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CONTINUING LEGAL EDUCATION SEMINAR



Perspectives from the Bench: Ethical Considerations with Federal Court Practice

Today's Presenters



Judge Michael J. Newman

U.S. District Court for the Southern District of Ohio



Judge J. Philip Calabrese

U.S. District Court for the Northern District of Ohio



Magistrate Judge Amanda K. Knapp

U.S. District Court for the Northern District of Ohio

Today's Agenda

- Rule of Professional Conduct 3.4 (Fairness to Opposing Party and Counsel) and Civility
- Rule of Professional Conduct 3.3 (Candor toward the Tribunal)
- Rule of Professional Conduct 3.5 (Impartiality and Decorum of the Tribunal)
- Rule of Professional Conduct 3.1 (Meritorious Claims and Contentions)

Rule 3.4: Fairness to Opposing Party and Counsel

A lawyer shall not

- (a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;
- (b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;
- (c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;
- (d) in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;
- (e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused.

U.S. District Court for the Southern District of Ohio Statement on Civility

"The Model Federal Rules of Disciplinary Enforcement, the Rules of Professional Conduct, and other rules, such as Fed. R. Civ. P. 11, govern lawyers' conduct through the imposition of sanctions, but necessarily set only minimum standards of behavior. Lawyers committed to professionalism must do more than merely avoid sanctions. They must acknowledge in their behavior that common courtesy, respect, and personal integrity play an essential role in the administration of justice ... Every lawyer, litigant, and Judge is entitled to expect, and should be accorded, the courtesy and respect described in this Statement."

1. Common courtesy
2. Respect for the profession
3. Respect for the legal system
4. Alternate dispute resolution and legal reform

Rule 3.3: Candor toward the Tribunal

A lawyer shall not knowingly:

- (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
- (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
- (3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

Rule 3.5: Impartiality and Decorum of the Tribunal

A lawyer shall not do any of the following:

- (1) seek to influence a judicial officer, juror, prospective juror, or other official by means prohibited by law;
- (2) lend anything of value or give anything of more than de minimis value to a judicial officer, official, or employee of a tribunal;
- (3) communicate ex parte with either of the following:
 - i. a judicial officer or other official as to the merits of the case during the proceeding unless authorized to do so by law or court order;
 - ii. a juror or prospective juror during the proceeding unless otherwise authorized to do so by law or court order.
- (4) communicate with a juror or prospective juror after discharge of the jury if any of the following applies:
 - i. the communication is prohibited by law or court order;
 - ii. the juror has made known to the lawyer a desire not to communicate;
 - iii. the communication involves misrepresentation, coercion, duress, or harassment;
- (5) engage in conduct intended to disrupt a tribunal;
- (6) engage in undignified or discourteous conduct that is degrading to a tribunal.

Rule 3.1: Meritorious Claims and Contentions

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue in a proceeding, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law.

Questions?



Judge Michael J. Newman

U.S. District Court for the Southern District of Ohio



Judge J. Philip Calabrese

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Magistrate Judge Amanda K. Knapp

U.S. District Court for the Northern District of Ohio

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