

**IN THE CIRCUIT COURT FOR THE FIFTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA**

ADMINISTRATIVE ORDER NO. A-2019-23

**ADMINISTRATIVE ORDER ESTABLISHING LOCAL PROFESSIONALISM
PANELS AND PROCEDURES FOR RESOLVING PROFESSIONALISM
COMPLAINTS AND VACATING ADMINISTRATIVE ORDER A-2013-45-B**

WHEREAS, in the interest of promoting professionalism, a Professionalism Committee allows the bench and the Bar to coordinate professional activities for lawyers and judges in furtherance of and in an effort to maintain the highest standards of professionalism in the Fifth Circuit; and

WHEREAS, a Judge, appointed by separate administrative order, in and for the Fifth Judicial Circuit shall serve as the Chair of the Fifth Circuit Professionalism Committee, Professionalism Practice Division; and

WHEREAS, on June 6, 2013, the Florida Supreme Court entered Administrative Order No.:SC13-688 In Re: Code for Resolving Professionalism Complaints; and

WHEREAS, said Order mandates that a local subdivision of the Fifth Circuit Professionalism Committee be developed in each county in this Fifth Circuit to receive, screen and act upon any and all complaints of unprofessional conduct and to resolve those complaints informally, if possible, or refer to The Florida Bar if necessary; and

THEREFORE, As Chief Judge of this Fifth Judicial Circuit and in accordance with Florida Rule of Judicial Administration 2.215(b)(2), it is now **HEREBY ORDERED**:

I. ESTABLISHMENT OF THE PANELS:

- A. Each County in this Fifth Circuit shall establish a Local Professionalism Panel (hereinafter "the Panel") which shall operate under the guidance and supervision of the Chair of the Fifth Judicial Circuit Professionalism Committee, Professionalism Practice Division (hereinafter "Professionalism Practice Chair").
- B. By separate Administrative Order, specific to each county, the Panel shall consist of one Judge or Senior Judge, presiding in that county, who shall serve as the Chair of that Panel.
- C. Each Panel shall consist of no less than two (2) members of The Florida Bar in good standing and one Chair.
- D. Each Panel, including the Chair, shall be comprised of an odd number of members.
- E. One member of each Panel shall serve as the Panel Liaison and be responsible for communicating between the Circuit Professionalism Practice Chair, the local Panel

Chair and the Panel members. The Liaison shall be responsible for coordinating meetings and distributing information.

- F. Panel members shall be selected by the Panel Chair and ratified and approved by the Circuit Professionalism Practice Chair.
- G. Initially, at least one member of the Panel, other than the Chair, shall be appointed to serve a one-year term. Every other member, other than the Chair, shall be appointed to serve a two-year term unless otherwise noted in the County specific Administrative Order with prior approval of the Circuit Professionalism Practice Chair.

II. CODE FOR RESOLVING PROFESSIONALISM COMPLAINTS

Standards of Professionalism

- A. Members of The Florida Bar 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, or the decisions of The Florida Supreme Court. See also, Fifth Circuit Administrative Order A-2010-02, In Re: Adopting Professionalism Expectations and Guidelines for Professional Conduct.
- B. 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. Rattner, 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). See also, Fifth Circuit Administrative Order A-2010-02, In Re: Adopting Ideals and Goals of Professionalism Expectations and Guidelines for Professional Conduct.
- C. In accordance with the Rules Regulating the Florida Bar, Rule 4-1.6 (c)1 the filing or defense of a complaint filed in accordance with this Administrative Order may result in a waiver of the attorney-client privilege.

Implementation Procedures

1. Terminology

1.1. 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 Fifth Circuit Administrative Order A-2010-02, In Re: Adopting Professionalism Expectations and Guidelines for Professional Conduct.

1.2. **Complainant:**

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

1.3. **Respondent:**

The attorney whose behavior is the subject of the complaint.

1.4. **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.

1.5. **Local Professionalism Panel:**

An entity independent of The Florida Bar which is established at the local level for the purpose of resolving complaints of alleged unprofessional conduct by attorneys practicing in that circuit.

1.6. **Practice and Professionalism Enhancement Programs:**

The various programs of The Florida Bar which exist for use in diversion cases or as a condition of discipline. These programs include Ethics School, Professionalism Workshops, Law Office Management Assistance Service (LOMAS), Stress Management Workshop, Florida Lawyers Assistance, Inc., and the Trust Accounting Workshop.

2. **Initiating Professionalism Complaints**

The Local Professionalism Panel shall consist of members of the judiciary and local members of The Florida Bar. The Panel shall operate as a "peer review program" and will conduct peer review proceedings in a constructive, non-punitive fashion unless the allegations contained in the complaint are a clear, per se violation of the Rules Regulating The Florida Bar.

Participation and appearance by attorneys who may be requested to appear before the Local Panel is strictly voluntary but encouraged.

The Judiciary of the Fifth Judicial Circuit may refer cases of perceived improper attorney conduct to a Local Professionalism Panel for resolution but are not obligated

to make such referral.

Should a member of the Judiciary refer a case to the Local Professionalism Panel, that case shall be transferred, at random, out of the county from where the Complainant Judge presides.

2.1. Commencement of the Process:

Any person may initiate a professionalism complaint against a member of The Florida Bar through the Local Professionalism Panel or through ACAP. Complaints received by a Local Professionalism Panel may be referred to ACAP at any time depending upon the nature and severity of the complaint.

3. Processing Professionalism Complaints Through the Local Professionalism Panel

- 3.1. Complaints initiated through the local Panel can be an informal request for assistance by written request.
 - 3.1.1. The written request for assistance must be sent to the Office of the General Counsel whose address is available on the Fifth Circuit website at www.circuit5.org.
 - 3.1.2. The General Counsel shall create a record of the request by obtaining the contact information for both the Complainant and the Respondent. Thereafter, the General Counsel shall immediately notify the Circuit Professionalism Practice Chair.
 - 3.1.3. The General Counsel shall be responsible for monitoring and tracking the number of cases transferred, the transferring county and the receiving county.
 - 3.1.4. The General Counsel shall also be responsible for advising and transferring/transmitting the referral to the Liaison and Chair of the receiving county.
 - 3.1.5. If the referral is made by a member of the Judiciary of the Fifth Judicial Circuit, the General Counsel shall advise the Circuit Professionalism Practice Chair and shall select, at random, a county other than the county wherein the Complainant Judge presides and transfer the case to that county. In the interest of fairness, the transferring county shall receive the next referral made by a member of the Judiciary in any other county.
 - 3.1.6. The Circuit Professionalism Practice Chair shall immediately determine if the allegations, on their face and as alleged, constitute a per se violation of the Rules Regulating The Florida Bar. If so, the Complainant shall be referred to The Florida Bar for further proceedings.
 - 3.1.7. After the Circuit Professionalism Practice Chair has determined that allegations do not constitute a per se violation of the Rules Regulating The Florida Bar the information will then be forwarded to the Liaison of the local Panel, via the General Counsel, for the appropriate county for Initial Screening.

3.2. Initial Screening:

- 3.2.1. Upon receipt of a complaint from the Circuit Professionalism Practice Chair:
- 3.2.2. The local Panel Liaison will immediately contact the Chair of the Local Panel.
- 3.2.3. The Chair of the Local Panel, in his/her sole discretion, shall select and assign no fewer than three (3) Local Panel members to each complaint filed.
- 3.2.4. The Liaison shall coordinate a meeting time with the selected Panel Members. Panel Members shall be permitted to appear telephonically.
- 3.2.5. The Liaison shall distribute a copy of the complaint and any other information obtained to all assigned Panel members.
- 3.2.6. The Panel members shall review the referral as soon as practicable but in no event longer than five (5) business days from receipt and determine whether the referral should be sent out of county for disposition.
- 3.2.7. The final decision to transfer a referral out of county lies solely with the Chair of the Local Panel.
- 3.2.8. The Chair of the Panel or the Liaison of the Panel shall immediately notify the General Counsel if the Local Panel determines the referral should be transferred out of county.
- 3.2.9. The General Counsel shall advise the Circuit Professionalism Practice Chair and shall select, at random, a county other than the county wherein the referral originates and transfer the case to that county.
- 3.2.10. In the interest of fairness, the transferring county shall receive the next referral that is determined appropriate to transfer from any other county.
- 3.2.11. The General Counsel shall be responsible for monitoring and tracking the number of cases transferred, the transferring county and the receiving county.
- 3.2.12. The General Counsel shall also be responsible for advising and transferring/transmitting the referral to the Liaison and Chair of the receiving county.
- 3.2.13. No later than thirty (30) business days after receipt of the complaint the Local Panel shall schedule and conduct a meeting to determine if the concerns raised in the complaint should be resolved informally.
- 3.2.14. The Panel's recommendation/decision shall be made by majority vote.
- 3.2.15. At said meeting the Local Panel will determine whether the allegations, if proven, would constitute a violation of The Rules of Professional Conduct relating to professionalism.

3.2.16. After initial review of the complaint and the allegations set forth therein, the Local Committee will advise the Circuit Professionalism Practice Chair of their findings and recommended actions.

3.3 Informal Resolution Procedures:

3.3.1. If the Local Panel determines the facts as alleged would not constitute a violation of The Rules of Professional Conduct or Fifth Circuit Administrative Order A-2010-02, In Re: Adopting Professionalism Expectations and Guidelines for Professional Conduct, Relating to Professionalism, the Chair or the Panel Liaison (on behalf of the local Chair) will advise the Circuit Professionalism Practice Chair of the situation and suggest one of the following recommendations:

1. To advise the Complainant and the Respondent of the decision not to pursue an inquiry and will provide the reasons for doing so; or
2. In the event it is determined that informal contact with the Respondent would resolve the issue, the Chair of the Local Panel or his/her designee, shall contact the Respondent to discuss the professionalism issues and provide remedial guidance as necessary.

3.4 Formal Resolution Procedures:

3.4.1. If the Local Panel determines the facts as alleged would constitute a violation, the Chair or the Panel Liaison (on behalf of the local Chair) will advise the Circuit Professionalism Practice Chair of the situation and recommend that an inquiry be opened and the Local Panel will investigate the allegations. The investigation may include (but is not limited to) an in person or telephonic interview of the Complainant, the Respondent, or any potential and available witnesses.

3.4.2. If the Local Panel determines after investigation that the facts show the Respondent did not violate The Rules of Professional Conduct or Fifth Circuit Administrative Order A-2010-02, In Re: Adopting Ideals and Goals of Professionalism and Guidelines for Professional Conduct, the Local Panel 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.

3.4.3. If the Local Panel determines after investigation that a complaint warrants further action for a possible violation of one or more of The Rules of Professional Conduct or Fifth Circuit Administrative Order A-2010-02, In Re: Adopting Ideals and Goals of Professionalism and Guidelines for Professional Conduct, the Circuit Professionalism Practice Chair and the Chair of the Local Committee shall jointly forward the matter to the Attorney Consumer Assistance and Intake Program of the Florida Bar for further investigation or resolution or appropriate branch office of The Florida Bar's Lawyer Regulation Department for further consideration. The Complainant and Respondent shall both be advised of this referral.

- 3.4.4. The Local Panel shall prepare a memorandum containing their investigatory procedures and outcome, the actions taken by the Local Panel and all findings as a result thereof. A copy of the complaint and this memorandum shall be attached to the referral and forwarded to the appropriate division of The Florida Bar as set forth above.
- 3.4.5. In the event the Chair of the Local Panel and the Circuit Professionalism Practice Chair disagree on procedures or recommendations set forth above, the Circuit Professional Practice Chair shall make the final determination.
- 3.4.6. If the Circuit Professional Practice Chair is the same individual as the Chair of the Local Committee the Chief Judge and the Circuit Professionalism Practice Chair shall jointly forward the matter to the appropriate division as outlined above.

3.5. Local Professionalism Panels and Circuit Committees on Professionalism:

In accordance with Florida Supreme Court Order No.: SC15-75, the members of the Local Professionalism Panels, staff persons assisting those panels, members of the Circuit Committees on Professionalism, and staff persons assisting those committees, shall have absolute immunity from civil liability for all acts in the course and scope of their official duties.

III. Florida Supreme Court Administrative Order:

Any and all procedures and/or requirements established in Florida Supreme Court Order No.: SC13-688 are hereby ratified, affirmed and incorporated herein.

IV. Confidentiality:

All records regarding referrals to the Local Professionalism Panel shall be handled in the manner set forth in AOSC13-688 and as outlined in Rule 3-7.1, The Rules Regulating The Florida Bar, regarding the confidentiality of disciplinary investigations and proceedings.

FUTHER, it is HEREBY ORDERED Administrative Order A-2-13-45-B is **VACATED**.

IT IS SO DONE AND ORDERED in Chambers in Ocala, Marion County, Florida
this 29th day of April, 2019.



S. Sue Robbins
Chief Judge
Fifth Judicial Circuit