



ADMINISTRATIVE OFFICE OF THE COURTS
INTER-OFFICE

MEMO 2015-34

TO: Honorable Carolyn Timmann
Honorable Sharon Robertson
Honorable Joseph E. Smith
Honorable J.R. Smith

FROM: Thomas A. Genung, Trial Court Administrator

DATE: August 17, 2015

RE: **Administrative Order 2015-06**
RE: NINETEENTH CIRCUIT PROFESSIONALISM PANEL

A handwritten signature in black ink, appearing to be "T. Genung", written over the name of the sender in the "FROM:" field.

Attached please find an original **Administrative Order 2015-06** for filing with the Court.

If you have any questions regarding the above, please do not hesitate to contact me.

TAG/js
Attachment

cc w/attach: All Judges in the Nineteenth Judicial Circuit
All Magistrates and Hearing Officers in the Nineteenth Judicial Circuit
All Staff Attorneys in the Nineteenth Judicial Circuit
Honorable Bruce Colton, State Attorney's Office
Honorable Diamond Litty, Public Defender's Office
All County Attorneys in the Nineteenth Judicial Circuit
All Local Law Libraries
All Local Bar Presidents
IT

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT IN
AND FOR INDIAN RIVER, MARTIN, OKEECHOBEE & ST. LUCIE
COUNTIES, FLORIDA

ADMINISTRATIVE ORDER NO. 2015-06

RE: NINETEENTH CIRCUIT PROFESSIONALISM PANEL WHEREAS, on June 11, 1998, the Chief Justice of the Florida Supreme Court issued an administrative order directing the Chief Judge of each circuit to create and maintain in continuous operation a Circuit Committee on Professionalism; and

WHEREAS, on January 30, 2015, the Board of Governors of The Florida Bar approved the Professionalism Expectations that replaced the Ideals and Goals of Professionalism that were adopted in May of 1990, and

NOW, THEREFORE, pursuant to the authority vested in me as Chief Judge of the 19th Judicial Circuit of Florida under Rule 2.215, Florida Rules of Judicial Administration, it is ORDERED as follows:

1. The 19th Judicial Circuit Professionalism Panel

The 19th Judicial Circuit Professionalism Panel is designated as the Local Professionalism Panel in accordance with SC13-688 and SC15-75. The members of the Executive Board of the Professionalism Panel shall comprise the Circuit Committee on Professionalism. The purpose of the Professionalism Panel is to review complaints and other intake items, meet with attorneys who may have conducted themselves in a manner inconsistent with the Standards of Professionalism in order to discuss such conduct and counsel attorneys to avoid future conduct inconsistent with the existing standards. The Professionalism Panel shall have no authority to discipline any attorney or to compel any attorney to appear before the Professionalism Panel. The Professionalism Panel may also counsel attorneys if it determines such counseling will further the goals of the Standards of Professionalism. The Standards of Professionalism apply to all counsel practicing law in this circuit and their staff, *pro se* litigants appearing before the courts of this circuit and all persons entering an appearance before the courts of this circuit.

2. Standards of Professionalism

2.1 Members of The Florida Bar who practice in or before the 19th Judicial Circuit shall not engage in unprofessional conduct. "Unprofessional conduct" means substantial or repeated violations of the *Oath of Admission to The Florida Bar, The Florida Bar Creed of Professionalism, The Florida Bar*

Professionalism Expectations, The Rules Regulating The Florida Bar, the decisions of The Florida Supreme Court. or the Standards of Professional Courtesy and Civility collectively adopted by the Indian River County Bar Association, the Martin County Bar Association, the Okeechobee County Bar Association, and the St. Lucie County Bar Association (the "19th Circuit's Standards of Professional Courtesy"). A representative copy of the 19th Circuit's Standards of Professional Courtesy adopted by the Martin County Bar Association is attached as Exhibit A.

2.2 Unprofessional conduct, as defined above, in many instances will constitute a violation of one or more of the *Rules of Professional Conduct*. In particular, Rule 4-8.4(d) of *The Rules Regulating the Florida Bar* has been the basis for imposing discipline in such instances. *See generally, The Florida Bar v. Ratiner*, 46 So.3d 35 (Fla. 2010); *The Florida Bar v. Abramson*, 3 So.3d 964 (Fla. 2009); and *The Florida Bar v. Martocci*, 791 So.2d 1074 (Fla. 2001).

3. Terminology

3.1 **Standards of Professionalism:** The Standards of Professionalism are set forth in the Oath of Admission to The Florida Bar, The Florida Bar Creed of Professionalism, The Florida Bar Professionalism Expectations, The Rules Regulating the Florida Bar, the decisions of The Florida Supreme Court, and the 19th Circuit's Standards of Professional Courtesy.

3.2 **Complainant:** The person who complains that an attorney's conduct has violated the Standards of Professionalism.

3.3 **Respondent:** The attorney whose behavior is the subject of the complaint.

3.4 **Attorney Consumer Assistance and Intake Program (ACAP):** The program of The Florida Bar which fields and screens complaints against members of The Florida Bar. Depending upon the nature and severity of the professionalism complaint, ACAP can resolve the complaint informally as provided herein or it can refer the matter to the appropriate branch office of The Florida Bar's Lawyer Regulation Department for further action.

3.5 **Professionalism Panel:** An entity independent of The Florida Bar and the judiciary which is established at the circuit level for the purpose of resolving complaints of alleged unprofessional conduct by attorneys practicing in this circuit. The Panel consists of only members in good standing of The Florida Bar

who are either residents of or have principal offices in the 19th Judicial Circuit and/or retired members of the judiciary all who volunteer on an annual basis to be on the Panel.

3.6 **Designated Reviewer:** A member of the Professionalism Panel appointed by majority vote of the Executive Board to participate in any proceeding as a member of a Reviewing Committee as more fully described below and qualified to participate and assist in carrying out this Order pursuant to 6.1 below.

3.7 **Executive Board:** Those individuals who are members of the Professionalism Panel appointed by the Chief Judge or the Chief Judge's designee, as more specifically described in 7.1 herein.

3.8 **Reviewing Committee:** The committee of Designated Reviewers and members of the Executive Board selected by the Executive Board to review a specific complaint before the Professionalism Panel as more fully described in 6.

4. Initiating Professionalism Complaints Before the 19th Judicial Circuit Professionalism Panel

Commencement of the Process: Any person may initiate a professionalism complaint against a member of The Florida Bar through the 19th Judicial Circuit Professionalism Panel when appropriate. Complaints shall be submitted to the Chair of the Executive Board. The website of the Nineteenth Judicial Circuit shall list the contact information for the Chair (currently www.circuit19.org). Complaints initiated through the 19th Judicial Circuit Professionalism Panel can be an informal request for assistance or as an unsworn judicial referral as outlined in Standing Board Policy 15.91 of The Florida Bar. The Professionalism Panel may accept referrals sent by ACAP.

5. Processing Professionalism Complaints Through 19th Judicial Circuit Professionalism Panel

5.1 Initial Screening:

5.1.1 Upon receipt of a written complaint the Chair of the Executive Board will create a record of the request by obtaining the contact information for both the Complainant and the Respondent. The request shall be limited to ten (10) pages inclusive of exhibits.

5.1.2 Upon receipt of a written complaint, the Executive Board will determine whether the allegations, if proven, would constitute a violation of The Standards of Professionalism in Section 2.1 relating to professionalism. A simple majority vote of the participating Executive Board members (at least three (3) members must be participating in order to take any action) shall be sufficient to render

an effective decision. If the Executive Board determines the facts as alleged may constitute a professionalism violation, an inquiry will be opened and the Executive Board will appoint and convene a Reviewing Committee for the complaint that will investigate the allegations as more fully described in 6. below. If the Executive Board determines the facts as alleged would not constitute a professionalism violation, the Executive Board will advise the Complainant and the Respondent of the decision not to pursue an inquiry and will provide the reasons for doing so. Moreover, pursuant to Supreme Court Opinion SC13-688, the Executive Board has discretion to refer any appropriate complaints to the Florida Bar or the Florida Bar Attorney Consumer Assistance and Intake Program (ACAP), depending upon the nature and severity of the complaint.

6. Review

6.1 If the Reviewing Committee determines, after review, that the facts show the Respondent did not violate The Standards of Professionalism in Section 2.1, the Reviewing Committee may dismiss the case after taking informal action, if necessary, such as providing remedial guidance. The Complainant and Respondent will be notified of the dismissal and will be provided the reasons for doing so.

6.2 If the Reviewing Committee determines, after review, that a complaint warrants further action for a possible violation of one or more of The Standards of Professionalism in Section 2.1, the Chair of the Executive Board shall address a letter to the attorney involved inviting the attorney to meet with the Reviewing Committee on a date and time specified. Moreover, pursuant to Supreme Court Opinion SC13-688, the Reviewing Committee has discretion to refer any appropriate complaints to the Florida Bar or the Florida Bar Attorney Consumer Assistance and Intake Program (ACAP), depending upon the nature and severity of the complaint.

6.3 Any letter sent to an attorney by the Professionalism Panel requesting that an attorney appear before a Reviewing Committee 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 Reviewing Committee meeting is not a disciplinary proceeding. A copy of the Standards of Professionalism shall be included in the correspondence. This communication may be delivered by way of e-mail delivered to the current e-mail address for the attorney listed on the Florida Bar's website.

6.4 The Reviewing Committee will meet at the date and time specified in the letter. The Reviewing Committee shall be comprised of at least one member of the Executive Board¹ and at least two additional participants (which may be Designated Reviewers) that have been appointed by the Executive Board. The highest ranking member of the Executive Board on the Reviewing Committee shall be the leader of the committee². The purpose of the meeting shall be to discuss with the attorney his or her conduct and ways the attorney should act in the future to be consistent with the Standards of Professionalism.

6.5 If the respondent attorney fails to appear, the Reviewing Committee shall discuss the conduct inconsistent with the Standards of Professionalism and shall summarize the committee's discussions by letter to the respondent attorney. Consistent with the provisions of this Order, the Reviewing Committee may consider the Respondent's failure to appear in determining whether referral to the Florida Bar and/or ACAP is appropriate.

6.6 The Reviewing Committee shall be responsible for submitting its determination (report and recommendation) at the conclusion of the committee's investigation of that complaint to the Executive Board. The Executive Board may send a letter summarizing the Reviewing Committee's discussions to the respondent attorney and may send a letter(s) to local Bar Associations for publication with the name(s) deleted and any identifying information redacted in order to preserve the confidentiality of the proceeding.

7. Appointment and Terms

7.1 The Professionalism Panel shall have an Executive Board comprised of five of its members selected by the Chief Judge. The Chief Judge shall not be a member of the Professionalism Panel. The Executive Board members shall have staggered terms. The initial Executive Board shall have two (2) members with a one (1) year term, two (2) members with a two (2) year term, and one (1) member with a three (3) year term. Thereafter, the terms for the successor members appointed to serve on the Executive Board shall be for

¹ In the event that each member of the Executive Board determines that they cannot participate in a proceeding as a result of a conflict, the Reviewing Committee shall not be required to contain a member of the Executive Board.

² In the event that the Reviewing Committee does not contain a member of the Executive Board, the Reviewing Committee members shall choose the leader of the committee.

three (3) years from the date of appointment by the Chief Judge, which should be on or about October, or until such, time as their successors are appointed. The terms for appointments by the Chief Judge to fill vacancies shall be for the length of time remaining to complete the term of the vacancy, and such appointments to fill vacancies and such initial appointments for terms less than three (3) years shall not count toward service for determining consecutive terms. Continuous service of an Executive Board member shall not exceed two (2) consecutive three (3) year terms. An Executive Board member shall not be reappointed to serve on the Executive Board for a period of one (1) year after the end of the Executive Board Member's second consecutive three (3) year term.

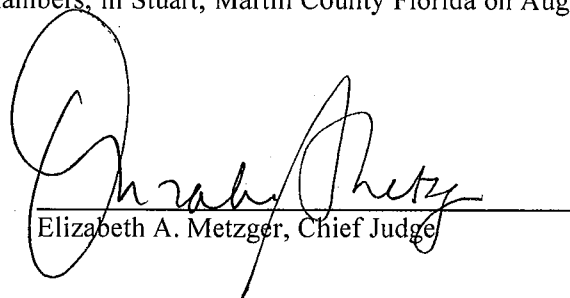
8. Panel Chair

The initial Chair and initial Vice Chair of the Executive Board shall be selected by the Chief Judge. The Chair shall serve for a one (1) year term and the Vice Chair shall serve for a two (2) year term, including the second year of service as the successor Chair. Thereafter, on or about October of each year thereafter, and in any event, no less often than annually, the Executive Board shall elect, by majority vote, the successor Vice Chair from the members of the Executive Board serving at that time with two (2) or more years remaining in their current terms of appointment.

9. Miscellaneous

The Executive Board shall be permitted and empowered to promulgate and enact all rules and procedures it deems required to further the purpose of this Order and Supreme Court Opinion SC13-688 and SC15-75 as may be amended.

DONE and SIGNED in quadruplicate in Chambers, in Stuart, Martin County Florida on August 12, 2015.


Elizabeth A. Metzger, Chief Judge

* Supersedes Administrative Order 2013-14.

Exhibit A

MARTIN COUNTY
BAR ASSOCIATION

STANDARDS OF
PROFESSIONAL COURTESY



Standards of Professional Courtesy and Civility

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 state and federal courts and other tribunals in Martin County as well as in South Florida, including those in Broward, Indian River, 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 Martin as well as in South Florida are expected to behave professionally and civilly at all times. They have received the approval of the Board of Directors of the Martin County Bar Association. They have also been endorsed by the judges of the 19th Judicial Circuit, who expect professional conduct by all attorneys who appear and practice before them.

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 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.

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.