R - E - S - P - E - C – T

HOW RESPECTING OTHERS CAN MAKE YOU MORE MONEY

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I. INTRODUCTION

As Aretha Franklin says, "All I'm askin' is for a little respect . . ."

Everybody wants it: Respect. It is part of being human.

When we were all young, someone taught us, "If you want respect, you have to be respectful."

This outline and my talk will discuss the importance of being respectful. Difficult cases are made much easier if you are respectful.

The five entities/persons whom I suggest in this topic that you be respectful to are:

1. Your Opponent

2. The Court

3. The Jury

4. Your Client

5. Yourself

II. RESPECT

From Wikipedia, the free encyclopedia.

"**Respect** is esteem for, or a sense of the worth or excellence of, a person. In certain ways, respect manifests itself as a kind of ethic or principle, such as in the commonly taught concept of [having] respect for others or the ethic of reciprocity.

Esteem for, or a sense of the worth, or excellence, of a person, a personal quality or ability, or something considered as a manifestation of a personal quality or ability: I have great respect for her judgment.

Deference to a right, privilege, privileged position, or someone or something considered to have certain rights or privileges; proper acceptance or courtesy."

III. PERSONAL INJURY CASES ARE DIFFICULT

They are especially difficult on the plaintiff's side. First, there is the generally accepted public opinion that the plaintiff's attorney is out for one thing. Money. Many people view you as a "river boat gambler." That is a hard way to begin a trial.

There are a hundred other reasons why your work in representing a plaintiff is enormously difficult. In the extremely difficult circumstances you are faced with, when you have invested a lot of your own money in a case, when you have spent weeks of your life on a case, when your severely injured client's life and future perhaps is at stake, it is very hard maintaining respect at all times. But you need to.

IV. ANGER

Anger impairs good judgment. It interferes with rational thinking, and it makes you act in a disrespectful manner.

The topic of respect cannot be adequately addressed without first talking about anger. Anger is the root of most disrespectful acts.

It has been said that 50% of all people who seek counseling have problems dealing with anger. Anger can shatter judgment. It can destroy communication and tear apart

relationships. It can ruin health. Oftentimes, people tend to justify the anger instead of accepting responsibility for it.

We all wrestle with anger, to different degrees.

Being angry and respectful at the same moment is almost impossible.

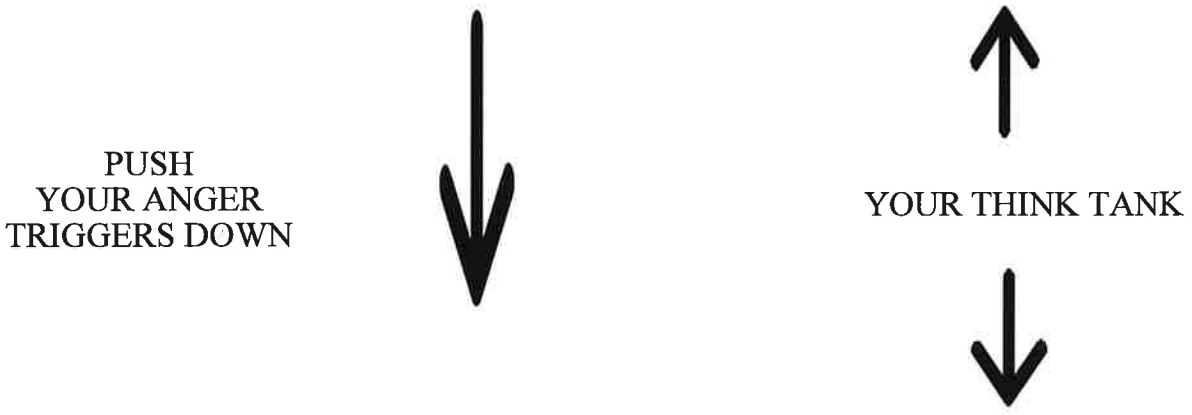
GOOD JUDGMENT

ANGER TRIGGERS

YOUR THINK TANK

Learn healthy ways to move your anger triggers down--making it harder for anger to erupt and wipe out good judgment. This is not "bottling up" your anger. It is learning to deal with the triggers that make you angry. I will spend a fair amount of time during my presentation offering you suggestions on anger management.

GOOD JUDGMENT



At the seminar, I will give you some examples of "angry" moments in my professional and personal life. And how I wish they had never occurred. And how today I, hopefully, would avoid them.

V. STRESS

Without a doubt, stress makes you tense. When you are tense, your anger level comes higher and is easier to get to. Worry less about the little things.

VI. COMPETENCY

Always remember that before you can get any respect in this profession, you must first be *competent*.

You can respect people all you want, but if you are not competent, you will get little respect.

The fact that you are reading this and/or attending this seminar should be a clear signal to you that you are working towards the impossible-to-obtain goal of perfect competence. You are headed in the right direction. The learning curve is steep in

personal injury cases. Keep climbing the curve! When you get near the top, look back down at me and let me know how the view is because I'm still climbing.

VII. RESPECTING YOUR OPPONENT

Of all the five persons/entities we will discuss today, giving respect to your opponent is probably the most difficult one.

A. YOUR "OPPONENT" INCLUDES THE DEFENDANT

Just because the defendant has acted carelessly, it does not follow that the defendant is a bad person. Most defendants actually are good persons. They deserve to be treated with respect, most often. (Obviously, there are exceptions, and you will know those exceptions when you see them. Even still, you should not be disrespectful.

B. ANGER IN DEPOSITIONS

The people in the room can be adversely impacted by angry outbursts.

The witness may have a hard time giving cooperative testimony.

The whole system itself can be impacted.

C. DEALING WITH RAMBO AT A DEPOSITION, VIDEO TAPING

"In the heat of litigation, emotions and zealous advocacy sometimes get the best of an attorney. I have rarely seen aggressive conduct be effective . . . Rather, respectful and reasoned presentations are much more persuasive.[1]

If you have tried all the techniques you can to deal with a particularly bad acting lawyer on the other side at depositions, and those techniques have failed, consider using audio-visual recordings of depositions with such an attorney.

A deposition may be video recorded, per Rule 57.03(c) of the Missouri Supreme Court Rules of Civil Procedure and Rule 206(g) of the Illinois Supreme Court Rules on Civil Proceedings in the Trial Court, unless the Court orders otherwise.

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[1] Judge John P. Erlick, "Professionalism in the Courtroom, a View from the State of Washington, Oklahoma Bar Association, Article, 8/7/2009.

This means that you can pack the audio-visual camera in your own briefcase, set it up at the deposition, and run it yourself, at no particular expense (other than buying the equipment, which you can always use to record your children's swim at the beach on vacation).

An audio-visual recording of a lawyer's bad conduct is far more persuasive to a Trial Judge than a cold transcript--on a motion.

It is my experience that when the camera is rolling, the bad conduct is always reduced, and is usually avoided.

See your rules of civil procedure concerning audio-visual depositions and follow them.

I asked a fellow trial lawyer what he does in respect to videotaping and he offered this idea:

"When opposing counsel starts "acting up" during a deposition (e.g, starts making faces, mocking me, etc.), I ask the videographer (if the deposition is videotaped, of course) to put the camera on opposing counsel until they finish. I will do it ten times if I have to. However, the most I have ever had to do it is three. Others suggest bringing a small camera of their own to the deposition and putting it on opposing counsel if they start acting up. Among these three suggestions, this one has been the most effective in curtailing --- if not elimination --- bad conduct."

I do not know about the propriety of filming the face of a defense lawyer, but if you can get away with it, it is a great idea.

D. TERMINATING THE HOT DEPOSITION

If Rambo really gets out of hand, and you have had all you can take, or your client has had all he/she can take, and you are confident that the conduct will not stand scrutiny, terminate the deposition pursuant to Rule 57.03(e) of the Missouri Supreme Court Rules of Civil Procedure and Rule 206(e) of the Illinois Supreme Court Rules on Civil Proceedings in the Trial Court

"Upon the demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to present a motion for an order." Ill. Sup. Ct., Rule 206(e).

So, as an example of what you could do in case Rambo is out of control:

State on the record, "Your conduct has become unprofessional and unreasonable. You are oppressing this witness and being totally disrespectful. Pursuant to Rule 206(e), I am terminating the deposition. I will file a motion as soon as possible that the Court take appropriate action."

You could tell the witness to sit tight and tell Rambo that you will give him a few minutes to calm down and then invite him to discuss the issues with you outside the deposition room and perhaps you can come to an agreement about continuing the deposition. Tell him your genuine, sincere concerns. Calmly.

It has been my experience that taking this step alone usually results in the lawyer gaining control of himself, and the deposition can continue. Of course, once the deposition starts back up, put on the record that you are not waiving the right to terminate the deposition, but that out of respect for everyone, including the witness, the deposition may continue at the present time.

If the cooling off period is not agreed to and if Rambo does not agree to talk informally to you about the problems you perceive, then you need to contact the Court. It is likely that you will not be able to reach the Judge on the telephone.

If you are able to reach the Judge or obtain a visit with the Judge at the courthouse, you should not do so unilaterally (ex parte) but allow Rambo to hear what you say at the same time.

Tell the Judge that you want to file a motion and in support you want a transcript (and/or audio-visual recording) of the contentious conduct in order for Court to rule. That way you will not have to appear in Court that instant and watch a hearing dissolve into a hopeless, "he said, she said" argument, which likely would result in the Judge's not ruling for you. Later on, with the record, you could present a sound, supportable argument.

Be advised that Judges *hate* these sorts of motions. And unless the conduct of Rambo is really egregious, the Judge is not likely to get too exercised over your motion. Judges consider a squabble over the conduct of lawyers at a deposition like an argument between children.

Keep in mind also that sanctions can be awarded against you if your motion fails. On the other hand, if your motion succeeds, you are entitled to sanctions. See Rule 219(c)(vii) of the Illinois Supreme Court Rules on Civil Proceedings in the Trial Court and Rule 61.01(g) of the Missouri Supreme Court Rules of Civil Procedure, which apply to such motions.

E. HIDING THE BALL AND HOW TO DEAL WITH IT

When Rambo wants to hide the ball, another attorney had some good thoughts about how to deal with Rambo. Here is his suggestion:

> "We all encounter the dishonorable, and to be frank about it, lying lawyer. I don't know of a method inscribed in stone to deal with one to the next. What I have learned the hard way is to *stay composed* and be firm in my dealings with such a person."
>
> "On a more specific note, the misbehavior I deal with in medical device cases is dumping of thousands of documents in response to doc requests. These come in a disorganized state under guise of "kept in normal course of business" when that is a blatant lie. In these circumstances, I carefully present my objections to defense counsel (and we are often required to consult by rule) avoiding confrontation even in face of blatant obstruction, carefully research the procedural points in the case law. There is much good stuff in the federal decisions. I then present to the court which I find to be much more effective than wasting time, energy and enduring stressful emotion engendered by confrontation. With one or two good rulings, typically you see an attitude adjustment from other side, even if grudgingly. Like Cool Hand Luke, you gotta get his mind right."

F. SOME DEFENSE LAWYERS JUST INSIST ON MAKING LIFE HARD

The below is an email received from a colleague who has had some bad experience with defense lawyers:

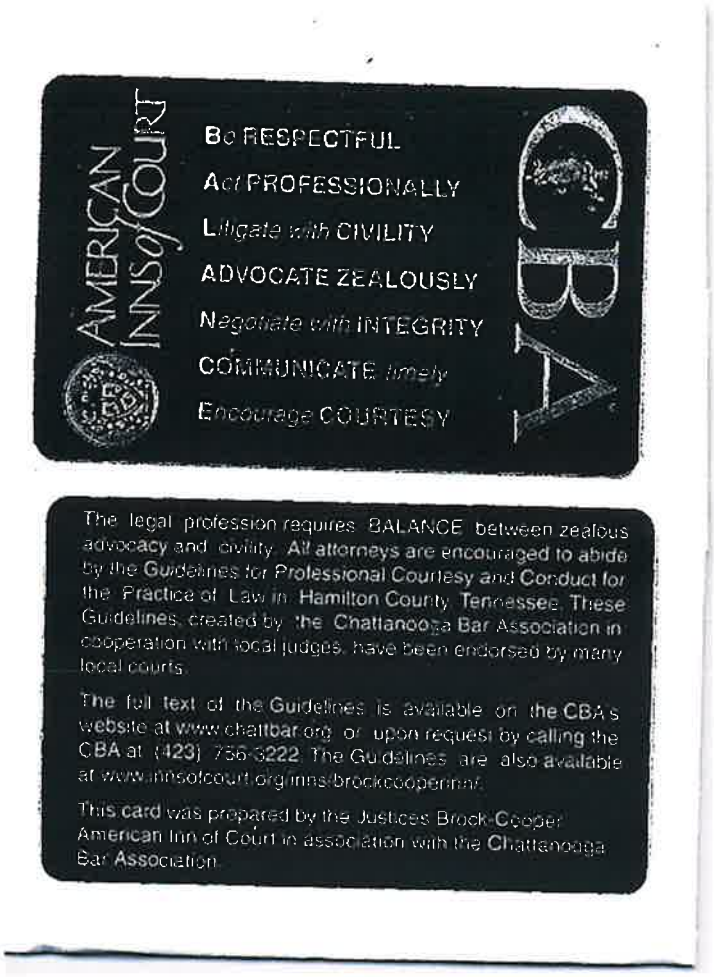
> "The most recent example I have is a common one: Some defense lawyers who do anything and everything to gum up even simple tasks. Recently, I won a motion compelling a defense lawyer representing a doctor's group to produce two doctors who are members of the group for discovery deposition, principally to get facts on the record in preparation for expert disclosures (med mal case). We had been working for a year to set their deposition. The judge clearly tells me to "pick a date" and grants the order. Then I work on actually consulting with all counsel (there are 3 defense lawyers), to work on setting dates by agreement. In order to prevent motions to quash, etc. The depositions are to be taken by the end of August. Over the course of the first week, the defense lawyer refused to agree to the very simple proposed order I drafted, reflecting exactly what the judge said.

The objection was based on a completely separate issue: why I wouldn't agree to let the defense lawyer talk ex parte with these treating doctor witnesses that he didn't even represent. Turns out, he wanted to represent them in the depositions. They didn't need counsel. The 3 year statute of repose had already run on the facts of the case and their treatment. Yet he insisted. The doctors secured independent counsel. Now, the defense lawyer claims that there's no need for an Order naming specific depositions of the doctors, and now claims that I didn't win anything in court, and that asserting an order is now a waste of time. I assured him the Court is waiting on an order, which is now overdue (in Memphis orders are due within 7 days of hearing). I have warned defense counsel that I am prepared to file my version and set a hearing if necessary. Of course, by the time that happens, the first of the depositions will have occurred. I'm concerned about making the judge mad by not getting an order in, but clearly, trying to work by agreement has led to unnecessary frustration and complications."

How would you deal with this problem? I think he should file a motion for entry of his Order. I expect the defense lawyer will then agree to entry - - if for no other reason than to avoid embarrassment with the Court. I believe the plaintiff's attorney will keep in mind that perhaps the best thing to do is to remember what occurred and when dealing with these same lawyers, forewarned is forearmed.

G. CHATTANOOGA BAR ASSOCIATION GUIDELINES FOR PROFESSIONAL COURTESY

Here is a copy of the two-sided card that the Chattanooga Bar Association issues to lawyers. Both sides of the card appear below.



I want to get some of these cards and carry them with me and hand them out at the appropriate time to opponents when it looks like they could pay more attention to the principles espoused on the card!

H. SAY *THANK YOU* AND *PLEASE* WHENEVER YOU CAN

You are not showing any signs of weakness if you say *Thank You* or *Please*.

In fact, the use of those words is conducive to getting along and making your life easier, as well as the life of your opponent.

Recently, at the deposition of my clients (parents of a child who died from negligence), the opposing lawyer was always courteous to my clients. Although he was firm at times, as he was required to be, he never showed them disrespect. I sent him the below email:

"Thank you for being courteous to my clients.
Can you please send me a copy of all the phone records you have obtained, without my having to request same via a request for production?
Thanks.
Randy"

Note that the opposing lawyer sent me the phone records I asked for, without my having to take all the time necessary to prepare a formal request for production. I saved time, he saved time. Could it be because we have been courteous to each other?

I. A VIEW FROM THE OTHER SIDE

I asked a defense lawyer to give me some examples of when he has seen disrespect by a plaintiff's lawyer. Here is what he sent:

"Here are some examples from my personal experience of what I consider to be disrespectful conduct. I have not used the names of the guilty parties.

1. The plaintiff's attorney, for about 2 weeks bombarded our office with facsimiles, a large majority of which included baseless requests and/or motions. He then proceeded to essentially harass me by phone, refusing to leave voicemails and requiring that our staff pull me from whatever or wherever I was to speak with him, namely about a discovery dispute. On the phone, he would be unreasonable, unprofessional, and absurd, often resorting to cussing and then threatening sanctions, which he did eventually file for, but then never did set the hearing on. At the hearing regarding discovery, he didn't oppose our position. He clearly knew before the hearing that he was not opposing the motion and thus there was no need for a hearing, yet he made us spend a half day in Circuit (in my opinion) just to harass us.

   We countered this situation with consistent professionalism and with responsive motions based on the law. Being unable to get a rise out of us, he eventually calmed down and has now restored his sanity, at least for the moment.

   The response to this situation was specific to the circumstance and the individual involved. But, the moral of the story is there - I would say that typically, a heated situation involving another lawyer can be

diffused if the response is not such that stokes the fire. The proper response for this situation was in large part to remain calm and confident in our position, almost stoic - plaintiff's counsel was looking for an emotional reaction. The response for another lawyer may be different. Regardless of the precedent that needs to be set with that lawyer, I think the key is to remain professional no matter what.

2. In another case, the plaintiff's counsel was extremely rude during some of the depositions. He raised his voice at the deponent and other lawyers. He also spoke over other lawyers who were trying to make objections during the depositions. He didn't even want the defense attorneys to make appropriate objections for the record. He even asked one doctor if he was using cocaine, without any basis for asking the question.

3. A plaintiff's attorney recently deposed a defendant. When the attorney was not satisfied with that defendant's responses, he made sarcastic comments to the defendant such as "am I speaking English?"

4. In a case years ago, my partner asked me to go depose some important lay witnesses in a case where we had huge exposure. (I had probably been in practice about a year.) Surprised to see me show up instead of the old man, the plaintiff's attorney told the witnesses that I was not the real lawyer, just a 'fill in lawyer.' His comment has motivated me for years. Every time I get one of his cases dismissed or get a verdict against him, I think (though I have never said it), 'It must be tough getting beat by a fill in lawyer.'

VIII. RESPECTING THE COURT

From a Judge:

"I prefer the advocacy of explanation and communication rather than argument and rhetoric. This is a matter of ethics and of effectiveness. Judges and jurors want to have the case explained to them as clearly and simply as possible.

. . .

Then you wonder, why do lawyers so often employ argument and rhetoric?

> And why distort the evidence and the law? Why do lawyers use clever guile to cast a meaning on testimony contrary to the words of the witness?
>
> . . .
>
> It may be because lawyers mistakenly think this is what lawyers are supposed to do. Or it may be that lawyers think this is the way to fame and fortune."[2]

If you have never been before a particular Judge, or tried a case before her/him, you should do research on that Judge's customs, practices, and protocols. Try to learn the culture of that particular Court. This can be invaluable information.

[At seminar--an example of appealing to the Court's reasoning and sense of fairness instead of attacking an opponent personally at a hearing.]

As one particular Trial Judge suggests, "Don't address your arguments towards opposing counsel. Don't turn to him or her and state, 'I did so provide those documents to you.' Such conduct rapidly turns up the heat in the courtroom; it personalizes an attack on counsel. Proper practice and common courtesy is to address the Court. Direct colloquy with counsel during argument is inappropriate."[3]

A lawyer by the name of Bob Krivcher, whom I had the privilege of working for in law school, once told me about his biggest secret in life. As his law clerk, I went with him to a motion hearing. It was his motion. The brevity of his argument startled me. He had left out 90% of my suggested arguments, which I had given to him in a brief. While his opponent made his argument to the Court, I wrote a note to Mr. Krivcher, urging him to argue the constitutional law issues I had so carefully briefed. He had been staring at the Judge, and he glanced down quickly at my note and waved me off. When opposing counsel had argued for about fifteen minutes, the Court asked, "Mr. Krivcher, do you have anything else to add?" "No, Your Honor," was Mr. Krivcher's response. I was really disappointed because all that work and research I had done was never even argued.

Then the Court ruled in favor of Mr. Krivcher.

The opposing lawyer jumped up and started arguing with the Judge--as if he were going to get the Judge to reverse himself. The Judge leaned forward and said, in a low

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[2] Thomas M. Reavley, Senior Judge, United States Court of Appeals, Fifth Circuit, LITIGATION Spring 2009, Volume 35 Number 3.

[3] Judge John P. Erlick, "Professionalism in the Courtroom, a View from the State of Washington, Oklahoma Bar Association, Article, 8/7/2009.

voice, "I have made my ruling. Next case."

As we walked down the hall, Mr. Krivcher whispered to me, "Randy, the secret to life is knowing when to shut up."

Judges do not like it when a lawyer tries to get the Judge to reverse herself or himself when the death knell is sounding for the lawyer. Accept the loss and move on instead of continuing to argue with the Judge. In other words, accept with honor the fact that you have lost this particular issue. The Judge will have much more respect for you as a lawyer and as a person, and that respect will come in handy later.

What if you have been respectful to everyone in the courtroom, yet the Judge acts disrespectfully towards you or your client? What to do?

[At seminar--an example of disrespect by a Judge.]

As you can see from the example, any time anyone (including a Judge) is disrespectful, it usually backfires on the person showing the disrespect.

If you or your client suffer disrespect from the Judge in front of the jury, fear not! Hang in there. A jury knows when anybody is being unfair and disrespectful. Juries have a way of making things right. So, be patient and never return the disrespect.

In "Cry the Beloved Country" by Alan Paton, the narrator comments on a South African courtroom:

"You may not smoke in this Court, you may not whisper or speak or laugh. You must dress decently, and if you are a man, you may not wear your hat unless such is your religion. This is in honour of the Judge . . . and in honour of the Law behind the Judge, and the honour of the People behind the Law."

I think this quote demonstrates well the concept that ALL citizens are part of the legal system, and the court represents so much of that - that a incident of disrespect towards a judge or the court has much greater ramifications than that one isolated incident.

Respecting the Court, including the judge, the clerks, and everyone behind the scenes, shows a respect for our entire legal system.

It seems as though jurors sometimes have more regard and respect for the courts than some seasoned and cynical attorneys have. Jurors are also very attuned to the level

of respect that the attorneys show each other, show the judge, and show the court officers.

Disrespect for the court will affect not only the jurors' opinion of you, but also the other courtroom staff and probably the judge's opinion of you.

We cannot let ourselves ever get TOO comfortable in a courtroom or in front of a judge.

IX. RESPECTING THE JURY

Of course, you never want to lose the respect of the jury.

Here are some tips on keeping their respect.

- Be professional.
- Know what you are doing.
- In voir dire, respect jurors' privacy. If you are considering asking a very personal question of any juror, rethink asking it. Do you really need an answer? Is it worth the risk of alienating that particular juror and perhaps the entire venire panel?
- Talk *to* jurors and never down to them.
- Respect the jury's space. You are ordered to do so in Federal Court, but in state court, you are free to move around. Do not take license with that freedom and do not get right in jurors' faces.
- Sometimes you can almost hear the jury moan when anyone causes them to leave the courtroom and go sit in the jury room while an objection is argued. While you are arguing, they are sitting idly, doing nothing, or worse, continuing to worry about personal problems, like, "Will I be able to get supper ready on time?" "Can I even afford supper?" "Will I be able to beat the downtown traffic today?" "Can I afford the insurance premium for my health insurance?"
- Never be late and never keep the jury waiting.
- Look efficient. That means having your witnesses lined up and ready to go and that you never have a stop in the proceedings because of a failure to plan ahead.
- Have witnesses at the courthouse early, instead of at the anticipated time you will

want them to testify.

- Show witnesses respect. Remember: the jury identifies with the witness--not you. If the jury perceives that you are bullying a witness, they will take it out on you.

- Most witnesses are trying hard to tell the truth. They deserve respect.

- Sometimes, a witness clearly is a gross exaggerator, or worse--a liar. It is permissible to be very firm with them then.

X. RESPECTING YOUR CLIENT

"I never met a man I didn't like."[4]

We all want the appropriately dressed, nice looking client to represent. That person seldom walks into my office. Most of the people that come to see me look distraught. They look disheveled. They are tired and sad looking.

Regardless of how they look, deep down inside there is someone there that I find of interest and am happy to get to know.

These are all real human beings and they deserve my respect.

Once you enter into a professional relationship with a client, the attorney/client relationship is established. The relationship is sort of like that of a horse and jockey.

1. There must be great respect between a jockey and his horse for them to be a successful pair.

2. Each has a specific role to play - or job to do - and also has to perform well in that role. And each of them must respect this about the other and about their relationship.

3. They have consideration and regard for one another.

4. Communication is essential to their relationship, but they also employ care and caution in this communication.

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[4] Will Rogers

5. If either messes up, they both lose.

Remember: you would not have a JOB if it weren't for your client! Without a client/or a cause to advocate for, you do not have a role or a purpose. So, remember those two things when you get frustrated with your clients, or when you are tempted to not be as respectful as you should be with your clients.

And always, always remember that no matter how many lawsuits *you* have, this is the *only one* your client has. Realize:

1. This problem is probably encompassing your client's life.

2. They probably think about it every night before they go to bed and every morning before they wake up.

3. They have been through something awful and terrible and unjust - or else you wouldn't have taken their case. And, because of that *alone* they deserve your respect:

    A. Consideration
    B. Deferential regard
    C. Care; caution
    D. Esteem
    E. Communication
    F. "Ethic of Reciprocity"

How does a client expect to receive your respect? (If you do these things, the respect you are showing your client will most definitely be reciprocated!)

1. Listen to them
2. Sympathize with their situation
3. Communicate with them
4. Explain the law and your theories with them
5. Enjoy them as a human being

A lawsuit is a journey, and hopefully there is an end that offers your clients some closure on this terrible thing that happened to them. In the meantime, be their guide on this journey; most of them may have never traveled this way before. Offer them ways to create their own closure - allow them to talk through their worries and concerns; they just might find their own way out of them!

XI. RESPECTING YOURSELF

[Play video of Bobby Jones.]

If you do not have respect for yourself, it will be difficult for you to earn the respect *of* others. And without self-respect, you may not be able to show real respect *for* others.

I think there are two parts to this:

1. Inner respect for yourself:

    A. Be confident

    B. Know that you are a good person, you do right, you work hard, and you deserve your fair shake

2. Outer command of respect of and for yourself:

    A. Do not allow others to walk all over you - i.e., do not allow others to disrespect you.

    B. Do not give others reason to disrespect you - i.e., because you were disrespectful first.

    C. But, be humble.

        1. As Justice Penny White told new lawyers: "Don't take yourself too seriously. You are becoming a lawyer, not the diety. Many of us become too convinced of our own importance in this profession."[5]

    D. One of the most powerful ways of showing self-respect is holding yourself to a higher standard - use a level of honesty and integrity that reflects the ideals you hold within yourself. Others will see this and you will earn their respect because of it.

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[5] "10 Things They Never Taught You in Law School," speech by Penny White to newly admitted Tennessee lawyers.

From Ezine: "Self Worth - 5 Steps to Respecting Yourself":

A. Do not let others invalidate your feelings

B. Make your own plan

C. Be passionate about your life

D. Do not be afraid of failure

E. Lighten up

As Justice White said, "Becoming a lawyer does not require that you lose your humanity. So, act like a human. If you have forgotten how, fake it."

Whether you are a religious person or not, I think you will agree the following words offer up good thoughts on how to live right.

Strengthen and increase our admiration for honest dealing and clean thinking, and suffer not our hatred of hypocrisy and pretence over to diminish. Encourage us in our endeavor to live above the common level of life. Make us to choose the harder right instead of the easier wrong, and never to be content with a half truth when the whole can be won. Endow us with courage that is born of loyalty to all that is noble and worthy, that scorns to compromise with vice and injustice and knows no fear when truth and right are in jeopardy. Guard us against flippancy and irreverence in the sacred things of life. Grant us new ties of friendship and new opportunities of service. Kindle our hearts in fellowship with those of a cheerful countenance, and soften our hearts with sympathy for those who sorrow and suffer.[6]

Be Happy always! In life, shortcomings, loss, and setbacks are inevitable . . . but . . . suffering, worry and sadness are all OPTIONAL. Be cheerful and happy always. Just take care of your health and family. Happiness will follow you wherever you go or be![7]

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[6] From the Cadet Prayer, U.S.M.A.

[7] "The Tip of the Day," Stress Central #2340, By Mary from Singapore

XII. CONCLUSION

I thought some quotes here from some famous people would be a good way to wrap this up.

> "The best thing to give to your enemy is forgiveness; to an opponent, tolerance; to a friend, your heart; to your child, a good example; to a father, deference; to your mother, conduct that will make her proud of you; to yourself, respect; to all men, charity."[8]

> "Men are respectable only as they respect."[9]

> "Would that there were an award for people who come to understand the concept of enough. Good enough. Successful enough. Thin enough. Rich enough. Socially responsible enough. When you have self-respect, you have enough."[10]

> "Respect your efforts, respect yourself. Self-respect leads to self-discipline. When you have both firmly under your belt, that's real power."[11]

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[8] Benjamin Franklin

[9] Ralph Waldo Emerson

[10] Gail Sheehy

[11] Clint Eastwood

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User Name: Jessica Kinnard
Date and Time: Wednesday, April 24, 2019 1:22:00 PM CDT
Job Number: 87631728

Document (1)

1. *Ill. Sup. Ct., R 206*
   Client/Matter: -None-

Ill. Sup. Ct., R 206

Illinois State Rules and Local Federal Rules Reflect Changes Received through March 15, 2019

Illinois Court Rules > ILLINOIS SUPREME COURT RULES > ARTICLE II. RULES ON CIVIL PROCEEDINGS IN THE TRIAL COURT > PART E. DISCOVERY, REQUESTS FOR ADMISSION, AND PRETRIAL PROCEDURE

Rule 206. Method of Taking Depositions on Oral Examination

(a) ***Notice of Examination; Time and Place.***A party desiring to take the deposition of any person upon oral examination shall serve notice in writing a reasonable time in advance on the other parties. The notice shall state the time and place for taking the deposition; the name and address of each person to be examined, if known, or, if unknown, information sufficient to identify the deponent; and whether the deposition is for purposes of discovery or for use in evidence.

(1) ***Representative Deponent.***A party may in the notice and in a subpoena, if required, name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons to testify on its behalf, and may set forth, for each person designated, the matters on which that person will testify. The subpoena shall advise a nonparty organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization.

(2) ***Audio-Visual Recording to be Used.***If a party serving notice of deposition intends to record the deponent's testimony by use of an audio-visual recording device, the notice of deposition must so advise all parties to the deposition. If any other party intends to record the testimony of the witness by use of an audio-visual recording device, notice of that intent must likewise be served upon all other parties a reasonable time in advance. Such notices shall contain the name of the recording-device operator. After notice is given that a deposition will be recorded by an audio-visual recording device, any party may make a motion for relief in the form of a protective order under Rule 201. If a hearing is not held prior to the taking of the deposition, the recording shall be made subject to the court's ruling at a later time.

If the deposition is to be taken pursuant to a subpoena, a copy of the subpoena shall be attached to the notice. On motion of any party upon whom the notice is served, the court, for cause shown, may extend or shorten the time. Unless otherwise agreed by the parties or ordered by the court, depositions shall not be taken on Saturdays, Sundays, or court holidays.

(b) ***Any Party Entitled to Take Deposition Pursuant to a Notice.***When a notice of the taking of a deposition has been served, any party may take a deposition under the notice, in which case the party shall pay the fees and charges payable by the party at whose instance a deposition is taken.

(c) ***Scope and Manner of Examination and Cross-Examination.***

(1) The deponent in a discovery deposition may be examined regarding any matter subject to discovery under these rules. The deponent may be questioned by any party as if under cross-examination.

(2) In an evidence deposition the examination and cross-examination shall be the same as though the deponent were testifying at the trial.

(3) Objections at depositions shall be concise, stating the exact legal nature of the objection.

(d) ***Duration of Discovery Deposition.***No discovery deposition of any party or witness shall exceed three hours regardless of the number of parties involved in the case, except by stipulation of all parties or by order upon showing that good cause warrants a lengthier examination.

(e) ***Motion to Terminate or Limit Examination.***At any time during the taking of the deposition, on motion of any party or of the deponent and upon a showing that the examination is being conducted in bad faith or in any manner that unreasonably annoys, embarrasses, or oppresses the deponent or party, the court may order that the examination cease forthwith or may limit the scope and manner of taking the examination as provided by these rules. An examination terminated by the order shall be resumed only upon further order of the court. Upon the demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to present a motion for an order. The court may require any party, attorney or deponent to pay costs or expenses, including reasonable attorney's fees, or both, as the court may deem reasonable.

(f) ***Record of Examination; Oath; Objections.***The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically, by sound-recording device, by audio-visual recording device, or by any combination of all three. The testimony shall be transcribed at the request of any party. Objections made at the time of the examination to the qualifications of the officer taking the deposition, to the manner of taking it, to the evidence presented, or to the conduct of any person, and any other objection to the proceedings, shall be included in the deposition. Evidence objected to shall be taken subject to the objection. In lieu of participating in the oral examination, parties served with notice of taking a deposition may transmit written questions to the officer, who shall propound them to the witness and record the answers verbatim.

(g) ***Video Depositions.***Except as otherwise provided in this rule, the rules governing the practice, procedures and use of depositions shall apply to depositions recorded by audio-visual equipment.

(1) Depositions which are to be recorded by audio-visual equipment shall begin by the operator of the equipment stating, on camera, (1) the operator's name and address, (2) the date, time and place of the deposition, (3) the caption of the case, (4) the name of the witness, (5) the party on whose behalf the deposition is being taken, and (6) the party at whose instance the deposition is being recorded on an audio-visual recording device. The officer before whom the deposition is being taken shall state the officer's name and swear the witness on camera. At the conclusion of the deposition the operator shall state on camera that the deposition is concluded. If the deposition requires the use of more than one videotape or other storage medium, the end of each recorded segment and the beginning of each succeeding segment tape shall be announced on camera by the operator.

(2) The operator shall initially take custody of the audio-visual recording of the deposition and shall run through the recording to determine the exact length of time of the deposition. The operator shall sign an affidavit stating the length of time of the deposition and shall certify that the recording is a true record of the deposition and shall certify that the operator has not edited or otherwise altered the recording. A deposition so certified requires no further proof of authenticity. If requested by any party at the conclusion of the taking of the deposition, the operator shall make a copy of the videotape and deliver it to the party requesting it at the cost of that party.

(3)A recording of a deposition shall be returned to the attorney for the party at whose instance the deposition was recorded. Said attorney is responsible for the safeguarding of the recording and shall permit the viewing of and shall provide a copy of the recording upon the request and at the cost of any party. A recording of a discovery deposition shall not be filed with the court except by leave of court for good cause shown.

(4)A recording of a deposition for use in evidence shall not be filed with the court as a matter of course. At the time that a recording of a deposition is offered into evidence, it shall be filed with the court in the form and manner specified by local rule.

(5) The party at whose instance the deposition is recorded audio-visually shall pay the charges of the recording operator for attending and shall pay any charges associated with filing the audio-visual recording.

(6) The recording of a deposition may be presented at trial in lieu of reading from the stenographic transcription of the deposition.

(h) ***Remote Electronic Means Depositions.***Any party may take a deposition by telephone, videoconference, or other remote electronic means by stating in the notice the specific electronic means to be used for the deposition, subject to the right to object. For the purposes of Rule 203, Rule 205, and this rule, such a deposition is deemed taken at the place where the deponent is to answer questions. Except as otherwise provided in this paragraph (h), the rules governing the practice, procedures and use of depositions shall apply to remote electronic means depositions.

(1) The deponent shall be in the presence of the officer administering the oath and recording the deposition, unless otherwise agreed by the parties.

(2) Any exhibits or other demonstrative evidence to be presented to the deponent by any party at the deposition shall be provided to the officer administering the oath and all other parties within a reasonable period of time prior to the deposition.

(3) Nothing in this paragraph (h) shall prohibit any party from being with the deponent during the deposition, at that party's expense; provided, however, that a party attending a deposition shall give written notice of that party's intention to appear at the deposition to all other parties within a reasonable time prior to the deposition.

(4) The party at whose instance the remote electronic means deposition is taken shall pay all costs of the remote electronic means deposition, unless otherwise agreed by the parties.

History

Amended 9-8-75, eff. 10-1-75; amended 1-5-81, eff. 2-1-81; amended 7-1-85, eff. 8-1-85; amended 6-26-87, eff. 8-1-87; amended 6-1-95, eff. 1-1-96; amended 10-22-99, eff. 12-1-99; amended 2-16-11, eff. immediately; amended 12-29-17, eff. 1-1-18.

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Document (1)

1. *Ill. Sup. Ct., R 219*
   Client/Matter: -None-

Ill. Sup. Ct., R 219

Illinois State Rules and Local Federal Rules Reflect Changes Received through March 15, 2019

Illinois Court Rules > ILLINOIS SUPREME COURT RULES > ARTICLE II. RULES ON CIVIL PROCEEDINGS IN THE TRIAL COURT > PART E. DISCOVERY, REQUESTS FOR ADMISSION, AND PRETRIAL PROCEDURE

Rule 219. Consequences of Refusal to Comply with Rules or Order Relating to Discovery or Pretrial Conferences

(a) ***Refusal to Answer or Comply with Request for Production.*** If a party or other deponent refuses to answer any question propounded upon oral examination, the examination shall be completed on other matters or adjourned, as the proponent of the question may prefer. Thereafter, on notice to all persons affected thereby, the proponent of the question may move the court for an order compelling an answer. If a party or other deponent refuses to answer any written question upon the taking of his or her deposition or if a party fails to answer any interrogatory served upon him or her, or to comply with a request for the production of documents or tangible things or inspection of real property, the proponent of the question or interrogatory or the party serving the request may on like notice move for an order compelling an answer or compliance with the request. If the court finds that the refusal or failure was without substantial justification, the court shall require the offending party or deponent, or the party whose attorney advised the conduct complained of, or either of them, to pay to the aggrieved party the amount of the reasonable expenses incurred in obtaining the order, including reasonable attorney's fees. If the motion is denied and the court finds that the motion was made without substantial justification, the court shall require the moving party to pay to the refusing party the amount of the reasonable expenses incurred in opposing the motion, including reasonable attorney's fees.

(b) ***Expenses on Refusal to Admit.*** If a party, after being served with a request to admit the genuineness of any documents or the truth of any matters of fact, serves a sworn denial thereof, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter of fact, the requesting party may apply to the court for an order requiring the other party to pay the requesting party the reasonable expenses incurred in making the proof, including reasonable attorney's fees. Unless the court finds that there were good reasons for the denial or that the admissions sought were of no substantial importance, the order shall be made.

(c) ***Failure to Comply with Order or Rules.*** If a party, or any person at the instance of or in collusion with a party, unreasonably fails to comply with any provision of part E of article II of the rules of this court (Discovery, Requests for Admission, and Pretrial Procedure) or fails to comply with any order entered under these rules, the court, on motion, may enter, in addition to remedies elsewhere specifically provided, such orders as are just, including, among others, the following:

(i) That further proceedings be stayed until the order or rule is complied with;

(ii) That the offending party be debarred from filing any other pleading relating to any issue to which the refusal or failure relates;

(iii) That the offending party be debarred from maintaining any particular claim, counterclaim, third-party complaint, or defense relating to that issue;

(iv) That a witness be barred from testifying concerning that issue;

(v) That, as to claims or defenses asserted in any pleading to which that issue is material, a judgment by default be entered against the offending party or that the offending party's action be dismissed with or without prejudice; or

(vi) That any portion of the offending party's pleadings relating to that issue be stricken and, if thereby made appropriate, judgment be entered as to that issue.

(vii) That in cases where a money judgment is entered against a party subject to sanctions under this subparagraph, order the offending party to pay interest at the rate provided by law for judgments for any period of pretrial delay attributable to the offending party's conduct.

In lieu of or in addition to the foregoing, the court, upon motion or upon its own initiative, may impose upon the offending party or his or her attorney, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of reasonable expenses incurred as a result of the misconduct, including a reasonable attorney fee, and when the misconduct is wilful, a monetary penalty. When appropriate, the court may, by contempt proceedings, compel obedience by any party or person to any subpoena issued or order entered under these rules. Notwithstanding the entry of a judgment or an order of dismissal, whether voluntary or involuntary, the trial court shall retain jurisdiction to enforce, on its own motion or on the motion of any party, any order imposing monetary sanctions, including such orders as may be entered on motions which were pending hereunder prior to the filing of a notice or motion seeking a judgment or order of dismissal.

Where a sanction is imposed under this paragraph (c), the judge shall set forth with specificity the reasons and basis of any sanction so imposed either in the judgment order itself or in a separate written order.

(d) ***Abuse of Discovery Procedures.***The court may order that information obtained through abuse of discovery procedures be suppressed. If a party wilfully obtains or attempts to obtain information by an improper discovery method, wilfully obtains or attempts to obtain information to which that party is not entitled, or otherwise abuses these discovery rules, the court may enter any order provided for in paragraph (c) of this rule.

(e) ***Voluntary Dismissals and Prior Litigation.***A party shall not be permitted to avoid compliance with discovery deadlines, orders or applicable rules by voluntarily dismissing a lawsuit. In establishing discovery deadlines and ruling on permissible discovery and testimony, the court shall consider discovery undertaken (or the absence of same), any misconduct, and orders entered in prior litigation involving a party. The court may, in addition to the assessment of costs, require the party voluntarily dismissing a claim to pay an opposing party or parties reasonable expenses incurred in defending the action including but not limited to discovery expenses, expert witness fees, reproduction costs, travel expenses, postage, and phone charges.

History

Amended eff. 9-1-74; amended 5-28-82, eff. 7-1-82; amended 7-1-85, eff. 8-1-85; amended 6-1-95, eff. 1-1-96; amended 3-28-02, eff. 7-1-02.

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1. *Mo. Sup. Ct. R. 57.03*
   Client/Matter: -None-

Mo. Sup. Ct. R. 57.03

Rules current through March 26, 2019.

Missouri Court Rules > SUPREME COURT RULES > RULES OF CIVIL PROCEDURE > PART I. RULES GOVERNING CIVIL PROCEDURE IN THE CIRCUIT COURTS > RULE 57. INTERROGATORIES AND DEPOSITIONS

57.03. Depositions Upon Oral Examination

(a) When Depositions May Be Taken.--After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and petition upon any defendant, except that leave is not required if a defendant has served a notice of taking deposition or otherwise sought discovery. The attendance of witnesses may be compelled by subpoena as provided in *Rule 57.09*. The attendance of a party is compelled by notice as provided in subdivision (b) of this Rule. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court describes.

(b) Notice of Examination:*General Requirements; Special Notice; Production of Documents and Things; Deposition of Organization.*

(1)A party desiring to take the deposition of any person upon oral examination shall give not less than seven days notice in writing to every other party to the action and to a non-party deponent.

The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known. If the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs shall be stated.

If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

A party may attend a deposition by telephone.

(2) The court may for cause shown enlarge or shorten the time for taking the deposition.

(3) The notice to a party deponent may be accompanied by a request made in compliance with *Rule 58.01* for the production of documents and tangible things at the taking of the deposition. The procedure of *Rule 58.01* shall apply to the request.

(4)A party may in the notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf and may set forth, for each person designated, the matters on which the person will testify. A subpoena shall advise a nonparty organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This *Rule 57.03(b)(4)* does not preclude taking a deposition by any other procedure authorized in these rules.

(c) Non-stenographic Recording -- Video Tape.--Depositions may be recorded by the use of video tape or similar methods. The recording of the deposition by video tape shall be in addition to a usual recording and transcription method unless the parties otherwise agree.

(1) If the deposition is to be recorded by video tape, every notice or subpoena for the taking of the deposition shall state that it is to be video taped and shall state the name, address and employer of the

recording technician. If a party upon whom notice for the taking of a deposition has been served desires to have the testimony additionally recorded by other than stenographic means, that party shall serve notice on the opposing party and the witness that the proceedings are to be video taped. Such notice must be served not less than three days prior to the date designated in the original notice for the taking of the depositions and shall state the name, address and employer of the recording technician.

(2) Where the deposition has been recorded only by video tape and if the witness and parties do not waive signature, a written transcription of the audio shall be prepared to be submitted to the witness for signature as provided in *Rule 57.03(f)*.

(3) The witness being deposed shall be sworn as a witness on camera by an authorized person.

(4) More than one camera may be used, either in sequence or simultaneously.

(5) The attorney for the party requesting the video taping of the deposition shall take custody of and be responsible for the safeguarding of the video tape and shall, upon request, permit the viewing thereof by the opposing party and if requested, shall provide a copy of the video tape at the cost of the requesting party.

(6) Unless otherwise stipulated to by the parties, the expense of video taping is to be borne by the party utilizing it and shall not be taxed as costs.

(d) Record of Examination; Oath; Objections.--The officer before whom the deposition is to be taken shall put the witness on oath or affirmation and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means ordered in accordance with *Rule 57.03(c)*. If requested by one of the parties, the testimony shall be transcribed.

All objections made at the time of the examination to the qualifications of the officer taking the deposition, to the manner of taking it, to the evidence presented, to the conduct of any party, or any other objection to the proceedings shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition, and that party shall transmit them to the officer before whom the deposition is to be taken, who shall propound them to the witness, and the questions and answers thereto shall be recorded.

(e) Motion to Terminate or Limit Examination.--At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or a court having general jurisdiction in the place where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in *Rule 56.01(c)*. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of *Rule 61.01(g)* apply to the award of expenses incurred in relation to the motion.

(f) Submission to Witness; Changes; Signing.--When the testimony is fully transcribed, the officer shall make the deposition available to the witness for examination, reading and signing, unless such examination, reading, and signing are waived by the witness or by the parties. Any changes in form or substance that the witness desires to make shall be entered upon an errata sheet provided to the witness with a statement of the reasons given for making such changes. The answers or responses as originally given, together with the changes made and reasons given therefor, shall be considered as a part of the deposition. The deposition shall then be signed by the witness before a notary public unless the witness is ill, cannot be found, is dead, or refuses to sign. If the deposition is not signed by the time of trial, it may be used as if signed, unless, on a motion to suppress, the court holds that the reasons given for the refusal to sign requires rejection of the deposition in whole or in part.

(g) Certification, Delivery, and Filing; Exhibits; Copies.

(1) ***Certification and Delivery.***The officer shall certify on the deposition that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. Upon payment of reasonable charges therefor, the officer shall deliver the deposition to the party who requested that the testimony be transcribed.

(2) ***Filing***

(a) By the Officer. Upon delivery of a deposition, the officer shall file with the court a certificate showing the caption of the case, the name of the deponent, the date the deposition was taken, the name and address of the person having custody of the original deposition, and whether the charges have been paid. The officer shall not file a copy of the deposition with the court except upon court order.

(b) By a Party. A party shall not file a deposition with the court except upon specific court order or contemporaneously with a motion placing the deposition or a part thereof in issue. The court may enact local court rules requiring a party who intends to use a deposition at a hearing or trial to file that deposition with the court on or prior to the date of the hearing or trial.

(c) Return of Deposition. At the conclusion of the hearing or trial the deposition that has been filed or delivered to the court shall be returned to the party that filed or delivered the deposition.

(d) Retention of Deposition. The original deposition shall be maintained until the case is finally disposed.>

(3) ***Exhibits.***Documents and things produced for inspection during the examination of the witness shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition and may be inspected and copied by any party, except that (A) the person producing the materials may substitute copies to be marked for identification if the person affords to all parties fair opportunity to verify the copies by comparison with the originals and (B) if the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court pending final disposition of the civil action.

(4) ***Copies.***Upon request and payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

(h) Failure to Attend or to Serve Subpoena; Expenses.

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving notice to pay to such other party the reasonable expenses incurred by that other party and that other party's attorney in attending, including reasonable attorney's fees.

(2) If a witness fails to appear for a deposition and the party giving the notice of the taking of the deposition has not complied with these rules to compel the attendance of the witness, the court may order the party giving the notice to pay to any party attending in person or by attorney the reasonable expenses incurred by that other party and that other party's attorney in attending, including reasonable attorney's fees.

History

Adopted March 29, 1974, eff. Jan. 1, 1975. Amended June 1, 1993, eff. Jan. 1, 1994; Amended Sept. 28, 1993, eff. Jan. 1, 1994; Amended June 25, 2001, eff. Jan. 1, 2002. Amended June 27, 2006, eff. Jan. 1, 2007; Amended June 20, 2014, eff. January 1, 2015.

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1. *Mo. Sup. Ct. R. 61.01*
   Client/Matter: -None-

Mo. Sup. Ct. R. 61.01

Rules current through March 26, 2019.

Missouri Court Rules > SUPREME COURT RULES > RULES OF CIVIL PROCEDURE > PART I. RULES GOVERNING CIVIL PROCEDURE IN THE CIRCUIT COURTS > RULE 61. ENFORCEMENT OF DISCOVERY; SANCTIONS

61.01. Failure to Make Discovery: Sanctions

(a) Failure to Act--Evasive or Incomplete Answers.--Any failure to act described in this Rule 61 may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has served timely objections to the discovery request or has applied for a protective order as provided by *Rule 56.01(c)*.

For the purpose of this Rule 61, an evasive or incomplete answer is to be treated as a failure to answer.

(b) Failure to Answer Interrogatories.--If a party fails to answer interrogatories or serve objections thereto within the time provided by law, or if objections are served thereto that are thereafter overruled and the interrogatories are not timely answered, the court may, upon motion and reasonable notice to other parties, take such action in regard to the failure as are just and among others the following:

(1) Enter an order striking pleadings or parts thereof or dismissing the action or proceeding or any part thereof or render a judgment by default against the disobedient party;

(2) Upon the showing of reasonable excuse, grant the party failing to answer the interrogatories additional time to serve answers, but such order shall provide that if the party fails to answer the interrogatories within the additional time allowed, the pleadings of such party shall be stricken or the action shall dismissed or a default judgment shall be rendered against the disobedient party.

(c) Failure to Answer Request for Admissions.--If a party, after being served with a request to admit the genuineness of any relevant documents or the truth of any relevant and material matters of fact, fails to serve answers or objections thereto, as required by *Rule 59.01*, the genuineness of any relevant documents or the truth of any relevant and material matters of fact contained in the request for admissions shall be taken as admitted. If a party fails to admit the genuineness of any document or the truth of any matter as requested under *Rule 59.01*, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the party requesting the admissions may apply to the court for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney fees. The court shall make the order unless it finds that:

(1) The request was held objectionable pursuant to *Rule 59.01*;

(2) The admission sought was of no substantial importance;

(3) The party failing to admit had reasonable grounds to believe that such party might prevail on the matter; or

(4) There was other good reason for the failure to admit.

(d) Failure to Produce Documents, and Things or to Permit Inspection.--If a party fails to respond that inspection will be permitted as requested, fails to permit inspection, or fails to produce documents and tangible things as requested under *Rule 58.01*, or timely serves objections thereto that are thereafter overruled and the documents and things are not timely produced or inspection thereafter is not timely permitted, the court may, upon motion and reasonable notice to other parties, take such action in regard to the failure as are just and among others the following:

(1) Enter an order refusing to allow the disobedient party to support or oppose designated claims or defenses or prohibiting the disobedient party from introducing designated matters in evidence;

(2) Enter an order striking pleadings or parts thereof or staying further proceedings until the order is obeyed or dismissing the action or proceeding or any part thereof or render a judgment by default against the disobedient party;

(3) Enter an order treating as a contempt of court the failure to obey; or

(4) Enter an order requiring the party failing to obey the order or the attorney advising the party or both to pay the reasonable expenses, including attorney fees, caused by the failure unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(e) Failure to Appear for Physical Examination.--If a party fails to obey an order directing a physical or mental or blood examination under *Rule 60.01*, the court may, upon motion and reasonable notice to the other parties and all persons affected thereby, make such orders in regard to the failure as are just, and among others, it may take any action authorized under *Rules 61.01(d)(1)*, (2), and (4). Where a party has failed to comply with an order requiring the production of another for examination, the court may enter such orders as are authorized by this *Rule 61.01*, unless the party failing to comply shows an inability to produce such person for examination.

(f) Failure to Attend Own Deposition.--If a party or an officer, director or managing agent of a party or a person designated under *Rules 57.03(b)(4)* and *57.04(a)*, to testify on behalf of a party, fails to appear before the officer who is to take his deposition, after being served with notice, the court may, upon motion and reasonable notice to the other parties and all persons affected thereby, make such orders in regard to the failure as are just and among others, it may take any action authorized under paragraphs (1), (2), (3) and (4) of subdivision (d) of this Rule.

(g) Failure to Answer Questions on Deposition.--If a witness fails or refuses to testify in response to questions propounded on deposition, the proponent of the question may move for an order compelling an answer. The proponent of the question may complete or adjourn the deposition examination before applying for an order. In ruling upon the motion, the court may make such protective order as it would have been empowered to make on a motion pursuant to *Rule 56.01(c)*.

If the motion is granted, the court, after opportunity for hearing, shall require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the court, after opportunity for hearing, shall require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

If the motion is granted and if the persons ordered to respond fail to comply with the court's order, the court, upon motion and reasonable notice to the other parties and all persons affected thereby, may make such orders in regard to the failure as are just, and among others, it may take any action authorized under *Rule 61.01(d)*.

(h) Objections to Approved Discovery.--If objections to *Rule 56.01(b)(6)* approved interrogatories or requests for production are overruled, the court may assess against such objecting party, attorney, or attorney's law firm, or all of them, the attorney's fees reasonably incurred in having such objection overruled. If such fees are not paid within sixty days, the court may enter such other appropriate orders against the disobedient party, including an order striking pleadings, dismissing the action, or entering a judgment by default.

History

Adopted March 29, 1974, eff. Jan. 1, 1975. Amended June 1, 1993, eff. Jan. 1, 1994; Amended Sept. 28, 1993, eff. Jan. 1, 1994; Amended June 10, 2015, effective January 1, 2016.

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File
Extraordinary

Your Honor
I AM TIRED OF SPENDING DAY AFTER DAY WASTING MY TIME LISTENING TO THIS BULLCRAP. THIS IS CRUEL AND UNUSAL PUNISHMENT. THE PLANTIF IS AN IDIOT. HE HAS NO CASE. WHY ARE WE HERE? I THINK MY CAT COULD BETTER ANSWSER THESE QUESTIONS... AND HE WOULDN'T KEEP ~~ARG~~ ASKING TO SEE A DOCUMENT. I'VE BEEN PATIENT. I'VE SAT IN THESE CHAIRS FOR 7 DAYS NOW. IF I BELIEVED FOR A SECOND THIS WAS GOING TO END ON THURSDAY I MIGHT NOT GO CRAZY. THIS IS GOING TO LAST FOR ANOTHER 4 WEEKS. I CANNOT TAKE THIS. I HATE THESE LAWYERS AND PRAYED ONE WOULD DIE SO THE CASE WOULD END. ~~SPENDING~~ ~~[illegible]~~ I SHOULDN'T BE ON THIS JURY. I WANT TO DIE. I DON'T WANT TO BE THANKED FOR MY PATIENCE. I WANT TO DIE!! WELL NOT DIE FOR REAL BUT THAT IS HOW I FEEL SITTING HERE. I AM THE JUDGE, YOU'VE SAID THAT OVER AND OVER WELL I AM NOT FAIR AND BALANCED. I HATE THE PLANTIF. HIS IGNORANCE IS DRIVING ME CRAZY. I KNOW I'M WRITING THIS IN VAIN BUT I HAVE TO DO SOMETHING... FOR MY SANITY. THESE JURY CHAIRS SHOULD COME WITH A STRAIGHT JACKET. AN ENTIRE DAY TODAY AND WE ARE STILL ON THE SAME WITNESS. THE DEFENSE HASN'T EVEN STARTED YET AND WE HAVE 3 DAYS LEFT 3 DAYS MY ASS. NOT THAT THE DEFENSE NEEDS A TURN CONSIDERING THE PLANTIF AND HIS LAWYER (WHO LOOKS LIKE THE PENGUIN) HAVE NO CASE!!!! THANKS FOR LETTING ME GET THIS OFF MY CHEST. PLEASE KEEP THE DISORDELIES NEARBY. I MAY NEED THEM.

JUROR #5
R BUTEN

APPENDIX D