

## RESOLVING PROFESSIONALISM COMPLAINTS

Professionalism & Ethics Committee

Chairs: Joan Boles - Bay Area Legal Services; Caroline Johnson Levine - Office of the Attorney General



In a 2013 opinion, the Florida Supreme Court established a Code for Resolving Professionalism Complaints and directed the chief judge of every circuit to develop a Local Professionalism Panel to receive, screen, and act upon complaints of unprofessional conduct.<sup>1</sup>

The opinion notes that The Florida Bar requested the court create a “Commission on Professionalism with the overarching objective of increasing the professionalism *aspirations* of all lawyers in Florida.”<sup>2</sup>

The court established the Code for Resolving Professionalism Complaints as a structure for affirmatively addressing unacceptable professional conduct and noted that the code “contains small initial measures designed to firmly *encourage* better behavior.” It attempts “to utilize a wide range of interventions from mere conversations to written communications to more severe sanctions.”<sup>3</sup>

Florida lawyers may then ask: Are the professionalism standards aspirational to encourage better behavior or are they mandatory and the basis for discipline for unethical conduct? The court answers this question by

explaining that professionalism is not “simply an issue of rule-following or rule-violating.”

The opinion does not create a new code of “professional” or “unprofessional” conduct. Rather, the court adopts the existing Standards of Professionalism found in the Oath of Admission to the Florida Bar, The Florida Bar Creed of Professionalism, The Florida Bar Ideals and Goals of Professionalism, The Rules Regulating the Florida Bar and the decisions of the Florida Supreme Court.<sup>4</sup>

Thus, members of The Florida Bar are enjoined from engaging in “unprofessional conduct.” And when the unprofessional conduct demonstrates substantial and repeated violations of the Standards of Professionalism, the unprofessional conduct can subject an attorney to discipline as a violation of Rule 4-8.4(d) of The Rules Regulating The Florida Bar.

Under Rule 4-8.4(d), a lawyer shall not “engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis.”<sup>5</sup>

The court referenced a dissolution of marriage case where the lawyer made unethical,

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disparaging, and profane remarks to belittle and humiliate the opposing party and her lawyer. He referred to the opposing party as “crazy” and a “nut case.” He also made facial gestures and stuck his tongue out at

a deposition and called opposing counsel a “stupid idiot” who did not know the law and needed to go back to law school. These and other repeated violations were deemed to be sufficient for discipline under Rule 4-8.4(d).<sup>6</sup>

Thus, the question of resolving professionalism complaints is not simply an issue of rule-following or rule-breaking. They may be resolved in the Local Professional Panel through conversations or written communications, but it may require more severe sanctions if necessary.

<sup>1</sup> *In re: Code for Resolving Professionalism Complaints*, 116 So. 3d 280 (Fla. 2013).

<sup>2</sup> *Id.* at 280 (emphasis added.)

<sup>3</sup> *Id.* at 281 (emphasis added.)

<sup>4</sup> *Id.* at 282.

<sup>5</sup> R. Regulating Fla. Bar. 4-8.4(d).

<sup>6</sup> *The Florida Bar v. Martocci*, 791 So. 2d 1074 (Fla. 2001).



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