

**PEER REVIEW PROGRAM
OF THE TWENTIETH JUDICIAL CIRCUIT OF FLORIDA**

I. FOREWORD

In 1989, The Florida Bar established a task force to study the course of professionalism among lawyers in Florida. The study addressed issues regarding the lack of civility among lawyers, the public's poor perception of lawyers and the steady decline in lawyers' satisfaction and fulfillment with their profession. The work performed by the task force resulted in the creation of The Florida Bar's Standing Committee on Professionalism. In July, 1996, the Honorable Chief Justice Gerald Kogan signed an administrative order that created the Florida Supreme Court Commission on Professionalism. In January, 1998, Justice Kogan requested that the Chief Judge of each Judicial Circuit appoint a Circuit Committee on Professionalism charged with the overall responsibility of initiating and coordinating professionalism activities within the Circuit. Accordingly, in early 1998, the Twentieth Judicial Circuit Committee on Professionalism was formed.

In November, 1999, a subcommittee of the Twentieth Judicial Circuit Committee on Professionalism was appointed at the direction of the Chief Judge of the Circuit to prepare a practical set of standards of professional courtesy and conduct for lawyers and to explore the formation of a peer review program for lawyers practicing law in the Twentieth Judicial Circuit. The subcommittee, with the guidance, insight and participation of the Circuit Committee on Professionalism, prepared this Peer Review Program as well as the Standards of Professional Courtesy and Conduct for Lawyers Practicing in the Twentieth Judicial Circuit, a copy of which is attached hereto. In February, 2000, the Standards of Professional Courtesy and Conduct for Lawyers Practicing in the Twentieth Judicial Circuit and this Peer Review Program were approved and adopted by the Twentieth Judicial Circuit Committee on Professionalism.

II. INTRODUCTION

The Twentieth Judicial Circuit Committee on Professionalism believes that a system of peer review would be beneficial to foster and promote professionalism among lawyers practicing in the Twentieth Judicial Circuit. The following program of peer review was created upon a review of other peer review programs, including programs approved by the Orange County Bar Association, Palm Beach County Bar Association and the Hillsborough County Bar Association, as well as the standards of professional conduct adopted by the Fourth, Sixth, Eighth and Fifteenth Judicial Circuits. This Peer Review Committee Program has been endorsed by the Charlotte County Bar Association, the Collier County Bar Association, the Hendry-Glades County Bar Association, the Lee County Bar Association, and the Circuit and County Judges of the Twentieth Judicial Circuit.

III. PURPOSE OF PEER REVIEW

The general purpose of Peer Review is to improve the level of professional performance and competence of lawyers who practice in the Twentieth Judicial Circuit. The Peer Review Program is not a disciplinary proceeding. Instead, the Peer Review Program is intended to be a voluntary, educational, informal, non-punitive and confidential enhancement program for the practice of law in the Twentieth Judicial Circuit. The original concept was suggested in a January 1993 Report of the Bench/Bar Commission which was created by the Supreme Court of Florida and The Florida Bar. That Report recommended that a compulsory diversionary skills enhancement program be created as an alternative to the punitive option existing under the current grievance procedures. The Peer Review Program is not intended to deal specifically with violations of ethics or the Rules Regulating The Florida Bar which remain solely within the jurisdiction of the grievance process of The Florida Bar.

IV. PEER REVIEW COMMITTEE

A. MEMBERS OF THE COMMITTEE

The Peer Review Committee will consist of a board of a minimum of 9 members, all of whom must be members in good standing of The Florida Bar and regularly practice and reside in the Twentieth Judicial Circuit. At a minimum, the board shall include 2 members who regularly practice and reside in Charlotte County, 2 members who regularly practice and reside in Collier County, 2 members, either or both, who regularly practice and reside in either Glades County or Hendry County, and 3 members who regularly practice and reside in Lee County. The board members will be appointed by the Chief Judge of the Twentieth Judicial Circuit with input from the Twentieth Judicial Circuit Committee on Professionalism, the Chair of the Professionalism Committee of each County Bar Association if such a committee exists, and the President of each County Bar Association. The Board should consist of experienced lawyers who have distinguished themselves in their fields and who come from all areas of practice. Board members will serve a 2 year term, with appointments to be made each year for staggered terms so that there is some consistency and experience on the Board from year to year. Board members may serve more than one term upon reappointment by the Chief Judge, but such members can only serve 2 consecutive terms. A quorum of the Peer Review Committee at any meeting shall consist of a majority of the members of the board; a vote by the committee shall not occur unless a quorum is obtained. In the event that a board member fails to demonstrate a sufficient interest in the committee or carry out his or her duties on a regular basis, the Chief Judge may remove and replace that member at any time during his or her term.

B. INITIAL REFERRAL TO THE COMMITTEE

Referrals will be strictly confidential. Names of the members of the Peer Review Committee will be forwarded periodically to each County Bar Association within the Twentieth Judicial Circuit with a request for publication so that lawyers practicing within the Circuit and judges will know who they should contact to refer an attorney into the program. It is recommended that the complainant use the written Referral Form created by the Committee, but using such a form is not mandatory. A copy of the Referral Form which is recommended for use is attached hereto.

Any judge within the Twentieth Judicial Circuit or any lawyer who observes conduct by an attorney, occurring after July 1, 2000, which is inconsistent with the Standards of Professional Courtesy and Conduct for the Twentieth Judicial Circuit ("complainant"), may confidentially refer such conduct and the identity of the attorney to any member of the Peer Review Committee. The member shall then promptly forward the referral to the Chairperson of the Peer Review Committee ("Committee"). At its next meeting, the Committee shall, by a majority vote of the quorum, determine how to respond to the referral. A response may include informal and confidential discussions, either by telephone or in person, with the attorney who has been referred to the Committee. If the attorney refuses to discuss the matter, the Committee shall still discuss the conduct and determine how best to proceed. The Committee has the discretion to direct the referral back to the complainant for clarification or additional information.

C. REVIEW BY COMMITTEE OR SUB-PANEL

The Committee may decide to forward the referral to a sub-panel of the Committee to consider whether conduct has been alleged which does not comply with the Standards of Professional Courtesy and Conduct for the Twentieth Judicial Circuit ("Standards"). The sub-panel shall recommend an appropriate response to the Committee, which may include a referral to a member of the Mentor Program of the Twentieth Judicial Circuit. The sub-panel members shall outline the perceived problem and ask the subject attorney whether he or she can assist the sub-panel in finding a solution. If the attorney refuses to discuss the matter, the sub-panel shall still discuss the conduct of the attorney and determine whether the alleged conduct warrants a referral to the Committee. There will be no sanctions or other enforcement mechanism associated with the consultation. Finally, the identity of the complaining parties and attorney referred into the program shall remain confidential except to those who need to know in order to carry out the program's goals.

D. PROCEDURE IF CONDUCT DOES NOT COMPLY WITH THE STANDARDS

In the event that a referral to the Committee reflects conduct which does not comply with the Standards of Professional Courtesy and Conduct for the Twentieth Judicial Circuit ("Standards"), the Committee shall (i) contact the lawyer either by telephone, in person or by letter, (ii) describe the alleged noncompliance or enclose the written referral form with the complainant's identity redacted, and (iii) request a response from the subject attorney to be provided within 30 days. The subject attorney's response shall be provided by the Committee to the complainant. Upon receipt of the response the Committee shall consider the referral and response, or it may direct the referral and response to a sub-panel for review and recommendation to the Committee. The sub-panel or Committee may thereafter contact the subject attorney and the complainant to further discuss the referral and response. The sub-panel or Committee thereafter shall determine by majority vote whether conduct has occurred which does not comply with the Standards. The determination of the Committee shall be communicated to the subject lawyer as well as the complainant. An appointee of the Committee shall discuss the matter with the lawyer in an attempt to educate the lawyer about the noncompliance and hopefully avoid other or similar conduct in the future which does not comply with the Standards. It is recommended that the entire review process be accomplished within 90 days from the date that the alleged conduct was referred by the complainant to the Committee; however, failure to adhere to this recommended time limit is not fatal to the referral.

In the event that the Committee determines that conduct has occurred which does not comply with the Standards, a redacted summary shall be provided by the Committee 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 should be forwarded to each County Bar Association by the Committee within 60 days of the Committee's determination. 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 Committee or sub-panel who voted. All such identities shall be anonymous and strictly confidential. It is the hope that members of the bar will learn from these publications and misunderstandings of the Standards will be reduced.

E. REFERRALS ARE STRICTLY CONFIDENTIAL AND PRIVILEGED

All referrals to the Committee shall remain strictly confidential. All such referrals, related statements and discussions, whether verbal or in writing, are to be considered opinions, absolutely privileged and immune from liability. All findings, summaries, determinations and resolutions by the Committee shall likewise be absolutely privileged and immune from liability. Referrals to the Committee and resulting findings, summaries and determinations are to be considered as allegations and not factual statements of wrongful conduct.

F. PROCEEDINGS ARE NOT PUBLIC RECORDS

The records of the Committee's proceedings, including the referral and all documents related thereto, are not public records. All such records and documents do not have archival value. Furthermore, all records of the Committee's proceedings, including the referral and all documents related thereto, shall be immune from and not subject to process, civil discovery or public access, and such records and documents are not admissible in a judicial or quasi-judicial proceeding.

G. DESTRUCTION OF RECORDS

All records of the Committee's proceedings, including the referral and all documents related thereto, shall be destroyed within 30 days of the Committee's determination or disposition. The Committee may maintain its redacted summary which was forwarded to each County Bar Association for publication and which does not identify the complainant, the lawyer, or the members of the Committee or sub-panel who voted.

V. OUTLINE OF THE PEER REVIEW COMMITTEE

A. BRIEF SUMMARY

It is intended that the Peer Review Committee provide a confidential and informal methodology for judges and lawyers to refer allegations of unprofessional or discourteous conduct by attorneys, with the goal of addressing and resolving such referrals. The Peer Review Committee is intended to be a voluntary, educational, informal, non-punitive and confidential enhancement program for the practice of law in the Twentieth Judicial Circuit. It is not a disciplinary proceeding.

Any judge within the Twentieth Judicial Circuit or any lawyer who observes conduct by an attorney, occurring after July 1, 2000, which is inconsistent with the Standards of Professional Courtesy and Conduct for the Twentieth Judicial Circuit ("complainant"), may confidentially refer such conduct and the identity of the attorney to a member of the Peer Review Committee who will then forward the referral to the Chairperson of the Peer Review Committee ("Committee"). If at any time a Committee member believes that there is a conflict of interest concerning that member's evaluation of a referral, then the Committee member may excuse himself or herself from further proceedings by advising the Chairperson of the conflict and taking no further part in the proceedings.

The Peer Review Program of the Twentieth Judicial Circuit and procedures of the Committee may be amended from time to time by an Administrative Order of the Chief Judge of the Twentieth Judicial Circuit. Below is an outline of the Peer Review Committee. A further discussion of the procedures of the Committee and Peer Review Program is contained in the foregoing pages of this publication.

B. COMMITTEE MEMBERS

The Peer Review Committee:

- 1) Shall be appointed by the Chief Judge of the Twentieth Judicial Circuit, with input from the Twentieth Judicial Circuit Committee on Professionalism, the Chair of the Professionalism Committee of each County Bar Association if such a committee exists, and the President of each County Bar Association.
- 2) Shall have a Chairperson, who will be appointed by the Chief Judge and serve a 2 year term.
- 3) Shall consist of a minimum of 9 members, all of whom must be members in good standing of The Florida Bar and regularly practice and reside in the Twentieth Judicial Circuit. The Board may consist of more than 9 members; however, the board shall include at least 2 members who regularly practice and reside in Charlotte County, 2 members who regularly practice and reside in Collier County, 2 members, either or both, who regularly practice and reside in either Glades County or Hendry County, and 3 members who regularly practice and reside in Lee County.
- 4) Board members will serve a 2 year term, with appointments to be made each year for staggered terms so that there is some consistency and experience on the Board from year to year. Board members may serve more than one term upon reappointment by the Chief Judge, but such members can only serve 2 consecutive terms.
- 5) In the event that a board member fails to demonstrate a sufficient interest in the Committee or carry out his or her duties on a regular basis, the Chief Judge may remove and replace that member at any time during his or her term.

- 6) A sub-panel may be formed by the Committee to consider whether conduct has been alleged which does not comply with the Standards of Professional Courtesy and Conduct for the Twentieth Judicial Circuit ("Standards"). The sub-panel shall recommend an appropriate response to the Committee, which may include a referral to a Mentor Program of the Twentieth Judicial Circuit, if one exists. A further discussion of the sub-panel is contained within the foregoing pages of this publication.
- 7) A quorum at a Committee meeting shall consist of a majority of the Committee members.

C. PROCEDURE

- 1) Any judge within the Twentieth Judicial Circuit or any lawyer who observes conduct by an attorney, occurring after July 1, 2000, which does not comply with the Standards, may confidentially refer such conduct and the identity of the attorney to any member of the Peer Review Committee. The member shall thereafter promptly forward the referral to the Chairperson of the Committee.
- 2) The Peer Review Committee shall informally address the referral at the next scheduled meeting of the Committee or a sub-panel of the Committee may be appointed to review the referral. The sub-panel shall recommend an appropriate response to the Committee, which may include a referral to a Mentor Program of the Twentieth Judicial Circuit, if one exists.
- 3) The Committee shall, by majority vote of the quorum, respond to the referral in an expeditious and confidential manner. The Committee should meet, by telephone or in person, at least bi-monthly if there are pending referrals.
- 4) The Committee may resolve referrals through informal and confidential discussions, either by telephone or in person, with the subject attorney.
- 5) It is recommended that the complainant use a written referral form, which is preferable but not required. The form is attached hereto.
- 6) In the event that a referral to the Committee reflects conduct which does not comply with the Standards, the Committee shall (a) contact the lawyer either by telephone, in person or by letter, (b) describe the alleged noncompliance or enclose the written referral form with the complainant's identity redacted, and (c) request a response from the subject attorney to be provided within 30 days. The subject attorney's response shall be provided by the Committee to the complainant.
- 7) Upon receipt of the response, the Committee shall consider the referral and response, or it may direct the referral and response to a sub-panel for review and recommendation to the Committee. The sub-panel or Committee may thereafter contact the subject attorney and the complainant to further discuss the referral and response. The sub-panel or Committee thereafter shall determine by majority vote whether conduct has occurred which does not comply with the Standards. The determination of the Committee shall be communicated to the subject lawyer as well as the complainant. An appointee of the Committee shall discuss the matter with the lawyer in an attempt to educate the lawyer about the noncompliance.
- 8) It is recommended that the entire review process be accomplished within 90 days from the date that the alleged conduct was referred by the complainant to the Committee; however, failure to adhere to this recommended time limit is not fatal to the referral.

- 9) In the event that the Committee determines that conduct has occurred which does not comply with the Standards, a redacted summary shall be provided by the Committee within 60 days thereafter 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 Committee or sub-panel who voted. All such identities shall be anonymous and strictly confidential. It is the hope that members of the bar will learn from these publications and misunderstandings of the Standards will be reduced.
- 10) All referrals to the Committee, related statements and discussions, whether verbal or in writing, are to be considered opinions, absolutely privileged and immune from liability. All findings, summaries, determinations and resolutions by the Committee shall be absolutely privileged and immune from liability. Referrals to the Committee and resulting findings, determinations and summaries are to be considered as allegations and not factual statements of wrongful conduct. This section and its privilege shall be interpreted as broadly as possible.
- 11) After the review process has been completed, the Committee may refer the subject lawyer to a Mentor Program of the Twentieth Judicial Circuit, if one exists, or to Florida Lawyers Assistance, Inc., which provides assistance to lawyers who are struggling with problems of chemical dependency, alcoholism, addiction and other issues. The participation of the lawyer in the foregoing programs is voluntary; it is not mandatory.

D. LIMITATIONS

- 1) No complaints that rise to the level of a formal grievance shall be handled or resolved by the Peer Review Committee. The Peer Review Program is not a disciplinary proceeding.
- 2) The Peer Review Committee shall not resolve any written complaints concerning Judges, but may refer such complaints to the Bench/Bar Committee or the Chief Judge of the Twentieth Judicial Circuit.
- 3) The Committee shall not engage in any discussions concerning complaints of actual conduct which would violate the professional rules of ethical conduct. Those complaints should be forwarded to the local grievance committee of The Florida Bar.
- 4) The records of the Committee's proceedings, including the referral and all documents related thereto, are not public records. In addition, all such records and documents do not have archival value. This section is to be interpreted as broadly as possible against retention and against public review of records.
- 5) All records of the Committee's proceedings, including the referral and all documents related thereto, shall be immune from and not subject to process, civil discovery or public access. All such records and documents shall not be admissible in a judicial or quasi-judicial proceeding. The section is to be interpreted as broadly as possible against disclosure and discovery, and in favor of strict confidentiality.
- 6) All records of the Committee's proceedings, including the referral and all documents related thereto, shall be destroyed within 30 days of the Committee's findings or disposition. The Committee may maintain its redacted summary which was forwarded to each County Bar Association for publication and which does not identify the complainant, the lawyer, or the members of the Committee or sub-panel who voted.

REFERRAL FORM
TO THE PEER REVIEW COMMITTEE
OF THE TWENTIETH JUDICIAL CIRCUIT

1. Referring Attorney or Judge:

Your Name: _____

Bar Number: _____

Your Address: _____

Telephone: _____

Facsimile: _____

2. Attorney Being Referred:

Name of Attorney: _____

Bar Number: _____
(If known of attorney being referred)

Address: _____

Telephone: _____

Facsimile: _____

NOTE: THIS IS NOT A DISCIPLINARY PROCEEDING

3. Alleged Noncompliance (check one):

_____ Twentieth Judicial Circuit's Standards of Professional Courtesy and Conduct for Lawyers.
Standards involved: _____

_____ The Florida Bar's Ideals and Standards of Professionalism.
Ideals or Standards involved: _____

Briefly describe the facts and circumstances of the alleged conduct which does not, in your opinion, comply with the above Standards. Please use the back of this form or attach additional pages if necessary. Please try to be brief and non-judgmental. Please list and attach any papers requiring consideration or needed for clarification of the allegations discussed. Please state the specific provision(s) involved.

Signed: _____

Date: _____