

Basic Steps for Good Peer Review

The Florida Bar's certification program has now passed the 25-year mark and is stronger than ever. The 24 certification areas now boast a total of 4,293 certified lawyers, and the first testing cycle for 2010 saw the largest number of new applications in many years.

Certainly we hope all of those new applicants can become board certified lawyers. That would mean they meet the rigorous standards of knowledge of their substantive area of law and have the "character, ethics, and reputation for professionalism" necessary to achieve certification.

But past experience has shown that many applicants will not achieve certification for a reason that will catch them by surprise: negative peer review.

To become board certified in Florida, a lawyer must have practiced law for a minimum of five years, show substantial involvement in his or her area of practice, pass an area examination, and pass peer review.¹

Peer review is just what it sounds like; it is the sum total of commentary about an applicant's level of competence and "character, ethics, and reputation for professionalism" drawn from the applicant's "peers": his or her colleagues, adversaries, and judges before whom the applicant has appeared. Peer review is obtained from persons identified by the applicant, and from other sources sought out by the area certification committee. These peer review responses can be a bitter pill because some applicants — although having demonstrated substantial involvement in their substantive area

— are denied the opportunity to sit for the exam (and ultimately for certification) because their colleagues just don't have good things to say about how they practice law.

Unfortunately, this often happens with younger lawyers, folks who have picked up bad habits either because they have not been mentored or because they have had the wrong kind of mentoring from people who still think gratuitous incivility and sharp practice advance the interests of their clients or are in keeping with their professional obligations.

So how does one get good peer review? Most of us know the fundamentals. We know not to lie to the court or our adversaries, hide evidence, or fail to cite controlling law. But good or bad peer review often arises from behavior more subtle than that.

Below are four suggestions to help ensure that those who deal with you will say that while you may be a tough adversary, you are ethical and professional.

Be Responsive

If another lawyer, especially your opponent, asks a question or otherwise seeks your input, be responsive. If you receive a letter or an e-mail calling for a response, respond to it. If opposing counsel drafts an order following a hearing and sends it to you for review before sending it to the court, get back to opposing counsel promptly. If your opponent calls, return the call promptly. Let me repeat this one: Return the call promptly. We're all busy, but there's no surer way to create a bad impression than by forcing another lawyer to call you two or three or more

times before reaching you. If you're in a situation where you truly can't respond with reasonable promptness, have someone convey that message, along with your commitment to respond as soon as possible.

Be Constructive

Look for solutions to problems, not obstacles to solving them. Look for the common ground and try to build on that. Look for ways to resolve part of a dispute if the whole dispute can't be resolved. Certainly, there will be differences that can't be resolved or overlooked, and our justice system is designed to deal with those, but try to limit litigation to the issues on which you really can't agree and that really count. When other lawyers learn you're on the other side of a matter, do they inwardly groan, dreading a tiresome, protracted relationship that will be time-consuming and expensive for both sides, or do they welcome the arrival of a skilled practitioner who will be a worthy opponent dedicated to achieving a prompt and efficient resolution?

Be Candid

As I said above, we all know — or should know — that candor means we don't lie to the court, hide evidence from our opponent, fail to cite controlling authority, or engage in similar such conduct that subverts the integrity of our system of justice. But candor is more than this. I recently received a copy of a letter from a young lawyer to a judge addressing an issue that had come up at a hearing both of us attended. Her letter stated "hand delivery" in bold at the top, and showed a copy to me. The trouble was that the

letter was dated two days earlier and my copy arrived in the mail.

Of course, this violates one of the guidelines of professionalism promulgated by the Trial Lawyers Section, but more fundamentally, it shows a lack of candor. My adversary had led the court to believe that her arguments were being shared contemporaneously with me. Candor means complete forthrightness and honesty in everything we do.

Be Courteous

This is often the toughest. Courtesy means being civil, even when you don't feel like it. It means treating people with respect and dignity, even when you think they don't deserve such treatment. Some would say,

especially when you think they don't deserve courtesy, because that is the true mark of a professional.

Of course, being "courteous" and "civil" doesn't necessarily mean being cordial. Cordial behavior is appropriately reserved for those for whom you feel genuine respect or affection, and undoubtedly you won't feel that way toward everyone you deal with professionally. Being courteous is grounded in the Rules of Professional Conduct and, ultimately, it's just plain good manners; however, there is a substantive justification as well. It is much easier to deal constructively and to resolve differences with people with whom you are on civil terms. That ultimately benefits your clients as well as the profession.

Practice these four simple precepts and you'll more than likely be described as a worthy opponent, one who is tough, but fair.

Good peer review starts now. What will yours be like? □

¹ Rule 6-3.5(c)(6), Rules Regulating The Florida Bar.

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This column is submitted on behalf of the Trial Lawyers Section, Robert Earl Mansbach, Jr., chair, and D. Matthew Allen, editor.