

**CRAIG S. BARNARD, AMERICAN INN OF COURT IV
OUTLINE FOR MENTORING LUNCH ON FEBRUARY 13, 2009**

I. How to Deal with the Difficult Client

- Dealing with the difficult client is challenging and demanding.
- Important to focus your attention on the difficult client and handle the client with care and diligence.
- Problems with difficult clients:
 - May not get paid.
 - May get sued for malpractice.
 - May have a Bar grievance filed against you.
- Identifying the difficult client – First interview:
 - Important to personally interview the client and speak to the client in scheduling the interview.
 - Has the client been represented previously regarding this matter by other attorneys? Who? How many? Consider the possibility of speaking to the other attorney. Tell the client you want to speak with the other attorney.
 - Why is the client no longer represented by those attorney(s)?
 - What is the nature and stage of the representation?
 - What are the client's expectations regarding time and costs to be expended?
 - What are the client's expectations regarding results?
- Dealing with the Difficult Client Once Retained by the Client
 - Stay within the confines of your role to analyze the case, give legal advice and make legal recommendations to the client
 - Advise the client on the consequences of different courses of action.
 - The client must make the business decisions on what course of action to follow, not the lawyer.
 - Be certain to carefully document your discussions with the client in writing – including the possible consequences of various courses of action the client is considering.
 - Discuss the proposed advice you intend to give the client with another attorney in your office.

CRAIG S. BARNARD, AMERICAN INN OF COURT IV
OUTLINE FOR MENTORING LUNCH ON FEBRUARY 13, 2009

- If the client has been referred to you by another lawyer in your office, or an outside attorney who represents the client on other matters, consider seeking the assistance of that attorney if the client is reluctant to follow your advice.
- Maintain your composure and patience with the client – no "screaming matches."
- Explain to the client the need for reciprocal respect, including that of your staff. Have a zero tolerance policy towards abuse of the staff.
- Make certain that the staff deals with the client in the same fashion that you do.
- Carefully manage in writing the clients expectations about legal services, costs and results.
- Honesty is the best policy – if the client has a bad case, let him or her know that and recommend what course of settlement is in the client's best interest.
- Bill the client frequently and regularly, with detailed explanation as to the services rendered. It's also important to have received a substantial retainer at the beginning of the representation.

-- Terminating the Relationship with the Client

- You cannot satisfy all clients. Where the client lacks confidence in your advice, suggest to the client that he or she find another attorney.
- If the client is unhappy with your bill or services, let another attorney try to please the client.
- Make certain not to disadvantage the client and see that the material needed to allow the client to proceed forward with another attorney is released (even if your bill has not been paid in full).

II. How to Deal with Difficult Opposing Counsel

-- Nature of the problem – Rambo or win at all costs lawyers

- Some lawyers don't believe rules apply to them – they act rude, aggressive and are purposefully difficult to work with. They exhibit a win-at-all costs mentality and turn the courtroom into a battleground.
- Your dilemma – you can't allow the lawyer to steamroller your case, but you also can't sink to their level of unprofessionalism and lack of civility.

CRAIG S. BARNARD, AMERICAN INN OF COURT IV
OUTLINE FOR MENTORING LUNCH ON FEBRUARY 13, 2009

- How do you deal with difficult opposing counsel while still maintaining your professionalism and civility and effectively representing your client?
 - Does your opposing counsel's misconduct really matter? I.e., does it hurt your case?
 - Keep your eye on the goal to win the case for your client, not to punish opposing counsel.
 - In the early part of the case, if difficulties begin to arise, try arranging for a meeting over coffee with opposing counsel to see if the problems can be curtailed. Let opposing counsel know that you will abide by the rules in conducting the case and ask them to do likewise.
 - Where misconduct becomes a serious issue, make your record carefully such as writing – "Letters for the Record."
 - Don't use "Letters for the Record" to vent frustrations or anger. Avoid bravado and sarcasm. Make the record calm and conciliatory – keeping in mind that the Judge on the case may very well be reading the letter.
 - Have the "Letter for the Record" reviewed by another lawyer in your office for his or her input.
 - If it is necessary to file motions and seek Court assistance, do so in a civil, professional manner. Avoid name calling and let the Court know of the facts which caused you to file the motion.
 - Maintain the right perspective – to represent your client zealously and ethically and conduct yourself at all times in a professional manner. Let your misbehaving counsel lose their credibility with the Court or jury – not you.
 - Be familiar with the Palm Beach County Bar Association Standards of Professional Courtesy which have been endorsed by the Judges of the Fifteenth Judicial Circuit. If opposing counsel does not comply with the standards in conducting the case, send him or her a letter requesting that they do so. If compliance is still not forthcoming, file a motion with the Court seeking to have an Order entered requiring compliance with the Standards.

III. Discovery and Professionalism in the Discovery Process

- The need to balance effective advocacy and professional courtesy during the discovery process.
 - Frequently, the discovery process degenerates into nasty disputes that are time consuming, expensive for the client and burdensome upon the Courts.

CRAIG S. BARNARD, AMERICAN INN OF COURT IV
OUTLINE FOR MENTORING LUNCH ON FEBRUARY 13, 2009

- In order to maintain a high level of professionalism in the discovery process, while effectively, zealously and ethically representing your client's interest, periodically review the Oath of Admission to the Florida Bar (found at page 1741 of the 2008 Florida Rules of Court manual).
- Also periodically review "Chapter 4-3. Advocate" of the Rules of Professional Conduct of the Rules Regulating the Florida Bar (found at pages 1478 through 1485 of the 2008 Florida Rules of Court manual).
- Be familiar, and comply with, the Palm Beach County Bar Association Standards of Professional Courtesy and the Ideals & Goals of Professionalism adapted by the Florida Bar.
- When conducting depositions, comply with Fla.R.Civ.P. 1.310. Make non-speaking objections, if an objection is necessary, by stating the objection concisely and in a non-argumentative manner. Instruct a deponent not to answer a question only when necessary to preserve a privilege, to enforce a limitation on evidence directed by the Court, or to present a motion under subdivision (d) of Rule 1.310.
- Conduct written discovery in a manner designed not to crush or intimate the opposition, or to unnecessarily delay the resolution of a case, but to gain relevant, necessary information from the other side to effectively advocate your client's position.
- Educate yourself regarding advising your clients of requirements pertaining to electronic discovery issues and retention of documents before litigation arises.
- Remember that your reputation with the Judges before whom you appear, will be primarily built upon the Judges personal experiences with you. Consequently, conduct yourself throughout the discovery process in a manner which, while advocating your client's interests zealously and ethically, always does so professionally, in a manner which enhances your reputation as being trustworthy and ethical to the Judges before whom you appear.

IV. Other Civil Litigation Issues which the Inn Members Wish to Discuss