

## Appendix A

### The Code for Resolving Professionalism Referrals

**Purpose:** This code describes an informal peer-to-peer mentoring process for addressing instances of unprofessional conduct separate and apart from instances of misconduct that require the formal grievance process. This process does not replace the Florida Rules of Professional Conduct or the formal disciplinary process for a violation of those rules as set out in Chapter 3 of the Rules Regulating The Florida Bar. Rather, this code establishes local professionalism panels (LPPs) in each judicial circuit that will 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.

#### 1.0 Unprofessional Conduct and the Standards of Professionalism

**1.1 Definition of Unprofessional Conduct.** Members of The Florida Bar must not engage in unprofessional conduct. “Unprofessional Conduct” means a violation of the Standards of Professionalism. The Standards of Professionalism are found in the *Oath of Admission to The Florida Bar*, *The Florida Bar Creed of Professionalism*, the *Professionalism Expectations*, and the *Rules Regulating The Florida Bar*.

**1.2 Referrals to The Florida Bar.** Minor or isolated instances of unprofessional conduct may be addressed through the informal process described in this code. However, when unprofessional conduct is substantial or repeated, that conduct may be referred to The Florida Bar for a disciplinary investigation into whether the formal disciplinary process should be initiated. In particular, Rule 4-8.4(d) of the Rules Regulating the Florida Bar has been the basis for imposing discipline in these Instances. *See e.g., The Florida Bar v. Norkin*, 132 So. 3d 77 (Fla. 2013) (holding that lawyer’s unprofessional behavior at numerous hearings violated Rule Reg. Fla. Bar 4- 3.5(c) and inappropriate emails and outbursts violated Rule Reg. Fla. Bar 4-8.4(d); *The Florida Bar v. Ratiner*, 46 So. 3d 35

(Fla. 2010) (holding that lawyer's unprofessional deposition conduct violated Rules Reg. Fla. Bar 3-4.3, 3-4.4, 4-3.5, 4-4.4(a), 4-8.4(b), and 4-8.4(d)); *The Florida Bar v. Abramson*, 3 So. 3d 964 (Fla. 2009) (holding that lawyer's disrespectful and confrontational conduct toward a judge and jury violated Rules Reg. Fla. Bar 4-3.5(a), 4-3.5(c), 4-8.2(a), 4-8.4(d)); and *The Florida Bar v. Martocci*, 791 So. 2d 1074 (Fla. 2001) (holding that lawyer's disparaging and profane remarks to opposing party and counsel violated Rule Reg. Fla. Bar 4-8.4(d)). The bar must refer conduct that an LLP referred to the bar, but for which the bar determines prosecution through the disciplinary process is not warranted, to the LPP for the appropriate circuit for handling through the informal process described in this code.

## **2.0 Process for Addressing Unprofessional Conduct Referrals**

**2.1 Initiating Referrals.** Any person may initiate an unprofessional conduct referral against a member of The Florida Bar through the appropriate judicial circuit's local professionalism panel as described in Section 3.0.

## **3.0 Processing Referrals of Unprofessional Conduct through a Local Professionalism Panel**

**3.1 Formation.** The chief judge of each judicial circuit will create and maintain in continuous operation a local professionalism panel ("LPP" or "panel") to receive, screen, and act on any referrals of claimed unprofessional conduct and to resolve those referrals informally, if possible, or refer them to The Florida Bar, if necessary. The LPPs are entities independent of The Florida Bar, established in each circuit for the purpose of informally resolving referrals of claimed unprofessional conduct by lawyers practicing in that circuit, including appellate practice and transactional practice.

The chief judge appoints the panel, which must include judges (current or senior, trial or appellate) and local attorneys that are in good standing with The Florida Bar and eligible to practice law from diverse areas of practice with varying levels of experience, but must have practiced law at least 5 years. The chief judge appoints the

LPP Chair. The chief judge or the chief judge's designee also appoints members as necessary to fill LPP vacancies. The chief judge determines the number of members to serve on the LPP.

**3.2 Terms.** LPP members serve staggered 3-year terms. A member may be reappointed to serve 1 additional 3-year term, not to exceed 6 consecutive years. Each term begins on July 1 and runs through June 30 of the third year.

**3.3 Immunity.** The members of the LPP, staff assisting those panels, members of the circuit committees on professionalism, and staff assisting those committees, have absolute immunity from civil liability for all acts in the course and scope of their duties under this code.

**3.4 Education.** The chief judges must facilitate the promotion and education of the lawyers in their respective circuits about the LPPs through local, circuit-wide, CLE program about the role of the LPPs. The members of the LPPs must undergo training by experienced lawyers involved in the The Florida Bar disciplinary process prior to serving on the panels.

**3.5 Required Meetings.** Every other year, beginning in 2023, the chairs, or the member of the panel designated by the chair of each LPP, must meet in person or through the use of remote conferencing to review this code and make any recommendations for change to the Florida Supreme Court, review the forms used by the circuits to maintain uniformity of the forms (allowing for each circuit to modify the forms to meet the needs of the individual circuits), and review the procedures used by the circuits to maintain uniformity of procedures (allowing for each circuit to modify procedures to meet the needs of the individual circuits). The LPPs also must discuss the policies and procedures of the circuits to facilitate continued enhancement of the program. The Florida Bar will organize the biannual conferences.

**3.6 Confidentiality.** Documents and records provided to, and proceedings before, each LPP are confidential. LPP referrals to the

bar do not remain confidential under Rule Regulating The Florida Bar 3-7.1.

### **3.7 Reporting.**

(a) Each LPP must file a written report with the chief judge of its circuit, the Florida Supreme Court, and The Florida Bar identifying all professionalism referrals received against a member of The Florida Bar in June and December of each calendar year.

(b) The biannual reports must include the following information for each referral for the six calendar months preceding the month in which the report is due:

- (1) the date of the referral;
- (2) the circuit in which the issue arose;
- (3) a short summary detailing the substance of the referral;
- (4) the relationship of the respondent to the person submitting the referral;
- (5) whether or not the respondent voluntarily participated in the process;
- (6) the resolution, if any, of the referral; and
- (7) whether there were previous referrals against the respondent.

(c) The reports must not include identifying information for the respondent or the party who submitted the referral.

**3.8 Publishing Reports.** The Florida Bar will publish on its website the LPP biannual reports. The chief judge, or the chief judge's designee, will publish on the judicial circuit's website the LPP biannual reports from that circuit.