

Local Rule 10A and Civility

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Excerpt From The Oath Of Admission to The Florida Bar

“To opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in Court, but also in all written and oral communications.”

The Overriding Principles Promoted by the Standards of Professional Courtesy and Civility for South Florida

- Good-faith
- Civil and respectful communication between counsel and similar cooperation with judges, arbitrators, mediators, clerks, court staff, witnesses and non-parties.

What does it mean to be civil?

- Civil means to be polite and courteous, but not necessarily friendly.
- Civilized is an adjective that describes the very opposite of barbarity.
- Civilized behavior can include:
 - Using respectful, supportive, and encouraging language
 - Sharing information
 - Interacting with a cooperative versus confrontational attitude
 - Approaching conflict with a desire for resolution rather than a fight or opportunity to prove others wrong

Importance of Civility in the Legal System

- Promotes fairness, respect, and effective communication.
- Reduces conflict and distractions during proceedings.
- Encourages cooperation among attorneys, judges, and clients.
- Creates a more positive atmosphere for all participants.
- Civility often leads to more favorable resolutions.

Florida's Civility Guidelines

- History of Professional Courtesy and Civility in Florida
 - In 1990, the Board of Governors of The Florida Bar adopted the Ideals and Goals of Professionalism.
 - In 2011, the Florida Supreme Court amended its oath of attorney admission to require that attorneys taking the oath pledge to opposing parties and counsel “fairness, integrity, and civility, not only in court, but also in all written and oral communications.”
 - In 2013, the Florida Supreme Court issued an opinion entitled *In re: Code for Resolving Professionalism Complaints* that requires each judicial circuit in Florida to create a local professionalism panel to hear grievances for professionalism and civility violations.
 - On July 6, 2023, the Florida Supreme Court replaced the 2013 Code and directed the chief judge of each judicial circuit to create a local professionalism panel to receive, screen, and act on referrals of unprofessional conduct; and address those referrals informally, if possible; or refer those referrals to the Florida Bar for investigation.
 - *Administrative Order 2023-29-Gen Establishment of Local Professionalism Panel*

Professionalism Panel Procedures

- Any person may initiate a referral for unprofessional conduct inconsistent with the Standards of Professionalism against a member of The Florida Bar.
- The Panel shall address conduct in an informal, non-punitive and educational manner.
- The Panel may refer the attorney to the Broward County Bar Association's Mentorship program.
- The Panel may recommend the attorney attend an appropriate ethics course.
- The Panel may refer the attorney to "Florida Lawyers Assistance" or other similar, appropriate program(s) for assistance with drug, alcohol, and/or emotional problems.
- The Panel may refer the attorney to The Florida Bar for investigation.
- The Panel must file a written report in June and December of each calendar year with the Chief Judge of the Seventeenth Judicial Circuit, the Florida Supreme Court, and The Florida Bar identifying all professionalism referrals received against a member of the Florida Bar.

Professionalism Issues Seen Most Often

- The majority of the judicial referrals involve attorneys who are on opposite sides of litigation behaving badly in court.
- A smaller percentage of referrals involve attorneys who are less than candid with the court in their arguments or pleadings.
- The attorney referrals are about opposing counsel on cases using bullying or delaying tactics or displaying unprofessional conduct.
- Being rude to a judicial assistant.

First Statewide Report From the 17th

9 cases from September 2023 – June 2024

- Lack of professionalism in the course of litigation including lack of fair play, dilatory tactics, rude, discourteous, disruptive, disrespectful, unruly conduct towards opposing counsel and the judge.
- Lack of honesty, integrity and candor to the tribunal.
- Bullying, badgering and other rude behavior.
- A Family Law lawyer being abusive, rude, discourteous, disruptive, disrespectful, uncivil, unruly, disorganized and unprepared, and displayed offensive personality, bullying or badgering behavior, unprofessional conduct, dilatory tactics, and lacked honesty, integrity, and candor.
 - In addition, constantly violating the Florida Rules of Civil Procedure, Florida Rules of Family Law Procedure, Local Rules and the Florida Rules of Professional Conduct.

Challenges to Civility

- High-Stress Environment
 - Emotional and financial pressures can lead to incivility.
- Increasing Public Distrust
 - Perception of the legal system affects interactions.
- Lack of Relationship Between Attorneys
 - Prior to Covid attorneys were forced to interact with each other.

Standards of Professional Conduct

- Scheduling

- Attorneys should endeavor to provide opposing counsel and pro se litigants, parties, witnesses, and other affected persons, sufficient notice of depositions, hearings and other proceedings.
 - As a general rule, actual notice should be given that is no less than five (5) business days for in-state depositions, ten (10) business days for out-of-state depositions and five (5) business days for hearings.
- Attorneys should communicate with opposing counsel prior to scheduling depositions, hearings and other proceedings, so as to schedule them at times that are mutually convenient for all interested persons.
- Sufficient time should be reserved to permit a complete presentation by counsel for all parties.
- Upon receiving an inquiry concerning a proposed time for a hearing, deposition, meeting or other proceeding, a lawyer should promptly agree to the proposal or offer a counter suggestion that is as close in time as is reasonably available.
- Attorneys should cooperate with each other when conflicts and calendar changes are reasonably necessary.

Standards of Professional Conduct Cont.

- Scheduling Cont.
 - Attorneys should promptly notify the court or other tribunal of any resolution between parties that renders a scheduled court appearance unnecessary or otherwise moot.
 - Attorneys should grant reasonable requests by opposing counsel for extensions of time within which to respond to pleadings, discovery and other matters when such an extension will not prejudice their client or unduly delay a proceeding.
- Discovery
 - Attorneys should pursue discovery requests that are reasonably related to the matter at issue.
 - Attorneys should not use discovery for the purpose of harassing, embarrassing or causing the adversary to incur unnecessary expenses.
 - Attorneys should not use discovery for the purpose of causing undue delay or obtaining unfair advantage.
 - Attorneys should not produce documents in a way calculated to hide or obscure the existence of documents.

Standards of Professional Conduct Cont.

- Conduct Directed to Opposing Counsel, the Court/Tribunal, and Other Participants in the Proceedings
 - As it brings dishonor to the legal profession, attorneys should refrain from criticizing or denigrating opposing counsel, the court/tribunal and their staff, the parties, and witnesses before clients, the public, and the media.
 - Attorneys should be, and should impress upon their clients and witnesses the need to be, courteous and respectful and not rude or disruptive with the court/tribunal, opposing counsel, parties and witnesses.
 - Attorneys should make an effort to explain to witnesses the purpose of their required attendance at depositions, hearings or trials.
 - Attorneys should respect and abide by the spirit and letter of all rulings of the court and advise their clients to do the same.
 - Attorneys and their staff should a) act and speak civilly and respectfully to courtroom deputies and bailiffs, clerks, court reporters, judicial assistants and law clerks; b) be selective in inquiries posed to judicial assistants as their time and resources are limited; and c) familiarize themselves with the court's administrative orders, local rules and each judge's published standing orders, practices and procedures.

Standards of Professional Conduct Cont.

- Candor to the Court/Tribunal and Opposing Counsel
 - Attorneys should not knowingly misstate, misrepresent, or distort any fact or legal authority to the court, tribunal or opposing counsel and shall not mislead by inaction or silence.
 - If this occurs unintentionally and is later discovered, the attorney immediately should disclose and correct the error.
 - Attorneys, likewise, should affirmatively notify the court or tribunal of controlling legal authority that is contrary to their client's legal position.
 - Copies of any submissions to the court should be simultaneously provided to opposing counsel.
 - Attorneys should submit factual or legal argument to a court in a motion or memorandum of law and not in the form of an e-mail or letter.

Standards of Professional Conduct Cont.

- Efficient Administration

- Attorneys should refrain from actions intended primarily to harass or embarrass and should refrain from actions which cause unnecessary expense or delay.
- Attorneys should endeavor to stipulate to all facts and legal authority not reasonably in dispute.
- Attorneys should encourage principled negotiations and efficient resolution of disputes on their merits.
- Attorneys should prior to filing or upon receiving a motion, contact opposing counsel to determine if the matter can be resolved in whole or in part.
 - This may alleviate the need for filing the motion or allow submission of an agreed order in lieu of a hearing.
 - *This is also required under Local Rule No. 10A*

Local Rule No. 10A

- Uniform Motion Calendar

- Only for matters that can be heard and resolved by the Court in five minutes.
- All parties shall be prepared to proceed at 8:45 A.M., and if one party fails to timely appear, the matter may proceed on the merits in that party's absence.
- Any person scheduling a motion calendar shall set same a minimum of five days in advance of the hearing.
- Prior to setting any matter on uniform motion calendar, the party or parties noticing the motion shall attempt to resolve the matter by direct communication with all parties, and shall also certify a good faith attempt to resolve or narrow the issues contained in the motion.
 - Direct communication means by oral or written communication, including by telephone, in person, email, or text messaging.
- All persons scheduling cases on motion calendar or special set hearings shall review the practices and procedures of the assigned judge.

Local Rule No. 10A Cont.

- The scheduling party shall utilize the Online Scheduling System to cancel any hearing.
- The filing of a notice of cancellation, without also cancelling using the Online Scheduling System, is insufficient to cancel a uniform motion calendar hearing.
- Only the scheduling party or the court may cancel a uniform motion calendar hearing.
- The cancelling party shall also generate an email advising all parties of the cancellation of the hearing.
- Hearings requiring the presentation of evidence are **NOT** permitted on uniform motion calendar.
- No more than a total of two (2) matters per case may be scheduled on any one uniform motion calendar.
- Any party requesting relief shall bring to the uniform motion calendar hearing a prepared proposed order with sufficient copies for all parties.

Local Rule No. 10A Cont.

Agreed orders include:

- (1) orders which are agreed as to the form and content;
- (2) Local Rule 10A ex parte orders;
- (3) orders which are the result of a ruling by the court in which the language is agreed to by all parties;
- (4) final judgments approved by the court at a hearing;
- (5) any order which a judge orders a party to submit via the online agreed order portal; and
- (6) orders re-validating subpoenas for trial.

Local Rule No. 10A Cont.

- Special Set Hearings

- All matters, other than uniform motion calendar hearings, shall be scheduled in accordance with the practices and procedures of each individual judge.
- All pleadings, affidavits, or other materials shall be provided to the court as required by each judge's published practices and procedures.
- Any special set hearing that is scheduled by the court may only be cancelled when:
 - (1) the parties have reached an agreement on the matter(s) subject of the specially set hearing;
 - (2) there exists an emergency; or
 - (3) the court has approved the cancellation.
- Prior to appearing before the court, the parties shall have direct communication regarding the issues raised in the pending motion, and all parties shall be prepared to certify at the hearing that they have made a good faith effort to resolve the issues.
- Failure to comply may result in a hearing being stricken from the docket, suspension of online scheduling privileges, an award of attorney's fees, or such other sanction.

Local Rule No. 10A Cont.

- Motions For Emergency Relief

- Any motion seeking emergency relief as to any circuit civil or family matter shall comply with Administrative Order 2019-02-2019-9-UFC.
 - A child emergency is a matter of imminent or impending abuse, neglect or abandonment affecting the health, safety, or welfare of a child.
 - Visitation is not an emergency.
 - An emergency that is unrelated to children and which does not involve an allegation of domestic violence, repeat violence, dating violence, sexual violence, or stalking is defined as a matter in which “immediate and irreparable injury, loss, or damage will result” and for which there is no adequate remedy at law.
 - Sanctions shall be considered by the divisional judge for the filing of emergency motions that do not comply with this Administrative Order or rules of court, or which are otherwise filed in bad faith.

Conclusion

- Civility is Essential
 - Promoting civility among lawyers is crucial for fostering a positive legal environment.
 - Integral to the integrity and effectiveness of the judicial system.
 - All legal professionals need to commit to civility.
 - Foster a culture where lawyers hold each other accountable for uncivil behavior, promoting a sense of shared responsibility.
 - Educate clients about the importance of civility and encourage them to support their lawyers in maintaining professionalism.