

IN THE CIRCUIT COURT OF THE SEVENTEENTH
JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA

Administrative Order 2020-61-Gen

SEVENTEENTH JUDICIAL CIRCUIT PROFESSIONALISM PANEL

(a) Pursuant to Article V, section 2(d) of the Florida Constitution, and section 43.26, Florida Statutes, the chief judge of each judicial circuit is charged with the authority and the power to do everything necessary to promote the prompt and efficient administration of justice.

(b) The Florida Supreme Court has adopted standards of professional behavior for attorneys codified in: (1) the Oath of Admission to The Florida Bar; (2) The Florida Bar Creed of Professionalism; (3) The Florida Bar Professionalism Expectations; (4) The Rules Regulating The Florida Bar; and (5) the decisions of the Florida Supreme Court (collectively referred to as “Standards of Professional Behavior”).

(c) The Board of Directors of the Broward County Bar Association has approved the Standards of Professional Courtesy and Civility for South Florida, a copy of which is attached as Exhibit “A”.

(d) The Standards of Professional Behavior and the Standards of Professional Courtesy and Civility for South Florida apply to all attorneys practicing law in the Seventeenth Judicial Circuit and will be collectively referred to herein as the “*Standards of Professionalism.*”

(e) On June 6, 2013 and January 29, 2015, the Florida Supreme Court, in *In Re Code for Resolving Professionalism Complaints*, 116 So. 3d 280 (Fla. 2013) and *In Re Amendment to the Code for Resolving Professionalism Complaints*, 156 So. 3d 1034 (Fla. 2015), adopted and amended the Code for Resolving Professionalism Complaints and directed the chief judge of each judicial circuit to create a local professionalism panel to receive and resolve professionalism complaints.

(f) In accordance with the authority vested in the chief judge pursuant to Article V, section 2(d) of the Florida Constitution, section 43.26, Florida Statutes, Florida Rule of Judicial Administration 2.215, and under mandate from the Florida Supreme Court, it is hereby **ORDERED** as follows:

(1) **ESTABLISHMENT OF LOCAL PROFESSIONALISM PANEL**

- (a) The Seventeenth Judicial Circuit Professionalism Panel (“Panel”) is hereby constituted and is designated the local professionalism panel in accordance with Florida Supreme Court opinions.
- (b) The Panel shall consist of not less than fifteen (15) or more than twenty-one (21) members selected and appointed from time to time by the Chief Judge of the Seventeenth Judicial Circuit. The Chief Judge shall strive to select members that represent a cross-section of the Circuit with due consideration to such matters including geographic location, diversity, discipline, reputation or bar activities.
- (c) The Chief Judge of the Seventeenth Judicial Circuit shall appoint the Chairperson and Vice-Chair of the Panel.
- (d) The Chief Judge shall not be a member of the Panel but may preside over the Panel, as necessary.
- (e) Meetings may be called by the Chairperson, the Chief Judge, or a majority of the Panel membership. Notice of any meeting shall be given to each Panel member in such manner as deemed appropriate by the Chairperson of the Panel, and e-mail or telephonic notice is specifically approved.
- (f) Members of the Panel shall serve at the discretion of the Chief Judge. The membership of the Panel, as it changes from time to time, shall be posted on the Seventeenth Judicial Circuit website.

(2) **PURPOSE OF LOCAL PROFESSIONALISM PANEL.** The purpose of the Panel is to promote adherence to the *Standards of Professionalism*, receive, screen, evaluate and act upon complaints of unprofessional conduct and resolve those complaints informally, if possible, or refer to The Florida Bar if appropriate or necessary. The Panel may discuss the complaint, if appropriate, with the complainant, witnesses and the attorney alleged to have engaged in unprofessional conduct (the "Respondent Attorney"). The Panel shall address conduct inconsistent with the *Standards of Professionalism* in an informal, non-punitive, and educational manner. The Panel shall have no authority to discipline any attorney or to compel any attorney to appear before the Panel. The Panel may counsel

attorneys if it determines such counseling will further the goals of the *Standards of Professionalism*.

(3) **PANEL PROCEDURES**. The following procedures shall generally govern the proceedings of the Panel:

(a) *Initiation by Judicial Officer or Quasi-Judicial Officer*. When any judge or quasi-judicial officer within the Seventeenth Judicial Circuit determines that an attorney has engaged in conduct inconsistent with the *Standards of Professionalism*, he or she may refer the matter to the Panel via the Chairperson of the Panel.

(b) *Initiation by Attorney / Non-Attorney*.

(i) If an attorney observes conduct on the part of another attorney that he or she believes, in good faith, is inconsistent with the *Standards of Professionalism*, that attorney may request that the Panel consider the matter by completing a referral form and submitting it to the Chairperson of the Panel.

(ii) If a non-attorney is directly and adversely affected by conduct on the part of an attorney that is allegedly inconsistent with the *Standards of Professionalism*, that person may request the Panel consider the matter by completing a referral form and submitting it to the Chairperson of the Panel.

(c) *Initiation by the Florida Bar's Attorney Consumer Assistance Program (ACAP)*.

(d) *Review*.

(i) The Chairperson of the Panel shall review the request, shall notify the Respondent Attorney of the request, may request a response, and shall determine whether the matter justifies a referral to the Panel. If a matter is referred to the Panel, the Chairperson of the Panel shall address a letter to the Respondent Attorney inviting the attorney to meet with the Chairperson or members of the Panel on a date and time specified.

- (ii) Any letter sent to a Respondent Attorney by the Panel requesting that the Respondent Attorney appear before the Panel shall identify the conduct alleged to be inconsistent with the *Standards of Professionalism* and the *Standards of Professionalism* potentially implicated and shall advise the attorney that the Panel meeting is not a disciplinary proceeding.
- (iii) The Chairperson, alone or the Chairperson with any number of Panel members to be designated by the Chairperson, may meet at the date and time specified in the letter. The purpose of the meeting shall be to discuss with the Respondent Attorney his or her conduct *and* attempt to resolve the conduct or behavior alleged to be inconsistent with the *Standards of Professionalism*. The Chairperson of the Panel may send a letter summarizing the Panel's discussions to the Respondent Attorney.
- (iv) If the Respondent Attorney fails to appear, the designated members of the Panel shall discuss the alleged conduct inconsistent with the *Standards of Professionalism* and may summarize the Panel's discussions by letter to the Respondent Attorney. Consistent with the provisions of this Order, the Panel may consider the Respondent Attorney's failure to appear in determining whether referral to ACAP is appropriate.

(4) **GENERAL MATTERS**

- (a) The Panel members should endeavor to resolve all referrals in a timely manner.
- (b) Upon conferring with each other and conducting an investigation, the Panel members involved may proceed and resolve the issues in any of the following non-punitive, educational and constructive manner to provide the Respondent Attorney with an incentive for self-improvement:
 - (i) The Chairperson may issue an oral or written decision to the Respondent Attorney.
 - (ii) The Panel, in its discretion, may also refer the Respondent Attorney to the Broward County Bar Association's Mentorship program or may communicate with an assisting mentor of the Respondent.

- (iii) The Panel may recommend the Respondent Attorney attend an appropriate ethics course approved by The Florida Bar or otherwise.
 - (iv) The Panel may advise the Respondent Attorney with recommendation that will assist the attorney in the future.
 - (v) The Panel, in appropriate circumstances, may refer the Respondent Attorney to “Florida Lawyers Assistance” or other similar, appropriate program(s) for assistance with drug, alcohol, and/or emotional problems.
 - (vi) Pursuant to Section 2.1 of the Florida Supreme Court’s opinion in *In Re Code for Resolving Professionalism Complaints*, 116 So. 3d 280 (Fla. 2013), the Panel has the discretion to direct any referrals to ACAP depending upon the nature and severity of the referral.
 - (vii) The Panel may form any other such solutions the Panel may deem as appropriate or necessary.
- (c) All records regarding referrals to the Panel will be handled in the same manner as set forth in *In Re Code for Resolving Professionalism Complaints*, 116 So. 3d 280 (Fla. 2013) and as outlined in Rule 3-7.1 of the *The Rules Regulating the Florida Bar* regarding the confidentiality of disciplinary investigations and proceedings.

This Administrative Order vacates and supersedes Administrative Order 2016-8-Gen.

DONE AND ORDERED in Chambers, Fort Lauderdale, Broward County, Florida, this 8th day of July, 2020.

/s/ Jack Tuter
Jack Tuter, Chief Judge

Standards of Professional Courtesy and Civility for South Florida

Preamble

Attorneys are often retained to represent their clients in disputes or transactions. The practice of law is often an adversarial process. Attorneys are ethically bound to zealously represent and advocate in their clients' best interests. Nonetheless, certain standards of professional courtesy exist that must be observed in the courtroom, the board room, or any other setting in which an attorney is present.

The following standards of professional courtesy describe the conduct expected of attorneys practicing before courts and other tribunals in South Florida, including Broward, Indian River, Martin, Miami-Dade, Monroe, Okeechobee, Palm Beach, and St. Lucie counties. These standards are not meant to be exhaustive, but instead to set a tone or guide for conduct not specifically covered by these standards. The overriding principles promoted by these standards are good-faith, civil and respectful communication between counsel and similar cooperation with judges, arbitrators, mediators, clerks, court staff, witnesses and non-parties.

These standards have been codified with the intent that their dissemination will educate and remind attorneys and their clients that attorneys practicing in South Florida are expected to behave professionally and civilly at all times. In 1990, the Board of Governors of The Florida Bar adopted the Ideals and Goals of Professionalism. In 2011, the Florida Supreme Court amended its oath of attorney admission ("Oath of Attorney Admission") to require that attorneys taking the oath pledge to opposing parties and counsel "fairness, integrity, and civility, not only in court, but also in all written and oral communications." In 2013, the Florida Supreme Court issued an opinion entitled *In re: Code for Resolving Professionalism Complaints* (SC13-688) that requires each judicial circuit in Florida to create a local professionalism panel to hear grievances for professionalism and civility violations. These standards below should be read together with the Ideals and Goals of Professionalism, the Oath of Attorney Admission, and the Florida Supreme Court's opinion aimed at improving attorneys' professionalism and civility.

I. Scheduling

1. Attorneys should endeavor to provide opposing counsel and pro se litigants (collectively, "opposing counsel"), parties, witnesses, and other affected persons, sufficient notice of depositions, hearings and other proceedings, except upon agreement of counsel, in an emergency, or in other circumstances compelling more expedited scheduling. As a general rule, actual notice

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should be given that is no less than five (5) business days for in-state depositions, ten (10) business days for out-of-state depositions and five (5) business days for hearings.

2. Attorneys should communicate with opposing counsel prior to scheduling depositions, hearings and other proceedings, so as to schedule them at times that are mutually convenient for all interested persons. Further, sufficient time should be reserved to permit a complete presentation by counsel for all parties. Upon receiving an inquiry concerning a proposed time for a hearing, deposition, meeting or other proceeding, a lawyer should promptly agree to the proposal or offer a counter suggestion that is as close in time as is reasonably available, and attorneys should cooperate with each other when conflicts and calendar changes are reasonably necessary. Only after making a reasonable effort to confer with opposing counsel should attorneys unilaterally schedule depositions, hearings or other matters.

3. Attorneys should notify opposing counsel, the court or other tribunal, and others affected, of scheduling conflicts as soon as they become apparent. Further, attorneys should cooperate with one another regarding all reasonable rescheduling requests that do not prejudice their clients or unduly delay a proceeding and promptly offer reasonable alternative dates to reschedule a matter.

4. Attorneys should promptly notify the court or other tribunal of any resolution between parties that renders a scheduled court appearance unnecessary or otherwise moot.

5. Attorneys should grant reasonable requests by opposing counsel for extensions of time within which to respond to pleadings, discovery and other matters when such an extension will not prejudice their client or unduly delay a proceeding.

6. Attorneys should cooperate with opposing counsel during trials and evidentiary hearings by disclosing with reasonable advance notice the identities of all witnesses reasonably expected to be called and the length of time needed to present the attorney's client's case, except when a client's material rights would be adversely affected. The attorneys also should cooperate with the calling of witnesses out of turn when the circumstances justify it.

II. Discovery

1. Attorneys should pursue discovery requests that are reasonably related to the matter at issue. Attorneys should not use discovery for the purpose of harassing, embarrassing or causing the adversary to incur unnecessary expenses.

2. Attorneys should not use discovery for the purpose of causing undue delay or obtaining unfair advantage.

3. Attorneys should ensure that responses to reasonable discovery requests are timely, organized, complete and consistent with the obvious intent of the request. Attorneys should not produce documents in a way calculated to hide or obscure the existence of documents. A response to a request to produce should refer to each of the items in the request and the responsive documents should be produced as they correspond to each request or as they are kept in the usual course of business.

III. Conduct Directed to Opposing Counsel, the Court/Tribunal, and Other Participants in the Proceedings

1. As it brings dishonor to the legal profession, attorneys should refrain from criticizing or denigrating opposing counsel, the court/tribunal and their staff, the parties, and witnesses before clients, the public, and the media.

2. Attorneys should be, and should impress upon their clients and witnesses the need to be, courteous and respectful and not rude or disruptive with the court/tribunal, opposing counsel, parties and witnesses.

3. Attorneys should make an effort to explain to witnesses the purpose of their required attendance at depositions, hearings or trials. Absent compelling circumstances, attorneys should give adequate notice to non-party witnesses before the scheduling of their depositions, advance notice of a subpoena for a deposition, hearing or trial. Attorneys further should attempt to accommodate the schedules of witnesses when resetting their appearance and promptly notify them of any cancellations.

4. Attorneys should respect and abide by the spirit and letter of all rulings of the court and advise their clients to do the same.

5. Attorneys and their staff should a) act and speak civilly and respectfully to courtroom deputies and bailiffs, clerks, court reporters, judicial assistants and law clerks; b) be selective in inquiries posed to judicial assistants as their time and resources are limited; and c) familiarize themselves with the court's administrative orders, local rules and each judge's published standing orders, practices and procedures.

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IV. Candor to the Court/Tribunal and Opposing Counsel

1. Attorneys should not knowingly misstate, misrepresent, or distort any fact or legal authority to the court, tribunal or opposing counsel and shall not mislead by inaction or silence. Further, if this occurs unintentionally and is later discovered, the attorney immediately should disclose and correct the error. Attorneys, likewise, should affirmatively notify the court or tribunal of controlling legal authority that is contrary to their client's legal position.
2. Attorneys immediately should notify opposing counsel of all oral or written communications with the court or other tribunal, except those involving only scheduling or administrative matters.
3. Copies of any submissions to the court or other tribunal (such as e-mails, correspondence, motions, pleadings, memoranda or law, legal authorities, exhibits, transcripts, etc.), should be simultaneously provided to opposing counsel by e-mail or delivery of an electronic or hard copy. For example, if a memorandum of law is hand-delivered to the court, a copy should be simultaneously e-mailed or hand-delivered to opposing counsel.
4. Attorneys should submit factual or legal argument to a court in a motion or memorandum of law and not in the form of an e-mail or letter. Tribunals other than courts, however, may permit more informal means than a motion or memorandum of law for the submission of factual or legal argument.
5. Attorneys should draft proposed orders promptly after a hearing or decision and the orders should fairly and adequately represent the ruling of the court or tribunal. Attorneys should promptly provide, either orally or in writing, proposed orders to opposing counsel for approval. In response, opposing counsel should communicate promptly any objections to the drafting attorney. The drafting attorney then should promptly submit a copy of the proposed order to the court or other tribunal and state whether opposing counsel agrees or objects to the form of the order.
6. Attorneys should draft agreements and other documents promptly after the discussions or agreement so as to fairly reflect the true intent of the parties. Where revisions are made to an agreement or other document, attorneys should point out, redline or otherwise highlight any such additions, deletions or modifications for opposing counsel.

V. Efficient Administration

1. Attorneys should refrain from actions intended primarily to harass or embarrass and should refrain from actions which cause unnecessary expense or delay.
2. Attorneys should, whenever possible, prior to filing or upon receiving a motion, contact opposing counsel to determine if the matter can be resolved in whole or in part. This may alleviate the need for filing the motion or allow submission of an agreed order in lieu of a hearing.
3. Attorneys should, whenever appropriate, discuss discovery planning. Attorneys should also endeavor to stipulate to all facts and legal authority not reasonably in dispute.
4. Attorneys should encourage principled negotiations and efficient resolution of disputes on their merits.