



## THE ETHICS KORNER: CHANGES IN THE LOCAL LANDSCAPE OF PROFESSIONALISM

JASON HUNTER KORN



It was over twenty years ago that I first authored an article about the newly adopted *Standards of Professional Courtesy and Conduct for Lawyers Practicing in the Twentieth Judicial Circuit* (“Standards”). That article discussed the *Standards* and the Peer Review Program adopted by our Circuit in 2000 through Administrative Order (“AO”) 2.20. At that time, I was

a member of the Circuit’s first Professionalism Committee constituted in 1998 by then Chief Judge Hugh Starnes, and I served on the Circuit’s Peer Review Committee established a couple years later by AO 2.20. The history of AO 2.20 and our Circuit’s Professionalism Committee date back to 1998, when Chief Justice Gerald Kogan requested that the Chief Judge of each Circuit appoint and be involved in a Circuit Committee on Professionalism to initiate and coordinate professionalism activities within their Circuit.

Since that time, the Twentieth Judicial Circuit has been at the forefront of professionalism initiatives in Florida. This is due in no small part to the leadership of each Chief Judge of our Circuit to foster professionalism. Since 1998, each Chief Judge of the Twentieth Judicial Circuit has chaired the Circuit’s Professionalism Committee, administered a program of peer review, and coordinated professionalism activities within the Circuit. Those initiatives started with Chief Judge Hugh Starnes, followed by Chief Judge William Blackwell, and then Chief Judge Hugh Hayes, Chief Judge Jay Rossman, Chief Judge Michael McHugh, and currently Chief Judge Frank Porter.

### *Administrative Order No. 2.20 (2024)*

On January 12, 2024, Chief Judge Frank Porter signed an order amending AO 2.20 for the fourth time. If you have practiced more than two decades in our Circuit, you may recall that Chief Judge William Blackwell issued the original AO 2.20 over 20 years ago on May 8, 2000. That AO also established the Peer Review Program of the Circuit which has since been reconstituted and relabeled as the Circuit’s Local Professionalism Panel.

The recent amended AO 2.20 continues in that same vein upon the recommendations of the Twentieth Judicial Circuit’s Committee on Professionalism. The *Standards* are again attached to the order along with the Circuit’s Local

Professionalism Program. Both are applicable to lawyers practicing within the Circuit.

### *Standards of Courtesy and Conduct*

The *Standards* are a practical set of guidelines adopted for the purpose of emphasizing decency and courtesy in our professional lives and without intruding unreasonably on a lawyer’s choice of style or tactic. The theme of the *Standards* is best set forth in its Preamble:

*The practice of law is a privilege, not a right. In exercising this privilege, lawyers must not pursue victory at the expense of justice nor at the risk of the loss of the lawyer’s reputation for honesty and professionalism within the legal community. Clients are best represented by attorneys who exhibit professional conduct at all times. The Bar must protect the honor and integrity of the judicial system and improve the public trust and perception of the legal profession. Lawyers must work to enhance communication, respect and courtesy among members of the Bar.*

The recent amendment to AO 2.20 included minimal modifications to the *Standards* from the ones ten years ago. For the most part, the *Standards* are the same. There is now a reference to the Local Professionalism Program rather than its predecessor, the Peer Review Program. Keeping up with the Digital Age, there is reference to e-mail service in Section C.4. The Committee also deleted reference to some language at the end of Section J.17 regarding a lawyer’s conduct in appearing before a tribunal. The basic expectations of profession courtesy and conduct remain unchanged.

However, the *Standards* still provide a basic blueprint and guideline for attorneys to follow in their conduct. For example, specific provisions include Section A1 (attorneys should refrain from criticizing or denigrating opposing counsel, the court, parties or witnesses), A6 (attorneys should adhere strictly to all promises and agreements with opposing counsel), B2 (requiring communication and the scheduling of proceedings at mutually convenient times), D1 (attorneys should at all time be civil and courteous in communicating with adversaries), F5 (deposition questioning should not be in a manner intended to harass the witness), F8 (counsel should not through objections or otherwise coach the deponent), and I2 (prior to filing certain motions, the moving party should confer with counsel for the opposing party in a good faith effort to resolve the issues raised by the motion and then file a statement certifying such efforts).



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### Local Professionalism Program

In contrast, there were substantial changes to the Local Professionalism Program (“LPP”). A copy of the revised program is attached to AO 2.20. The LPP is a non-punitive confidential program created to foster and promote professionalism and courtesy amongst members of our Bar. It is intended to address only unprofessional conduct. Notably, any judge within the Circuit, or any lawyer or *other person* who observes conduct by a lawyer inconsistent with the *Standards*, may refer such conduct to the Local Professionalism Panel (“Panel”).

One substantial change is that the Panel will now include 2 judges along with 7 attorneys. The Panel will consist of 9 members, comprised as follows: 3 members representing Lee County, 2 members representing Collier County, 1 member representing Charlotte County, 1 member representing Hendry/Glades Counties, and 2 members representing the judiciary of the Circuit. The Panel can and will likely request in-person meetings with the lawyer who is the subject of the referral.

All referrals, documents, and records provided to the Panel are confidential and not subject to public disclosure. Likewise, all proceedings before the Panel are confidential and not open to the public. This issue had been a concern for years but was resolved by the Florida Supreme Court’s recent opinion in the matter of: *In re: Code for Resolving Professionalism Referrals and Amendments to Rule Regulating the Florida Bar 6-10.3*, 367 So. 3d 1184 (Fla. 2023). That opinion triggered revisions to the LPP and the resulting amendment to AO 2.20.

Although not new, the LPP does still allow for publishing of a redacted summary of the referral and the determination of the Panel. The Program states:

... the Panel may, in its discretion, provide a redacted summary to each County Bar Association within the Twentieth Judicial Circuit with a request for it to be published in the newsletters or other regular periodic publications of each bar association. The summary shall briefly and concisely inform the bar of the referral, the alleged facts giving rise to the referral, and the determination of the Committee. The summary shall not identify the complainant, the lawyer, or the members of the Panel who voted.

In years past, the Panel (then known as the Peer Review Committee) sent redacted summaries to the Bar Associations for publication, and those summaries were published. That practice will now likely continue based

upon the recommendation of the Circuit’s Professionalism Committee and the Florida Supreme Court’s 2023 opinion referenced above. To provide some flavor, examples of past redacted opinions published years ago in the Collier County Bar Association’s *Adverse Witness* included the following:

- Conduct occurring during a deposition, involving remarks and actions in an effort to prevent the witness from testifying about certain items, including the statement to the deponent’s attorney, “*Why don’t you just let her answer the [expletive] questions.*”
- Statements in correspondence to an arbitrator after the lawyer was displeased with the decision, including the statement, “*To say that I was astounded, as I read your Arbitration Award in this case, is a massive understatement.... This award has sounded the death knell for me of any future consideration for arbitration.... I shall oppose any suggested exposure of my clients to this minefield.*”

Consistent with AO 2.20, attorneys who fail to comply with the *Standards*, whether it be through discourteous and unprofessional communication, deposition conduct, or courtroom behavior should be referred to the Panel. For most attorneys, the *Standards* will reflect their current practice. However, for those lawyers that use intimidation, denigration and unprofessionalism in their practice, the *Standards* and the LPP will hopefully end such conduct.

*The Ethics Korner focuses on various professional and ethical issues. This article borrows from discussion in the author’s initial article published in 2001. The author, Jason Hunter Korn, is an attorney and managing shareholder of the Florida office of Dentons Cohen & Grigsby. He was the principal drafter of the Standards of Courtesy and Conduct for Lawyers Practicing in the Twentieth Judicial Circuit. He has served for multiple years as a member of the Twentieth Judicial Circuit’s Professionalism Committee and as the Chief-Judge’s designee (1998-2003 and 2012-present), and as a member and former Chair of the Circuit’s Local Professionalism Panel (2001-2005, 2012-present), and as a member and current Vice-Chair of The Florida Bar’s Professional Ethics Committee (1999-2005, 2008-2014, and 2019-present).*