

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

ADMINISTRATIVE ORDER NO. A-2021-58

**ADMINISTRATIVE ORDER ADOPTING IDEALS AND GOALS
OF PROFESSIONALISM AND GUIDELINES FOR PROFESSIONAL
CONDUCT, INCLUSIVE OF VIRTUAL/ZOOM/AUDIO-VISUAL/REMOTE
COURT PROCEEDINGS¹**

AND

VACATING ADMINISTRATIVE ORDER A-2010-02

WHEREAS, the number of attorneys now practicing law in the Fifth Circuit has grown substantially since the Florida Bar's implementation of the Guidelines For Professional Conduct; and

WHEREAS, the quantity, variety, and nature of court proceedings held remotely has substantially increased in a relatively short period of time, making it necessary to the orderly and efficient administration of justice to promulgate certain professionalism guidelines;

WHEREAS, the Guidelines For Professional Conduct originates from (1) the ethical duties established by the Florida Supreme Court in the Rules Regulating The Florida Bar and (2) the long-standing customs of fair, civil, and honorable legal practice in Florida, and creates **Professionalism Expectations** for each lawyer practicing within the Fifth Judicial Circuit; and

WHEREAS, the Florida Bar has determined that it has become more important to articulate the ideals of professionalism and to emulate such ideals by deed, the Fifth Judicial Circuit hereby adopts the Ideals and Goals of Professionalism and Guidelines for Professional Conduct.

IT IS THEREFORE,

¹ Sections I-VIII are aspirational guidelines approved by the Standing Committee on Professionalism on October 16, 2014, and the Florida Bar Board of Governors on January 30, 2015. Section IX is taken from the Workgroup on Continuity of Court Operations and Proceedings During and After COVID-19 Best Practices

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ORDERED and ADJUDGED as follows:

I. FIFTH JUDICIAL CIRCUIT PROFESSIONALISM PRINCIPLES

Members of the Florida Bar in good standing and those admitted pro hac vice and who appear before the Courts of the Fifth Judicial Circuit should exemplify the following:

1. a commitment to serve others;
2. dedication to properly use knowledge and skills to promote a fair and just result;
3. endeavor to enhance knowledge, skills, and competence;
4. ensure that concern for a client's desired result does not subvert the lawyer's fairness, honesty, civility, respect, and courtesy during interactions with fellow professionals, clients, opponents, public officials, court staff, members of the judiciary, or the public;
5. contribute skill, knowledge, and influence to further the profession's commitment to service and the public good, including efforts to provide all persons, regardless of their means or popularity of their causes, with access to the law and the judicial system;
6. enhance the legal system's reputation by educating the public about the profession's capabilities and limits, specifically about what the legal system can achieve and the appropriate methods of obtaining those results; and
7. accept responsibility for one's own professional conduct and the conduct of others in the profession, including encouraging other lawyers to meet these civility and Professionalism Expectations and fostering peer regulation to ensure that each lawyer is competent and public-spirited.

II. COMMITMENT TO EQUAL JUSTICE UNDER THE LAW AND TO THE PUBLIC GOOD

A license to practice law is a privilege that gives the lawyer a special position of trust, power, and influence in our society. This privilege requires a lawyer to use that position to promote the public good and to foster the reputation of the legal profession while protecting our system of equal justice under the law.

Professional Expectations:

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1. A lawyer should avoid the appearance of impropriety.
2. A lawyer should counsel and encourage other lawyers to abide by these Professionalism Expectations.
3. A lawyer should promote the public's understanding of the lawyer's role in the legal profession and protect public confidence in a just and fair legal system founded on the rule of law.
4. A lawyer should not enter into a lawyer-client relationship when the lawyer cannot provide competent and diligent service to the client throughout the course of the representation.
5. A lawyer must not seek clients through the use of misleading or manipulative oral and written representations or advertisements. (See R. Regulating Fla. Bar 4-7.13 and 4-7.14). Contingency fee arrangements must be in writing and follow R. Regulating Fla. Bar 4-1.5(f).
6. When employed by a new client, a lawyer should discuss fee and cost arrangements at the outset of the representation and promptly confirm those arrangements in writing.
7. A lawyer must place a client's best interest ahead of the lawyer's or another party's interests. (See R. Regulating Fla. Bar 4-1.7(a)(2)).
8. A lawyer must maintain and preserve the confidence and private information of clients. (See R. Regulating Fla. Bar 4- 1.6).
9. In any representation where the fee arrangement is other than a contingent percentage-of-recovery fee or a fixed, flat-sum fee or in which the representation is anticipated to be of more than brief duration, a lawyer should bill clients on a regular, frequent interim basis, and avoid charging unnecessary expenses to the client.
10. When a fee dispute arises that cannot be amicably resolved, a lawyer should endeavor to utilize an alternative dispute resolution mechanism such as fee arbitration.
11. A lawyer must routinely keep clients informed and attempt to resolve client concerns. (See R. Regulating Fla. Bar 4-1.4). In the case of irreconcilable disagreements with a client, the lawyer must provide diligent representation until the lawyer-client relationship is formally dissolved in compliance with the law and the client's best interests. (See R. Regulating Fla. Bar 4-1.16 and Rule 2.505 (f) Fla. R. Jud. Admin.).

12. A lawyer must devote professional time and resources and use civic influence to ensure equal access to our system of justice. (See R. Regulating Fla. Bar 4-6.1).

13. A lawyer must avoid discriminatory conduct prejudicial to the administration of justice in connection with the practice of law. (See R. Regulating Fla. Bar 4-8.4(d)).

III. HONEST AND EFFECTIVE COMMUNICATION

A lawyer's word is his or her bond. Effective communication requires lawyers to be honest, diligent, civil, and respectful in their interactions with others.

Professional Expectations:

1. A lawyer should inform every client what the lawyer expects from the client and what the client can expect from the lawyer during the term of the legal representation.

2. Candor and civility must be used in all oral and written communications. (See R. Regulating Fla. Bar 4-8.4(c)).

3. A lawyer must avoid disparaging personal remarks or acrimony toward opposing parties, opposing counsel, third parties, or the court. (See R. Regulating Fla. Bar 4-8.4(d)). Incivility within the profession and courts of the Fifth Circuit shall not be tolerated.

4. A lawyer must timely serve all pleadings to prevent prejudice or delay to the opposing party. (See R. Regulating Fla. Bar 4-3.2).

5. A lawyer's communications in connection with the practice of law, including communications on social media, must not disparage another's character or competence or be used to inappropriately influence or contact others. (See R. Regulating Fla. Bar 4-8.4(d)).

6. A lawyer should use formal letters or e-mails for legal correspondence and should not use text messages to correspond with a client or opposing counsel unless mutually agreed.

7. In drafting a proposed letter of intent, the memorialization of an oral agreement, or a written contract reflecting an agreement reached in concept, a lawyer should draft a document that fairly and accurately reflects the agreement of the parties.

8. In drafting documents, a lawyer should point out to opposing counsel all changes that the lawyer makes or causes to be made from one draft to another.
9. A lawyer should not withhold information from a client to serve the lawyer's own interest or convenience.
10. A lawyer must not knowingly misstate, misrepresent, or distort any fact or legal authority to the court or to opposing counsel and must not mislead by inaction or silence. Further, the discovery of additional evidence or unintentional misrepresentations must immediately be disclosed or otherwise corrected. (See R. Regulating Fla. Bar 4-3.3 and 4-8.4).
11. A lawyer must not inappropriately communicate with a party represented by a lawyer (See R. Regulating Fla. Bar 4- 4.2), including not responding "reply all" to emails.
12. A lawyer should diligently prepare legal forms and documents to avoid future harm or litigation for the client while ensuring compliance with the requirements of the law.
13. Social media must not be used to disparage opposing parties, lawyers, judges, and members of the public. (See R. Regulating Fla. Bar 4-8.2(a) and 4-8.4(d)).
14. Social media should not be used to avoid the ethical rules regulating lawyer advertising.
15. Social media must not be used to inappropriately contact judges, mediators, jurors, witnesses, or represented parties. (See R. Regulating Fla. Bar 4-3.5 and 4-4.2).
16. Social media must not be used for the purpose of influencing adjudicative proceedings. (See R. Regulating Fla. Bar 4-3.6).
17. A lawyer must ensure that the use of electronic devices does not impair the attorney-client privilege or confidentiality. (See R. Regulating Fla. Bar 4-1.6).
18. A lawyer must diligently respond to calls, correspondences, complaints, and investigations by The Florida Bar and to any Professionalism Panel of the Fifth Circuit. (See Regulating Fla. Bar 4-8.4(g)).

IV. ADHERENCE TO A FUNDAMENTAL SENSE OF HONOR, INTEGRITY, AND FAIR PLAY

Courtesy, cooperation, integrity, fair play, and abiding by a sense of honor are paramount for preserving the integrity of the profession and to ensuring fair, efficient, and effective administration of justice for the public.

Professional Expectations:

1. A lawyer must not engage in dilatory or delay tactics. (See R. Regulating Fla. Bar 4- 3.2).
2. A lawyer should not make scheduling decisions that limit opposing counsel's opportunity to prepare or respond.
3. A lawyer should not unreasonably oppose an adversary's motion.
4. A lawyer must not permit non-lawyer personnel to communicate with a judge or judicial officer on any matters pending before the judge or officer or with other court personnel except on scheduling and other ministerial matters. (See Regulating Fla. Bar 4-3.5(b) and 4-8.4(a)).
5. A lawyer must avoid substantive ex-parte communications in a pending case with a presiding judge. The lawyer must notify opposing counsel of all communications with the court or other tribunal, except those involving only scheduling or clerical matters. (See R. Regulating Fla. Bar 4-3.5).
6. When submitting a written communication to a court or other tribunal, a lawyer should provide opposing counsel with a copy of the document contemporaneously or sufficiently in advance of any related hearing.
7. A lawyer must promptly prepare a proposed order, ensure that the order fairly and adequately represents the court's ruling and does not include any argument, inflammatory remarks, or unannounced findings, before submitting the order to the court, and advise the court whether or not opposing counsel has approved the order. (See R. Regulating Fla. Bar 4-3.4(c)).
8. A lawyer should only schedule depositions to ascertain relevant facts and not to generate income or harass deponents or opposing counsel.
9. A lawyer must not ask a deponent irrelevant personal questions or questions designed to embarrass a deponent. (See Regulating Fla. Bar 4-4.4(a)).
10. A lawyer should not make improper objections in depositions.
11. A lawyer must not prevent a deponent from answering questions unless a legal privilege applies. (See R. Regulating Fla. Bar 4-3.4(c)).

12. When scheduling depositions, hearings, and other court proceedings, a lawyer should request an amount of time that permits all parties in the case the opportunity to be fully and fairly heard on the matter. If the matter lasts longer than the time reserved, or if it begins to appear that insufficient time has been reserved, the lawyer should bring this to the attention of all other parties and be prepared to relinquish remaining reserved time to the other party or parties, reschedule the matter, or concede the matter. A lawyer should have no expectation that opposing parties, witnesses, court staff, court reporters, or the judge is in a position to extend their time to accommodate a matter that was inefficiently scheduled.

13. A lawyer should immediately provide a scheduling notice for a hearing, deposition, or trial to all opposing parties.

14. A lawyer should timely notify opposing parties and subpoenaed witnesses of a cancelled or rescheduled hearing, deposition, or trial, including the Court when related to a hearing.

15. During pre-trial disclosure, a lawyer should make a reasonable, good-faith effort to identify witnesses likely to be called to testify and not list witnesses that are not going to be called to testify but are listed solely to intimidate, mislead or inconvenience the opposing party.

16. During pre-trial disclosure, a lawyer should make a reasonable, good-faith effort to identify exhibits to be proffered into evidence.

17. A lawyer should not mark on or alter exhibits, charts, graphs, or diagrams without opposing counsel's permission or leave of court.

18. A lawyer must not threaten opposing parties with sanctions, disciplinary complaints, criminal charges, or additional litigation to gain a tactical advantage. (See R. Regulating Fla. Bar 4-3.4(g) and (h)).

V. FAIR AND EFFICIENT ADMINISTRATION OF JUSTICE

The just, speedy, and inexpensive determination of every controversy is necessary to preserve our system of justice.

Professional Expectations:

1. A lawyer should be familiar with the court's administrative orders, local rules, and each judge's published standing orders, practices, and procedures.
2. A lawyer should endeavor to achieve the client's lawful objectives as economically and expeditiously as possible.

3. A lawyer should counsel the client concerning the benefits of mediation, arbitration, and other alternative methods of resolving disputes.
4. A lawyer should counsel the client to consider settlement in good faith.
5. A lawyer should accede to reasonable requests for waivers of procedural formalities when the client's legitimate interests are not adversely affected.
6. A lawyer must not invoke a rule for the purpose of creating undue delay, or propose frivolous oral or written arguments which do not have an adequate basis in the law nor fact. (See R. Regulating Fla. Bar 4-3.1).
7. A lawyer must not use discovery to harass or improperly burden an adversary or cause the adversary to incur unnecessary expense. (See R. Regulating Fla. Bar 4-4.4).
8. A lawyer should frame reasonable discovery requests tailored to the matter at hand.
9. A lawyer should assure that responses to proper discovery requests are timely, complete, and consistent with the obvious intent of the request. A lawyer should not avoid disclosure unless a legal privilege prevents disclosure.
10. A lawyer should not respond to discovery requests in a disorganized, unintelligible, or inappropriate manner, in an attempt to conceal evidence.
11. A lawyer should stipulate to all facts and principles of law that are not in dispute and should promptly respond to requests for stipulations of fact or law.
12. After consulting with the client, a lawyer should voluntarily withdraw claims and defenses that are without merit, superfluous, or cumulative.
13. A lawyer should be fully prepared when appearing in court or at hearings.
14. A lawyer should not use voir dire to extract promises from or to suggest desired verdicts to jurors.
15. A lawyer should abstain from all acts, comments, and attitudes calculated to curry favor with jurors.
16. A lawyer should not express bias or personal opinion concerning any matter at issue in opening statements and in arguments to the jury.
17. A lawyer should not make offers or requests for a stipulation in front of the jury.
18. A lawyer should not use the post-hearing submission of proposed orders as an opportunity to argue or reargue a matter's merits.

19. A lawyer must not request rescheduling, cancellations, extensions, and postponements without legitimate reasons or solely for the purpose of delay or obtaining unfair advantage. (See R. Regulating Fla. Bar 4-4.4).

20. A lawyer must not criticize or denigrate opposing parties, witnesses, or the court to clients, media, or members of the public. (See R. Regulating Fla. Bar 4-8.2(a) and 4-8.4(d)).

VI. DECORUM AND COURTESY

When lawyers display reverence for the law, the judicial system, and the legal profession by acting with respect, decorum, and courtesy, they earn the trust of the public and help to preserve faith in the operation of a fair judicial system.

Professional Expectations:

1. A lawyer should abstain from rude, disruptive, and disrespectful behavior. The lawyer should encourage clients and support personnel to do the same.

2. A lawyer should be civil and courteous in all situations, both professional and personal, and avoid conduct that is degrading to the legal profession. (See R. Regulating Fla. Bar 3-4.3).

3. A lawyer must always behave in a courteous and formal manner in hearings, depositions, and trials and should refrain from seeking special consideration from a judge or juror.

4. A lawyer should refer to all parties, witnesses, and other counsel by their last names during legal proceedings.

5. A lawyer should request permission from the court before approaching the bench or submitting any document.

6. A lawyer should state only the legal grounds for an objection unless the court requests further argument or elaboration.

7. A lawyer should inform clients and witnesses that approving and disapproving gestures, facial expressions, or audible comments are absolutely prohibited in legal proceedings.

8. A lawyer should abstain from conduct that diverts the fact-finder's attention from the relevant facts or causes a fact-finder to make a legally impermissible decision.

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9. A lawyer should address objections, requests, and observations to the judge, not to opposing counsel, and should not engage in argument with a party, witness or opposing counsel.

10. A lawyer should attempt to resolve disagreements before requesting a court hearing or filing a motion to compel or for sanctions.

VII. RESPECT FOR THE TIME AND COMMITMENTS OF OTHERS

Respecting the time and commitments of others is essential to the efficient and fair resolution of legal matters.

Professional Expectations:

1. A lawyer should not impose arbitrary or unreasonable deadlines on others.
2. A lawyer should schedule a deposition during a time period sufficient to allow all parties to examine the deponent.
3. Unless circumstances compel more expedited scheduling, a lawyer should provide litigants, witnesses, and other affected persons with ample advance notice of hearings, depositions, meetings, and other proceedings, and whenever practical, schedule these events at times convenient for all interested persons.
4. A lawyer should accede to all reasonable requests for scheduling, rescheduling, cancellations, extensions, and postponements that do not prejudice the client's opportunity for full, fair, and prompt adjudication.
5. A lawyer should promptly agree to a proposed time for a hearing, deposition, meeting or other proceeding or make his or her own counter proposal of time.
6. A lawyer should promptly call potential scheduling conflicts or problems to the attention of those affected, including the court or tribunal.
7. A lawyer should avoid last-minute cancellations of hearings, depositions, meetings, and other proceedings.
8. A lawyer should promptly notify the court or tribunal when a scheduled court appearance becomes unnecessary.
9. A lawyer should be punctual in attending all court appearances, depositions, meetings, conferences, and other proceedings.

10. A lawyer must respond promptly to inquiries and communications from clients and others including opposing parties and lawyers. (See R. Regulating Fla. Bar 4-1.4.)

VIII. INDEPENDENCE OF JUDGMENT

An enduring value of a lawyer's service is grounded in the lawyer's willingness to exercise independent judgment in practice and while giving the client advice and counsel.

Professional Expectations:

1. A lawyer should exercise independent judgment and should not be governed by the client's ulterior motives, ill will, or deceit.
2. A lawyer should counsel a client or prospective client, even with respect to a meritorious claim or defense, about the public and private burdens of pursuing the claim as compared with the benefits to be achieved.
3. In advising a client, a lawyer should not understate or overstate achievable results or otherwise create unrealistic expectations. A lawyer should ensure that a client understands when the client's expectations are unreasonable or unrealistic.
4. A lawyer should never permit a client's ill will toward an adversary, witness, or tribunal to become that of the lawyer.
5. A lawyer must counsel a client against using tactics designed: (a) to hinder or improperly delay a legal process; or (b) to embarrass, harass, intimidate, improperly burden, or oppress an adversary, party or any other person and should withdraw from representation if the client insists on such tactics. (See R. Regulating Fla. Bar 4- 1.16, 4-3.2, and 4-4.4).
6. In contractual and business negotiations, a lawyer should counsel the client concerning what is reasonable and customary under the circumstances.

IX. VIRTUAL APPEARANCES AND COURT PROCEEDINGS

The changing nature of how lawyers appear for matters before a court has expanded to include remote conduct of hearings. However, this expansion has not changed the ethical and professional duties for lawyers appearing before a court.

Professional Expectations:

1. Conduct in a virtual courtroom should be consistent with conduct in a traditional courtroom.
2. Participants must dress and otherwise present themselves professionally, as if they are physically appearing in a courtroom, deposition or mediation, as the circumstances indicate.
3. Participants should notify their court reporter or other technical assistants to follow the same requirements as if they were appearing in-person.
4. Participants should conduct remote proceedings in a quiet location where they are free from distractions, with as little ambient noise as possible, and with lighting that allows all participants to clearly see each other. Participants must not operate a motor vehicle while participating in a remote proceeding and should otherwise ensure that their participation does not create a public safety issue. Participants should remain seated and still throughout the hearing, and not be moving about or distracted during the proceeding.
5. Participants in video conferencing proceedings must use a device that allows them to have access to a camera, a speaker, and a microphone. This includes having the necessary device to be able to view any shared documents on the screen of the device, when applicable.
6. Participants must have an adequate Internet connection. A wired Internet connection is preferable over a wireless connection. Participants should ensure that they have working audio and video, know how to mute and unmute, ensure that they are visible to the other participants, can share screens, and are generally familiar with these Best Practices.
7. If any participant does not have access to a device that allows for video conferencing, that participant may attend a remote proceeding by telephone, or as otherwise determined by the court, in accordance with applicable Rules of Procedure. Lawyers should always employ the video function so that they are visible to the court, can share screen and view items being offered as evidence.
8. Prior to the proceeding, participants should familiarize themselves with the requirements and other operational aspects of the virtual platform being used. If possible, participants should display their full name (and not just a first name, nickname, phone number, phone model, or offensive comment/name) and any party they represent, if applicable.

9. At the commencement of a remote proceeding, all participants should take turns to individually identify themselves to the other participants and should also identify any other person present with them, even if that person is off-camera. If another person enters the room with a participant during the proceeding, that participant should notify the other participants and identify the person at that time. Generally, a party or witness who is testifying should be alone and must not subject to coaching by someone else in their vicinity.

10. When not speaking or preparing to make timely objections during the proceedings, the parties, lawyers, their clients, and non-testifying witnesses should mute themselves.

11. For all court proceedings, the court should provide the link to the virtual platform that is being used and/or the meeting ID and password for each hearing or docket of hearings if individual links are not provided, as the court may determine appropriate, to ensure open and public access to remote court hearings when proper. No participant should create either a visual or audio recording of a court proceeding without permission of the court. Except as otherwise provided herein, if a participant desires an official record of the proceeding, the participant should hire a court reporter to appear unless the official record is otherwise preserved as authorized by statute or rule.

12. Requests for continuances based solely on a participant's preference to wait until the court event can be conducted in person are disfavored and will be considered only under extraordinary circumstances. Parties and counsel should make any such requests as early as practicable. Disputes about the appearance of litigants and witnesses in person or remotely may be addressed to the discretion of the Court as provided by law, rules of procedure, and nature of the proceeding.

13. The court should provide for a breakout room or some other secure and private manner in which a lawyer can confer with his or her client during the proceeding, or in the event the participants need to discuss a matter off the record.

14. All notices of remote proceedings must include any meeting information required by the Court at the time of scheduling of the hearing and:

(i) indicate that the proceeding will occur by video conferencing.

(ii) include, if available, the video conferencing details, including complete and accurate links and login information.

(iii) state that no party or counsel should appear in person at the proceeding, unless a hybrid remote/in-person hearing is otherwise anticipated, indicated, and previously arranged; and

(iv) provide instructions for participation by telephone if a self-represented party does not have access to the video conferencing platform that is being used. For security purposes, unique links and login information are preferred.

15. Judges may begin all court proceedings with an explanation of the video conferencing procedures, including the process the court will use to designate participants to speak.

16. Absent an order of court, upon discovering that a participant has lost audio or video connection, the court, mediator, or the participant conducting the deposition, as the case may be, should immediately stop the proceeding until all participants have a good, live audio and video connection.

17. Participants should act in good faith to assist other participants who are unintentionally experiencing technical issues, including but not limited to failing to activate or deactivate the mute function or inadvertently sharing material that is confidential or privileged or otherwise inappropriate for sharing. Participants who observe such instances should alert the court, mediator, or the unaware participant, as appropriate under the circumstances.

18. Judges may also require such other reasonable requirements and rules regarding remote appearances for their individual dockets and hearings as may promote professionalism and preserve the tradition, dignity, and sanctity of the Courts, while at the same time being cognizant of and providing for evolving modern access to the Courts in the increasing era and use of improved electronic access and communication.

DONE and ORDERED in Chambers at Brooksville, Hernando County, Florida this 1st day of December 2021.



Daniel B. Merritt, Jr.

Chief Judge, Fifth Judicial Circuit