Applying the Rules of Evidence: What Every Attorney Needs to Know - NBI

Ethics

David J. Guarnieri

A. Facilitating Efficiency, Reliability and Overall Fairness of the Adversary Process

One of the central tenets of attorney ethics is that lawyers must zealously represent their clients, and indeed many of the Rules of Professional Conduct address the relationship between attorney and client with an aim to preserve such an advocacy. There are as many Rules of Professional Conduct, Rules of Civil Procedure and Rules of Evidence that also serve, however, to preserve the integrity, efficiency, reliability and fairness of the process itself. These rules interact not just to curb potential abuses of the adversarial system, but to strengthen and inspire confidence in the overall process itself.

Additionally, the newest provisions of the rules, such as those found in Federal Rule of Evidence 502, reflect an understanding on the part of policymakers and courts that the process must be reflexive and evolve to meet modern trends that have changed the process, such as advances in technology.

It's a truism that attorneys should read and understand all applicable rules, but this study should extend beyond the simple substance of the rules and reach to the practical application. These rules are not meant to simply constrain attorneys, but also to facilitate the efficient and ethical practice of law.

B. Complying with Time Constraints

Model Rule of Professional Conduct 1.3 simply states, "A lawyer shall act with reasonable diligence and promptness in representing a client." Comment 2 to that rule says that a lawyer must control her or his workload so that every client's matter can be handled competently. Comment 3 gets right to the heart of the issue, however:

> "Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness."[1]

It is possible that no other profession relies so heavily on the timely performance of work. Statutes of limitations and other conditions that affect a client's legal position are indeed an issue, but there is also another point to consider. Attorneys handle matters for clients that affect their lives. There are plenty of transactions that may not be regarded as having much day-to-day impact on particular clients, such as corporate transactions and the like, but even these can affect the lives of clients. Clients come to attorneys to resolve legitimate problems, and the longer the attorney takes to resolve those issues, the more they will affect the client.

Attorneys have an ethical duty to conduct their work in a timely, efficient manner, complying with all filing deadlines, statutes of limitations, and ethical rules (such as Rule 1.4) that require prompt or ongoing action for compliance. To do this, attorneys need to follow some simple concepts.

1. Time Management and Efficiency

[1] Model Rules of Prof'l Conduct R.1.3 cmt. 3

Time management is still one area where attorneys struggle, and, frankly, in the era of killer apps and the ubiquity of smart phones and computers, that struggle should be at an end. Attorneys should take advantage of several apps on the market designed to increase productivity and manage time, such as these:

Toggl – this app allows you to track time spent across different matters and catalogues billable time as well

Focus Booster – this app uses a method known as the pomodoro technique to help you focus on tasks and avoid distractions

RescueTime – this app will send weekly reports to you to show you how much time is wasted browsing the internet or using social media apps.

Attorneys should also make effective use of calendars, keeping multiple calendars for work and personal use separate. Reminders and alarms are effective means for keeping a client matter on task and on schedule. For instance, when initially taking on a client matter, put all relevant dates – filing and other relevant deadlines and even statutes of limitations – on a calendar with reminders set for intervals well ahead of time.

As will be discussed below concerning Federal Rule of Evidence 502, there may be rules and regulations that exist merely to make an attorney's job easier. FRE 502, for instance, has provisions designed to allow attorneys to retain privilege over client communications or protected attorney work product that are inadvertently disclosed through production in the discovery process. Such rules are designed with attorneys in mind, facilitating efficiency and timeliness of the process. Learn how to use the rules of evidence, procedure and other rules of court to effectively conduct client matters efficiently.

Evaluate processes such as e-filing, electronic communications, digital case management and electronic litigation support to save time and effort over traditional methods.

2. Organization

In daily practice, create checklist forms for routine tasks, such as conflict checking, receiving a retainer, creating a client file, and closing a client matter. Use electronic means whenever possible to organize client files, with a reasonable ability to cross-reference to physical client files. Some commentators have suggested that a disorganized office or disorganized files are warning signs of malpractice in attorneys, as are failing to make a prioritized task list or keeping a personal calendar, so clear and thorough organization are key elements of a successful practice.[2]

C. Asserting and Challenging Privileges Under Rule 502(d)

Federal Rule of Evidence 502 was introduced and signed into law in 2008 as a means of resolving a circuit split over whether an inadvertent disclosure of otherwise privileged information during the course of production would or would not waive that privilege, and to what extent. This was due to a widespread problem wherein the cost of protecting against waivers of the attorney-client privilege or the protection of attorney work product became increasingly prohibitive. E-discovery in particular made the thorough and attentive review of documents to prevent such disclosures onerous, as discovery requests could now encompass an incredibly high number of documents and a large amount of data.

FRE 502(b) provides protection against waiver of privilege due to inadvertent disclosure when the holder of the privilege took reasonable steps to prevent the disclosure and then promptly took reasonable steps to rectify the error. This provision grants a minimum

[2] "Malpractice Warning Signals," Bar Association of the District of Columbia Monthly Newsletter (Vol. I, Issue 4, April 1996), citing Nancy Byerly Jones, Director and Practice Management Counsel for the North Carolina State Bar)

catch-all layer of protection to production, allowing counsel to comply with large requests without as much uncertainty that those documents may disclose otherwise protected or privileged information and waive protections. Counsel still has to take steps to prevent the disclosure, however, and this can still be time-consuming and costly.

Enter FRE 502(d):

> **(d) Controlling Effect of a Court Order.** A federal court may order that the privilege or protection is not waived by disclosure connected with the litigation pending before the court — in which event the disclosure is also not a waiver in any other federal or state proceeding.

If FRE 502(b) is the minimum protection, then FRE 502(d) is the maximum protection, a veritable fortress of impenetrability around privileged communications and work product. While FRE 502(b) requires reasonable action on the part of the inadvertent discloser to prevent the disclosure and reasonable steps taken after the fact to rectify it, FRE 502(d) is a blanket protection against waiver with no such caveats.

Rule 502(d) is an incredibly powerful tool for litigants. A court may issue the order *sua sponte* without any input or agreement from the parties under Federal Rule of Civil Procedure 26(c)(1)(B), or the parties to the litigation may craft a specific agreement as to the scope of the order. Privileged documents must be returned to the inadvertently disclosing party no matter what care was taken in the review of the documents before production; in other words, it is entirely possible that the party producing the documents conducted no review whatsoever, negligently threw together the documents with no regard for their contents, and yet still has not waived any privileges or protections of the documents that the opposing party must now return. Finally, and importantly, the effect of order will apply in other state and federal court proceedings.

The importance of this tool cannot be overstressed. U.S. Magistrate Judge David Waxse, an expert on e-discovery, opined at a seminar in November 2013 that failure to engage in discovery without a 502(d) may rise to the level of malpractice *per se.* Considering that attorneys now have a responsibility under Model Rule 1.6(c)[3] to protect against inadvertent disclosure of information related to the representation of a client, FRE 502(d) gives attorneys a safe harbor for handling extensive document production that might inadvertently disclose this information.

Judge Waxse presided over a significant case for FRE 502(d), *Rajala v. McGuire Woods*.[4] In that case, Waxse imposed a 502(d) order on both parties when they would not stipulate to one, and the case is widely seen as a touchstone for the interpretation that parties and courts can agree or order around the reasonableness standards of FRE 502(b). As Waxse and other have noted, the key to effective use of this rule is in drafting any clawback agreements under the rule to forego such a "reasonableness" standard in favor of the agreement acting as a complete defense against waiver. The inclusion of any care standards in such an order will automatically reduce its effectiveness. The effectiveness in a 502(d) order is that involves no real inquiry as to care taken by the parties, or even if the production of privileged documents is truly inadvertent. It is a nearly-unassailable protection designed to speed up the discovery process. *Brookfield Asset Management, Inc., v. AIG Financial Products Corp.*,[5] showed the power of such an order when the court noted, "[E]ven if AIG or its counsel had dropped the ball (which they did not), the parties at my urging had entered into a Rule 502(d) stipulation which I so ordered on February 11, 2011. *See*Fed.R.Evid. 502(d). That stipulation (ECF No. 57) contains one decretal paragraph, which provides that 'Defendants' production of any documents in this proceeding shall not, for the purposes of this proceeding or any other proceeding in any other court, constitute a waiver by Defendants of any privilege applicable to those documents, including the attorney-client privilege ....' Accordingly, AIG has the right to

[3] Note: Kentucky has not yet adopted this provision of this rule.
[4] *Rajala v. McGuire Woods, LLP*, Civil Action No. 08-2638-CM-DJW (D. Kan. Jan. 2, 2013)
[5] *Brookfield Asset Management, Inc., v. AIG Financial Products Corp.*, No. 09 Civ. 8285 (PGG) (FM), 2013 WL 142503 (S.D.N.Y. Jan. 7, 2013)

claw back the minutes, no matter what the circumstances giving rise to their production were."[6]

All parties to a proceeding should stipulate to such an order, but one party can move for the court to produce such and order if the opposing party won't stipulate, and as noted earlier, the court can enter an order on its own to make the litigation process more efficient if that parties can't or won't agree on the clawback terms. A model clawback agreement under FRE 502(d) is included as Addendum A.

FRE 502(d) provides an incredibly simple way for parties to assert privilege over inadvertently-disclosed information, and the ability to claw back privileged documents or protected work product can be nearly absolute. The potential for abuse, however, also exists, as litigants may dump countless documents on the opposing party as the result of a discovery request, only to claim privilege over many of them after the opposing party has gone to the trouble of reviewing and sorting the documents. Production of such documents can also reveal trade secrets and tactical discussions, but the overarching ability to eliminate waiver of any privileges and protections outweighs potential negatives and abuses.

FRE 502(d) can prove frustrating for counsel that must return documents that opposing counsel has now clawed back under an agreement set up by the rule, but it is important to note that the court order does define the terms of the protection. If an order contains a "reasonableness" standard of any kind, counsel may challenge the opposing side to prove that it took reasonable steps to prevent the inadvertent disclosure of the material, and the rule then cleaves to similar standards of FRE 502(b).

D. Abusive Litigation Practices and Their Remedies

[6] Ibid. at 1

Adversarial proceedings can breed abusive practices as litigation gets increasingly contentious, but some practices, such as excessive discovery requests or endless interrogatories, have been used as a means to wear down the opposition through sheer effort. Such requests could easily burden opposing counsel with extraordinarily little work necessary on the part of the movant. These practices tend to favor stronger and wealthier litigants, forcing weaker opposition into a settlement or other resolution favorable to the opposing party out of sheer necessity.

Federal Rule of Civil Procedure 11 ("Rule 11") has evolved through the years to curb such practices. Kentucky also has a version of Federal Rule of Civil Rule 11, which provides remedies to correct abusive practices by opposing counsel. Both versions of the rule prevent an attorney from submitting a pleading, motion or other document that is presented for an improper purpose, "such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation."[7]

Rule 11 works to weed out both frivolous litigation as well as pleadings, motions and requests designed to bog down the process. This has been known in years past as "vexatious litigation," and the rule gives the courts wide latitude in sanctioning litigants who engage in such practices.

Federal Rule of Civil Procedure 37 ("Rule 37") (and its Kentucky analogue), on the other hand, provides attorneys suffering from discovery failures at the hands of opposing counsel with powerful tools to compel disclosures and weighty sanctions to enforce the rule.

Rule 37 allows any party the opportunity to compel, by motion, disclosure or discovery if the movant certifies that a good faith effort was made to discuss the situation with the

[7] Fed. R. Civ. P. 11(b)(1).

opposing party for resolution without the involvement of the court. Motions can be made to compel disclosure, to compel a discovery response, or in relation to a deposition.

The meat of Rule 37, however, is in the potential sanctions it can impose on bad actors in relation to discovery. If a party fails to obey a discovery order, the sanctions the court an impose include the following:

> "(i) directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims;
>
> (ii) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;
>
> (iii) striking pleadings in whole or in part;
>
> (iv) staying further proceedings until the order is obeyed;
>
> (v) dismissing the action or proceeding in whole or in part;
>
> (vi) rendering a default judgment against the disobedient party; or
>
> (vii) treating as contempt of court the failure to obey any order except an order to submit to a physical or mental examination."[8]

These sanctions in (i)-(vii) can also be imposed for failing to produce a person for examination. Finally, the court can order, instead of *or in addition to* the sanctions above, the disobedient party, ***that party's attorney*** or both, to pay the reasonable expenses of the opposing party caused by the failure to obey the order. The rule specifically says that

[8] Fed. R. Civ. P. 37(b)(2)(A)

these expenses can include attorney's fees, suggesting that the expenses incurred might be more expansive than the direct costs the attorney's services.

The Rule 37(b)(2)(A) sanctions (save for (vii)) and reasonable expenses can be sanctions in whole or in part for failures to disclose or supplement an earlier response, failures to admit under Rule 36, failure to attend a party's own deposition, failure to serve answers to interrogatories, or failure to respond to requests for inspection.

One notable exception to this rule and sanctions therein is if a party can't provide electronically-stored information because it was lost in the course of routine, good-faith operation of the storage system.

E. Keeping the Client Informed

Attorneys have both ethical and fiduciary duties to communicate with clients. The Rule on point with client communication is 1.4:

> "**Rule 1.4 Communication**
>
> a) A lawyer shall:
>
> (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
>
> (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
>
> (3) keep the client reasonably informed about the status of the matter;

> (4) promptly comply with reasonable requests for information; and
>
> (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.
>
> (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."[9]

This duty may seem simple, but attorneys managing multiple cases for multiple clients may fail to keep in communication with a client at the degree to which a client expects. One of the most basic functions of an attorney is to act as a counselor to a client, and failure to maintain contact with a client is both an easy way to lose a client and a potential ethical violation.

An illustrative example of poor client communication occurred in the case *dePape v. Trinity Health Systems Inc*.[10] Dr. dePape was immigrating to the United States from Canada to work with a physician's group. The contract with the group, Trinity, called for Trinity to provide immigration services for Dr. dePape, which Trinity hired a Missouri law firm to do. Dr. dePape, at the direction of the law firm, attempted to cross into the United States in Buffalo, New York, but failed to be able to do so due to the fact that he did not meet visa requirements. In an extraordinary set of events, the firm hired to represent both Dr. dePape and Trinity in the immigration matter failed to give Dr. dePape any information about the difficulty in gaining his visa, especially when it was aware that he would need further qualifications to do so and did not qualify for the visa he would actually need. The firm sent him to the border crossing to seek a completely different visa

[9] Model Rules of Prof'l Conduct R. 1.4
[10] *dePape v. Trinity Health Systems Inc.*, 242 F. Supp. 2d 585 (N.D. Iowa 2003)

and essentially lie about his purpose for coming to the United States. No attorney from the firm ever attempted to contact Dr. dePape after his failed entry attempt. The firm's failure to communicate with Dr. dePape left him literally homeless and unemployed, stranded at a border crossing. Consequently, the court found that the law firm had committed significant legal malpractice, and even awarded Dr. dePape damages for emotional distress to the tune of $75,000.

There certain times when client communication is essential to representation: when decisions require client consent concerning the representation, either to the objectives of the representation or the means; when the client is needed to waive any obligations such as conflicts of interest or confidentiality; when the status of the client's matter changes; when something happens that changes aspects of the representation, such as a different attorney taking on the case or developments within the firm; when the client wants assistance not permitted by law or ethics; and finally, communicate with the client when the client asks for information.

F. What to Do When Your Client is Dishonest

Many attorneys assume that at least some of what a client says is untruthful, or at the very least, misleading. In any adversarial proceeding, there's a very human temptation to bend the facts a little to make them more amenable, and even attorneys can get sucked into a "win at all costs" mentality. An outright dishonest client, however, can hurt the efficacy and integrity of the proceedings. Luckily, the rules of professional conduct offer insight into how attorneys should deal with a dishonest client, including duties towards the client, duties towards the court and ultimately, termination of representation.

Attorneys find guidance initially in Rule 1.2(d) (Note: the rule numbering will track the Model Rules of Professional Conduct, but these rules have been adopted by the Kentucky

Supreme Court and are applicable to Kentucky attorneys), which provides the following prohibitions:

> "(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law."[11]

Rule 1.6, however, adds a wrinkle, prohibiting the attorney from revealing information relating to the representation of the client without informed consent unless the information falls into specific exceptions, such as when the attorney is seeking ethical advice or if the information is necessary to prevent death or substantial bodily harm. Your communications with your client, even communications that indicate, implicitly or explicitly, that your client is lying, may still be privileged and subject to Rule 1.6.

Rule 3.3, "Candor toward the Tribunal," gives Rule 1.6 a bit of leeway, however. Rule 3.3 bears mentioning in its entirety:

> **"Rule 3.3 Candor toward the tribunal**
>
> (a) 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 published legal authority in the controlling jurisdiction known to the lawyer to be

[11] Model Rules of Prof'l Conduct R. 1.2

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.

(b) ***A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal***.

(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply ***even if compliance requires disclosure of information otherwise protected by Rule 1.6***.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer which will enable the tribunal to make an informed decision, whether or not the facts are adverse."[12]

[12] Model Rules of Prof'l Conduct R. 3.3 (emphasis added)

The rule makes it fairly clear that attorneys confronted with a dishonest client have a duty to mitigate the effects of any fraudulent testimony or any other fraudulent conduct toward the court, up to and including making the court aware of the client's past dishonest conduct in the proceeding or even future dishonest conduct. Comment 6 to Rule 3.3 makes it clear that the attorney should at least attempt to dissuade the client:

> "[6] If a lawyer knows that the client intends to testify falsely or wants the lawyer to introduce false evidence, the lawyer should seek to persuade the client that the evidence should not be offered. If the persuasion is ineffective and the lawyer continues to represent the client, the lawyer must refuse to offer the false evidence. If only a portion of a witness's testimony will be false, the lawyer may call the witness to testify but may not elicit or otherwise permit the witness to present the testimony that the lawyer knows is false."[13]

Finally, if the client insists on the dishonesty and there is no way to persuade him or her to take another course of action, the attorney can ask the court for leave to withdraw under Rule 1.16, which allows the attorney to "fire" the client if the representation will result in violation of the Rules of Professional Conduct; if the client insists upon taking an action the lawyer believes is repugnant or disagrees with fundamentally; or if the client uses the lawyer's services to perpetuate a fraud or crime or will do so. Comment 15 to Rule 3.3 invokes Rule 1.16 withdrawal as a remedy when the disclosures required by Rule 3.3 lead to the deterioration of the attorney-client relationship to the point where the lawyer can no longer represent the client.

At a minimum, an attorney should counsel the client to be honest with the tribunal at all times, taking steps to preserve both the integrity of the proceedings as well as the integrity of the attorney-client relationship.

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[13] Model Rules of Prof'l Conduct R.3.3 cmt. 6

ADDENDUM A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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RULE 502(d) ORDER

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ANDREW J. PECK, United States Magistrate Judge:

1. The production of privileged or work-product protected documents, electronically stored information ("ESI") or information, whether inadvertent or otherwise, is not a waiver of the privilege or protection from discovery in this case or in any other federal or state proceeding. This Order shall be interpreted to provide the maximum protection allowed by Federal Rule of Evidence 502(d).

2. Nothing contained herein is intended to or shall serve to limit a party's right to conduct a review of documents, ESI or information (including metadata) for relevance, responsiveness and/or segregation of privileged and/or protected information before production.

SO ORDERED.

Dated: New York, New York
[DATE]

_____
Andrew J. Peck
United States Magistrate Judge

Copies **by ECF** to: All Counsel
Judge _____ __

DAVID J. GUARNIERI
MEMBER

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Mr. Guarnieri joined the Lexington office of McBrayer, McGinnis, Leslie & Kirkland, PLLC in April, 2009. Mr. Guarnieri acquired a broad range of legal experience through practicing law for 13 years in Frankfort, both as an associate and partner at Johnson, True & Guarnieri, PLLC, and as a solo practitioner before joining the McBrayer team. Mr. Guarnieri has extensive trial experience, with more than 80 jury trials to date. This trial experience includes successfully representing both plaintiffs and defendants in sexual harassment cases, plaintiffs in bodily injury, products liability and fraud actions, and defendants in criminal matters--including favorable outcomes and several acquittals in federal and state courts on charges ranging from Attempted Murder, Sexual Abuse, Assault, Conspiracy to Manufacture and Distribute Marijuana, Money Laundering, Attempted Escape and Driving Under the Influence. Mr. Guarnieri has also represented witnesses before federal and state grand juries, which has included the successful negotiation of immunity from prosecution.

In addition to his vast trial experience, Mr. Guarnieri has represented numerous clients in appeals before the Kentucky Court of Appeals, the Kentucky Supreme Court and the United States Court of Appeals for the Sixth Circuit. These appeals have resulted in a

number of reported opinions, and include the reversal of an $84,000.00 judgment issued against an employer in a wage and hour case and the reversal of a mandatory minimum drug sentence in a multi-state marijuana cultivation operation.

Mr. Guarnieri has also handled a variety of cases in both family courts and before administrative bodies.

Areas of Practice

- Administrative Law
- Bank Litigation
- Criminal Litigation
- Civil Litigation
- Family Law
- Probate Law

Bar Admissions

- Kentucky, 1996
- U.S. District Court Eastern District of Kentucky, 1996
- U.S. District Court Western District of Kentucky, 1996
- U.S. Court of Appeals 6th Circuit, 1996
- U.S. Supreme Court, 1999

Education

- **University of Kentucky College of Law, Lexington, Kentucky**
  - J.D. - 1996
  - Honors: CALI award for Litigation Skills, 1996
  - Honors: Best Oral Argument
  - Honors: Legal and Research Writing Award 1994
- **Centre College, Danville, Kentucky**
  - B.A. - 1993
  - Major: History

Representative Cases

- *Hammond v. Hammond* (Pike Family Court 2012)
- *Teco Mechanical Contractor, Inc. v. Com., Environmental and Public Protection Cabinet, Dept. of Labor* (Kentucky Court of Appeals 2009)
- *Custom Tool and Manufacturing Company v. Sandra Fuller* (Kentucky Court of Appeals 2007)
- *Barbara Lucinda Sawyer vs. Melbourne Mills, Jr.* (Fayette Circuit Court 2006)
- *Dean and Marcie Blevins v. Benjamin and Vicky Boggs (Civil Action No.)* (Anderson Circuit Court 2006)
- *United States of America vs. Maurice Cornell Williams* (Eastern District of Kentucky 2006)

- *United States of America v. William David Miller* (Sixth Circuit 2006)
- *Commonwealth of Kentucky v. Barry K. Young* (Kentucky Court of Appeals 2005)
- *United States of America vs. David Scott Miller* (Eastern District of Kentucky 2003)
- *United States of America vs. David Scott Miller* (Eastern District of Kentucky 2003)
- *Douglas E. Durso v. Kentucky Association of Counties, Inc., et al.* (Eastern District of Kentucky 1999)

Representative Clients

- Frankfort County Club
- Teco Mechanical Contractor Inc.

Professional Associations

- Kentucky State University, Board of Regents, 2010 - Present
- United States Magistrate Judge Selection Panel, Member, 2009
- Federal Bar Association, Kentucky Chapter , Secretary, 2005 - Present
- Franklin County Bar Association, Secretary, 2002 - 2004
- National Association of Criminal Defense Lawyers, Member, 2000 - 2006
- United Way, Franklin County Board Member, 2000 - 2003
- American Bar Association, Member, 1996 - Present
- Kentucky Academy of Trial Attorneys, Member, 1996 - 2006

Past Employment Positions

- David J. Guarnieri, Sole Practitioner, 2006 - 2009
- Johnson, True and Guarnieri LLP, Partner, 2001 - 2006
- Johnson, Judy, True and Guarnieri PLLC, Associate, 1996 - 2001

Seminars

- Annual Kentucky Law Update, Federal Court Updates, September 10, 2013
- Presenter, Kentucky Supreme Court Review (Criminal Law), Kentucky Bar Association Annual Convention, June 21, 2013
- Presenter, Applying the Rules of Evidence: What Every Attorney Needs to Know, National Business Institute, November 28, 2012
- Presenter, Employment Issues and Anti-Discrimination Laws, National Business Institute, 2000 - 2004
- Adjunct Professor, Law Office Management Paralegal Studies Department, Midway College, 1998

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