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Professionalism standards letter for distribution to clients in the works

By Gary Blankenship

Senior Editor

A letter that Florida lawyers can voluntarily give to clients informing them about the Bar's professionalism standards and the professionalism enforcement system may soon be available.

The Supreme Court's Commission on Professionalism, which met at the Bar's Annual Convention in Orlando, voted to instruct the Bar's Standing Committee on Professionalism to prepare a letter for lawyers' use, if they choose, when first engaged by clients.

The commission also voted not to require a formal written complaint for the Bar or a local professionalism committee to act; however, the complainant must be willing to follow through with the complaint. (Written complaints will still be required to act on grievance matters.)

The meeting came in the wake of a Supreme Court opinion last year that said lawyers could be disciplined for unprofessionalism, as well as ethical violations. The opinion ordered the creation of a professionalism enforcement system to include both the Bar and circuit professionalism panels.

Local professionalism committees operate in some parts of the state, while others are still being established.

Florida Supreme Court Justice Fred Lewis, chair of the commission, said the professionalism forms would serve two functions, both informing clients about professionalism standards expected of lawyers and promoting the professionalism program to lawyers and clients.

The letters will be sent to circuit professionalism panels, which in turn can distribute them to individual lawyers. Members emphasized using the letters will be voluntary, with one member saying, "I think it's a very good idea. We have to get dissemination, but I'm not looking for another box you have to check off every time you get a client."

The committee discussed communications between the Bar's [ACAP program](#) and the local circuit professionalism panels. Both can accept complaints from clients, judges, and others that lawyers have acted unprofessionally. Lewis said that the Bar could refer appropriate cases to the local panels for review, if the Bar determines that formal disciplinary proceedings are not warranted. He said that many people know to contact the Bar if they have a question about the conduct of their lawyers, but don't know about the circuit professionalism panels.

John Berry, director of the Bar's Legal Division, said ACAP can refer complaints to the local panels, but he said most of the time a professionalism complaint is tied to an ethics complaint, which the Bar must handle before any referral is made.

"If there's an allegation of theft and an allegation of being a son of a gun, we're not going to want to send the professionalism complaint to a local panel when it's tied to another case," Berry said.

Shanell Schuyler, director of ACAP, the program that handles grievance intake for the Bar and assists with resolving minor disagreements between attorneys and clients, said many times callers don't want any action taken.

"Please keep in mind that a lot of these issues we hear on the phone, they don't want us to communicate with that attorney; they don't want us to file a complaint," she said. "A lot of the time, they don't want us to contact the attorney; they're just feeling us out [about whether there may be a rules violation]."

Commission members discussed whether a written complaint should be required before taking action on a professionalism complaint and eventually voted that a written complaint would not be required, but that a caller would have to be willing to follow through and provide information either to the Bar or the local panel.

"If you have a complaining party who's unwilling to file a complaint and unwilling to go to the local professionalism panel, that situation puts the committee in a difficult position," commission member Jack Brandon said. "I think the local committee wants to be fair. But I think they have to have more background and they have to have something of substance they can deal with."

Commission members also discussed whether the Bar should do more to keep track of the number of calls made about particular lawyers, which could be a sign of professionalism problems.

Berry and Schuyler said the Bar already does that within certain limits. They noted that all calls and complaints to the Bar and resulting investigations, which are closed without disciplining an attorney, are public record for a year, after which the files are disposed of in accordance with the Supreme Court's record retention policy. Complaints resulting in the imposition of discipline against an attorney become a permanent record. Keeping track of non-discipline files for longer periods would require a significant change in Bar policies, which balances fairness to attorneys with protection of the public. Berry and Schuyler said they would get back with the commission after looking into the issue.

Schuyler cautioned that many, if not most, repeated complaints about individual lawyers come from inmates complaining about the state attorneys who prosecuted them and the public defenders who represented them or from family law cases, which frequently are highly emotional and contentious.

"I think we can find a meeting ground . . . without an all encompassing requirement that every time someone calls up [to the Bar with a professionalism complaint] that it's referred [to a local professionalism panel]," Berry said.

Commission members discussed the difficulties in getting judges to make complaints about lawyers who act unprofessionally.

"Circuit judges are still coming up to me and saying, 'No, no, I can't report them because then I have to withdraw from the case,'" Lewis said. "Are we never going to draw the line? If we won't report, then we're never going to solve the problem."

Commission member Mary Ellen Borja said she asked a Sixth Circuit judge why judges weren't more active in reporting bad lawyers, "And he said, 'Mary Ellen, I've got to run for reelection.'"

On a related issue, the commission voted to recommend to the Supreme Court that members of professionalism panels have absolute immunity for actions related to their duties, similar to members of grievance and unlicensed practice of law committees.

The commission also heard Florida Board of Bar Examiners Executive Director Michelle Gavagni report that the bar exam now includes professionalism matters in its essay questions. And commission members discussed and voted to study whether more mental health and substance abuse education should be added to CLE courses, since those matters frequently lead to ethical and professionalism problems.