated to detract or divert the fact-finder's attention from the relevant facts or otherwise cause it to reach a decision on an impermissible basis.
16. A lawyer's word should be his or her bond. A lawyer should not knowingly misstate, distort, or improperly exaggerate any fact or opinion and should not improperly permit a lawyer's silence or inaction to mislead anyone. Upon learning of any inadvertent misstatement, a lawyer should immediately correct that misstatement so as to preserve the credibility of the record.
17. A charge of impropriety by one lawyer against another in the course of litigation should never be made except when relevant to the issues of the case.
18. In appearing in his or her professional capacity before a tribunal, a lawyer should not:
• 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;
• ask any question that he or she has no reasonable basis to believe is relevant to the case and that is intended to degrade a witness or other person;
• assert one's personal knowledge of the facts in issue, except when testifying as a witness;
• assert one's personal opinion on matters before the tribunal, except that a lawyer may argue on the lawyer's analysis of the evidence, for any position or conclusion with respect to the matters before the tribunal.
19. 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 a matter considered by the tribunal.
20. A lawyer should address objections, requests and observations to the tribunal and not engage in undignified, discourteous, and unprofessional conduct.
21. 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 JCC by repeated 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 properly admitted through other means. This does not preclude a lawyer from proffering evidence deemed inadmissible, for the appropriate purpose of appellate review.
22. A lawyer should not attempt to get before the JCC evidence which is improper.

23. A lawyer should never attempt to place before a JCC evidence known to be clearly inadmissible, nor make any remarks or statements which are intended to improperly influence the outcome of any case.
24. A lawyer should accede to reasonable requests for waivers of procedural formalities when the client's legitimate interests are not adversely affected.
25. Lawyers should not knowingly misstate, misrepresent or distort any fact or legal authority to the judge or to opposing counsel and shall not mislead by inaction or silence. Further, if this occurs unintentionally and is later discovered, it should immediately be disclosed or otherwise corrected.
26. A lawyer should refrain from any derogatory or discourteous remarks relating to the competence or ability of the JCC due to an adverse ruling or result.
27. A lawyer should strictly adhere to a judge's requests. If the judge requests brevity, either orally or in writing, a lawyer should adhere to that request.