

SPECIAL COMMITTEE LOOKS TO REVITALIZE CIRCUIT PROFESSIONALISM PANELS, BOOST EDUCATIONAL EFFORTS

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'So, what we are proposing is a uniform approach for all circuits, right down to the professionalism referral form. The court has made it very clear that professionalism is their number one priority for the practice of law in Florida, and the court is right'



Gary Lesser

The Special Committee for the Review of Professionalism in Florida has almost completed its work, with the goal of improving and prioritizing professionalism for Florida lawyers.

Some primary “deliverables” of the special committee include increased professionalism CLEs for experienced lawyers, more realistic professionalism training for would-be lawyers, and more uniform use of “local professionalism panels” in each circuit.

One of the special committee’s recommendations is a proposed Supreme Court Administrative Order establishing a revised and updated “Code for Resolving Professionalism Referrals,” and these and other recommendations will be presented to the Board of Governors when it meets on May 20 in Tampa.

“We’re almost at the finish line,” said President-elect Gary Lesser, who co-chairs the Special Committee for the Review of Professionalism in Florida along with Co-Chair Elizabeth Hunter. “We have a work product that is almost done.”

The recommendations include increasing to 3 hours the number of professionalism CLE credits lawyers must earn every three-year reporting cycle.

If approved, a Florida Bar member’s overall continuing legal education credit requirements for a three-year cycle would increase from 33 to 35 hours, still less than the annual CLE requirement of many other state bars.

“This is not a significant load at all for our members,” Lesser said. “And at least one of those three hours will be a Florida Bar-produced CLE that will talk about professionalism panels and the mechanics of how professionalism works. This will improve the quality of professionalism education for Florida lawyers.”





Elizabeth Hunter

Hunter noted “education is an important component, so that attorneys are aware of what the professionalism standards are and how they are enforced.”

Local professionalism panels have been around for a while, and if the proposed “Code for Resolving Professionalism Referrals” is adopted, this would increase the informal “peer-to-peer mentoring process” for addressing instances of unprofessional conduct separate and apart from instances of misconduct that require the formal grievance process.

The special committee stresses that these panels are for professionalism issues, and that the process does not replace the Florida Rules of Professional Conduct or the formal disciplinary process for more serious lawyer misconduct.

“This revised code establishes local professionalism panels (LPPs) in each judicial circuit that will receive, screen, and act on complaints of unprofessional conduct; and address those complaints informally, if possible,” noted Lesser.

“The LPPs’ process of peer mentoring is very effective,” Hunter said. “And our goal is to make sure more people know that this resource is there and it works.”

The work of local professionalism panels would be confidential, but they would be required to submit annual reports — including the number and types of cases — to The Florida Bar, though no lawyer names would be submitted for matters resolved through the confidential professionalism panel process.

According to the proposed order, “The LLPs are entities independent of The Florida Bar, established in each circuit for the purpose of informally resolving referrals or claimed unprofessional conduct by lawyers participating in that circuit, including appellate practice and transactional practice.”

Under the proposed order, “any person may initiate an unprofessional conduct referral against a member of The Florida Bar through the appropriate judicial circuit’s local professionalism panel. Local professionalism panel members and staff would have “absolute immunity” from civil liability for their work associated with the panel.

“So, what we are proposing is a uniform approach for all circuits, right down to the professionalism referral form,” Lesser said. “The court has made it very clear that professionalism is their number one priority for the practice of law in Florida, and the

court is right."

President Mike Tanner announced the Special Committee for the Review of Professionalism in Florida at his swearing-in ceremony last June in Orlando.

Urging the Bar to "recommit to core principles," Tanner cited a recent member survey in which 32% of respondents identified a lack of ethics/professionalism as a "serious problem."

The February 2021 survey of 4,000 members generated a robust 34% response rate. It showed that 57% of respondents would approve "stronger methods" to enforce professionalism standards. Only 11% were opposed and 32% unsure.

More than half of the respondents, 54%, believed stronger enforcement by judges would be the most effective way to address unprofessional behavior.

But when it comes to the Bar and improving professionalism, "We are going to look at how we teach it, how we define it, when we teach it, how we enforce it, how we promote it," Tanner said.

Almost one year later, the special committee has worked hard to cover all the bases, Lesser said.

"These issues are really important to [Tanner], and they are important to me, and I want him to be able to submit this to the Supreme Court," Lesser said. "The Bar stands ready to act on further instruction and direction from the court."

Hunter also chairs of the Standing Committee on Professionalism and brings years of work to these issues. The 20-member special committee includes judges, law professors, a former Bar counsel who specializes in Bar discipline cases, a former chair of the Disciplinary Procedure Committee, and other thought leaders on these issues.

The special committee focused on In Re: Code for Resolving Professionalism Complaints, No. SC13-688. In it, the Supreme Court identified The Florida Bar Professionalism Expectations, The Florida Bar Oath of Professionalism, The Florida Bar Creed of Professionalism, the Rules Regulating The Florida Bar, and the decisions of the Florida Supreme Court, as the collective "integrated professionalism standards."

Much has changed in the years since the order was issued and then updated in 2015, including greater use of remote technology after the onset of the COVID-19 pandemic. Lesser said.

"We really need to sit down and look at where the practice of law is and where it's heading, and to make sure that this resource of professionalism expectations is up to date, helpful, and readily available to our members," Lesser said.

The special committee's recommendation states, "The Florida Bar should create a single document that sets out the Standards of Professionalism in Florida to codify the Integrated Standards of Professionalism, integrating the relevant guidance from the Creed of Professionalism and also from the Oath of Admission."

The goal is to increase access and awareness. Hunter noted that "professionalism is essential not only to improve our daily experience as attorneys, but also to uphold the integrity of our judicial system."

"I don't know how many of our Florida Bar members know the effort that The Florida Bar and the Supreme Court have taken to create some of these resources — so that's going to be part of our effort going forward," Lesser said.

After an education subcommittee reached out to Florida law schools, the special committee recommended a Bar-produced video that would help students better understand how professionalism works, Lesser said, adding law schools are eager to participate.

"We can make the content helpful to all students who are going to become lawyers," Lesser said. "Not just conceptual, what does professionalism mean to you, but this is what professionalism is like in the actual practice of law."

Statistics show that most of the 110,000 Florida Bar members meet the high standards the profession demands. The Bar logged 8,000 complaints in 2019, but only a small fraction, 325, resulted in a disciplinary action.

But that means most Florida Bar members are unfamiliar with the disciplinary process, or how to address professionalism problems when they witness them, the committee concluded.

"Education is an important component," Hunter said, "so that attorneys are aware of what the professionalism standards are and how they are enforced."

When the Supreme Court established local professionalism panels, it gave chief judges authority to establish procedures based on each circuit's needs.

The result has been widely varying procedures and levels of activity, Lesser said.

"That led to a great deal of disparity between the composition and approaches of these panels, and some of them went pretty dormant in certain circuits," he said, "and a more uniform approach across all circuits will help everybody involved in the LPP process."

The existing panels are voluntary and lack authority to impose discipline, but where they have been active, they have proven valuable for correcting behavior, said Lesser, who chaired a local professionalism panel in the 15th Circuit not long after they were established.

"They can absolutely work if they're active," Lesser said. "There is actually a culture of, when somebody makes a misstep, and they come to the table with their peers, they can learn to handle the next situation better, and that's a great outcome."