



The Florida Bar

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Level: Intermediate
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CLE Credits

General	2.5
Ethics	2.5

Certification Credits

TAMPA BAY TRIAL LAWYERS ASSOCIATION (August 2017)

RECENT TRENDS OF THE FLORIDA SUPREME COURT AND OF THE FLORIDA BAR (What Trial Lawyers Should Know)

I. AN EMPHASIS ON DISCIPLINE FOR UNPROFESSIONAL CONDUCT

A. An attempt to discourage and stop unprofessional and inappropriate actions that previously may not have been considered unethical or requiring discipline

1. Examples of the “trend”

- a. Additional language of Oath of Admission
- b. Establishment of local / circuit professionalism panels
- c. Supreme Court opinions
- d. Judge’s roles

2. How to respond by Trial lawyers

- a. Practice with the “Golden Rule” in mind
- b. Review your Oath and the Florida Bar Professionalism Expectations
- c. Request Judges to insist on courtesy / professionalism and enforce the Rules
- d. Report misconduct to the Professionalism Committee

II. MORE SEVERE DISCIPLINE

- A. Trend toward imposing harsher sanctions even where TFB does not seek enhanced discipline and when Consent Judgments are agreed by TFB and approved by Referee (Judge)
- B. Less reliance on legal precedent, more on Supreme Court's determination

III. FURTHER TRENDS

- A. More frequent reports / complaints / transmittals of orders by Judges to TFB
- B. Increased focus by TFB on judicial complaints / referrals
- C. Increased complaints against Plaintiff's Personal Injury lawyers
- D. Increased pressure on Boar Counsel for more severe discipline?

IV. COMMON ETHICAL ISSUES

- A. Communication: Rule 4-1.4
- B. Diligence: Rule 4-1.3
- C. Client Expectations: Rule 4-1.2
- D. Fees: 4-1.5 NOTE: Most cases (it's all about the money)
 - 1. Hourly
 - 2. Flat Fee
 - 3. Contingent

E. Trust Accounts: Chapter 5

1. More than 1 lawyer – Written Plan: Rule 5-1.2(c)
2. Retain for 6 years (minimum): Rule 5-1.2(f)
3. Emergency Suspension
4. Presumption of Disbarment

F. Competence: Rule 4-1.1

1. Associate another lawyer?
2. Technology and Security

G. Criminal Arrests: Rule 3-4.4; Rule 3-7.2

1. Notice within 10 days of Determination of Guilt
2. Notice within 10 days of Felony Charges
3. Automatic suspension upon felony guilt

H. Sexual Relationship w/Client: Rule 4-8.4(i)

1. TFB v. Pittman
2. TFB v. Cohen

I. Alcohol / Substance Abuse and Psychological Disorder

1. FLA, Inc.
2. Confidential if voluntary: Rule 3-7.1(j)

J. Relationships with Judges

1. Seeking to improperly influence: Rule 4-3.5(a)
2. Social network concerns

K. Departure from firms (Rule 4-5.8)

1. Notice to clients

2. Good faith
3. Non-solicitation
4. Ownership of files
5. "Attorney of Record"
6. Court approval
7. Staff departure
8. Trust funds

L. Inventory Attorneys

M. Technology and Security

VI. ARE THE PROFESSIONALISM COMMITTEES EFFECTIVE?

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