

§ 1103.27

§ 1103.27 Candor and fairness in dealing with other litigants.

(a) The conduct of practitioners before the Board and with other practitioners should be characterized by candor and fairness. The practitioner shall observe scrupulously the principles of fair dealing and just consideration for the rights of others.

(b) It is not candid or fair for a practitioner knowingly to misstate or misquote the contents of a paper, the testimony of a witness, the language or the argument of an opposing practitioner, or the language or effect of a decision or a text book; or, with knowledge of its invalidity to cite as authority a decision which has been overruled or otherwise impaired as a precedent or a statute which has been repealed; or in argument to assert as a fact that which has not been proved, or to mislead his opponent by concealing or withholding positions in his opening argument upon which his side then intends to rely.

(c) It is dishonorable to deal other than candidly with the facts in taking the statements of witnesses, in drawing affidavits and other documents, and in the presentation of cases.

(d) A practitioner shall not offer evidence which he knows the Board should reject, in order to get the same before the Board by argument for its admissibility, or arguments upon any point not properly calling for determination. He shall not introduce into an argument remarks or statements intended to influence the bystanders.

(e) A practitioner shall rely on his judgment concerning matters incidental to the trial which may, in some cases, affect the proceeding. For example, a practitioner should not force a matter to trial when there is affliction or bereavement on the part of the opposing practitioner if no harm will come from postponing the proceeding.

(f) A practitioner shall not ignore known customs or practice of the Board, even when the law permits, without giving timely notice to the opposing practitioner.

(g) Insofar as is possible, important agreements affecting the rights of the clients should be made in writing. It is, however, dishonorable to avoid per-

49 CFR Ch. X (10-1-13 Edition)

formance of an agreement fairly made only because it is not made in writing.

§ 1103.28 Negotiations with opposing party.

A practitioner shall not in any way communicate upon the subject of controversy with a party represented by another practitioner except upon express agreement with the practitioner representing such party. He shall not negotiate or make compromises with the other party, but shall deal only with the opposing practitioner. The practitioner shall avoid everything that may tend to mislead a party not represented by a practitioner and should not advise that party as to the law.

§ 1103.29 Public communication and solicitation.

(a) A practitioner shall not make any public communication or solicitation for employment containing a false, fraudulent, misleading, or deceptive statement or claim. This prohibition includes, but is not limited to:

(1) The use of statements containing a material misrepresentation of fact or omission of a material fact necessary to keep the statement from being misleading;

(2) Statements intended or likely to create an unjustifiable expectation; statements of fee information which are not complete and accurate;

(3) Statements containing information on past performance or prediction of future success;

(4) Statements of prior Board employment outside the context of biographical information; statements containing a testimonial about or endorsement of a practitioner;

(5) Statements containing an opinion as to the quality of a practitioner's services, or statements intended or likely to attract clients by the use of showmanship, puffery, or self-laudation, including the use of slogans, jingles, or sensational language or format.

(b) A practitioner shall not solicit a potential client who has given the practitioner adequate notice that he does not want to receive communications from the practitioner, nor shall a