

## Professionalism Expectations

*“Professionalism is the pursuit and practice of the highest ideals and tenets of the legal profession. It embraces far more than simply complying with the minimal standards of professional conduct. The essential ingredients of professionalism are character, competence, commitment, and civility.”*

- The Florida Bar Standing Committee on Professionalism

### **Preamble:**

As The Florida Bar grows, it becomes more important to articulate the bar’s professionalism expectations and for Florida lawyers to demonstrate these expectations in practice. The guidance provided in these Professionalism Expectations originates both from (1) the ethical duties established by the Florida Supreme Court in the Rules Regulating The Florida Bar and (2) the long-standing customs of fair, civil, and honorable legal practice in Florida. Where a Professionalism Expectation is coextensive with a lawyer’s ethical duty, the expectation is stated as an imperative, cast in the terms of “must” or “must not.” Where a Professionalism Expectation is drawn from a professional custom that is not directly provided for in the Rules Regulating The Florida Bar, the expectation is stated as a recommendation of correct action, cast in terms of “should” or “should not.” To The Florida Bar, lawyer professionalism is:

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

To reinforce and communicate its expectations of lawyer professionalism among our members, The Florida Bar adopts the following Professionalism Expectations:

### **1. Commitment to Equal Justice Under the Law and to the Public Good**

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

### **Expectations:**

- 1.1 A lawyer should avoid the appearance of impropriety.
- 1.2 A lawyer should counsel and encourage other lawyers to abide by these Professionalism Expectations.
- 1.3 A lawyer should promote the public’s understanding of the lawyer’s role in the legal profession and protect public confidence in a just and fair legal system founded on the rule of law.
- 1.4 A lawyer should not enter into a lawyer-client relationship when the lawyer cannot provide competent and diligent service to the client throughout the course of the representation.

1.5 A lawyer must not seek clients through the use of misleading or manipulative oral and written representations or advertisements. (*See* R. Regulating Fla. Bar 4-7.13 and 4-7.14). Contingency fee arrangements must be in writing and follow R. Regulating Fla. Bar 4-1.5(f).

1.6 When employed by a new client, a lawyer should discuss fee and cost arrangements at the outset of the representation and promptly confirm those arrangements in writing.

1.7 A lawyer must place a client's best interest ahead of the lawyer's or another party's interests. (*See* R. Regulating Fla. Bar 4-1.7(a)(2)).

1.8 A lawyer must maintain and preserve the confidence and private information of clients. (*See* R. Regulating Fla. Bar 4-1.6).

1.9 In any representation where the fee arrangement is other than a contingent percentage-of-recovery fee or a fixed, flat-sum fee or in which the representation is anticipated to be of more than brief duration, a lawyer should bill clients on a regular, frequent interim basis, and avoid charging unnecessary expenses to the client.

1.10 When a fee dispute arises that cannot be amicably resolved, a lawyer should endeavor to utilize an alternative dispute resolution mechanism such as fee arbitration.

1.11 A lawyer must routinely keep clients informed and attempt to resolve client concerns. (*See* R. Regulating Fla. Bar 4-1.4 ). In the case of irreconcilable disagreements with a client, the lawyer must provide diligent representation until the lawyer-client relationship is formally dissolved in compliance with the law and the client's best interests. (*See* R. Regulating Fla. Bar 4-1.16).

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

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

## **2. Honest and Effective Communication**

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

### **Expectations:**

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

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

2.3 A lawyer must avoid disparaging personal remarks or acrimony toward opposing parties, opposing counsel, third parties or the court. (*See* R. Regulating Fla. Bar 4-8.4(d)).

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

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

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

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

2.8 In drafting documents, a lawyer should point out to opposing counsel all changes that the lawyer makes or causes to be made from one draft to another.

2.9 A lawyer should not withhold information from a client to serve the lawyer's own interest or convenience.

2.10 A lawyer must not knowingly misstate, misrepresent, or distort any fact or legal authority to the court or to opposing counsel and must not mislead by inaction or silence. Further, the discovery of additional evidence or unintentional misrepresentations must immediately be disclosed or otherwise corrected. (*See* R. Regulating Fla. Bar 4-3.3 and 4-8.4).

2.11 A lawyer must not inappropriately communicate with a party represented by a lawyer (*See* R. Regulating Fla. Bar 4-4.2), including not responding “reply all” to e-mails.

2.12 A lawyer should diligently prepare legal forms and documents to avoid future harm or litigation for the client while ensuring compliance with the requirements of the law.

2.13 Social media must not be used to disparage opposing parties, lawyers, judges, and members of the public. (*See* R. Regulating Fla. Bar 4-8.2(a) and 4-8.4(d)).

2.14 Social media should not be used to avoid the ethical rules regulating lawyer advertising.

2.15 Social media must not be used to inappropriately contact judges, mediators, jurors, witnesses, or represented parties. (*See* R. Regulating Fla. Bar 4-3.5 and 4-4.2).

2.16 Social media must not be used for the purpose of influencing adjudicative proceedings. (*See* R. Regulating Fla. Bar 4-3.6).

2.17 A lawyer must ensure that the use of electronic devices does not impair the attorney-client privilege or confidentiality. (*See* R. Regulating Fla. Bar 4-1.6).

2.18 A lawyer must diligently respond to calls, correspondences, complaints, and investigations by The Florida Bar. (*See* R. Regulating Fla. Bar 4-8.4(g)).

### **3. Adherence to a Fundamental Sense of Honor, Integrity, and Fair Play**

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

#### **Expectations:**

3.1 A lawyer must not engage in dilatory or delay tactics. (*See* R. Regulating Fla. Bar 4-3.2).

3.2 A lawyer should not make scheduling decisions that limit opposing counsel's opportunity to prepare or respond.

3.3 A lawyer should not unreasonably oppose an adversary's motion.

3.4 A lawyer must not permit non-lawyer personnel to communicate with a judge or judicial officer on any matters pending before the judge or officer or with other court personnel except on scheduling and other ministerial matters. (*See* R. Regulating Fla. Bar 4-3.5(b) and 4-8.4(a)).

3.5 A lawyer must avoid substantive *ex parte* communications in a pending case with a presiding judge. The lawyer must notify opposing counsel of all communications with the court or other tribunal, except those involving only scheduling or clerical matters. (*See* R. Regulating Fla. Bar 4-3.5).

3.6 When submitting a written communication to a court or other tribunal, a lawyer should provide opposing counsel with a copy of the document contemporaneously or sufficiently in advance of any related hearing.

3.7 A lawyer must promptly prepare a proposed order, ensure that the order fairly and adequately represents the court's ruling before submitting the order to the court, and advise the court whether opposing counsel has approved the order. (*See* R. Regulating Fla. Bar 4-3.4(c)).

3.8 A lawyer should only schedule depositions to ascertain relevant facts and not to generate income or harass deponents or opposing counsel.

3.9 A lawyer must not ask a deponent irrelevant personal questions or questions designed to embarrass a deponent. (*See* R. Regulating Fla. Bar 4-4.4(a)).

3.10 A lawyer should not make improper objections in depositions.

3.11 A lawyer must not prevent a deponent from answering questions unless a legal privilege applies. (*See* R. Regulating Fla. Bar 4-3.4(c)).

- 3.12 When scheduling depositions, hearings, and other court proceedings, a lawyer should request an amount of time that permits all parties in the case the opportunity to be fully and fairly heard on the matter.
- 3.13 A lawyer should immediately provide a scheduling notice for a hearing, deposition, or trial to all opposing parties.
- 3.14 A lawyer should notify opposing parties and subpoenaed witnesses of a cancelled or rescheduled hearing, deposition, or trial.
- 3.15 During pre-trial disclosure, a lawyer should make a reasonable, good-faith effort to identify witnesses likely to be called to testify.
- 3.16 During pre-trial disclosure, a lawyer should make a reasonable good-faith effort to identify exhibits to be proffered into evidence.
- 3.17 A lawyer should not mark on or alter exhibits, charts, graphs, or diagrams without opposing counsel's permission or leave of court.
- 3.18 A lawyer must not threaten opposing parties with sanctions, disciplinary complaints, criminal charges, or additional litigation to gain a tactical advantage. (*See* R. Regulating Fla. Bar 4-3.4(g) and (h)).

#### **4. Fair and Efficient Administration of Justice**

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

##### **Expectations:**

- 4.1 A lawyer should be familiar with the court's administrative orders, local rules, and each judge's published standing orders, practices, and procedures.
- 4.2 A lawyer should endeavor to achieve the client's lawful objectives as economically and expeditiously as possible.
- 4.3 A lawyer should counsel the client concerning the benefits of mediation, arbitration, and other alternative methods of resolving disputes.
- 4.4 A lawyer should counsel the client to consider settlement in good faith.
- 4.5 A lawyer should accede to reasonable requests for waivers of procedural formalities when the client's legitimate interests are not adversely affected.
- 4.6 A lawyer must not invoke a rule for the purpose of creating undue delay, or propose frivolous oral or written arguments which do not have an adequate basis in the law nor fact. (*See* R. Regulating Fla. Bar 4-3.1).
- 4.7 A lawyer must not use discovery to harass or improperly burden an adversary or cause the adversary to incur unnecessary expense. (*See* R. Regulating Fla. Bar 4-4.4).
- 4.8 A lawyer should frame reasonable discovery requests tailored to the matter at hand.
- 4.9 A lawyer should assure that responses to proper discovery requests are timely, complete, and consistent with the obvious intent of the request. A lawyer should not avoid disclosure unless a legal privilege prevents disclosure.
- 4.10 A lawyer should not respond to discovery requests in a disorganized, unintelligible, or inappropriate manner, in an attempt to conceal evidence.
- 4.11 A lawyer should stipulate to all facts and principles of law that are not in dispute and should promptly respond to requests for stipulations of fact or law.
- 4.12 After consulting with the client, a lawyer should voluntarily withdraw claims and defenses that are without merit, superfluous, or cumulative.
- 4.13 A lawyer should be fully prepared when appearing in court or at hearings.
- 4.14 A lawyer should not use *voir dire* to extract promises from or to suggest desired verdicts to jurors.
- 4.15 A lawyer should abstain from all acts, comments, and attitudes calculated to curry favor with jurors.
- 4.16 A lawyer should not express bias or personal opinion concerning any matter at issue in opening statements and in arguments to the jury.

4.17 A lawyer should not make offers or requests for a stipulation in front of the jury.

4.18 A lawyer should not use the post-hearing submission of proposed orders as an opportunity to argue or reargue a matter's merits.

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

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

## **5. Decorum and Courtesy**

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

### **Expectations:**

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

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

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

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

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

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

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

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

5.9 A lawyer should address objections, requests, and observations to the judge.

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

## **6. Respect for the Time and Commitments of Others**

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

### **Expectations:**

6.1 A lawyer should not impose arbitrary or unreasonable deadlines on others.

6.2 A lawyer should schedule a deposition during a time period sufficient to allow all parties to examine the deponent.

6.3 Unless circumstances compel more expedited scheduling, a lawyer should provide litigants, witnesses, and other affected persons with ample advance notice of hearings, depositions, meetings, and other proceedings, and whenever practical, schedule these events at times convenient for all interested persons.

6.4 A lawyer should accede to all reasonable requests for scheduling, rescheduling, cancellations, extensions, and postponements that do not prejudice the client's opportunity for full, fair, and prompt adjudication.

6.5 A lawyer should promptly agree to a proposed time for a hearing, deposition, meeting or other proceeding or make his or her own counter proposal of time.

6.6 A lawyer should promptly call potential scheduling conflicts or problems to the attention of those affected, including the court or tribunal.

6.7 A lawyer should avoid last-minute cancellations of hearings, depositions, meetings, and other proceedings.

6.8 A lawyer should promptly notify the court or tribunal when a scheduled court appearance becomes unnecessary.

6.9 A lawyer should be punctual in attending all court appearances, depositions, meetings, conferences, and other proceedings.

6.10 A lawyer must respond promptly to inquiries and communications from clients and others. (*See* R. Regulating Fla. Bar 4-1.4.)

## **7. Independence of Judgment**

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

### **Expectations:**

7.1 A lawyer should exercise independent judgment and should not be governed by the client's ulterior motives, ill will, or deceit.

7.2 A lawyer should counsel a client or prospective client, even with respect to a meritorious claim or defense, about the public and private burdens of pursuing the claim as compared with the benefits to be achieved.

7.3 In advising a client, a lawyer should not understate or overstate achievable results or otherwise create unrealistic expectations.

7.4 A lawyer should not permit a client's ill will toward an adversary, witness, or tribunal to become that of the lawyer.

7.5 A lawyer must counsel a client against using tactics designed: (a) to hinder or improperly delay a legal process; or (b) to embarrass, harass, intimidate, improperly burden, or oppress an adversary, party or any other person and should withdraw from representation if the client insists on such tactics. (*See* R. Regulating Fla. Bar 4-1.16, 4-3.2, and 4-4.4).

7.6 In contractual and business negotiations, a lawyer should counsel the client concerning what is reasonable and customary under the circumstances.

### **History**

The Florida Bar Commission on Lawyer Professionalism promulgated a set of Standards of Professionalism submitted to the Board of Governors in May of 1989. The Board appointed a Special Committee who revised the Standards and amended the title to the "Ideals and Goals of Professionalism." These aspirational guidelines were adopted by the Board of Governors of The Florida Bar on May 16, 1990.

The Florida Supreme Court has added the civility provision in the Oath of Admission to The Florida Bar adopted on September 10, 2011, and implemented SC13-688: Code for Resolving Professionalism Complaints adopted on June 6, 2013.

As a result of this change and a perceived decline in the lack of professionalism in the practice of law, in May 2014, The Florida Bar Standing Committee on Professionalism was requested by Bar leadership to review and develop uniform professionalism guidelines including electronic communications for statewide distribution. The Professionalism Expectations resulted from pairing existing professionalism guides with new technological concepts and this document was approved by the Standing Committee on Professionalism on October 16, 2014, and The Florida Bar Board of Governors on January 30, 2015.