



3-15-2015

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Recommended Citation

Gary Blankenship, Professionalism Expectations for the Electronic Age, The Fla. B. News, March 15, 2015

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March 15, 2015

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Professionalism Expectations for the electronic age

By Gary Blankenship

Senior Editor

Giving in to the urge to respond instantly and in-kind to a nasty text or email from an opposing attorney could give you some digital baggage you'll be lugging around for the rest of your career.



In recognition of that — and other stresses and strains of practicing law in a high-tech and instant-communications world — the Bar's Ideals and Goals of Professionalism have undergone a review and redrafting, emerging as a new document called [Professionalism Expectations](#).

The Board of Governors approved the new document at its January meeting. Professionalism Expectations has been sent to the conferences for circuit and county court judges, Bar President Greg Coleman said, and after that he expects to seek the blessing of the Florida Supreme Court and then disseminate the documents to Bar sections and local bars statewide. The original Ideals and Goals of Professionalism were adopted 24 years ago and have not been changed since.

"The genesis of this change began with the recognition that our existing professionalism rules and guidelines had nothing that encompassed the electronic age," Coleman said. "With more and more technology, we saw a decline in professionalism, mostly because instant communication usually results in an instant response, usually attached to an instant emotion, which often is not a good emotion.

"That's why we began the process of looking at all of the professionalism-related guidelines. What we found is there were multiple overlapping, redundant, outdated professionalism standards at the local level, the state level, the Supreme Court level, and at the section level."

So last May, Coleman and immediate Past President Eugene Pettis charged the Bar's Committee on Professionalism to review all those documents and standards and come up with one set that could be used in all courts, as well as by sections, local bars, and The Florida Bar.

"We're entering into the new era where you have the immediacy of communications," said Michael Schneider, chair of the Bar's Committee on Professionalism. "President Coleman wanted to integrate the new world we have with electronic communications. It's not terribly appropriate to text someone at 2 in the morning and expect that to be an appropriate communication."

The committee was specifically charged to "expeditiously review these best practices, the Ideals and Goals of Professionalism, the Guidelines for Professional Conduct, and all other existing professionalism guidelines, and develop uniform professionalism guidelines including electronic communications for statewide distribution, and that the committee consider whether the

professionalism ideals and goals and guidelines can be incorporated into one document referencing portions of the best practices.”

Schneider said the committee created a subcommittee to oversee the rewrite, with the principle drafting done by member Carolyn Johnson Levine, an assistant attorney general in the AG’s Tampa office.

The committee took the original Ideals and Goals of Professionalism, considered court rulings since then, looked at the Trial Lawyers Section’s Handbook on Civil Discovery Practice and its professionalism guidelines, worked with Bar staff, took in the Communications Committee’s initial “Best Practices for Effective Electronic Communication,” considered ABA recommendations in the area, and examined other resources.

The underlying professionalism principles remained the same, Schneider said, but the new Professionalism Expectations applied them to the communications age.

“We’re entering into a new era where you have the immediacy of communications. The goals and ideals are basically the same; it just makes some reference to newer technology,” he said. “If you’re acting unprofessionally, there’s not a huge difference in doing it in a [new tech] text or shouting on the [old tech] phone.”

Coleman said he’s seen an ever-growing problem with lawyers responding in the heat of anger rather than waiting for emotions to subside, something that was routine in the days of dictating letters and snail mail.

“In the mid-’90s before all of this craziness, someone would send me a nasty letter, and I would dictate a brutal response, knowing I wouldn’t send it. But there was something therapeutic about it. The next day you would dictate something else, eliminating 95 percent of it,” Coleman said.

“Those days are gone. That instant reaction with instant emotion is more and more a problem. Once you hit that send button, it’s like baggage. It stays with you forever.”

He said he’s seen email chains, attached to motions submitted to judges, that left him stunned.

“Things that are beyond, forget over the line, think in a different country. They don’t belong in a civilized society; just terribly nasty, brutal, personal attacks. That’s got to stop. That’s not good for anybody,” Coleman said. The new Professionalism Expectations are separate from, but designed to work in conjunction with, the pending e-etiquette guide, which was drafted by the Communications Committee, reworked by the Professionalism Committee, and has now been returned to the Communications Committee before going to the Board of Governors.

“It’s a more in-depth look at electronic and instant communications,” Coleman said. “It’s a friendly reminder that we all need to check ourselves and maybe slow down a little bit.”

The [Professionalism Expectations](#) can be found on the Bar’s website on the page for the [Henry Latimer Center for Professionalism](#) and under the heading [“Regulating Professionalism.”](#)