IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

**RE: STANDING DISCOVERY ORDER FOR DIVISION AE**

_____/

The following procedures are designed to help the parties and the Court work together to accomplish civil discovery without undue delay and unnecessary expense.

## I. GENERAL DISCOVERY PRINCIPLES

### A. RULE 1.280

An objection that a discovery request is not reasonably calculated to lead to admissible evidence will be overruled by this Court unless the objection states its basis.

### B. Rule 1.280 – Protective Orders

This Rule of Civil Procedure permits the Court to enter a protective order "to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." A motion seeking relief under this Rule must include a specific explanation, supported by facts, demonstrating how complying with the discovery request would cause annoyance, embarrassment, oppression, or undue burden or cost.

### C. Non-Waiver

Discovery is a dynamic process. What is relevant or proportionate or cumulative or unduly burdensome can change as a case moves forward. The Court recognizes that a party may be unwilling to compromise its position on a particular discovery request because of concern that the concession will be deemed to waive a future objection or a future demand for related

discovery. To eliminate this concern, the Court evaluates all discovery requests and responses individually. Therefore, by responding, in whole or in part, to a discovery request, a party does not waive any objection to a future request. Likewise, by agreeing to limit a discovery demand, a party does not waive its right to seek additional discovery in the future. Parties need not serve a response or objection that specifically reserves their rights or disavows a waiver.

## II. DISCOVERY OBJECTIONS

### A. Boilerplate or General Objections

The parties shall not make nonspecific, boilerplate objections. The parties also shall not make General Objections that are not tied to a particular discovery request. Such objections will be summarily overruled.

### B. Vague, Overly Broad, and Unduly Burdensome

Objections that state that a discovery request is "vague, overly broad, or unduly burdensome" will be overruled by this Court. If a party believes that a request or a term is vague, that party shall attempt to obtain clarification from opposing counsel prior to objecting on vagueness grounds.

If a party believes a discovery request seeks irrelevant information or is unduly burdensome, that party shall confer in good faith with opposing counsel to narrow the scope of the request before asserting these objections. The objecting party nevertheless shall respond as to those matters for which the scope or burden is not contested. For example, if there is an objection based upon the scope of the request, such as time frame or geographic location, discovery should be provided as to the time period or locations that are not disputed, and the response should clearly state such. Thus, if discovery is sought nationwide for a ten-year period, and the responding party objects on the grounds that only a five-year period limited to activities

in the State of Florida is appropriate, the responding party shall provide responsive discovery falling within the five-year period as to the State of Florida and state such with its objection to the remainder.

A party objecting on any of these grounds must explain the specific and particular way in which a request is vague, seeks irrelevant information or is unduly burdensome. *See, Topp Telecom, Inc. v. Atkins,* 763 So. 2d 1197, 1199 (Fla. 4th DCA 2000).

**C. Formulaic Objections Followed by an Answer**

A party shall not recite a formulaic objection followed by an answer to the request. It has become common practice for a party to object to a discovery request, and then state that "notwithstanding the above," the party will respond to the discovery request, subject to or without waiving such objection. Such a response will be deemed to preserve nothing. Further, it leaves the requesting party uncertain as to whether the discovery request (as propounded) has actually been fully answered, whether the response relates only to the request as unilaterally narrowed by the responding party, and whether the responding party is withholding any responsive materials.

The proper practice is to state (1) whether documents are being provided in response to the request and identify those documents by sequential number or category, and (2) whether any responsive documents are being withheld, and if so the specific legal basis for that objection.

Samples of proper objections include:

Defendant is providing documents marked as Defense 1 – 250, as well as a USB drive containing emails for the following custodians in native format _____. Defendant has identified other documents which are responsive to the request as

propounded, but Defendant asserts that those additional documents are irrelevant to the claims and defenses in this matter because _____.

Plaintiff is providing documents marked as Plaintiff 1 – 100. Plaintiff has identified other documents which are responsive to the request as propounded, but Plaintiff asserts that production of those materials would be unduly burdensome and disproportionate to the needs of the case because the burden and expense of the proposed discovery outweighs its likely benefit for the following reasons: _____.

**D. Production At An Indeterminate Time**

It has also become a common practice to respond to Requests for Production by saying that the party will either produce responsive materials, or make those materials available for inspection, at an indeterminate future date. Such a response is not a response and only serves to delay the discovery process. Production must be completed no later than the time for inspection specified in the request or another reasonable time specified in the response. Hence, unless all unobjectionable materials are being produced contemporaneously with the written response, the response must specify a date by which production will be completed; the respondent may adopt the date proposed in the request or may propose its own reasonable time, after consultation with opposing counsel.

Rolling production of documents is a viable alternative. If a rolling production is to occur, the parties shall confer about a production schedule, including the order in which categories of documents will be produced, and a good faith estimate of the date by which production will be completed.

The parties may agree to a longer period for production, without leave of Court. In the absence of agreement among the parties, if the production will not be completed within 30 days of the response deadline, a motion for enlargement of time should be filed by the responding party. The motion shall include a good cause explanation for why production cannot be completed within that time period, and a proposed schedule for completing the production.

**E. Objections Based upon Privilege–Requests for Production and Interrogatories**

Generalized objections asserting attorney-client privilege or work product doctrine do not comply with the Rules. The Rules require that objections based upon privilege identify the specific nature of the privilege being asserted, as well as, *inter alia*, the nature and subject matter of the communication at issue and the sender and receiver of the communication and their relationship to each other. The production of non-privileged materials should not be delayed while a party is preparing a privilege log or seeking a ruling.

**F. Instructions to the Responding Party**

A party propounding discovery cannot impose legal obligations on the respondent through the use of Instructions. Discovery is governed by the rules of Court, which cannot be unilaterally supplemented by a party. Any Instruction that purports to impose a duty not otherwise mandated by the Florida Rules of Civil Procedure has no legal effect.

## III. PROCEDURES FOR DISCOVERY DISPUTES

**A. Pre-hearing Communication.** If a discovery dispute arises, counsel must actually speak to one another (in person or via telephone) and engage in reasonable compromise in a genuine effort to resolve their discovery disputes before seeking Court intervention. No discovery motions shall be filed until after the parties have engaged in this process. The Court encourages filing the discovery objections without a motion if the Court can simply review the

request and objection in order to rule, thereby saving the parties unnecessary briefing and expense.

**B. Encouraging Participation by Less-Experienced Lawyers:** Ordinarily, only one lawyer for each party may argue at the discovery hearing. Nevertheless, the Court has a strong commitment to supporting the development of our next generation of lawyers. The Court encourages parties and experienced, seasoned attorneys to allow less-experienced practitioners the opportunity to argue in court. A party should advise the Court prior to the beginning of the hearing if a lawyer of 3 or fewer years of experience will be arguing the matter. In that event, the Court will allow multiple lawyers to argue on behalf of that party.

## IV. DEPOSITION ORDER TO CLARIFY PROCEDURES

On a showing of issues and at the request of any counsel or sua sponte, the Court, in its discretion, will enter the attached Deposition Order. In doing so, the Court will not consider fault or blame; rather, the Order will be entered to enable clarity on a going-forward basis without regard to prior disputes or discovery issues.

DONE AND ORDERED in Chambers at West Palm Beach, Palm Beach County, Florida, this 3rd day of November, 2021.

G. JOSEPH CURLEY
Circuit Court Judge

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO:

Plaintiff,

v.

Defendant.
_____/

**SUA SPONTE ORDER ESTABLISHING PROCEDURES REGARDING DISCOVERY**

THIS ORDER is to Establish Procedures Regarding Discovery. The Court believes that this Order is needed to provide clarity and efficiency. As a result thereof, it is hereby

ORDERED ADJUDGED as follows:

1. This Order shall govern the conduct of all counsel, parties and witnesses in this cause.

2. DISCOVERY – All discovery matters are to be resolved by agreement, if possible. In the event that agreement is not possible, the parties shall refer all such disagreements to the Court and the Court will entertain and resolve them. In the event of a dispute at an ongoing deposition which threatens to cause a termination of the deposition, counsel shall first discuss the issue outside the presence of the deponent (but on the record) in

an effort to resolve the issue. Should such reasonable, good faith efforts fail, before termination of the deposition, the attorneys shall attempt to contact the Court by telephone.

3. DEPOSITIONS – Depositions will be conducted in compliance with the following rules:

(a) LOCATION – Absent contrary order of Court, all depositions shall be taken only in court reporter's offices or at counsel's offices.

(b) PERSONS PRESENT – At all depositions in this cause, absent a Court order specifically directing otherwise, the only persons who shall be in attendance while any deposition is being conducted are (1) the attorneys for Plaintiff; (2) the attorneys for Defendant; (3) one representative of each of the parties, including any corporate representatives; (4) the court reporter; and (5) such other personnel as may be necessary to record the deposition. If the parties wish to have additional persons attend, a prior court order or agreement of counsel is required.

(c) OBJECTIONS – The only objections to questions asked at a deposition that may be made at a deposition are those involving a privilege against disclosure or objection as to the form of the question being asked. All other objections

to questions asked are preserved until trial. There will be no objection that the question posed seeks information beyond the scope of discovery, as any such objection shall be raised before the Court on motion by the objecting party pursuant to those provisions of the Florida Rules of Civil Procedure which address such objections. All objections shall be concise, shall never suggest answers to the deponent nor will any party or attorney coach the deponent. Argumentative interruptions, objections or statements will not be permitted at depositions.

(d) DIRECTIONS NOT TO ANSWER QUESTIONS – Directions to any deponent, by any counsel or party, not to answer questions are improper, except upon the ground of privilege, and no such direction shall be made by any counsel to any deponent. All parties and counsel are directed to follow, comply with, and obey all of the instructions, procedures and holdings as set forth in the Fourth District Court of Appeal Opinion in the case of Smith v. Gardy, 569 So.2d 504 (Fla. 4th DCA 1990) (attached). If there is a privilege objection, the witness shall, nevertheless, answer all questions relevant to the existence, extent or waiver of the privilege, such as the day of the communication, who made the statement in question, to whom and in whose presence the statement was made, other persons to whom the statement was made, other persons to whom

the content of the statement has been disclosed, and the general subject matter of the statement.

(e) RESPONSIVENESS – All deponents are required to answer all questions directly, without evasion and to the extent of their knowledge.

(f) PRIVATE CONSULTATION – Private conferences between deponents and attorneys during the actual taking of the deposition are improper and the Court prohibits same when any question is pending to the witness, except as may be necessary for the purpose of determining whether a privilege should be asserted. However, unless prohibited by the Court for good cause shown, such conferences may be held during recesses and adjournments.

4. The parties' counsel shall review the attached Palm Beach County Rules of Professional Courtesy and Civility and are hereinafter ordered to comply with same.

5. SANCTIONS – All parties, counsel and witnesses are hereby advised and notified in advance that the Court will impose such sanctions as are authorized by the Fla. R. Civ.P., including but not

limited to an award of attorney's fees and costs, as to any party, counsel or witness who violates the terms and provisions of this Order.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida, this ___day of _____, _____.

_____
G. JOSEPH CURLEY, JR.
Circuit Judge

Copies furnished to:

mercial Code comment to section 673.409, which states:

> 1. As under the original sections, a check or other draft does not of itself operate as an assignment in law or equity. The assignment may, however, appear from other facts, and particularly from other agreements, express or implied; and when the intent to assign is clear the check may be the means by which the assignment is effected.

U.C.C. § 3-409, comment 1, 19B Fla.Stat. Ann. 213 (1966).

Based on an affidavit of United's vice chairman, and on *Bancroft v. Gables Racing Association, Inc.*, 116 Fla. 769, 157 So. 500 (1934), United contends that there was a valid assignment of the $11,000. That position is unavailing. First, the affidavit does no more than outline the purpose for which the check was delivered to United. The elements of an assignment were not shown. *See Steinbrecher v. Fairfield County Trust Co.*, 5 Conn.Cir.Ct. 893, 255 A.2d 138, 142 (1968). Guerra retained control over the money in the account after the check was written and, for example, could have stopped payment on the check. There was no assignment of the funds. Second, the *Bancroft* case, relied on by United, is a pre-Uniform Commercial Code case. The facts of that case are materially different from those presented here. More important, to the extent *Bancroft* suggests that a draft can, without more, operate as an assignment of a debt or fund, 116 Fla. at 777, 157 So. at 503, it has been superseded by the contrary rule of the Uniform Commercial Code, § 673.409(1), Fla.Stat. (1989), and is no longer good law.[2]

[3] United argues alternatively that it had an equitable interest in Guerra's account and that it was entitled to relief from the writ of garnishment. That position is likewise unavailing. This court has held that "'[m]oney of another deposited by a debtor in his own name cannot be reached by garnishment as the property of such debtor.... [I]n garnishment the equitable title to the property will prevail over the bare legal title....'" *Ginsberg v. Goldstein*, 404 So.2d 1098, 1100 (Fla. 3d DCA 1981) (emphasis and citations omitted); *see Edward F. Gerace, P.A. v. Hayden*, 550 So.2d 1143, 1144 (Fla. 3d DCA 1989); *Best-Morrison Properties v. Dennison*, 468 So.2d 483 (Fla. 2d DCA 1985). This is not a case, however, in which United's money was deposited in Guerra's name. United's argument that the delivery of Guerra's check created an equitable interest in Guerra's account is merely an alternative way of arguing that the check operated as an assignment. That contention is foreclosed by section 673.409.

We therefore reverse the trial court's order partially dissolving the writ of garnishment and remand with directions to the trial court to enter an order directing United to return the funds to the garnishee, Centrust Bank.

**Markanna SMITH, individually and as Personal Representative of the Estate of Michael David Snelgrove, a minor, deceased, and Robin Snelgrove, individually and as Personal Representative of the Estate of Michael David Snelgrove, a minor, deceased, Appellants,**

**v.**

**Harvey GARDY, M.D., and Sunlife Ob/Gyn Services, Inc., Appellees.**

No. 88-3198.

District Court of Appeal of Florida, Fourth District.

Oct. 17, 1990.

Rehearing Denied Nov. 28, 1990.

Parents brought malpractice action against obstetrician. The Circuit Court,

2. *Compare Bancroft*, 116 Fla. at 777, 157 So. at 503 ("It appears to be well settled that a draft for the whole of a particular specified fund or debt amounts to an assignment of such debt or fund, even without acceptance, if the drawee have notice thereof.") (citation omitted) *with* § 673.409(1), Fla.Stat. (1989) ("A check or other draft does not of itself operate as an assignment of any funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until he accepts it.").

Broward County, Arthur M. Birken, J., rendered judgment for obstetrician, and parents appealed. The District Court of Appeal, Kahn, Martin D., Associate Judge, held that: (1) parents were not entitled to have defense expert witness testify about causation in person at trial, rather than by videotape, to allow cross-examination into issue of standard of care; (2) testimony by defense expert as to standard of care was not privileged as work product and was within scope of deposition, and so should have been provided at deposition; and (3) an attorney may not instruct witness at deposition not to answer questions.

Affirmed.

1. Trial ⇐38

Plaintiffs in medical malpractice action were not entitled to have defense expert testify on issue of causation in person at trial, rather than by videotape, to allow cross-examination into issue of standard of care, even though expert indicated at deposition that he had an opinion as to standard of care but was not allowed by defense attorney to answer questions about standard of care; because trial involved two distinct issues, standard of care and causation, had expert testified in person at trial on direct examination as to causation, trial judge would have committed no error in limiting cross-examination to that subject. West's F.S.A. § 90.612(2).

2. Pretrial Procedure ⇐312

Work product privilege would not apply to bar testimony in medical malpractice action by expert witness as to standard of care where responses to expert interrogatories indicated that all experts were to testify as to care and treatment.

3. Pretrial Procedure ⇐174

Expert witness should have answered deposition question about standard of care in medical malpractice action, notwithstanding fact that his response could have been excluded at trial as not being within scope of direct examination; inquiry at deposition is not so limited. West's F.S.A. RCP Rule 1.280(b)(1).

4. Appeal and Error ⇐1043(6)

Failure of trial court to require expert to respond to plaintiffs' question during deposition about standard of care was harmless error where any testimony that defendant departed from appropriate standard of care would probably not have been heard by jury, and plaintiffs had their own experts to express opinions in support of their positions as to standard of care.

5. Pretrial Procedure ⇐151

Attorney may not instruct witness not to answer question at deposition.

6. Pretrial Procedure ⇐151

Suspension of deposition pending ruling on improper examination is appropriate procedure to be followed if objecting attorney has valid basis for concluding that answer to clearly objectionable question would be so damaging that, even though not permitted at trial, information revealed would be devastating beyond repair. West's F.S.A. RCP Rule 1.310(d).

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G. William Bissett, Preddy, Kutner, Hardy, Rubinoff, Brown & Thompson, Miami, and Alan S. Marshall, Irwin Cohen and S. Leo Kaufman, Paralegal of Cohen & Cohen, P.A., Hollywood, for appellants.

Debra J. Snow and Robert M. Klein of Stephens, Lynn, Klein & McNicholas, P.A., Miami, for appellees.

KAHN, MARTIN D., Associate Judge.

The unsuccessful plaintiff in a medical malpractice raises three issues in this appeal. Although we find no reversible error and affirm, comment is warranted on one of those issues.

A baby was born comatose because of lack of oxygen to the brain. He died some months later without recovering or leaving the hospital, and the lawsuit against the obstetrician followed. As to liability, at issue were causation and standard of care.

The plaintiffs propounded expert interrogatories to the defendant, the responses to which were a gem of obfuscation. The information to be gleaned from those answers was practically nil; however, one of

the very few intelligible answers was to the inquiry as to the subject matter on which each expert was expected to testify. The blanket answer was, "The care and treatment rendered to [the mother and baby]."

Among the eighteen expert witnesses[1] listed by the defense in the pretrial stipulation was Dr. Roger Freeman of Long Beach, California. Less than two weeks prior to the beginning of the trial the attorneys traveled to Long Beach for Dr. Freeman's deposition by the plaintiff to be followed immediately by the same witness's videotaped testimony on behalf of the defendant for use at trial (the latter pursuant to court order permitting it). Dr. Freeman responded appropriately to plaintiffs' questions as to causation, but was directed by the defense attorney not to answer questions as to standard of care (after the doctor acknowledged that he did have an opinion on that issue). The same occurred on the videotaped testimony.

Over plaintiffs' objection the trial court permitted the videotaped testimony to be presented to the jury (without the statement that Dr. Freeman had an opinion as to standard of care), and denied the request by the plaintiffs that instead Dr. Freeman be required to testify in person at the trial to allow cross-examination into the issue of standard of care.

[1] There was no abuse of discretion by the trial court, hence our affirmance. It is safe to assume that if permitted, Dr. Freeman's opinion as to standard of care would have favored the plaintiffs. Since there were two distinct issues, had Dr. Freeman testified in person at trial on direct examination as to causation, the trial judge would have committed no error in limiting cross-examination to that subject. *See* § 90.612(2), Fla.Stat. (1987).

[2] As to the plaintiffs' deposition of Dr. Freeman, he should have answered the

1. Eighteen defense experts! We shudder at what the defense attorneys' statement to their clients must have totaled in fees and costs. To obtain a clue we refer to the record which contains a caveat from one of the defense experts (this one located in Columbus, Ohio). It reads:

ITEMIZED CHARGES FOR PROFESSIONAL, MEDICAL-LEGAL SERVICES

| | |
|---|---|
| Open case, preparation, review and all work on case: (up to 3 hours) $350/hr thereafter | $1,550.00 |
| Deposition—minimum fee $2,200 up to 3 hours, then $550/hr thereafter: | 2,200.00+ |
| Booked but cancelled or date changed | 700.00 |
| Courtroom appearance by videotape—minimum fee $3,000 up to 3 hours, then $600/hr thereafter: | 3,000.00+ |
| Booked but cancelled: | 1,000.00 |
| Date changed: | 700.00 |
| Courtroom appearances in person— | |
| Hourly rate of $400 or minimum fee $4000 for 3 hrs. then $850/hr. | |
| Court appearance cancelled: | 1,500.00 |
| Court appearance date changed: | 700.00 |
| Special conference with lawyer—minimum fee $500 (1 hour) then $400/hr: | 500.00+ |

Addendum of Understanding:

— The legal firm that retains the expert (FPZ) is responsible for his fees if the other attorney does not pay.
— Payment of bills due 60 days from time of receipt, then interest starts at prime rate + 1%.
— Bills will be generated on schedule when services rendered.
— Questions concerning fees should be raised prior to opening case.

questions as to standard of care, notwithstanding the defense protestations of work product privilege. The expert interrogatories response, such as it was, indicated that all experts were to testify as to care *and* treatment. Even if the response were not so broad, the work product privilege would not apply. *See Mims v. Casademont*, 464 So.2d 643 (Fla. 3d DCA 1985).

[3] Notwithstanding the fact that his responses could have been excluded at trial as not being within the scope of direct examination, it is fundamental that the scope of inquiry at deposition is not so limited. Rule 1.280(b)(1) of the Florida Rules of Civil Procedure states, "It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence."

[4] Still the trial court's failure to require Dr. Freeman to respond to plaintiffs' questions when the attorneys had returned from California and at the eve of trial is harmless error. That doctor's (assumed) testimony that the defendants departed from the appropriate standard of care would probably not have been heard by the jury, so even had the plaintiffs' attorney elicited that information at deposition, there was not much, if anything that could have been done with it. The plaintiffs had their own experts to express opinions in support of their position as to standard of care.

[5] Dr. Freeman indeed should have answered, and the arrogance of the defense attorney in instructing the witness not to answer is without legal justification. Nowhere in the Florida Rules of Civil Procedure is there a provision that states that an attorney may instruct a witness not to answer a question.

[6] Rule 1.310(d) permits suspension of the deposition pending ruling on improper examination, and that is the appropriate procedure to be followed if the objecting attorney has a valid basis for concluding that an answer to a clearly objectionable question would be so damaging that even though not permitted at trial, the information revealed would be devastating beyond repair. Rule 1.380 provides a vehicle for sanctions if the objection is valid. Of course, had the defense been acting in good faith, it could have made a motion in limine before traveling to California so that the trial court could have ruled before hand on the question of limiting the scope of examination.

There was no proper basis for objection here. The questions should have been answered because they were within the scope of subject matter on which that expert was expected to testify. Nor was there a work product privilege. The apparent reason that the witness was instructed not to answer was simply because the defense attorney did not want to reveal adverse information. It was a calculated risk (well calculated, as it turned out) that the rules could be violated with impunity. For the plaintiffs' attorney to have suspended the discovery deposition to travel back to Florida to obtain a ruling prior to the imminent trial would have been foolhardy. The defense attorney would have proceeded with the videotaped deposition for trial anyway, so the plaintiffs' attorney was left to vent his frustrations by motions to the trial court and by this appeal—all unsuccessful.

What does all this show? Unfortunately that there is a trend of selective adherence to the rules of civil procedure by the trial bar. We understand that conduct at depositions has diminished to the level that some lawyers now seek and obtain court permission to bring special masters to depositions to rule on disputes as they arise.

It also shows that the level of professionalism is not where it should be.

Sad!

This panel had accumulated a combined 62 years of trial practice before becoming judges; we are not newly arrived from another planet, and we are aware of the difficulties inherent in trial practice. Nevertheless, our professional goals are to seek truth and justice. Not only are the courts charged with that responsibility, the lawyers are too. Thwarting those goals

diminishes us all. We urge senior lawyers to imbue their junior colleagues with the sense of honor and fair dealing that our noble profession warrants. If the conduct and ethics of the practice of law are reduced to the level of the marketplace, the public (and the legislature) cannot be faulted for reining in the independence of the bar. That would be sad indeed.

AFFIRMED.

ANSTEAD and GLICKSTEIN, JJ., concur.

Rosalie Czernohus WISEMAN, Appellant,

v.

AT & T TECHNOLOGIES, INC., Self-Insured, Appellee.

No. 89-1696.

District Court of Appeal of Florida, First District.

Oct. 22, 1990.

Claimant in workers' compensation action filed claim for attorney fees. The Judge of Compensation Claims, Joseph F. Hand, determined that benefits secured by claimant's counsel amounted to $10,590.35, that only 30 to 35 hours of claimant's counsel's time were productive of ultimate results, and awarded claimant's counsel $7,000 as reasonable fee. Claimant appealed. The District Court of Appeal, Joanos, J., held that: (1) although amount of attorney fee award did not constitute abuse of discretion on its face, judge's orders suggested error in calculation of benefits secured and time expended by claimant's counsel, and (2) time expended by claimant's counsel in preparation for and participation in attorney fee hearings was required to be included in computation of attorney fee award except any portion of hearing directed toward establishing amount of fee.

Reversed and remanded with directions.

Zehmer, J., concurred and filed opinion.

1. Workers' Compensation ⇐1983

Although amount of attorney fee award did not constitute abuse of discretion on its face, order suggested that judge of compensation claims erroneously considered only those benefits obtained by order and discounted those benefits obtained by negotiation in calculating amount of benefits secured to claimant by virtue of counsel's efforts and that judge erroneously viewed fact that claimant failed to obtain all benefits sought as indicative of lack of bad faith on part of employer and minimized value of benefits actually obtained accordingly. West's F.S.A. § 440.34(2).

2. Workers' Compensation ⇐1981

Although there was some overlap of subject matter in first three attorneys fee hearings, time expended by claimant's counsel in preparation for and participation in hearings were required to be included in computation of attorneys fee award, as was any portion of fourth attorney fee hearing which was not directed toward establishing amount of fee. West's F.S.A. § 440.34(2).

3. Workers' Compensation ⇐1981

Attorney in workers' compensation case is entitled to recover fees for effort involved in prosecuting claim for attorneys fees. West's F.S.A. § 440.34(2).

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Stuart F. Suskin, Abrams & Suskin, North Miami Beach, for appellant.

H. George Kagan and Sheryl S. Natelson, Miller, Hodges, Kagan & Chait, Deerfield Beach, for appellee.

JOANOS, Judge.

In this workers' compensation appeal, claimant challenges the amount of the attorney's fee awarded to claimant's counsel.

# Standards of Professional Courtesy and Civility

## Preamble

Attorneys are often retained to represent their clients in disputes or transactions. The practice of law is often an adversarial process. Attorneys are ethically bound to zealously represent and advocate in their clients' best interests. Nonetheless, certain standards of professional courtesy exist that must be observed in the courtroom, the board room, or any other setting in which an attorney is present.

The following standards of professional courtesy describe the conduct expected of attorneys practicing before state and federal courts and other tribunals in Palm Beach County as well as in South Florida, including those in Broward, Indian River, Martin, Miami-Dade, Monroe, Okeechobee, and St. Lucie counties. These standards are not meant to be exhaustive, but instead to set a tone or guide for conduct not specifically covered by these standards. The overriding principles promoted by these standards are good-faith, civil and respectful communication between counsel and similar cooperation with judges, arbitrators, mediators, clerks, court staff, witnesses and non-parties.

These standards have been codified with the intent that their dissemination will educate and remind attorneys and their clients that attorneys practicing in Palm Beach County as well as in South Florida are expected to behave professionally and civilly at all times. They have received the approval of the Board of Directors of the Palm Beach County Bar Association. They have also been endorsed by the judges of the 15th Judicial Circuit, who expect professional conduct by all attorneys who appear and practice before them.

In 1990, the Board of Governors of The Florida Bar adopted the Ideals and Goals of Professionalism. In 2011, the Florida Supreme Court amended its oath of attorney admission ("Oath of Attorney Admission") to require that attorneys taking the oath pledge to opposing parties and counsel "fairness, integrity, and civility, not only in court, but also in all written and oral communications." In 2013, the Florida Supreme Court issued an opinion entitled *In re: Code for Resolving Professionalism Complaints* (SC13-688) that requires each judicial circuit in Florida to create a local professionalism panel to hear grievances for professionalism and civility violations. These standards below should be read together with the Ideals and Goals of Professionalism, the Oath of Attorney Admission, and the Florida Supreme Court's opinion aimed at improving attorneys' professionalism and civility.

## I. Scheduling

1. Attorneys should endeavor to provide opposing counsel and pro se litigants (collectively, "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. As a general rule, actual notice should be given that is no less than five (5) business days for in-state depositions, ten (10) business days for out-of-state depositions and five (5) business days for hearings.

2. Attorneys should communicate with opposing counsel prior to scheduling depositions, hearings and other proceedings, so as to schedule them at times that are mutually convenient for all interested persons. Further, sufficient time should be reserved to permit a complete presentation by counsel for all parties. 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 available, and attorneys should cooperate with each other when conflicts and calendar changes are reasonably necessary. Only after making a reasonable effort to confer with opposing counsel should attorneys unilaterally schedule depositions, hearings or other matters.

3. Attorneys should notify opposing counsel, the court or other tribunal, and others affected, of scheduling conflicts as soon as they become apparent. Further, attorneys should cooperate with one another regarding all reasonable rescheduling requests that do not prejudice their clients or unduly delay a proceeding and promptly offer reasonable alternative dates to reschedule a matter.

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

5. Attorneys 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.

6. Attorneys should cooperate with opposing counsel during trials and evidentiary hearings by disclosing with reasonable advance notice the identities of all witnesses reasonably expected to be called and the length of time needed to present the attorney's client's case, except when a client's material rights would be adversely affected. The attorneys also should cooperate with the calling of witnesses out of turn when the circumstances justify it.

## II. Discovery

1. Attorneys should pursue discovery requests that are reasonably related to the matter at issue. Attorneys should not use discovery for the purpose of harassing, embarrassing or causing the adversary to incur unnecessary expenses.

2. Attorneys should not use discovery for the purpose of causing undue delay or obtaining unfair advantage.

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

## III. Conduct Directed to Opposing Counsel, the Court/Tribunal, and Other Participants in the Proceedings

1. As it brings dishonor to the legal profession, attorneys should refrain from criticizing or denigrating opposing counsel, the court/tribunal and their staff, the parties, and witnesses before clients, the public, and the media.

2. Attorneys should be, and should impress upon their clients and witnesses the need to be, courteous and respectful and not rude or disruptive with the court/tribunal, opposing counsel, parties and witnesses.

3. Attorneys should make an effort to explain to witnesses the purpose of their required attendance at depositions, hearings or trials. Absent compelling circumstances, attorneys should give adequate notice to non-party witnesses before the scheduling of their depositions, advance notice of a subpoena for a deposition, hearing or trial. Attorneys further should attempt to accommodate the schedules of witnesses when resetting their appearance and promptly notify them of any cancellations.

4. Attorneys should respect and abide by the spirit and letter of all rulings of the court and advise their clients to do the same.

5. Attorneys and their staff should a) act and speak civilly and respectfully to courtroom deputies and bailiffs, clerks, court reporters, judicial assistants and law clerks; b) be selective in inquiries posed to judicial assistants as their time and resources are limited; and c) familiarize themselves with the court's administrative orders, local rules and each judge's published standing orders, practices and procedures.

## IV. Candor to the Court/Tribunal and Opposing Counsel

1. Attorneys should not knowingly misstate, misrepresent, or distort any fact or legal authority to the court, tribunal or opposing counsel and shall not mislead by inaction or silence. Further, if this occurs unintentionally and is later discovered, the attorney immediately should disclose and correct the error. Attorneys, likewise, should affirmatively notify the court or tribunal of controlling legal authority that is contrary to their client's legal position.

2. Attorneys immediately should notify opposing counsel of all oral or written communications with the court or other tribunal, except those involving only scheduling or administrative matters.

3. Copies of any submissions to the court or other tribunal (such as e-mails, correspondence, motions, pleadings, memoranda or law, legal authorities, exhibits, transcripts, etc.), should be simultaneously provided to opposing counsel by e-mail or delivery of an electronic or hard copy. For example, if a memorandum of law is hand-delivered to the court, a copy should be simultaneously e-mailed or hand-delivered to opposing counsel.

4. Attorneys should submit factual or legal argument to a court in a motion or memorandum of law and not in the form of an e-mail or letter. Tribunals other than courts, however, may permit more informal means than a motion or memorandum of law for the submission of factual or legal argument.

5. Attorneys should draft proposed orders promptly after a hearing or decision and the orders should fairly and adequately represent the ruling of the court or tribunal. Attorneys should promptly provide, either orally or in writing, proposed orders to opposing counsel for approval. In response, opposing counsel should communicate promptly any objections to the drafting attorney. The drafting attorney then should promptly submit a copy of the proposed order to the court or other tribunal and state whether opposing counsel agrees or objects to the form of the order.

6. Attorneys should draft agreements and other documents promptly after the discussions or agreement so as to fairly reflect the true intent of the parties. Where revisions are made to an

agreement or other document, attorneys should point out, redline or otherwise highlight any such additions, deletions or modifications for opposing counsel.

## V. Efficient Administration

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

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

3. Attorneys should, whenever appropriate, discuss discovery planning. Attorneys should also endeavor to stipulate to all facts and legal authority not reasonably in dispute.

4. Attorneys should encourage principled negotiations and efficient resolution of disputes on their merits.

*Approved by the Board of Directors of the Palm Beach County Bar Association, May 2014*
*Jill G. Weiss, President*

*Endorsed by the Judges of the Fifteenth Judicial Circuit, June 2014*
*Jeffrey J. Colbath, Chief Judge*