

**APPENDIX D**

**BACKGROUND  
MATERIALS**

**April 4, 2016**

AMERICAN BAR ASSOCIATION  
COMMISSION ON ETHICS 20/20  
STANDING COMMITTEE ON CLIENT PROTECTION  
STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY  
STANDING COMMITTEE ON PROFESSIONAL DISCIPLINE  
STANDING COMMITTEE ON PROFESSIONALISM  
STANDING COMMITTEE ON SPECIALIZATION  
NEW YORK STATE BAR ASSOCIATION  
GENERAL PRACTICE, SOLO AND SMALL FIRM DIVISION  
SECTION OF INTERNATIONAL LAW  
YOUNG LAWYERS DIVISION  
NEW YORK COUNTY LAWYERS' ASSOCIATION  
SECTION OF BUSINESS LAW  
LAW PRACTICE MANAGEMENT SECTION  
REPORT TO THE HOUSE OF DELEGATES

**RESOLUTION**

1 RESOLVED, That the American Bar Association amends the ABA Model Rules of Professional  
2 Conduct dated August 2012, to provide guidance regarding lawyers' use of technology and  
3 confidentiality as follows (insertions underlined, deletions ~~struck through~~):  
4

- 5 (a) the black letter and Comments to Model Rule 1.0 (Terminology);  
6 (b) the Comments to Model Rule 1.1 (Competence);  
7 (c) the Comments to Model Rule 1.4 (Communication);  
8 (d) the black letter and Comments to Model Rule 1.6 (Confidentiality of Information); and  
9 (e) the black letter and Comments to Model Rule 4.4 (Respect for Rights of Third Parties).

84 ...

85  
86 **Rule 1.1 Competence**

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88 **A lawyer shall provide competent representation to a client. Competent representation**  
89 **requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for**  
90 **the representation.**

91  
92 **Comment**

93 ...  
94 **Maintaining Competence**

95 [6] To maintain the requisite knowledge and skill, a lawyer should keep abreast of  
96 changes in the law and its practice, including the benefits and risks associated with relevant  
97 technology, engage in continuing study and education and comply with all continuing legal  
98 education requirements to which the lawyer is subject.



# The Florida Bar

651 East Jefferson Street  
Tallahassee, FL 32399-2300

John F. Harkness, Jr.  
Executive Director

850/561-5600  
www.FLORIDABAR.org

## MEMORANDUM

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To: Professional Ethics Committee

From: Carolyn Ruth Bell, Chair, Tana R. Sachs Copple, Joseph A. Corsmeier, Leslie M. Kroeger, Honorable Robert James McCune, Jr., and Loretta C. O'Keeffe, Members, Subcommittee on Confidentiality and Technology

Date: May 30, 2012

Re: Proposed Changes to the ABA Model Rules Related to Confidentiality and Technology

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The Confidentiality and Technology Subcommittee examined proposed changes to the ABA Model Rules dealing with confidentiality and technology. The task for the Subcommittee is to make recommendations to the full PEC regarding the ABA's proposed changes to Model Rules. The PEC's recommendation will go to the Board of Governors to advise the Florida delegates to the ABA meeting in August that will be voting on the proposed changes to the ABA Model Rules.

The proposed changes examined by the subcommittee consist of changes to the Comment to Model Rule 1.0 (Terminology), changes to the Comment to Model Rule 1.1 (Competence), changes to the Comment to Model Rule 1.4 (Communication), changes to Model Rule 1.6 (Confidentiality) and its Comment, and changes to Rule 4.4 (Respect for Rights of Third Persons) and its Comment. A full copy of the proposed changes is included as the appendix to this memorandum. Unless otherwise noted, the ABA Model Rules/Comments and the Florida Bar Rules/Comment are the same. This memorandum will summarize the subcommittee's recommendations as to each proposed change.

### *1. Model Rule 1.0 Terminology*

Summary of Proposed Change: The proposed change is to paragraph 9 of the Comment to Model Rule 1.0. This portion of the Comment is entitled "Screened." The proposed changes are to change the word "materials" to "information, including information in electronic form" in the Comment's discussions about denying access to the screened lawyer of files, and information relating to the matter from which the lawyer is screened from participation.

*Note:* In Florida, the terminology section is part of the preamble to the rules, rather than a rule.

Subcommittee's Recommendation: The Subcommittee recommends to the PEC that The Florida Bar's delegates vote in favor of this proposed change.

## ***2. Model Rule 1.1 Competence***

Summary of Proposed Change: The proposed change is to paragraph 6 of the Comment to Model Rule 1.1. to add the underlined phrase: “[t]o maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with technology,, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.”

Subcommittee's Recommendation: The Subcommittee recommends to the PEC that The Florida Bar's delegates vote in favor of this proposed change.

## PROFESSIONAL ETHICS OF THE FLORIDA BAR

### Opinion 06-1 April 10, 2006

Lawyers may, but are not required to, store files electronically unless: a statute or rule requires retention of an original document, the original document is the property of the client, or destruction of a paper document adversely affects the client's interests. Files stored electronically must be readily reproducible and protected from inadvertent modification, degradation or destruction.

**RPC:** 4-1.5(f)(4), 4-1.6, 4-1.8(j), 4-7.7(h), 5-1.2(b)(3), 5-1.2(d)  
**Opinions:** 63-3, 71-62, 81-8, 88-11 (Rec.), ABA Informal Ethics Opinion 1127 (1970), New York County Ethics Opinion 725 (1998), New York State Ethics Opinion 680 (1996), North Carolina Ethics Opinion RPC 234 (1996)

The Professional Ethics Committee has been directed by The Florida Bar Board of Governors to issue an opinion regarding electronic storage of law firm files. The bar has received many inquiries regarding electronic storage of law firm files in the wake of natural disasters, such as hurricanes. Some lawyers have asked whether they may store files exclusively electronically, without retaining a paper copy.

There are very few Rules Regulating The Florida Bar that address records retention. Rule 4-1.5(f)(4) requires that lawyers retain copies of executed contingent fee contracts and executed closing statements in contingent fee cases for 6 years after the execution of the closing statement in each contingent fee matter. Additionally, lawyers who are paid by insurance companies to represent insureds must retain a copy of the Statement of Insured Client's Rights that the lawyer has certified was sent to the client for 6 years after the matter is closed. Rule 4-1.8(j), Rules of Professional Conduct. Copies of advertisements and records of the dissemination location and dates must be retained for 3 years after their last use. Rule 4-7.7(h), Rules of Professional Conduct. Finally, trust accounting records must be retained for 6 years following the conclusion of the matter to which the records relate. Rule 5-1.2(d), Rules Regulating The Florida Bar.

The Rules Regulating The Florida Bar, with limited exception, do not specify the method by which records must be retained. As an example of an exception, Rule 5-1.2(b)(3) requires that lawyers retain original cancelled trust account checks, unless the financial institution they are drawn on will provide only copies. [Note: Rule 5-1.2(b)(3) has since been amended to allow either original cancelled checks or copies as long as they are legible and include all endorsements and tracking information.]

The committee has indicated in prior opinions that "the attorney must place primary emphasis on the desires of the client." Florida Ethics Opinion 81-8. The committee has further determined that lawyers should make diligent attempts to contact clients to determine their wishes regarding file retention before the lawyer destroys any closed files. Florida Ethics Opinions 63-3, 71-62, and 81-8. These opinions are silent as to the method of file retention.

Many opinions from other states address records retention issues and, more specifically, whether files may be stored electronically as opposed to paper copies. These opinions, too numerous to cite, raise issues specific to electronic document retention that the committee finds worthy of mention. The opinions generally conclude that, with appropriate safeguards, electronic document retention is permissible. See, e.g., ABA Informal Ethics Opinion 1127 (1970) (Lawyers may use company that stores attorney files on computer as long as the material is available only to the particular attorney to whom the files belong, the company has procedures to ensure confidentiality, and the lawyer admonishes the company that confidentiality of the files must be preserved); New York County Ethics Opinion 725 (1998) (Permissible for a lawyer to retain only electronic copies of a file if “the evidentiary value of such documents will not be unduly impaired by the method of storage”); New York State Ethics Opinion 680 (1996) (Client’s file may be stored electronically except documents that are required by the rules to be kept in original form, but lawyer should ensure that documents stored electronically cannot be inadvertently destroyed or altered, and that the records can be readily produced when necessary); and North Carolina Ethics Opinion RPC 234 (1996) (Closed client files may be stored electronically as long as the electronic documents can be converted to paper copies, except for “original documents with legal significance, such as wills, contracts, stock certificates”).

This committee concludes that the main consideration in file storage is that the appropriate documents be maintained, not necessarily the method by which they are stored. Therefore, a law firm may store files electronically unless: a statute or rule requires retention of an original document, the original document is the property of the client, or destruction of a paper document adversely affects the client’s interests.

The committee agrees with other jurisdictions that have noted practical considerations involved in electronic file storage. The committee cautions lawyers that electronic files must be readily reproducible and protected from inadvertent modification, degradation or destruction. The lawyer may charge reasonable copying charges for producing copies of documents for clients as noted in Florida Ethics Opinion 88-11 Reconsideration. Finally, lawyers must take reasonable precautions to ensure confidentiality of client information, particularly if the lawyer relies on third parties to convert and store paper documents to electronic records. Rule 4-1.6, Rules of Professional Conduct.

The committee encourages the use of technology, such as electronic file storage, to facilitate cost-effective and efficient records management. However, the committee is of the opinion that a lawyer is not required to store files electronically, although a lawyer may do so.

## PROFESSIONAL ETHICS OF THE FLORIDA BAR

### OPINION 10-2 September 24, 2010

A lawyer who chooses to use Devices that contain Storage Media such as printers, copiers, scanners, and facsimile machines must take reasonable steps to ensure that client confidentiality is maintained and that the Device is sanitized before disposition, including: (1) identification of the potential threat to confidentiality along with the development and implementation of policies to address the potential threat to confidentiality; (2) inventory of the Devices that contain Hard Drives or other Storage Media; (3) supervision of nonlawyers to obtain adequate assurances that confidentiality will be maintained; and (4) responsibility for sanitization of the Device by requiring meaningful assurances from the vendor at the intake of the Device and confirmation or certification of the sanitization at the disposition of the Device.

**RPC:** 4-1.1, 4-1.6(a), 4-5.3(b)

The Professional Ethics Committee has been asked by the Florida Bar Board of Governors to write an opinion addressing the ethical obligations of lawyers regarding information stored on hard drives. An increasing number of devices such as computers, printers, copiers, scanners, cellular phones, personal digital assistants (“PDA’s”), flash drives, memory sticks, facsimile machines and other electronic or digital devices (collectively, “Devices”) now contain hard drives or other data storage media<sup>1</sup> (collectively “Hard Drives” or “Storage Media”) that can store information.<sup>2</sup> Because many lawyers use these Devices to assist in the practice of law and in doing so intentionally and unintentionally store their clients’ information on these Devices, it is important for lawyers to recognize that the ability of the Devices to store information may present potential ethical problems for lawyers.

For example, when a lawyer copies a document using a photocopier that contains a hard drive, the document is converted into a file that is stored on the copier’s hard drive. This document usually remains on the hard drive until it is overwritten or deleted. The lawyer may choose to later sell the photocopier or return it to a leasing company. Disposal of the device without first removing the information can result in the inadvertent disclosure of confidential information.

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<sup>1</sup> As used in this opinion, Storage Media is any media that stores digital representations of documents.

<sup>2</sup> See Brian Smithson, *The IEEE 2600 Series: An Introduction to New Security Standards for Hardcopy Devices*, ISSA JOURNAL, Nov. 2009, at 28; Holly Herman, *Experts Warn Copiers Can Be Fertile Ground for ID Thieves*, READING EAGLE (Jun. 2, 2010, 12:28:54 P.M.), <http://readingeagle.com/article.aspx?id=222523>; Mark Huffman, *Digital Copiers Could Be an Identity Theft Threat*, ConsumerAffairs.com (May 19, 2010), [http://www.consumeraffairs.com/news04/2010/05/digital\\_copiers.html](http://www.consumeraffairs.com/news04/2010/05/digital_copiers.html); Armen Keteyian, *Digital Photocopiers Loaded with Secrets*, CBSNews.com (April 15, 2010), <http://www.cbsnews.com/stories/2010/04/19/eveningnews/main6412439.shtml>; Gregg Kelzer, *Photocopiers: The Newest ID Theft Threat*, COMPUTERWORLD (March 14, 2007), [http://www.computerworld.com/s/article/9013104/Photocopiers\\_The\\_newest\\_ID\\_theft\\_threat](http://www.computerworld.com/s/article/9013104/Photocopiers_The_newest_ID_theft_threat).



## **Duty of Confidentiality**

Lawyers have an ethical obligation to protect information relating to the representation of a client. Rule 4-1.6(a) of the Rules Regulating the Florida Bar addresses the duty of confidentiality and states:

**(a) Consent Required to Reveal Information.** A lawyer shall not reveal information relating to representation of a client except as stated in subdivisions (b), (c), and (d), unless the client gives informed consent.

The comment to the rule further states:

The confidentiality rule applies not merely to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A lawyer may not disclose such information except as authorized or required by the Rules of Professional Conduct or by law.

A lawyer must ensure confidentiality by taking reasonable steps to protect all confidential information under the lawyer's control. Those reasonable steps include identifying areas where confidential information could be potentially exposed. Rule 4-1.1 addresses a lawyer's duty of competence:

**Competence** A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

The comment to the rule further elaborates:

To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law *and its practice*, engage in continuing study and education, and comply with all continuing legal education requirements to which the lawyer is subject.

(emphasis added).

If a lawyer chooses to use these Devices that contain Storage Media, the lawyer has a duty to keep abreast of changes in technology to the extent that the lawyer can identify potential threats to maintaining confidentiality. The lawyer must learn such details as whether the Device has the ability to store confidential information, whether the information can be accessed by unauthorized parties, and who can potentially have access to the information. The lawyer must also be aware of different environments in which confidential information is exposed such as public copy centers, hotel business centers, and home offices. The lawyer should obtain enough information to know when to seek protection and what Devices must be sanitized, or cleared of all confidential information,

before disposal or other disposition. Therefore, the duty of competence extends from the receipt, i.e., when the lawyer obtains control of the Device, through the Device's life cycle, and until disposition of the Device, including after it leaves the control of the lawyer. Further, while legal matters are beyond the scope of an ethics opinion, a lawyer should be aware that depending on the nature of the information, misuse of these Devices could result in inadvertent violation of state and federal statutes governing the disclosure of sensitive personal information such as medical records, social security numbers, criminal arrest records, etc.

### **Duty to Supervise**

The lawyer must regulate not only the lawyer's own conduct but must take reasonable steps to ensure that all nonlawyers over whom the lawyer has supervisory responsibility adhere to the duty of confidentiality as well. Rule 4-5.3(b) states:

**(b) Supervisory Responsibility.** With respect to a nonlawyer employed or retained by or associated with a lawyer or an authorized business entity as defined elsewhere in these Rules Regulating The Florida Bar:

- (1) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
- (2) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- (3) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
  - (A) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
  - (B) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

A lawyer's supervisory responsibility extends not only to the lawyer's own employees but over entities outside the lawyer's firm with whom the lawyer contracts to assist in the care and maintenance of the Devices in the lawyer's control. If a nonlawyer will have access to confidential information, the lawyer must obtain adequate assurances from the nonlawyer that confidentiality of the information will be maintained.

### **Sanitization**

A lawyer has a duty to obtain adequate assurances that the Device has been stripped of all confidential information before disposition of the Device. If a vendor or other service provider is involved in the sanitization of the Device, such as at the termination of a lease agreement or upon sale of the Device, it is not sufficient to merely obtain an agreement that the vendor will sanitize the Device upon sale or turn back of the Device. The lawyer has an affirmative obligation to ascertain that the sanitization has been accomplished, whether by some type of meaningful confirmation, by having the sanitization occur at the lawyer's office, or by other similar means.

Further, a lawyer should use care when using Devices in public places such as at copy centers, hotel business centers, and outside offices where the lawyer and those under the lawyer's supervision have little or no control. In such situations, the lawyer should inquire and determine whether use of such Devices would preserve confidentiality under these rules.

In conclusion, when a lawyer chooses to use Devices that contain Storage Media, the lawyer must take reasonable steps to ensure that client confidentiality is maintained and that the Device is sanitized before disposition. These reasonable steps include: (1) identification of the potential threat to confidentiality along with the development and implementation of policies to address the potential threat to confidentiality; (2) inventory of the Devices that contain Hard Drives or other Storage Media; (3) supervision of nonlawyers to obtain adequate assurances that confidentiality will be maintained; and (4) responsibility for sanitization of the Device by requiring meaningful assurances from the vendor at the intake of the Device and confirmation or certification of the sanitization at the disposition of the Device.

### **PEC Recommendations for the Henry Latimer Center for Professionalism**

A Subcommittee of The Program Evaluation Committee, chaired by Greg Coleman, was assigned to evaluate the Henry Latimer Center for Professionalism. After thorough review, which included several interviews with the Director and Assistant Director of the Center, as well as the Chair of the Standing Committee on Professionalism, and a review of numerous materials, the Subcommittee proposes the following 12 recommendations:

#### **The Center for Professionalism shall promote professionalism through the legal community by:**

- I. Serving as support, to the Florida Supreme Court Commission on Professionalism.
- II. Coordinating efforts, maintaining progress on projects, and providing staff support to The Florida Bar Standing Committee on Professionalism.
- III. Serving as a clearinghouse for research and information regarding professionalism efforts, both in-state and nationally, by reviewing, cataloging, and making available through the Center's webpage various articles, reports, projects and information regarding professionalism issues.
- IV. Serving as a research, writing and teaching resource for professionalism initiatives in Florida.
- V. Publishing a quarterly electronic newsletter on professionalism and increase the current distribution list.
- VI. Working with the Leadership Academy Committee in developing the curriculum for the newly created Florida Bar Leadership Academy.
- VII. Maintaining and updating the Center for Professionalism's website to assure content is current and relevant.

**Additionally, the PEC makes the following recommendations:**

- VIII. The Center for Professionalism shall establish a set of performance measurements to determine how effective the Center's projects and activities are and whether they are reaching their intended audience.
- IX. All decisions regarding annual objectives and new or revised projects for the Center for Professionalism must be approved by both the Director of the Bar's Legal Division and the Executive Director.
- X. Utilize the resources of the Bar's Department of Public Information and Bar Services to assist in the creation of a marketing plan for the Center for Professionalism.
- XI. Review of applications for CLE professionalism credit should fall under the jurisdiction of the Bar's Department of Legal Specialization and Education.



# THE FLORIDA BAR

651 EAST JEFFERSON STREET  
TALLAHASSEE, FL 32399-2300

JOHN F. HARKNESS, JR.  
EXECUTIVE DIRECTOR

850/561-5600  
WWW.FLABAR.ORG

## Minutes

### **Program Evaluation Committee Thursday, April 18, 2013 Marriott Waterside Hotel Tampa, Florida**

#### **PEC Members in Attendance**

John Stewart, Chair  
Ray Abadin, Chair-elect  
Jay Cohen  
Sandy Diamond  
Michael Higer  
Margaret Mathews  
Ed Scales  
Lanse Scriven  
Adele Stone  
Richard Tanner  
Grier Wells

#### **Others in Attendance**

Gwynne Young, President, The Florida Bar  
Gene Pettis, President-elect, The Florida Bar  
Jack Harkness, Executive Director, The Florida Bar  
Aramis Ayala, President, Virgil Hawkins Florida Chapter, National Bar Association  
Mary Ellen Bateman, Director, Division of Ethics & Advertising, UPL and Special Projects  
Dori Foster-Morales, Board of Governors  
Mike Garcia, Director of Research, Planning & Evaluation  
Tom Gonzalez, Thompson, Sizemore, Gonzalez & Hearing, P.A.  
Paige Greenlee, President, Young Lawyers Division  
Laird Lile, Board of Governors  
Brittany Maxie, President-elect, Florida Association for Women Lawyers  
Michael Orr, Young Lawyers Division  
Elizabeth Tarbert, Ethics Counsel  
Laura Wendell, President, Florida Association for Women Lawyers

The meeting was called to order at 9:00 a.m. by Program Evaluation Committee (PEC) Chair John Stewart. **A motion was made by Jay Cohen, seconded by Sandy Diamond, to approve the minutes of the January 31, 2013 Program Evaluation Committee meeting. The motion was unanimously approved.**

### **Approval of Various Proposed Rule Amendments for Adherence to the Strategic Plan**

John Stewart announced that three rule amendments assigned to the PEC for strategic plan review all fall within the jurisdiction of the Bar's current strategic plan and do not have any significant or negative impact to the plan.

**A motion was made by Grier Wells, seconded by Sandy Diamond, to accept the report from PEC Chair-elect John Stewart that these three amendments are consistent with the Bar's strategic plan. The motion was unanimously approved.**

### **Substantive Review of Amendment to Family Law Section Bylaws**

Family Law Section member Nicole Goetz presented the section's revised bylaws and explained how these bylaws were recently approved by the Family Law Section's Executive Council. She provided the rationale and answered questions pertaining to each substantive change that is being proposed. **A motion was made by Jay Cohen, seconded by Adele Stone, to approve the proposed bylaws for the Family Law Section. The motion was unanimously approved.**

### **Review of Florida Bar Standing Board Policies**

Ed Scales reported the Subcommittee's decisions to the substantive revisions being proposed by Florida Bar staff on the 500 and 600 series of Standing Board Policies. There were no objections from PEC members to any of the decisions.

Ed Scales announced that the Subcommittee will be working on this task through the 2013-14 Bar year and will present its decisions series by series. At the conclusion of the review, the Subcommittee will present the fully revised set of Florida Bar Standing Board Policies to the PEC for a final vote.

### **Evaluation of the Public Interest Law Section**

Lanse Scriven provided an overview of the Subcommittee's evaluation of the Public Interest Law Section and reviewed both the survey results of PILS current members and the evaluation form that was completed by PILS leadership.

Lanse Scriven described how the Subcommittee concluded that the Public Interest Law Section currently offers excellent CLE programs and has an important role within both the Bar and in society. He then presented the Subcommittee's full set of recommendations, which are designed

to assist the Public Interest Law Section in becoming even more efficient and effective, especially regarding the use of technology for communication purposes.

**A motion was made by Lanse Scriven, seconded by the Subcommittee, to approve the recommendations for the Public Interest Law Section. The motion was unanimously approved.**

### **Review of BLSE Rule Amendments**

Richard Tanner updated the PEC on how the Subcommittee has completed its review of the revisions to the 100 through 400 series of BLSE policies. He mentioned how this review has been most thorough and the Subcommittee did have some suggestions, as well as questions that will soon be answered by Tim Sullivan and Dawna Bicknell via conference call.

Richard Tanner explained how, after the Subcommittee's review of the 400 series of policy amendments, it referred that series (which contains policies about the Appeals process) to Chair Steve Echsner of the Board of Governors Certification Plan Appeals Committee (CPAC). He announced how Steve Echsner indicated that CPAC will review that series at its meeting today and will report back to the PEC shortly thereafter with any suggestions or recommendations.

Richard Tanner stated that the next step will involve a review of the 500, 600 and 700 series of amendments and asked that all PEC members take a few minutes to look over those policies and let him know if they wish to offer any comments or suggestions. He specifically mentioned 5.08 and 5.10 as being areas to carefully review.

Richard Tanner concluded that the Subcommittee will do its best to meet several times within the next few weeks and is hopeful for a presentation of all of its recommendations to the full PEC at the May 30 meeting in Sarasota.

### **Evaluation of the Henry Latimer Center for Professionalism**

John Stewart provided an overview of the Center for Professionalism and the PEC evaluations that have occurred over the years. He then described the steps that went into the current program evaluation and presented, on behalf of the PEC Subcommittee, a set of recommendations that offer solutions to make the Center more efficient and effective.

John Stewart also presented a revised flow chart, displaying how the various professionalism entities should interact with each other.

**A motion was made, and seconded by members of the Subcommittee, to approve the recommendations for the Center for Professionalism and the revised flow chart. The motion was unanimously approved.**

The PEC meeting then went into Executive Session and Tom Gonzalez made a presentation to the Committee.



## **Evaluation of Florida Bar Special Appointment Rating Forms**

Sandy Diamond presented the Subcommittee's draft of a Florida Bar Special Appointments Application Form and a Screening Committee Ratings Form. After some discussion with Tom Gonzalez, the Subcommittee was asked to redevelop the form with several changes.

## **Evaluation of the Diversity & Inclusion Initiative, Special Committee on Diversity and Inclusion and the Equal Opportunities Law Section**

Jay Cohen provided an overview of the evaluations of the 2009-10 PEC Evaluation on Diversity and Inclusion, the Special Committee on Diversity, and the Equal Opportunities Law Section.

He described the steps that went into these program evaluations, which included a thorough subcommittee discussion on the implementation efforts of the past diversity and inclusion recommendations; data from surveys of the Board of Governors, Section Chairs, Bar Committee Chairs and current and former Equal Opportunities Law Section members; the Leadership Academy and its potential impact on the diversity and inclusion initiative; Subcommittee meetings with Arnell Bryant-Willis, Manager of Florida Bar Diversity Initiatives; and the recent PEC discussion with Tom Gonzalez.

Jay Cohen then presented a set of recommendations created by the Subcommittee that focuses on

- a) The Florida Bar's Diversity and Inclusion initiative;
- b) The Diversity Grant Program;
- c) The Special Committee on Diversity and Inclusion;
- d) The Equal Opportunities Law Section

**A motion was made, and seconded by members of the Subcommittee, to approve the recommendations made by the PEC Subcommittee. The motion was unanimously approved.**

Due to time limitations, the Senior Lawyers Section/Division/Committee agenda item was deferred. With no additional business, John Stewart adjourned the meeting at 12:10 p.m.

Respectfully submitted,

Mike Garcia

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# Supreme Court of Florida

IN RE: FLORIDA SUPREME COURT  
COMMISSION ON PROFESSIONALISM

## ADMINISTRATIVE ORDER

The Florida Bar has suggested that the Court constitute a commission to address the subject of professionalism among all members of Florida's legal community, including members of the bar, the judiciary, as well as the teachers and students of the law at Florida's law schools. We concur in the suggestion and applaud the leadership of the Bar for this initiative. Adherence to the fundamental ideals and values of our justice system and the legal profession by all of those privileged to serve in the system is an essential requirement if the system is to carry out its obligation of service to the people of Florida.

Accordingly, under the authority vested in the undersigned as Chief Justice, a Florida Supreme Court Commission on Professionalism is hereby created. The Commission is charged with the planning and implementation of an ongoing plan and

policy to ensure that the fundamental ideals and values of the justice system and the legal profession are inculcated in all of those persons serving or seeking to serve in the system. The Commission shall serve indefinitely, at the pleasure of this Court, and shall work closely with The Florida Bar to carry out its charge. In turn, The Florida Bar is charged to provide the Commission with all necessary assistance to see that the mission of the Commission is carried out.

The suggestion of the Bar that the Commission's membership be appointed in part by nominees from this Court and in part by nominees from the Florida Bar is also accepted. Justice Harry Lee Anstead is hereby appointed as the Chair of the Commission. Upon the receipt of nominations from the Bar, the Court will appoint the full membership of the Commission so that the Commission may thereafter conduct an organizational meeting and adopt bylaws and rules to guide the Commission's continuing operation.

Attached to this order and marked Exhibit A is the letter of President John W. Frost II of July 9, 1996, containing an outline of the proposal for membership of the Commission. That proposal is approved. Also attached as Exhibit B to this order is the report and proposal for the creation of a center for professionalism of the Florida Bar's Standing Committee on Professionalism, as approved by the Board of Governors of the Bar. That report will serve as a guideline for the Commission in

its efforts to formulate policy for the carrying out of its mission as set out herein.

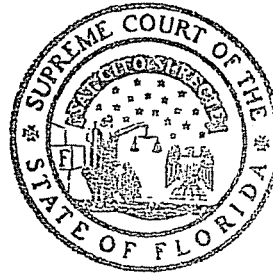
Done and Ordered at Tallahassee, Florida, this 19<sup>th</sup> day of July, A.D. 1996.

Serald Tazan  
CHIEF JUSTICE  
SUPREME COURT OF FLORIDA

ATTEST:

By: Dublin Causseay  
Chief Deputy Clerk

CLERK  
SUPREME COURT OF FLORIDA





# The Florida Bar

**John W. Frost, II**  
President

**John F. Harkness, Jr.**  
Executive Director  
July 9, 1996

**Edward R. Blumberg**  
President-elect

The Honorable Gerald Kogan  
Chief Justice  
Supreme Court of Florida  
500 South Duval Street  
Tallahassee, Florida 32399-1925

RE: Creation of Supreme Court of Florida Commission on Professionalism

Dear Chief Justice Kogan:

Please consider this letter as a petition of The Florida Bar seeking an administrative order of the court creating the Supreme Court of Florida Commission on Professionalism, which shall serve at the pleasure of the court.

Creation of the commission and the bar's center for professionalism were proposed to the bar by its standing committee on professionalism, of which Justice Anstead is the chair. The commission is intended to be the entity that will establish the policies of the bar's center and the center's governing board. The full report and recommendation of the standing committee, as approved by the board, is attached.

The standing committee proposed, and the bar agreed, that the commission should consist of:

1. the Chief Justice of the Supreme Court of Florida or the chief justice's designee (the chair of the commission);
2. a judge of one of the district courts of appeal;
3. a judge of one of the judicial circuits;
4. a judge of one of the county courts;
5. the law school dean or the dean's designee of each of the ABA accredited law schools in the state (1 of whom must be a member of the standing committee on professionalism);
6. a former public member of the bar's board of governors;
7. the president of the bar;
8. the president elect of the bar;
9. the president of the Young Lawyers Division;
10. the president elect of the Young Lawyers Division;
11. 7 practicing members of the bar, in good standing.

The court appoints or designates the judicial members (1 - 4) and the bar appoints the former public member of the board (6) and the 7 practicing lawyers (11).

Terms of office should be for the respective term of office for the chief justice and the presidents and presidents-elect of the bar and young lawyers division. All others shall serve a 4 year term, with no one being reappointed thereafter.

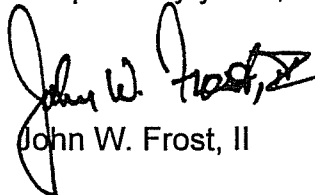
As usual, the initial appointees should be appointed for staggered terms and the bar suggests as follows:

1. the district court of appeals judge serves until June 30, 1997;
2. the circuit court judge serves until June 30, 1998; and
3. the county court judge serves until June 30, 1999;
4. 4 law school deans or designees serve until June 30, 1998, with the remainder serving until June 30, 2000;
5. 2 practicing lawyers serve until June 30, 1998, with the remaining 5 serving until June 30, 2000; and
6. the former public member of the board serves until June 30, 2000.

We do not believe that formal rules are required to create either the court's commission or the bar's center. However, the bar will file a petition to amend the continuing legal education requirement, adding a professionalism component to the ethics hours.

For your information I have attached the report and recommendations of the standing committee on professionalism, which has been amended to reflect the action of the board of governors.

Respectfully yours,

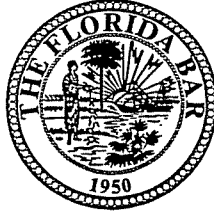


John W. Frost, II

cc: Justices of the Supreme Court of Florida  
John F. Harkness, Jr.  
Paul A. Remillard  
John T. Berry  
all with enclosures

Vletters\kogan\070896

**SUPREME COURT OF FLORIDA  
COMMISSION ON PROFESSIONALISM**



**THE FLORIDA BAR  
CENTER FOR PROFESSIONALISM**

**(Approved by The Florida Bar Board of Governors)  
May 17, 1996**

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**The Supreme Court of Florida's  
Commission on Professionalism  
and  
The Florida Bar's  
Center for Professionalism**

Executive Summary

**Objective**

The American Bar Association reports that although observance of the rules is on the rise, lawyers' professionalism may well be in a steep decline. The global objective of the center would be to raise the aspirational goals of all lawyers within the state. Although, the standing committee has generated a great deal of interest in this area, the lack of funding and dedicated human resources has severely limited its impact.

**Structure**

Three separate entities shall have responsibilities in the center's efforts. A totally volunteer commission (a supreme court body) shall act as a steering body to assist in the long range focus of the center. The commission shall have members of the judiciary, the law schools, practicing members and the leadership of the board of governors.

The standing committee on professionalism (a bar committee) will continue to convene but its mission will change from that of an implementor to that of a resource to assist the center's implementation efforts. It will also help screen new programs and continue to sponsor the professionalism award, etc.

The center will handle the day-to-day responsibilities and be responsible for research, compilation, design and implementation of the statewide professionalism effort targeting law schools, the local bars and the judiciary.

**Funding**

Funds for operation of the bar's center will be provided from the bar's general fund, as provided in the budget.

**Professionalism CLE Guidelines and Requirement**

Since the objective of the center is to insure that the practice of law remains a high calling, CLE guidelines will provide sections, committees, and private organizations with clear goals and purposes of the professionalism requirement. The center will publish these guidelines and offer the raw materials and assistance to insure that a professionalism segment can be added to each existing course with a minimum of effort. The center must approve any course for accreditation in this area. It is proposed that 5 of the existing 30 hours of continuing legal education requirements shall be in

the area of legal ethics, professionalism, or approved stress reduction programs. A rule amendment will be necessary to effectuate this recommendation.

### **Conclusion**

The center will provide the resources, materials, assistance, and any other needed support to ensure that the goal is met. Ongoing programs will be implemented at law schools, local bars, and judicial colleges to adequately cover the necessary elements of our bar.

# **INTRODUCTION**

**THE SUPREME COURT OF FLORIDA'S COMMISSION ON PROFESSIONALISM  
AND  
THE FLORIDA BAR'S CENTER FOR PROFESSIONALISM**

**Introduction**

In 1986, the American Bar Association ruefully reported that despite the fact that lawyers' observance of the rules of ethics governing their conduct is sharply on the rise, lawyers' professionalism, by contrast, may well be in steep decline:

[Although] lawyers have tended to take the rules more seriously because of an increased fear of disciplinary prosecutions and malpractice suits, . . . [they] have also tended to look at nothing but the rules; if conduct meets the minimum standard, lawyers tend to ignore exhortations to set their standards at a higher level.<sup>1</sup>

The ABA's observation reflects a crucial distinction: while a canon of ethics may cover what is minimally **required** of lawyers, "professionalism" encompasses what is more broadly **expected** of them -- both by the public and by the best traditions of the legal profession itself.

In response to those challenges, The Florida Bar, through President John DeVault, President-elect John Frost and Justice Harry Lee Anstead set a goal to establish a center for professionalism.

The center has been endorsed by The Florida Bar and the bar has requested the Supreme Court of Florida create a commission, chaired by the Chief Justice (or designee), that shall establish policies for the center and be its governing board. The bar's standing committee on professionalism shall provide resources to the center in aiding implementation of its efforts and daily operations for the center are the responsibility of The Florida Bar. Funding for the center will be from the bar's general fund.

The overriding objective of this entire project is to raise the professionalism aspirations of all the lawyers in the state and ensure that the practice of law remains a high calling, enlisted in the service not only of the client, but of the public good as well.

---

<sup>1</sup>American Bar Association Commission on Professionalism, " . . . In the Spirit of Public Service." A Blueprint for the Rekindling of Lawyer Professionalism, (1986) p.7.

## 1

## 2

3

4

## BACKGROUND

## BACKGROUND

In 1989, The Florida Bar established a task force to study the course of a great decline in professionalism among lawyers in Florida. The study addressed issues regarding the lack of civility among lawyers, the public's poor perception of lawyers and the steady decline in lawyers' satisfaction and fulfillment with their professions. The task force report listed a multitude of problems and made broad suggestions as to how to address some of these problems.

The work performed by the task force resulted in the creation of The Florida Bar's Standing Committee on Professionalism. The committee meets formally at the annual meeting, the midyear meeting and the general meeting. Initially, the committee dealt with the problems with defining and teaching professionalism. One of the committee's first projects was the distribution of *The Rules Regulating The Florida Bar/Ideals and Goals of Professionalism* to all first year law students throughout the state.

Under the guidance of the Honorable William M. Hoeveler, the committee focused its efforts on the Task Force's recommendations and worked to increase attorneys' awareness to the existence of professionalism problems and improving the level of civility among lawyers. The committee has established the Professionalism Award, put on professionalism seminars, provided speakers to law schools, local bar associations and other organizations and established a historical video series which provides videotaped interviews with pre-eminent Florida lawyers and judges regarding their views on professionalism and the practice of law. Since its inception, the committee has worked without a budget except to fund the professionalism award. Projects by the committee that were not paid for by the bar were underwritten by members of the committee who agreed to fund any shortfalls.

The productive effort of the committee and the number of successful projects created and nurtured by the committee, have created a need for a permanent organization in place to oversee the day to day operations. The establishment of the Supreme Court of Florida's Commission on Professionalism and The Florida Bar's Center on Professionalism to work in conjunction with the committee will assure continued attention to the various programs with long range guidance by the commission, day-to-day work by the center and a statewide network of support by the committee.



## **STRUCTURE OF THE SUPREME COURT'S COMMISSION**

## **STRUCTURE OF THE SUPREME COURT'S COMMISSION**

The commission should consist of:

- (1) the chief justice (or designee) of the Supreme Court of Florida;
- (2) a judge of one of the Florida District Courts of Appeal;
- (3) a judge of one of the Florida judicial circuit courts;
- (4) a judge of one of the Florida county courts;
- (5) the dean (or designee) of each of the American Bar Association accredited colleges of law in Florida;
- (6) the president and president-elect of The Florida Bar;
- (7) the president and president-elect of The Florida Bar's Young Lawyers Division;
- (8) a former public member of the Board of Governors of The Florida Bar; and
- (9) 7 practicing members of The Florida Bar, all of whom must be members in good standing.

One of the law school deans (or designees) shall also be a member of The Florida Bar Standing Committee on Professionalism. The chief justice (or designee) shall be the chair of the commission. The practicing lawyers and the former public board member shall be appointed by the board of governors and the judicial members shall be appointed by the court.

The term of office shall commence July 1 of the year of appointment and shall end June 30 of the year indicated below. Terms shall be staggered and, after initial appointment listed below, are:

- (1) the chief justice (or designee) shall serve for a term concurrent with the chief justice's term of office;
- (2) the district court of appeal judge shall serve 4 years;
- (3) the circuit court judge shall serve 4 years;
- (4) the county court judge shall serve 4 years;
- (5) the law school deans (or designees) shall serve 4 years;
- (6) the presidents and presidents-elect of The Florida Bar and The Florida Bar's Young Lawyers Division shall serve for a term concurrent with their respective terms of office;
- (7) the former public member of The Florida Bar Board of Governors shall serve 4 years; and
- (8) the 7 practicing members of The Florida Bar shall serve 4 years.

Initial terms of those members whose term is otherwise 4 years are:

- (1) the district court of appeal judge serves until June 30, 1997;
- (2) the circuit court judge serves until June 30, 1998;
- (3) the county court judge serves until June 30, 1999;
- (4) 4 law school deans (or designees) serve until June 30, 1998, the remainder shall serve until June 30, 2000;

- (5) the former public member of The Florida Bar's Board of Governors shall serve until June 30, 2000; and
- (6) 2 of the practicing lawyers shall serve until June 30, 1998, the remainder shall serve until June 30, 2000.

No member shall be reappointed to the commission after 1 term.

## **ROLE OF THE SUPREME COURT'S COMMISSION**

## **ROLE OF THE SUPREME COURT'S COMMISSION**

The Supreme Court of Florida's Commission on Professionalism will act as a steering and long-range planning commission for the creation and implementation of programs promoting the ideals and goals of professionalism. In addition to providing input, guidance and approval for the creation and implementation of professionalism programs and seminars, the commission would oversee the development of judicial professionalism programs and the teaching of professionalism in law schools. The commission will establish the policies of the bar's center and be its governing board.

The commission will meet at least three (3) times per year to address issues presented to the commission. Members of the commission may be called upon to speak at functions throughout the state.

## **THE ROLE OF THE CENTER ON PROFESSIONALISM**

## THE ROLE OF THE CENTER FOR PROFESSIONALISM

The Florida Bar's Center for Professionalism will consist of a director and two staff members and be responsible for the day-to-day implementation and operation of the programs established by the commission. The effort strives to deepen one's awareness of a lawyer's particular professional situation and can provide a sense of empowerment or control over a professional career rather than a passive acceptance of an untenable situation.

- I. The consciousness of lawyers about professionalism raised through the CLE requirement, convocations, town hall meetings, and publications focusing on various aspects of professionalism. Speakers, panelists, and facilitators at CLE events and the law school orientations on professionalism, as mentors, and as authors of published articles and columns on professionalism.
- II. "Quality control" for the required CLE professionalism courses must be assured through (a) the review of the content of proposed professionalism CLE courses by the commission's staff; and (B) the introduction of professionalism materials developed by the commission, center and/or committee.
  - (A) The center shall review applications for professionalism credit submitted for approval by CLE sponsors, including local bar associations, law firms, corporate and government legal departments, legal services programs, and inns of court. The center shall also assist in the planning and implementation of a number of CLE professionalism courses for these sponsors.
  - (B) The materials compiled by the center will include guided videotape programs with discussion materials that are appropriate for courses on professionalism in general, as well as in civil practice, criminal prosecution and defense, and the in-house setting. The tapes can also be used for in-house CLE and retreat programs for law firms, corporate legal departments, and governmental agencies. The center's ability to provide solid instructional materials will assure that what the professionalism courses teach is educationally as well as professionally sound. Through the center's marketing efforts, is videotape programs are sold to out-of-state CLE sponsors, state bar associations, law schools, and law firms.
- III. The center would like to extend its focus to include the judiciary working through the existing judicial college by developing programs on issues of judicial professionalism.
- IV. The state's efforts to improve professionalism to avoid duplication and loss of effort due to a failure of communication. The center would serve as an archive and a clearinghouse for exchange of information regarding professionalism

efforts past and present, local and national. The center will identify opportunities for promoting professionalism within and among all of these constituencies and will be a resource for lawyers and judges when preparing for presentations on professionalism or developing their own professionalism initiatives.

As part of its role as a clearinghouse, the center is to maintain a survey of professionalism activities within other states and within the American Bar Association and work closely with the ABA Center for Professional Responsibility. Articles on professionalism issues would be catalogued and filed for easy distribution to judges, lawyers and law schools to assist in development of continuing legal education, law school or other professionalism presentations or for use in local and state bar news articles.

- V. The center will provide statewide convocations on professionalism similar to the board of governors July, 1995 retreat as well as town hall meetings in various locations. Town hall meetings would be open to lawyers, nonlawyers, judges and legal educators. Issues that will be explored in town hall meetings include concerns that clients bring to the lawyer-client relationship, client and lawyer expectations of the representation, the role of the lawyer as problem-solver, access to the system of justice, public perceptions of the justice system, and effective communication as a vital element of professionalism. A local lawyer and judge will serve as the sponsors of each meeting which can be held in conjunction with a local bar meeting. The first part of the program should include remarks by a Supreme Court of Florida justice and the presentation of videotaped vignettes showing lawyer-client interactions interspersed with discussion of the issues raised in the tape by a panel composed of lawyers and clients from the community. The second part of the program is devoted to small group discussions for the lawyers, judges, and community guests.
- VI. Since its inception, the standing committee on professionalism has acted as a collection point for professionalism programs, guidelines, etc., however, the natural turnover within a committee makes it difficult to truly keep track of everything that has been collected. Therefore, the center would now handle this task.
- VII. One of the most effective professionalism training tools is a quality mentoring program. There are a number of mentoring programs in place around the state. The center could assist other local bars in the successful duplication of these programs. Additionally, the center could implement a program currently in use in other states whereby second year law students are linked with mentors to provide students contact throughout their law school careers with practicing lawyers and the opportunity to address issues of current concern to the profession and to learn the things they need to know to practice law which they may not learn in the academic setting. The goal is to provide experienced practitioners as mentors for law students to better assure that, as graduates, they will be equipped to deal with the realities of the practice of law, and to understand ethics and professionalism more fully. The center would develop an orientation program



for the mentors, including materials pertinent to the mentoring relationship,  
and plan events focusing on professionalism for mentors and students.

## **THE STANDING COMMITTEE ON PROFESSIONALISM**

## **The Standing Committee on Professionalism**

Currently, the approximately 40-member committee is chaired by Justice Harry Lee Anstead. The committee screens new ideas and assists in the actual implementation of many of the same.

The committee now sponsors professionalism handbooks for law students, the professionalism award, the historical video series, continuing legal education seminars, professionalism speeches, etc.

The committee will still sponsor and implement the professionalism award and the handbooks. The committee will further act as a resource for new program screening and as a resource for assisting the center in the implementation of its activities.

## **ORIENTATIONS ON PROFESSIONALISM**



## **LAW SCHOOL ORIENTATIONS ON PROFESSIONALISM**

The purpose of the program is to introduce the concept of professionalism to first-year students. Responding to suggestions from the bench and bar that the concept of professionalism needs to be introduced early in a law students' career, the commission and the center will use the two-hour program.

The program will begin with a keynote address by a supreme court justice, followed by breakout sessions to explore professionalism issues by discussing a series of hypothetical situations taken from the everyday practice of law and client relationships as well as some dilemmas taken from the law school experience. The breakout groups will be comprised of approximately eight students and two leaders, members of The Florida Bar - practicing lawyers, judges, and legal academicians - who volunteer for the project. An effort will be made to assure geographic, practice area, gender, and race diversity among the group leaders. Following the breakout discussions, all the students and leaders will reconvene for concluding remarks by a state bar leader. Following the two-hour program, a reception will be held where students, group leaders, speakers, and faculty can meet and follow up on the group discussion in an informal setting.

At the end of one program conducted in a sister state, a student remarked, "I am relieved to learn from this exercise that I do not have to leave my personal ethical values at the courthouse door." Clearly, orientations such as these will provide a sound foundation for planting the seeds of professionalism.

## **PROFESSIONALISM CLE GUIDELINES**

# The Florida Bar's Commission for Professionalism

## *Professionalism CLE*

### GUIDELINES

#### INTRODUCTION

Professionalism carries with it the charge of insuring that the practice of law in this state remains a high calling, enlisted in the service not only to the client, but of the public good as well.

The bar will request the Supreme Court of Florida to amend the current continuing legal education structure by requiring 5 of the current continuing legal education requirement hours to be in the area of legal ethics, professionalism or approved stress reduction programs.

Once this requirement is established, the following guidelines are intended to provide sections, committees and other organizations with clear goals and purposes of this requirement and what the desired outcomes from this training will be. If these guidelines are utilized in the design and implementation of the various continuing legal education, a forum will have been created whereby lawyers, judges and law students can explore the meaning of professionalism.

#### DISTINCTION BETWEEN ETHICS AND PROFESSIONALISM

The Rules Regulating The Florida Bar are the **floor** that supports our status as a lawyer in good standing. Whereas professionalism is the **ceiling** or higher standard that all lawyers should aspire to.

Laws and the Rules of Professional Conduct establish minimal standards of consensus impropriety; they do not define the criteria for ethical behavior. In the traditional sense, persons are not "ethical" simply because they act lawfully or even within the bounds of an official code of ethics. People can be dishonest, unprincipled, untrustworthy, unfair, and uncaring without breaking the law or the code. **Truly ethical people measure their conduct not by rules but by basic moral principles such as honesty, integrity and fairness.**

"Ethics" are commonly understood in the CLE context to mean "the law of lawyering" and the rules by which lawyers must abide in order to remain in good standing before the bar. "Professionalism" harkens back to the traditional meaning of ethics discussed above. The commission believes that lawyers should remember, in counseling clients and determining their own behavior, that the letter of the law is only a minimal threshold describing what is legally possible, while professionalism is meant to address the aspirations of the profession and how we as lawyers should behave. Ethics discussions tend to focus on misconduct -- the negative

dimensions of lawyering. Hopefully, the professionalism discussions will have an affirmative dimension -- a focus on helping, caring, protecting, counseling, and setting a good example.

## **GENERAL PURPOSES**

The general goal of the professionalism CLE requirement is to create a forum in which lawyers, judges and legal educators can explore and reflect upon the meaning and goals of professionalism in contemporary legal practice. Building a community among the lawyers of this state is a specific goal of this requirement.

## **GUIDELINES**

On May 16, 1990, the Board of Governors of The Florida Bar approved the *Ideals and Goals of Professionalism*. Contained therein are the aspirational standards that is the backbone of professionalism.

The kinds of issues implicit in the *Ideals and Goals of Professionalism*, and which can be the subject of discussion at CLE events, are:

- o the independence of the lawyer in the context of the lawyer-client relationship;
- o the conflict between duty to client and duty to the system of justice;
- o the conflict in the duty to the client versus the duty to the other lawyer;
- o the responsibility of the lawyer to employ effective client communications and client relations skills in order to increase service to the client and foster understanding of expectations of the representation, including accessibility of the lawyer and agreement as to fees;
- o the lawyer's responsibilities as an officer of the court;
- o misuse and abuse of discovery and litigation;
- o the lawyer's responsibility to perceive and protect the image of the profession;
- o the responsibility of the lawyer to the public generally and to public service; and
- o the duty of the lawyer to be informed about all forms of dispute resolution and to counsel clients accordingly.

A major goal of this training is to encourage introspection and dialogue about these issues. It is very difficult, if not impossible, to accomplish this in large, undifferentiated groups. The commission encourages the designers of these events to provide for smaller, more intensive groups. Practice-oriented programs are preferred, and they can be "taught" in small classes with an intense but relatively collegial atmosphere. They involve the lawyer/student in the process of lawyering. By definition, they present the sorts of problems lawyers typically face, and they search for solutions or ways of thinking about these problems. In courses such as these, the



interest of the lawyer/student usually rises in direct proportion to his or her personal engagement in the session.

Therefore, the center strongly encourages the designers of the sessions to explore more creative, introspective, interactive and simulation-based methods for presenting professionalism issues in the CLE course. Experiential training should be emphasized. Lawyers tend to learn best by example, so models of behavior and professional values should be identified and discussed. Above all, courses should be structured to confront the question, "**How will you handle this situation when it occurs in your practice?**" and the more confrontational the better. Practicing lawyers invariably respond better to realism in teaching, and professionalism issues can be made just as real as any other CLE-taught topic.

The center recognizes that it is possible and legitimate to define other training topics as encouraging professionalism. For example, substantive law training enhances competency and, therefore, assists lawyers in meeting their professional responsibility to their clients. Nevertheless, the center feels that, given the very limited and minimal requirement of one professionalism CLE hour per year and the aspirational goals envisioned by the supreme court, skills and substantive training are eligible only for general CLE credit and not for professionalism CLE credit.

## ACCREDITATION

The center for professionalism will assist in the preparation and review and approval of professionalism continuing legal education. No course will be accredited for professionalism continuing legal education credit without center approval.

## EXAMPLES OF COURSES

A number of different designs for professionalism courses have been developed which have been well-received by the participants while meeting the goals set out by the supreme court.

The following formats have proven effective in eliciting active participation and fostering reflection in CLE professionalism courses:

1. **The hypothetical format:**

A panel is asked to respond to hypothetical situations which raise questions or concerns ranging from pure ethical issues to professionalism concerns. The panel is facilitated in its discussion by a lawyer whose job it is to push the discussion and point out inconsistencies or disagreements. The ethical issues can be addressed in terms of the Rules of Professional Conduct, but the professionalism concerns tend not to be subject to right/wrong answers. This format tends to work best with discrete groups (i.e., lawyers who work in the same practice area) where the hypotheticals can be drawn from the day-to-day

practice of those particular lawyers. Hypotheticals compiled by the center will be available to planners of CLE events. Some examples are contained in the appendix.

2. **Use of role play through videotapes:**

A valuable training technique, especially when interaction with the audience is a goal, is to use role-plays to dramatize a particular issue or concern. There are now available several videotapes which were developed specifically to demonstrate through role plays various ethical and professionalism dilemmas. Videos produced by the American Bar Association, the University of Pennsylvania Center on Professionalism, and the Georgia Commission are particularly well-suited for these courses, and have been used successfully in both large and small group sessions. The use of role plays can be an effective technique for generating active and spirited audience participation in a discussion. Descriptions of the videotapes produced by the Georgia Commission are contained in the appendix.

3. **Use of non-role play videotapes:**

The center and other jurisdictions and organizations have developed videotapes on various professionalism topics, such as pro bono (the ABA's *Time for Justice - Pro Bono in Action*), civility, clients, discovery, gender, service (the Georgia Commission's *Perspectives on Lawyer Professionalism*, a 9-videotape series of interviews with Georgia lawyers and judges and the committee on professionalism historical video series).

4. **For newly admitted lawyers:**

*Expectations vs. Realities - From Law School to the Profession.* This 20-minute video contains interviews with law students and young lawyers who express their concerns about their experiences in law school and in the first few years of practice. They also offer their own personal definitions of what it means to be a professional. This tape is useful in framing issues of concern to the newly admitted lawyer and generating a panel or audience discussion about the expectations that accompanied one to law school versus the realities encountered early on in practice. The tape is available from the Georgia Commission.

5. **Town hall meeting:**

Particularly conducive to discussions of professionalism for local bar associations, in-house CLE, or firm retreats is the town hall meeting format. After introductory remarks about the need to explore professionalism in contemporary practice, the major portion of the meeting is devoted to discussions in small breakout groups of professionalism concerns and suggestions in the particular context. These discussions can be stimulated by oral questions or a written questionnaire. Responses to the questions provide data for the sponsoring

organization to use as it deems appropriate. For example, some firms have responded to town meeting data highlighting the need for more guidance for associates by instituting mentoring programs.

There are a variety of other designs and programs which are appropriate for in-house CLE programs, for specialized groups and for large groups. The goal of any design, however, should be to generate thought-provoking and introspective discussion among the participants about the meaning of professionalism in contemporary legal practice.

The center should be viewed as a clearinghouse for information and materials on professionalism by any sponsor, group, or person planning a CLE session on professionalism. The center encourages sponsors to tailor their professionalism sessions to the concerns of the group to whom it is presented. Once a format for the professionalism session has been determined by the sponsor, the center can be contacted and asked to search its files to ascertain whether relevant materials are available for the session being planned. The center is willing to assist, to the extent it receives sufficient advance notice, in the planning of a CLE course on professionalism.

### **RESULTS DESIRED**

If successful, these courses will inculcate a habit of talking with colleagues and engaging in dialogue that is essential to a healthy professional life. They also will encourage the habit of reflection (or the "*stop and think*" rule of morality). They will acquaint lawyers with the harsher realities of the profession, but also will equip them with a variety of strategies for coping with these realities. They will also deepen one's awareness of a lawyer's particular professional situation and can provide a sense of empowerment or control over a professional career rather than a passive acceptance of an untenable situation. They should expand the horizons of participants with respect to the richness and variety of the profession and the range of interests compatible with practice in the profession. And lastly, they can stimulate the normal imagination about the potential of a professional life.

### **WHAT THIS TRAINING SHOULD NOT BE**

The *Ideals and Goals of Professionalism* have been adopted as encouragement, guidance and assistance to individual lawyers, law firms, and local and circuit bar associations. They are specifically not intended:

- o To supersede or amend the disciplinary rules established by the Supreme Court;
  - o To establish a standard of conduct against which lawyer negligence might be judged or to become a basis for the imposition of civil liability of any kind;
  - o To establish a new basis for any formal disciplinary proceedings or enforcement;
- or

- o To establish any bar policy or set of principles, unless The Florida Bar or any local bar chooses to adopt a particular "Lawyer's Creed."

The commission's hope is that members of this profession will recognize the special obligations that attach to their calling and will also recognize their responsibility to serve others and not be limited to the pursuit of self interest. The *Ideals and Goals of Professionalism* cannot be imposed by edict, because moral integrity and unselfish dedication to the welfare of others cannot be legislated. Nevertheless, a public statement of principles of ethical and professional responsibility can provide guidance for newcomers and a reminder for experienced members of the bar about the basic ethical and professional tenets of their profession.

### **CLOSING THOUGHTS**

Professionalism is about both principles and character. All lawyers would prefer that their practices be character-building rather than corrupting. They want to be able to achieve a good life in the practice of law. That is much more a character issue than one of principle. Honesty is a moral principle, but it also is an issue of character ("I should not lie because lying makes me a liar, and being a liar is a bad way to live.").

Professional behavior, however, is not simply a matter of character and principle; it is a matter of choice and decision-making. Thus, the issue is not all or nothing. It is not a question of being or not being ethical. It usually is not a question of right or wrong. It is a question of doing or not doing the ethical or professional thing. In our high pressure world, it may not be possible to act professionally all the time. It is, however, possible and important to act more professionally more often.

Professionalism discussions are too often framed as simple issues of rule-following or rule-violation. But the real issue facing lawyers as professionals is developing the capacity for critical and reflective judgment. The CLE sessions should strive to cultivate reflective judgment about the practice of law and to assess how well current practices are serving the legal profession and the system of justice in light of the traditions of our practice.



# The Florida Bar

651 East Jefferson Street  
Tallahassee, FL 32399-2300

John F. Harkness, Jr.  
Executive Director

850/561-5600  
[www.FLORIDABAR.org](http://www.FLORIDABAR.org)

## MEMORANDUM

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To: Board of Governors

From: Jacina Haston, Director of the Henry Latimer Center for Professionalism

cc: John Harkness, John Berry, Elizabeth Tarbert, and John Stewart

Date: May 6, 2015

Re: Justification for Rule Change Request

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The Henry Latimer Center for Professionalism (“The Center”) was created by the Supreme Court in 1996, and since that time, Florida Bar Rule 6-10.3 has dictated that “[c]ourses offering credit in professionalism must be approved by the center for professionalism.” Pursuant to the most recent PEC evaluation of the Center and the BoG recommendations, the Center was asked to take steps to ensure that the review of applications for CLE professionalism credit would fall under the jurisdiction of the Bar’s Department of Legal Specialization and Education (LSE) and no longer be the responsibility of the Center.

The Center has recently learned that the Technology Subcommittee recommended to the BoG and the BoG approved an amendment to Rule 6-10.3. In furtherance of the foregoing PEC directive, the Center has asked to include an amendment to the Rule which would omit the requirement that the Center approve professionalism CLE credits; thereby allowing the LSE to handle CLE professionalism approvals.

As for justification for the request, first and foremost, the Center is attempting to follow the recommendations provided by the PEC. See attached recommendations. Second, the Bar leadership believes the review of all CLE credits is best undertaken by one centralized Bar office, the LSE. In fact, Florida Bar Rule 19-1.2, which lays out the responsibilities of the Center, supports this conclusion by requiring the Center provide guidance and support to the *continuing legal education department* in the execution of the professionalism requirement. In furtherance of this end, the Center has created and publicized CLE approval guidelines for professionalism credits which could be used by LSE staff to approve professionalism credits.

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In addition, allowing the LSE to consider the requests provides a one-step process which will be less confusing to those submitting programs for consideration and will promote efficiency and a more effective use of Bar resources by reducing the time required for processing approvals in-house. Given the foregoing, the Bar leadership requests Rule 6-10.3 be amended to eliminate the requirement that the Center consider all professionalism CLE applications.

From: Susan Kent <skent@florida-law.com>  
To: "VisionBarAdmissions@flabar.org" <VisionBarAdmissions@flabar.org>  
Date: 07/31/2015 04:47 PM  
Subject: proposed changes to CLE rules to include technology matters

I completely oppose any change to the CLE requirements to add technology matters, or any other matter, to our requirement. While I appreciate that some members of the Palm Beach County Bar Association feel this would be beneficial, it is already difficult to meet our CLE requirements for those of us who litigate and spend a lot of time out of the office. Further, my office already requires that we use and learn about technology it feels is useful to our firm. The proposed requirement would be redundant, unnecessary, not helpful and burdensome.

**Susan Kent**

Attorney

**Vernis & Bowling of Palm Beach, P.A.**

884 U.S. Highway One  
N. Palm Beach, FL 33408  
Tel: 561-775-9822  
Fax: 561-775-9821

[skent@florida-law.com](mailto:skent@florida-law.com)

[Click Here for my contact info](#)