No One is Immune to COVID-19’s Professionalism Challenges

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To state the obvious, 2020 was an unusual year. We are living in unprecedented times as a global pandemic creates new normal in everyone’s daily lives. Like most professionals, today’s lawyers face many challenges in maintaining professionalism while working during the era of COVID-19. From where they practice to how they practice, lawyers have been forced to make changes that promote safety while maintaining professionalism and productivity. At the start of the pandemic, many offices instructed their lawyers to work from home, which posed its own concerns surrounding productivity as many lawyers scrambled to set up home offices with adequate technology or juggle their schedules with their children’s online schooling. Additionally, lawyers have needed to change the way they communicate with their clients, as face-to-face discussions are no longer the norm. Even courtroom proceedings have become virtual events, requiring lawyers to advocate for their clients via telephonic or video conferencing. To many, these changes are not inherently negative and may very well be embraced long after the COVID-19 outbreak has been contained. Aside from the benefit of avoiding the spread of the virus, working from home may alleviate the stress often felt in an office, and meeting with a client or attending a court proceeding via a video conference saves the time and expense of travel. However, these changes also raise concerns about diminished professionalism. With the risks of increased distractions while working from home, inadequate continued...
communication with clients, and a lack of formality with virtual court proceedings, lawyers should be mindful of The Florida Bar’s Rules of Professional Conduct when modifying their practices to ensure that they maintain professionalism.

When the nation shut down in March, many lawyers began to work from home. While working from home offers many advantages, it tends to come with several distractions. On top of concerns of the pandemic, being surrounded by family, pets, or the allure of the television can be distracting and threaten anyone’s productivity and efficiency. Rule 4-1.3 of the Rules of Professional Conduct, however, requires that lawyers represent their clients with reasonable diligence, even in the face of personal inconvenience. Diligence demands zealous advocacy, competence, and timeliness. Though circumstances have understandably shifted due to COVID-19’s effects, lawyers are still required to zealously advocate on their client’s behalf. Even if working from the comfort of the living room, a lawyer should handle a client’s matter with the passion and importance it is owed. In the same vein, diligence requires that lawyers ensure their working conditions and workloads allow them to handle each case competently.

Lawyers need to be honest with themselves about their ability to handle cases if working from home has negatively impacted their productivity. It is better to advise a potential client to seek representation from a different lawyer than to take on a case knowing one does not have the present ability to competently handle it. Finally, diligence necessitates timeliness. As the comment to rule 4.1-3 notes, procrastination may be the most resented professionalism faux pas. Though working from home during the time of COVID-19 certainly presents challenges and entails distractions, a lawyer must remain diligent in continuing to meet deadlines and responding to clients in a timely manner.

In addition to the professionalism challenges that come with working remotely, COVID-19 has caused issues with how lawyers communicate with their clients. Lawyers and clients who prefer to meet in person at the lawyer’s office may now be limited to phone calls, emails, and perhaps video conference calls. This change can be especially challenging when working with clients who do not have access to the requisite technology. This change poses even more of a challenge to lawyers whose clients are incarcerated, as the Florida Department of Corrections has encouraged lawyers to refrain from in-person visitation when possible.1 Despite these challenges, rule 4-1.4 of the Professional Rules of Conduct provides that lawyers must engage in reasonable communication with their clients to allow for effective participation in their cases.

Under rule 4-1.4, lawyers must provide clients with prompt and adequate communication. If a lawyer knows his or her client is not the most technologically savvy or lacks the technology altogether, the lawyer may best ensure prompt communication by relying on phone calls rather than emails or video conferences. Relatedly, if a client is incarcerated, the lawyer can ensure an inmate has access to counsel by scheduling regular and predetermined times to check in and discuss the client’s case over the phone. Regardless of whether a lawyer and client communicate through phone calls, emails, or video conferences, the communication needs to adequately inform the client of the status of his or her case. Though it may be easier to explain the developments of a case in person, lawyers’ conversations with clients can and should remain thorough and informative no matter the medium used. Moreover, with increased reliance on remote forms of communication, confidentiality as described in rule 4-1.6 remains a paramount concern. Therefore, in utilizing phones, emails, and new virtual platforms to remain in touch with clients, lawyers must make reasonable efforts to prevent the disclosure of any confidential information to third parties. One possible measure to advance this interest is avoiding the use of public internet connections when emailing or video conferencing with a client. Ultimately, a lawyer must provide prompt, adequate, and confidential communications, irrespective of that communication’s form.

Remote communications are not limited to conversations between lawyers and clients, as many Florida lawyers are now remotely advocating before courts. In an effort to ensure the state’s judicial system does not become backlogged with stalled cases during the pandemic, Florida courts have come to rely on telephonic and video conferencing to conduct hearings, oral arguments, and, in some cases, trials.2 Virtual proceedings are undoubtedly beneficial; lawyers, clients, and witnesses avoid the need to travel and reduce the chance of contracting or spreading COVID-19, all while proceedings continue to take place in a timely, efficient manner. In fact, this widespread use of telephonic and video conferencing may become the preferred mode of advocacy for some judges and lawyers even after courtroom restrictions are lifted.

As Florida courts continue to handle many proceedings virtually, lawyers should try to maintain the same sense of professionalism over the phone or through video that is expected in the courtroom. As noted in the preamble of the Rules of Professional Conduct, a lawyer should act with respect towards judges and other lawyers. Though hearings conducted through video conferences, for example, inherently feel less formal than in-person proceedings, lawyers should continue to look and act as professional as they would for a court hearing. One Broward County circuit judge expressed his frustration with attorneys lacking professionalism during virtual proceedings, revealing that one male attorney attended a virtual hearing before his court without a shirt while another female attorney tuned in from her bed.2 Lawyers should retain the proper dress code and remain cognizant of their tone, body language, and camera backgrounds when advocating in such settings. If a lawyer plans on presenting an oral argument from a cluttered or distracting at-home workspace, utilizing one of the basic virtual backgrounds offered by many video conferencing platforms can help the court to focus on the lawyer’s argument, not his or her surroundings. Further, rule 4-3.5 of the Rules of Professional Conduct explains a lawyer’s duty of acting with decorum before a court. It goes without saying that obstreperous conduct and other intentional disruptions are prohibited in virtual proceedings just as they are in in-person dealings before a court. Respecting the formality of judicial proceedings, even when conducted remotely, helps a lawyer retain his or her professional image while advocating in the midst of COVID-19.

Though practicing law during a pandemic was unlikely to have been any Florida lawyer’s expectation before 2020, it is now the reality for the foreseeable future. Despite the switch to working from home, an absence of in-person communications, and the introduction of virtual courtroom proceedings, professionalism...
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remains an important aspect of practicing law. The Florida Bar’s Rules of Professional Conduct offer necessary guidance to lawyers during this unprecedented time. As lawyers continue to adjust their practices in response to concerns of COVID-19, ensuring professionalism requires observance of reasonable diligence, communication, and decorum. With an awareness and respect for these rules, professionalism does not need to suffer during this pandemic.

Endnotes:

Free CLE via Zoom Webinar

FRIDAY, April 23rd
9 AM – 11 AM

MENTORING Makes a Difference

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For more information, contact Rebecca Bandy - rbandy@floridabar.org
On January 12, 2021, Ms. Rebecca Bandy, Director of the Henry Latimer Center for Professionalism was awarded the 2021 Champion of Professionalism Award hosted and presented by Ita M. Neymotin, Regional Counsel for The Office of Criminal Conflict and Civil Regional Counsel, Second District Court of Appeal (by Zoom). This award was created by Regional Counsel, Second District, in 2019 to recognize an individual who has shown exemplary professionalism and ethical qualities in his/her work environment and in his/her interactions with the other members in the legal profession, as well as community partners. In attendance were distinguished speakers and guests including judges and elected officials. Friends and family members of Ms. Bandy were also in attendance at this event.

During the award ceremony, all the speakers had wonderful things to say about Ms. Rebecca Bandy.

Ita M. Neymotin, Regional Counsel for The Office of Criminal Conflict and Civil Regional Counsel, Second District Court of Appeal, introduced Ms. Rebecca Bandy as the recipient of the 2021 Champion of Professionalism Award. Ms. Neymotin further went on to outline Ms. Bandy’s distinguished qualifications over the years. Ms. Bandy co-founded her High School’s award-winning mock trial team. Later, Ms. Bandy served as the Director of Alumni Relations at the Florida State University College of Business and as the Assistant Director of Alumni and Development at the Florida State University College of Law. She currently serves on the American Bar Association’s Standing Committee on Professionalism. Ms. Bandy regularly speaks to legal professionals, law school students, and The Florida Bar staff on professionalism, mindfulness-based emotional intelligence, the impacts of loneliness, mentoring, networking, gratitude, resilience, interpersonal communications skills, active listening, implicit bias, and team building. Ms. Bandy also participated in Regional Counsel Second District’s Families, Children, Mental Health, Professionalism and the Courts Seminar on November 30, 2018, and gave an inspirational speech on emotional intelligence. Ms. Neymotin congratulated Ms. Bandy on being the 2021 Champion of Professionalism Award recipient.

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Ms. Dori Foster-Morales, Esq., President of The Florida Bar, congratulated Ms. Bandy on behalf of The Florida Bar with this incredible award, and thanked Ms. Bandy for her leadership. Ms. Foster-Morales said Ms. Bandy embodies professionalism every day in her role as the Director of the Henry Latimer Center for Professionalism. Ms. Bandy truly has a passion for mental health and wellness because she understands how important those issues are for professionalism.

Mr. Michael J. Higer, Esq., Past President of The Florida Bar, congratulated Ms. Bandy and said she is the heart and soul of the Henry Latimer Center for Professionalism. Mr. Higer said Ms. Bandy is a nationally recognized leader and a statewide voice on professionalism. Her recognition and compassion for lawyers is seen every single day, and Ms. Bandy truly elevates our profession.

Honorable Chief Judge Anthony Rondolino, Sixth Judicial Circuit, congratulated and thanked Ms. Bandy for her dedication to professionalism. He also thanked her for keeping professionalism as a focus for lawyers because professionalism equals responsibility, competency, dependability, respectfulness, ethics, and honesty.

Mr. Henry Lee Paul, Esq., The Florida Bar Student Education and Admissions Committee member and recipient of the first Champion of Professionalism Award in 2019, has had the pleasure of working with Ms. Bandy on several committees. Mr. Paul further stated that Ms. Bandy has taken her mission and advanced the cause for professionalism further than could have ever been envisioned. The Supreme Court abolished the Supreme Court Commission on Professionalism due to The Florida Bar and the Henry Latimer Center for Professionalism carrying forward the mission of professionalism so well.

Ms. Starling Hendriks, Esq., congratulated Ms. Bandy and said she has been an important part of professionalism. Ms. Hendriks further stated that Ms. Bandy’s work and the things she has accomplished at the Henry Latimer Center for Professionalism speaks for itself. Ms. Hendriks talked about Ms. Bandy’s incredible energy and enthusiasm for her work, and her life, and how she just lights up a room upon her entrance. Ms. Hendriks further stated how much she admires Ms. Bandy and she was thrilled to be a part of this award ceremony.

Mr. John A. Schifino, Esq., Past President of the Hillsborough County Bar Association, said it was an honor to speak about Ms. Bandy because the way Ms. Bandy conducts her work for The Florida Bar is inspirational. Mr. Schifino went on to say that what strikes him the most about Ms. Bandy is her remarkable ability to be kind. Her default when dealing with people is composure and kindness, and there is no better way to impact someone than with kindness.

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Mr. Steven Davis, Esq., The Florida Bar Board of Governors, and liaison to the Committee on Professionalism, said Ms. Bandy makes everything better with her enthusiasm. Mr. Davis said everyone aspires to have the programs Ms. Bandy has developed at the Florida Bar. He congratulated Ms. Bandy, and said she inspires greatness and makes everyone want to do better.

The Honorable Public Defender Julianne M. Holt, Thirteenth Judicial Circuit, recipient of the second Champion of Professionalism Award in 2020, could not attend the award ceremony but sent her well wishes and congratulations to Ms. Bandy on receiving the 2021 Champion of Professionalism Award.

Ms. Rebecca Bandy, Esq., Director of the Henry Latimer Center for Professionalism, said she was speechless, genuinely surprised, and very honored to receive the award. Ms. Bandy was the first person in her family to go to college, followed by graduate school, and then FSU Law School. Ms. Bandy talked about her interesting road to where she is now, being the teacher she always wanted to be, which she considers her perfect job. It was important to her to open doors for her family. Ms. Bandy thanked FSU Law School, her children, and everyone in attendance for this great honor.

Distinguished guests at this event:

- Ms. Gypsy Cowherd Bailey, General Counsel, The Florida Bar
- Honorable Judge Patricia D. Barkdale, United States District Court
- Ms. Lauren E. Baugh, Executive Director, Lee County Bar Association
- Dean Nancy Benavides, Associate Dean, Florida State University
- Ms. Lorna E. Brown-Burton, Florida Bar Board of Governors
- Ms. Kelly L. Fayer, Founder, Lee County Bar Diversity and Inclusion Committee
- Ms. Michele A. Gasagni, Executive Director, Florida Board of Bar Examiners
- Ms. Beth Kirkland, Program Coordinator, Henry Latimer Center for Professionalism
- Honorable Judge Gisela T. Laurent, 9th Judicial Circuit of Florida
- Mr. Gary Shepard Lesser, Florida Bar Board of Governors
- Mr. John Mitchell Stewart, Past President of the Florida Bar
- Mr. Michael Grant Tanner, President-Elect, The Florida Bar
- Elizabeth Clark Tarbert, Ethics Counsel
- Mr. F. Scott Westheimer, Florida Bar Board of Governors
- Ms. Katie Young, Assistant Director, Henry Latimer Center for Professionalism
ABA Addresses Remote Practice and Unlicensed Practice of Law

By Henry Lee Paul
reprint from LCBA’s RES GESTAE magazine

The reality of life in this time of COVID is that the remote practice of law has established itself as a presence that will not disappear with the pandemic. Although enabled by technology, it has been advanced by requirements of public safety.

The ABA has addressed the issue of lawyers who practice in a state in which they do not live. In the past, this would typically be considered unlicensed practice of law (UPL) in the jurisdiction of domicile. Florida has historically been a particularly fierce defender of restrictions against UPL. However, as discussed in my January 2021 article, The Florida Supreme Court is considering whether to revise the long standing restrictions against UPL in Florida.

ABA Formal Opinion 495 instructs that remote practice from a jurisdiction in which a lawyer is not licensed is acceptable, provided certain conditions are met. As an obvious threshold matter, such a remote practice must not be considered UPL in the jurisdiction of domicile. However, the opinion advises that the policy concerns against UPL should not restrict such practice to lawyers living outside the jurisdiction of licensure “… if they do not hold themselves out as being licensed to practice in the local jurisdiction, do not advertise or otherwise hold out as having an office in the local jurisdiction, and do not provide or offer to provide legal services in the local jurisdiction.”

It remains to be seen if The Florida Supreme Court will adopt the policy announced by the ABA, however they have this exact issue before them. On August 19, 2020, The Florida Bar filed The Florida Bar Re: Advisory Opinion – Out of State Attorney Working Remotely From Florida Home, SC20-1220, in which The Standing Committee on the Unlicensed Practice of Law for The Florida Bar issued a proposed advisory opinion that was consistent with the policy articulated in ABA 495.

This advisory opinion involved circumstances in which the petitioner, a New Jersey lawyer, retired from his career practice in New Jersey. He was formerly in-house counsel for a major corporation dealing with matters before the United States Patent and Trademark Office. He subsequently associated with a New Jersey firm, sold his New Jersey home and moved to Naples, Florida. All communication with clients is now through his New Jersey office, with no indicia of a presence in Florida. His computer server is located in New Jersey. His practice involves no issues of Florida Law. The petitioner asserted that he virtually practices law in New Jersey from his Florida home.

The proposed advisory opinion, which must be approved by The Florida Supreme Court to be effective, is currently under consideration by the Court. It was submitted for review, without oral argument, on October 22, 2020, after a period of public comment. The forthcoming decision on the proposed advisory opinion is one more reason that 2021 promises to be a watershed year for UPL policy in Florida.

Henry Lee Paul is former Bar Counsel who now represents lawyers in all matters before The Florida Bar and offers risk management services on all legal practice matters. He also represents applicants in all matters before The Florida Board of Bar Examiners.
Meet Our [Law] Suits: Karla Eckardt

By Malia-Lyn Fushikoshi, FSU College of Law, 3L

Karla Eckardt, a Miami native, moved to Tallahassee to pursue a bachelor’s degree in international affairs and criminology from Florida State University. During her time at FSU, Ms. Eckardt started working as a paralegal at a law firm in Tallahassee. Her role as a paralegal later morphed into a legal administrator role. She expected that her time at the law firm would continue to inspire her to attend law school. However, she realized that her professional skills and work-life balance goals were better suited in a legal administration role, rather than the substantive practice of law. Rather than going to law school, she pursued a juris master’s degree in legal risk management and human relations compliance.

Ms. Eckardt has worked at The Florida Bar since 2017. She is currently a Practice Management Advisor in the department LegalFuel: The Practice Resource Center of The Florida Bar. Ms. Eckardt’s workday varies each day. Typically, she answers live chat messages, emails, and phone calls to assist Bar members with the business aspects of managing a law firm (i.e., billing, marketing, etc.) and technology support. Ms. Eckardt believes this job position was a match made in heaven as her work duties are similar to the work she performed at her last job. She also performs a lot of internal work for the department, such as handling social media accounts and creating content for the department’s website. Although the COVID-19 pandemic has forced the transition to remote work, Ms. Eckardt’s workday has not changed much because the department was already operating on a cloud-based program. Impressively, her department has not closed one day since the pandemic began!

When asked about her favorite part about working at The Florida Bar, Ms. Eckardt stated that she loves working with a team. Previously, she worked at a small law firm, but now working at a large organization, she is able to learn from and interact with numerous people at work. She finds working at The Florida Bar extremely rewarding and enjoyable as it matches her professional skills and goals.

Ms. Eckardt believes being a good listener and being a good communicator is key to upholding a high standard of professionalism. Since her job involves talking to a variety of different Bar members, who each have different questions and concerns, she takes listening to their concerns and responding accordingly very seriously. Also, she believes it is important for everyone in her department to communicate effectively in order to do their job efficiently and effectively. Even during the pandemic, she continues to communicate daily with her team.

Additionally, she believes that it is important for her to be receptive to the changing landscape of the legal industry, especially now more than ever due to the pandemic.

A fun fact about Ms. Eckardt is that she loves home DIY projects. She also loves to read eBooks and to spend time with her two dogs.

The Center has launched its new social media campaign, #ProTipTuesday. These short videos go a long way toward helping young attorneys and those new to practice learn about and stay focused on practicing with professionalism. The videos can be found on the Center’s Twitter (@FLBarCFP), Facebook (@FLBarProfessionalism), and website: https://www.floridabar.org/prof/pro-tips/
FSU alum David Varet and his beloved sous chef Jackson Cage Varet (pictured) recently hosted an interactive cooking class for our law students entitled, “How Mayonnaise Will Make You a Better Lawyer.” This event was part of FSU Law’s *Raising the Bar* Professionalism+ Program’s 2021 Spring Wellness Break which we held March 15-19 in lieu of Spring Break this semester. We were also joined virtually that week by Florida Bar President Dori Foster-Morales who talked to students about her career path, her year as president of The Florida Bar, and the importance of mental health and wellbeing in the profession and in law schools.

(Shared by SCOP member and FSU COL’s Associate Dean for Academic Programs and Student Advancement, Nancy Benavides)

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PROFESSIONALISM: HELPING TO OVERCOME UNJUST SENTENCING AND DISCRIMINATION IN DEATH PENALTY LITIGATION

By Ita M. Neymotin, Regional Counsel Second District Court of Appeal
Chair of the Florida Bar Standing Committee on Professionalism

To opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications” (Oath of Admission to The Florida Bar, 2011, p. 1). Professionalism must be adhered to for our justice system to function properly. This is especially important in death penalty litigation when the stakes are so high.

In order for a justice system to work, the people subject to the justice system must believe in its effectiveness, and trust in its fairness. Professionalism helps to ensure that the justice system functions as it was intended, where both the prosecution and defense can present their evidence without fear of retribution and criticism from the bench, as well as opposing parties.

In the former Soviet Union, professionalism was never in place in court proceedings. The Soviet system was a corrupt justice system, and was never concerned with impartiality, or the perception of impartiality. My father and I were both born, at the same Birthing Center of Almaty, in Kazakhstan, which is a country in Asia, in the former Soviet Union. As an immigrant from the Asian part of the former Soviet Union, I have lived witnessing the effects of discrimination firsthand.

In 1972, my father, Dr. Evsey Neymotin, became the youngest Dean of Kazakh State University, at the age of 28. He defended two dissertations, the first in Applied Mathematics, and the second in Physics. When he declared his wish to leave the Soviet Union, my parents and I were immediately labeled, “enemies of the people” and we became Refuseniks for 5 years, because that is how long it took for the Soviet Union to finally release us from its horrible clutches. We were lucky to eventually leave, but unfortunately not everyone had the same luck.

When we arrived in the United States, in New York City in 1979, my father had a very difficult time finding a job as an immigrant, from the Asian part of the former Soviet Union. He would wake up every morning, walk to the subway station, and purchase a copy of the newspaper, The New York Times. He looked through the wanted advertisements daily, for a total of 6 months, in an attempt to find a job. As soon as he would see a position advertised in his field, he would travel on the subway to the place of employment, to hand deliver his resume. Unfortunately, the outcome was always the same, as soon as they would see my father, and hear his accent, they would immediately tell him the position had already been filled. The employers, at that time, were not interested in hiring an immigrant from the Asian part of the Soviet Union, no matter what his qualifications. Despite the fact that my father studied English in Kazakhstan for 5 years before we left the Soviet Union, and was fluent in English, he was always denied an interview for employment based on how he looked and spoke. It was only after a friend of the family recommended my father to an employer, that he was finally hired at the Rockefeller Institute, to calculate mathematical models of the growth rate of Malaria.

My personal experience with discrimination starts from when I was an immigrant from Kazakhstan, to when I decided to apply for the position of Regional Counsel for the Office of Criminal Conflict and Civil Regional Counsel, Second District Court of Appeal. At that time, I chose to seek guidance from others, prior to applying, and I was told by many people, “You can’t be the Regional Counsel, you’re under 40, and you’re a woman! All the Regional Counsels are men.” Regardless of this negative and discriminatory feedback, I chose to pursue my dream, and I applied continued...
for the position of Regional Counsel for the Second District Court of Appeal. My mentors were Ms. Michel Doherty, our community leader in Fort Myers, Florida, retired Sheriff of Lee County Mike Scott, as well as the Honorable Kathleen Smith, Public Defender for the 20th Judicial Circuit. They did not buy into these discriminatory statements and told me they believed I could be Regional Counsel, and supported me then, as well as to date. In December 2011, I was very honored to become the first female, and the youngest attorney in the State of Florida, to be appointed as the Regional Counsel for the Office of Criminal Conflict and Civil Regional Counsel, Second District Court of Appeal.

I know firsthand the importance of a fair and impartial justice system. The Soviet Union had a corrupt justice system and the death penalty was not given out justly or fairly, and often, innocent people were executed. One example was my great-grandfather Samuel Neymotin, who in the former Soviet Union was a political prisoner. He was tortured until he confessed to his crime of teaching religion to his children, and then executed by firing squad on August 29, 1937. On August 19, 1957, by order of the USSR, he was proven innocent, and his sentence was to be commuted. Although the Soviet justice system was very different from our justice system, one thing remains constant in both. In death penalty litigation there is not always room for second chances. We need to get it right the first time.

To truly understand the importance of professionalism in death penalty litigation, it is important to examine the background of the death penalty, as well as its many transitions in the State of Florida. No other category of cases has as many requirements of the attorneys imposed by the Supreme Court of Florida, as death penalty litigation. Death penalty defense teams are required to have first and second chair attorneys. Each of those attorneys has to meet additional stringent requirements to be able to defend death penalty clients.

The death penalty has been around since the formation of the United States of America. As of 2019, the death penalty was enforced by 27 states, according to the Death Penalty Information Center. Many changes have ensued within the death penalty in recent years (Death Penalty Information Center, 2021, p.1).

During the 1970s, attorneys in Florida were not required to meet the now heightened standards required by Florida Rule of Criminal Procedure 3.112, regarding attorney eligibility to litigate death penalty cases. Judges might have appointed a tax attorney to try a death penalty case; because of the absence of minimum standards of professionalism and experience, many death penalty cases were overturned on appeal (Neymotin, 2019, p. 19).

In 1972, the landmark case of Furman v. Georgia was decided. In that case, the United States Supreme Court held that arbitrary and discriminatory matters cannot be utilized in implementation of the death penalty because the 8th and 14th Amendments prohibit cruel and unusual punishments (U.S. Const. amend. VIII. XIV.). Due to the Furman v. Georgia (1972) decision, the sentences of 633 prisoners, who at that time were on death row, were invalidated. In 1972, a moratorium on death penalty came into effect (Johnson, 2001, p. 1101). The case of Gregg v. Georgia (1976), a United States Supreme Court case, which was decided in 1976, ended the moratorium on death penalty case.

The effects of unreasonable, arbitrary, and discriminatory matters seen in Furman, were addressed in the Gregg v. Georgia (1976) case by requiring juries to be instructed on specific sentencing guidelines. Juries were instructed that they could recommend life in prison for the defendant, if mitigating factors were presented. Juries were likewise instructed that they could recommend the death penalty for the defendant, if the prosecuting attorney was able to prove aggravating circumstances.

Gregg v. Georgia (1976) case allowed death penalty litigation to go forward (Johnson, 2001, p. 1102). As a result of the Gregg v. Georgia (1976) decision, Georgia’s new constitutional death penalty statute now included the bifurcation of the guilt and penalty phase (Johnson, 2001, p. 1102). Although the new standards which were implemented in the Gregg v. Georgia (1976) state statute reduced arbitrary and wrongful death sentences, it also served to greatly complicate the death penalty process, making it much more expensive (Johnson, 2001, p. 1102).

The case of Asay v. State (2016), decided by the Florida Supreme Court, held that Hurst v. State (2016) was only retroactive to cases which occurred after the case of Ring v. Arizona (2002). As a result, all of the defendants who were on death row sentenced after 2002, were now entitled to have a new penalty phase trial. The Florida Supreme Court further held that for the imposition of the death penalty, a unanimous jury verdict must be obtained in the penalty phase. At that time, roughly 200 cases were in need of having a new penalty phase trial (Auslen & Clark, 2016, p. 1).

On January 12, 2016, the U.S. Supreme Court issued its opinion in Hurst v. Florida (2016) finding Florida’s death penalty scheme unconstitutional, in so far as it relied on judicial fact-finding to sentence a defendant to death, treating the jury function as only advisory in nature. In issuing this ruling, the Court relied on its 2002 decision in Ring v. Arizona (2002), which held that a jury, not a judge, must find the aggravating factors necessary to impose a death sentence. In all capital cases prior to 2016, Florida juries gave the judge a sentencing recommendation, which the judge considered before weighing the aggravating and mitigating factors, and imposing a sentence. The jury verdict forms did not specify how the jurors decided the existence of aggravating factors, mitigating factors, and whether the aggravators outweighed the mitigators. In March 2016, in response to the U.S. Supreme Court’s decision, the Florida legislature re-wrote its capital sentencing statute to require juries unanimously find the existence of at least one aggravating factor and recommend a sentence of death by a vote of at least 10-2.

In October 2016, however, the Florida Supreme Court issued its ruling in Hurst v. State (2016), holding that under state and federal law, Florida juries 1) must unanimously find aggravating factors proven beyond a reasonable doubt, 2) unanimously find that the aggravating factors are sufficient to impose death, 3) unanimously find that the aggravating factors outweigh the mitigating factors, and 4) unanimously recommend a sentence of death.

The court ruled that the legislative amendment to the state’s death penalty statute made in March of 2016 was unconstitutional, because it did not require a unanimous recommendation for death. The court also held that the decision applied retroactively to cases that were not final as of the date of the 2002 Ring ruling.
Due to this fact, over 150 Florida death row prisoners became eligible for resentencing. In March 2017, the Florida Legislature again amended its death penalty statute, this time requiring a unanimous jury recommendation for death.

Another possible transition may come with the Florida Supreme Court case of State v. Poole (2020). The Court in Poole held that the only relevant question when evaluating a death sentence under Hurst, was whether the jury had found one aggravating factor sufficient to expose the defendant to a possible death sentence.

In an interview, the Honorable State Attorney Brian Haas, for the Tenth Judicial Circuit, stated, “The case of Poole was a significant case in death penalty litigation. It seemed to provide some clarity from the uncertainty of the Hurst case.” Mr. Haas’ office prosecuted the case. Mr. Haas further went on to explain that in regular cases, the victim knows, as well as the other parties in the case, that conclusion of the case means the ability for the parties to move forward. In a death penalty case, however, “the job never ends.” He explained how the families of the victim(s) are instructed with the current law at the time of the trial. If the defendant is sentenced to death, the victim’s family believes that it is what will occur, and they will finally get closure, and move on. Unfortunately, when the law changes, sometimes those families must be told that a new penalty phase must occur for the defendant, which is what happened in some of the Hurst re-sentencing cases. At this point, the healing process for the families is interrupted, “and the band-aid is ripped off.” Mr. Haas went on to explain that the stakes are extremely high in death penalty cases, and honesty and professionalism are crucial aspects in these cases. Mr. Haas further stated that he expects the attorneys in his office to always be professional, but in death penalty cases, professionalism must be on a higher level. For this reason Mr. Haas stated, “We must make certain that attorneys trying death penalty cases meet the highest burden of professionalism, because the stakes are so high for both the prosecution and defense” (B. Haas, personal communication, March 11, 2021).

The Office of the Public Defender for the Tenth Judicial Circuit has been one of the leaders in preparing defense attorneys to try death penalty cases. The Death Penalty Steering Committee of the Florida Public Defender Association (FPDA) developed a continuing legal education program specific to death penalty litigation and was instrumental in having minimum standards for capital attorneys added to the Florida Rules of Criminal Procedure. One of the minimum standards required of both lead counsel and co-counsel is to attend at least once every two years a capital case training program such as the FPDA’s “Life Over Death” conference. Two Assistant Public Defenders from the Tenth Judicial Circuit, Austin Maslanki followed by Pete Mills, have served as Chair of the Death Penalty Steering Committee, and both have been frequent speakers at death penalty training programs.

The Honorable Public Defender Rex Dimmig, for the Tenth Judicial Circuit, was lead counsel on the Poole case. During his interview, Mr. Dimmig explained how professionalism is now more important than ever in death penalty litigation. Since the Florida Supreme Court has recently ruled it will no longer engage in proportionality review of death sentences, the appropriateness of a prosecutor’s decision to seek the death penalty is not subject to appellate review. The likelihood of disparate application of the death penalty within Florida’s 20 Judicial Circuits is greater now than at any time since Furman. Further, Mr. Dimmig went on to say that both, the defense attorneys, as well as the prosecuting attorneys, need to be held to similar standards of professionalism. As it stands now, if a defense attorney is found to have provided ineffective assistance of counsel in 2 cases, he or she is not allowed to practice death penalty litigation for 5 years. No such sanction exists for the assistant state attorney if he or she is found guilty of prosecutorial misconduct.

Mr. Dimmig went on to further address the “false view” that the defense bar is not sympathetic to the families of the victims. He states, “We see firsthand the impact that these offenses have on all the parties involved, and it causes us to be very cautious and respectful when we are speaking with the survivors of the victim.” Mr. Dimmig further stated that he and his office spend a great deal of time focusing on professionalism in death penalty litigation because he understands its importance within these cases (R. Dimmig, personal communication, March 15, 2021).

Over the past 10 years, I, as The Regional Counsel for The Second District Court of Appeal (1st chair qualified) and Byron Hileman, my Homicide Chief for the Office of Regional Counsel Second District Court of Appeal, who has tried 50 capital cases since 1977, and my Managing Homicide attorney Chris Boldt, have carefully chosen and trained attorneys in the Regional Counsel Second District Office to be qualified to litigate capital cases under Supreme Court rules.

Homicide Chief Byron Hileman stated:

Our client’s trust and confidence are essential to professional representation. To that end we use The Golden Rule to treat clients and their families as you would want to be treated if the situation were reversed. You have to be as thorough as possible and not cut any corners.

Mr. Hileman further stated, “You literally have a person’s life in your hands, not just their freedom.” Mr. Hileman went on to explain that the attorney trying death penalty cases must take professionalism very seriously because, “If you don’t, you are literally risking the client’s life” (B. Hileman, personal communication, March 8, 2021).

Mr. Chris Boldt, in an interview stated that, “Florida is number one in the country for exonerations and false convictions, and professionalism must never be overlooked in death penalty litigation.” Mr. Boldt further stated that this is the reason that, “the level of scrutiny in death penalty cases is on a much higher level than in any other criminal cases” (C. Boldt, personal communication, March 8, 2021).

Due to the heightened requirements imposed by the Supreme Court, the cost of death penalty litigation continues to rise, in large part due to attorney labor costs, as well as investigation and mitigation costs (Neymotin & Neymotin, 2019, P.1059). To combat this continuing crisis, and to ensure proper representation for death penalty clients, Regional Counsel, Second District Court of Appeal has proposed The Cross Jurisdictional Death Penalty Program, which is currently being examined by the Florida Legislature, for its possible implementation. This program would save a great deal of taxpayer dollars, as well as ensure that death penalty clients are ethically and effectively represented.

Looking back at the story of my great-grandfather, Samuel
Neymotin, who was executed prior to being declared innocent, proves that professionalism in our justice system helps to safeguard against this type of flagrant injustice. Professionalism is key in ensuring that our justice system continues to be fair and impartial. This is especially important in death penalty litigation since it can mean the difference between a person’s life and death. The appearance of impartiality, as well as impartiality itself, becomes a vital aspect for the people to have faith in their justice system. For true impartiality to occur, professionalism must be in practice. It is crucial for all of us to protect the integrity of our justice system, and to ensure that fairness and professionalism are intact, for it is that same justice system that must work to truly protect us all.

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Mentoring Me: Advice to My Young Lawyer Self

By Jen Smith Thomas

Mentorship is all the rage these days and I have been blessed with some pretty brilliant mentors along the way. There have also been mentors whose actions taught me what not to do, and that’s valuable stuff too. Now, at 37 and nearly 12 years of practice, I find myself straddling the line of mentee, continuing to absorb bits of information and war stories from my superiors, and mentor, as organizations now ask me to volunteer to take on a young lawyer mentee. After agreeing to do so (why didn’t my mentors tell me it’s okay to say “no?”), I asked myself what I could possibly tell a young lawyer for their betterment. I decided that abstract advice in a vacuum didn’t make sense, so I decided to give advice to my younger self. Here it is:

1) The days are long but the years are short. They say that about having children, but it is also true about being an associate. You’ll spend late nights and weekends working feverishly on the most important (the next one will be just as important) project of your career. The days will blend together and you’ll wonder, “when did I sleep enough” and “have I seen my family today”, but your days as a young lawyer, allow you to ask infinite questions, try out different practice areas, and the constant flood of work to do will fly by. Soon you’ll reach lawyer middle age, where the billable hour requirement may be more palatable, but you’ll face a new challenge: generating your own work and business. Rainmaking is tough. Not only do you have to have the personality (being likable isn’t every lawyer’s expertise), but you have to keep at it. The work doesn’t come fast, relationships take time, and you will NOT see an instant return. Long gone are the days of partners feeding you work, and your only goal is making that magic monthly number. You’ll soon have to “eat what you kill,” and you’ll be too expensive to get work from those who used to feed you. Pay attention to lawyers who generate work and how they do so. Build relationships. Develop a reputation. Get involved in local and state bar organizations. Be known. Make a name for yourself. Start early: you’ll thank me later.

2) Take care of yourself, physically and mentally. Develop and keep up healthy routines and good habits. Don’t drink so much. Go to the gym. PUT YOUR FACE CREAM ON. You’ll hear the term “work life balance” a lot. Your bosses may laugh at this term and tell you war stories about walking up the hill in the snow to research out of A BOOK IN THE LIBRARY (what?). Women lawyers will tell you that their water broke, but they finished their closing argument. That may have worked for them, but you only have one body and one mind. Nurture both. Law, litigation especially, will push you harder than you have been pushed before. If you thought the Bar Exam was tough, you have another thing coming. Push yourself to your limits, you’ll surprise yourself at what you can do. But, know your limits. Get some sleep. Try to put your phone down after bedtime (this is not always possible, but it usually is). Go to the gym as often as you can, it’s good for your body and your mind. Plus, those extra pounds will be much harder to get rid of when you’re my age—trust me. More importantly, take care of your mental health. Be self-aware. Cry. It isn’t shameful to see a professional if you aren’t coping with the stress of your job or your life. You cannot be a good lawyer if your brain isn’t well—actually you can appear to be, you’ll meet some of those, but it doesn’t work out well in the long term for them. #facts

3) Be present. Be present in your professional development and your growth as an attorney, that’s important. But be present in your life. Being a lawyer is a huge part of your identity, but it doesn’t define you. Maintain your friendships. Life, especially as a lawyer, will take up a lot of time and you’ll be tempted not to go to girl’s night or call and check in on Caroline, Peegz, and Kirksey. Do those things, often. Cherish your close friendships and cultivate them. When hard times come, and they will, you will lean on these people, so don’t leave them behind while you play lawyer. Pay attention to your spouse/significant other. Nurture your marriage/relationship. Day in and day out, it will take a back seat to your career, but remember that the person who has chosen to share your life isn’t a passenger in your life. You’ve made a life together. Make time. What is a successful career when you don’t have someone to share it with? Spend time with your family, especially your parents. While you are cranking out 2200 hours a year, their wrinkles are deepening, their hair is graying, and their minds are beginning to fail. They won’t be with you forever. One day, before you know it, the roles will reverse, and you’ll be the parent to them. Save every second your mom nags you to visit and that uncomfortably long hug from your dad. You will miss it desperately one day.

Being a lawyer isn’t easy. My dad says, “if it were easy, anyone could do it.” (You’ll find yourself using phrases you previously rolled your eyes at). But you are capable and competent. Be kind, but remember: you are not a doormat. Be confident not arrogant. Be respectful and command respect. Enjoy the journey. Protect your reputation at all costs. Impress yourself. Oh, and put your damn face cream on.

Jen Smith Thomas is a Partner at Rumberger, Kirk & Caldwell in Orlando, Florida, where she focuses her practice on products liability and general liability defense. Jen has served on the YLD Board of Governors since 2014.
Proceed with caution: It’s the No.1 rule for using social media
The Florida Bar provides specific guidance for attorneys.

By Jamie Karpman • Jacksonville Bar Association Board of Governors
From the Jacksonville Bar Association Bar Bulletin/jaxdailyrecord.com.

Social media has commanded an outsized role in our personal and professional lives this past year, and it is expanding to new platforms and interests. It can be a valuable tool and a source of great frustration.

It allows us to interact, create and share content, promote ourselves and our businesses, educate and inform, rate and review and offer our opinions and critiques.

Social media connects us with friends, family, peers, clients and strangers from around town and around the world.

The line often may blur between our personal and professional lives.

Civility and professionalism must guide our use and interactions on these platforms as we do not abandon our professional obligations when we enter the digital world. Our oath of attorney pledges fairness, integrity and civility in all written and oral communications, including social media in its many forms.

The Florida Bar provides specific guidance about social media in its published Professionalism Expectations. These guidelines originate in our ethical duties established by The Rules Regulating The Florida Bar and the customs of fair, civil and honorable legal practice.

The Professionalism Expectations make clear that lawyers must not use their communications in connection with the practice of law, including on social media, to disparage another’s character or competence or to inappropriately influence or contact others.

The expectations plainly state that “social media must not be used to disparage opposing parties, lawyers, judges, and members of the public... or be used to inappropriately contact judges, mediators, jurors, witnesses, or represent-ed parties... or be used for the purpose of influencing adjudicative proceedings.”

Lawyers must be careful to maintain the integrity of our profession. That includes not engaging in behaviors that undermine public confidence in or are prejudicial to the administration of justice.

Engagement on social media is an effective way for lawyers to build their brand and connect with new clients and referral sources.

However, The Florida Bar Best Practices for Professional Electronic Communication handbook cautions lawyers to avoid giving casual advice on social media, particularly in response to specific questions, to avoid inadvertently creating a lawyer-client relationship.

Social media should not be used to circumvent lawyer advertising rules. The rules apply to all forms of communication, including social networking and targeted social media posts. For instance, targeted social media posts are treated as unsolicited direct mail.

Lawyers must be thoughtful when responding to online reviews appearing on social media platforms.

The Florida Bar recently issued advisory Ethics Opinion 20-01 specifying how a lawyer may best respond to a negative client review.

The opinion concludes that, absent an exception to the confidentiality rules, lawyers should only respond generally that they disagree with the client’s statements or that the review is neither fair nor accurate.

The opinion also provides suggested language that lawyers may use to respond appropriately.

Conversely, the Best Practices handbook also cautions lawyers to remove posts from third parties that may be positive misrepresentations, offering the example to “not allow family members to praise your legal services on social media if they have not been a client.”

To ensure you’re up to date about professionalism in this new digital age, visit The Florida Bar Henry Latimer Center for Professionalism to download the Best Practices for Professional Electronic Communication handbook and the 2019-2021 Professionalism Handbook, which includes the Professionalism Expectations.

To learn more about social media and lawyer advertising, download The Florida Bar Standing Committee on Advertising Handbook on Lawyer Advertising and Solicitation and Guidelines for Networking Sites.

The Rules Regulating The Florida Bar, Guidelines for Professional Conduct, and searchable ethics opinions are available on The Florida Bar website at www.floridabar.org.

Jamie Karpman is chair of Grievance Committee 4D and a member of The Florida Bar Standing Committee on Professionalism.
Phipps Reporting, Inc. Celebrates 2021 Court Reporting and Captioning Week

By Katie Young

“All You Need is Love and Steno” dubbed the theme of the 2021 National Court Reporting and Captioning week observed in February. This weeklong event brought court reporters, captioners, court reporting firms, schools, and others in the legal industry together to help spread the love by showcasing the numerous aspects that make court reporting and captioning a worthwhile profession.

Christine Phipps, RPR, President of Phipps Reporting, Inc., and current President of the National Court Reporters Association (NCRA) knows firsthand how meaningful a career in court reporting can be. For her, the reward comes from being a part of the law and the judicial system. She describes this as a “blanket of freedom” which she provides. Saying, “There are two sides to every case, sometimes more, and a judge; the one who holds it all together by keeping the record is the court reporter.” There is no doubt that the court reporter plays an integral role in the judicial system.

“Court Reporters, who are often referred to as guardians of the record, must be impartial, responsible, and reliable, and they must be properly educated, trained, and certified to expertly perform their job.”¹ Most court reporting programs result in an associate’s degree or a professional diploma from community colleges or court reporting schools. According to the NCRA, certification requires a machine shorthand minimum skill of literary at 180 wpm, jury charge at 200 wpm and testimony/Q&A at 225 wpm.²

Christine first became a member of the NCRA while still in school to stay connected to others in the profession. Graduating from Broward College with her Associate of Science degree in court reporting, she began her career as an official court reporter in Miami-Dade County. Soon after, she transitioned to freelance reporting where she would spend fifteen years traveling the world and building relationships.

Not only is Christine a powerhouse in the profession, but she also has a strong love for empowering women. As a single mom of three, she knows the sacrifices women endure and the desire to find that perfect work-life balance. Opening her own firm ten years ago, she made the decision to give back to her profession through NCRA committee work. She found that serving her profession had a reciprocal effect and the more she served, the more she unintentionally got back. “I changed a generation for my family through court reporting, and for that I owe a debt of gratitude,” says Phipps. Christine describes her service with the association stating, “I never could have imagined that I would have the honor of being the President of the entire profession, but here I am.”

Not even a global pandemic can slow Christine down as she has always been open to a remote work environment. Building her business from a bedroom of her home she now has offices nationwide. The flexibility of remote work allows Christine to hire talent where she finds it and not limit herself to one location. Not only does Christine have an incredible work ethic but she keeps a high standard of professionalism at the forefront of all she does. “Professionalism is how you conduct yourself, dress, speak to people, professional correspondence—it is everything,” says Christine.

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Phipps Reporting, Inc.
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Phipps. She believes in always doing her best, never shortchanging a product because that product is a direct reflection of her. She walks into every courtroom dressed for the occasion, donning a suit because she believes it signifies a respect for the process and the judicial system.

As the current President of NCRA, Christine’s goal in the promotion of the 2021 Court Reporting and Captioning Week was to get herself in front of as many people as possible to spread the word and promote the profession. Utilizing her staff at Phipps Reporting, Inc., she was able to facilitate connections and schedule interviews, seminars, and webinars. With court reporting being an under-marketed profession, it is crucial to use this event to showcase the essential role that court reporters play in the legal process. “Court reporters are considered the quiet, neutral person in the room and because of that not enough people know about this profession,” explained Phipps. This has created a shortage in the profession, as has the notion that everyone must go to college. “We should be educating ourselves for the career we want, not for a career that we may not even get a job in,” states Phipps.

With only 14,000 members, the NCRA lacks funding for large campaign companies to assist in marketing. Each state encompasses its own NCRA state association where members work to promote on a local level in various ways such as obtaining proclamations from the governor. It has been a grassroots effort by the association to advertise in hopes of amplifying the profession, which data has proved it to be highly successful. To assist in the marketing, the NCRA created a plethora of resources on their website from press releases to social media posts. Many of these resources can be used year-round by members, states, and schools to promote the court reporting and captioning profession.

“The events engaged more than 350 court reporting students, NCRA leaders and directors, teachers, seasoned professionals, new professionals, and more”. The 2021 Court Reporting and Captioning week certainly proved that there is still so much love for the profession.

Christine Phipps is a Registered Professional Reporter, President of Phipps Reporting, Inc., and current President of the National Court Reporters Association. She received her degree in court reporting from Broward State College. She started out as an official court reporter for the first two years of her career, and then spent the next 15 years working all over the world as a freelance court reporter. After building relationships all over the country, Christine opened her own court reporting and litigation support agency, Phipps Reporting. In addition to reporting, Christine is also an Eclipse Trainer and has served as Chair of NCRA’s Technology and Freelance Committees and served on many other committees. Christine was awarded the 2014 Most Enterprising Woman of the Year, Gamechanger of the Year, and Small Businesswoman-Owned Person of the Year. Christine’s company, Phipps Reporting, has made the Inc. 5000 list every year since 2014, making her the first Honorary member of the Inc. 5000 in our industry. She currently resides in Palm Beach Gardens, Florida and has three children--Brandon, Jarrod and Skylar and her grandson, Forrest.

Endnotes:
1 Licensing and Other Requirements to Become a Court Reporter, COURTREPORTER.EDU.ORG, https://www.courtreporteredu.org/
3 All you need is love and steno, 2021 Court Reporting & Captioning Week wrap-up, THE JCR.COM (February 16, 2021), https://www.thejcr.com/2021/02/16/all-you-need-is-love-and-steno-2021-court-reporting-captioning-week-wrap-up/
The Florida Supreme Court and the legal profession have become increasingly cognizant of the critical importance of professionalism in the practice of law and this article will discuss the critical importance of professionalism for Florida lawyers.

According to the Florida Bar Standing Committee on Professionalism:

Professionalism is the pursuit and practice of the highest ideals and tenets of the legal profession. It embraces far more than simply complying with the minimal standards of professional conduct. The essential ingredients of professionalism are character, competence, commitment, and civility.

Lawyers must be aware that violations of the Oath of Admission to The Florida Bar can result in sanctions. The Oath requires lawyers to “maintain the respect due to courts of justice and judicial officers.” The Oath also requires lawyers to “pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications.” Finally, lawyers must “abstain from all offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged.”

The Preamble to Chapter 4, Rules of Professional Conduct states:

A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system, and a public citizen having special responsibility for the quality of justice.

A lawyer’s conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer’s business and personal affairs. A lawyer should use the law’s procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers, and public officials.

The Florida Supreme Court has also addressed lawyer’s violations of ethics and professionalism and imposed sanctions. The Court has placed the legal profession on notice that unprofessional behavior will be sanctioned, and the following cases illustrate that trend.

Florida Bar v. Morgan, 938 So.2d 496 (Fla. 2006) (91-day suspension for misconduct in courtroom during litigation)

Florida Bar v. Abramson, 3 So.3d 964 (Fla. 2009) (91-day suspension for egregious litigation misconduct and repeated, disrespectful and rude conduct toward trial judge)

Florida Bar v. Price, 632 So.2d 69 (Fla.1994) 91-day suspension for appearing in court under the influence of alcohol and behaving in a hostile, abrasive, and belligerent; reinstatement conditioned on ability to show that satisfactorily completion of an evaluation and course of treatment for substance abuse approved by the Bar.

Florida Bar v. Norkin, 132 So. 3d 77 (Fla. 2014) (2-year suspension and personal court public reprimand for litigation related disparagement of judges, opposing counsel, and others, “appalling and unprofessional behavior”, and “escalating pattern of misbehavior)

“We do not take any pleasure in sanctioning Norkin, but if we are to have an honored and respected profession, we are required to hold ourselves to a higher standard. Norkin has conducted himself in a manner that is the antithesis of what this Court expects from attorneys. By his unprofessional behavior, he has denigrated lawyers in the eyes of the public. Norkin’s violations of the Bar rules and unprofessional behavior merit a two-year suspension and a public reprimand. We direct Norkin to appear personally before this Court to receive the public reprimand. His unprofessional conduct is an embarrassment to all members of The Florida Bar.”

Florida Bar v. Norkin, 183 So. 3d 1018 (Fla. 2015) (“Norkin 1”) (permanent disbarment for engaging in practice of law while suspended and egregious misconduct during Bar proceedings related to failure to comply with Order of suspension)

Florida Bar v. Ratiner, No. SC13-539 (Fla. 2018) (“Ratiner 1”) (disbarment for intentional and egregious litigation misconduct and had previous 60-day suspension for deposition misconduct)

Florida Bar v. Green, SC19-1004 (September 30, 2018) (60-day suspension for thefts and misconduct while employed with law firm and social media statements and retaliation after lawyer’s termination from law firm)

Bottom line: Lawyers must understand the critical importance of acting professionally and ethically, particularly in a profession that is self-regulating and highly visible to the public.

Stay safe and healthy and be careful out there.

Joseph A. Corsmeir is a Martindale-Hubbell “AV” rated attorney who practices in Palm Harbor, Florida. His practice consists primarily of the defense of attorneys and all licensed professionals in disciplinary and admission matters, and expert analysis and opinion and court testimony on ethics and liability issues. Mr. Corsmeir is available to provide attorney ethics and professionalism advice, provide expert opinions on ethics and malpractice issues, assist attorneys to ensure compliance with the Florida Bar Rules, and defend applicants before the Florida Board of Bar Examiners.
SEABC Member Featured on Criminal Prosecutor TH Williams’ ‘Off the Record’ Podcast

By Katie Young

Frederick V. Longmire, State Attorney for the First Judicial Circuit and member of The Florida Bar’s Student Education and Admission to the Bar Committee (SEABC) was a featured guest on Criminal Prosecutor and close friend, TH Williams’ Off the Record interview series podcast.

The intent of the podcast is for the host, a Criminal Prosecutor, to discuss everything except criminal prosecution. In this hour-long episode, Williams and Longmire discuss personal drive and the importance of setting and achieving personal goals.

For Frederick, he credits much of his personal drive to his humble beginnings. Growing up, he shared a three-bedroom home with his eight siblings, having to utilize the garage as a bedroom for himself and his brothers. He recalls his mother creating an expectation in the household that if you wanted different for your future, then an education was the way to achieve it. “The peer pressure of having siblings and growing up how we grew up, that is what propelled us to be driven and recognize that we wanted more,” says Frederick. “It only takes one person to change the trajectory of one’s life,” states Frederick, and for him it was his mother. He uses the same regimented structure that she instilled in him and his siblings today through his daily routines and goal setting.

His drive and success did not come without letdowns and setbacks. On the podcast he describes the greatest letdown of his life being when he was told he would not be able to commission into the army in college due to a degenerative eye condition. “It’s ok to have those setbacks, to feel letdown, to let yourself have that moment and not pretend that you are not affected by it,” says Frederick. Having to completely change the course of his life, he decided to pursue a degree in criminal justice and later would graduate from Stetson University College of Law.

Mentoring also played an integral role in Frederick’s life, sharing that his two most influential professional role models and mentors are Judges Ross and Marci Goodman. Seeking their advice and exploring the pros and cons before making certain decisions in his professional career is a process, he is accustomed to. Frederick believes that it is important for everyone to experience a mentoring relationship from both the mentor and mentee perspective.

Wrapping up the podcast episode, the two discussed their New Year’s resolutions and the importance of being intentional and prioritizing the goals that you want to achieve. “You have to be very purposeful with what you are doing with your time,” says Frederick. It is important to make your goals objective and measurable, so that you can determine success, and if you do not accomplish the goal you must take the time to reflect as to why. Both Williams and Longmire enjoy taking part in friendly, competitive banter to hold one another accountable in their fitness goals. To listen to the entire interview, this podcast episode is available by clicking the link below.

Off the Record- Frederick Longmire

OFF THE RECORD

with T.H. Williams

The Henry Latimer Center for Professionalism and the Standing Committee on Professionalism Present

KNOW YOUR WORTH—A CLE FOR WOMEN LAWYERS

How to professionally negotiate salary and benefits and bridge the gender pay gap

FREE 2-hour CLE
Self-Care in 2021

By Beth Kirkland

New Year, New Me. Raise your hand if you have ever said this (my hand is raised HIGH). I think we all can agree that we are thankful that we have survived 2020 and crossed over into a new year. However, this year I am not focusing on creating a new me, but rather taking care of the same old me.

I have always been a been advocate of “self-care.” However, before 2020, I would have defined that as watching my favorite guilty reality show, face mask on, and ice cream in hand. By the way, I still do this on an embarrassingly regular basis, but I have really striven to take care of myself this past year in more ways than just stuffing my body full of sugar and binging reality television. After experiencing a global pandemic, I can say with confidence that, now more than ever, it is so important to focus on taking care of yourself physically, mentally, and emotionally.

Physically

“My favorite exercise is a cross between a lunge and a crunch...I call it lunch.” I live by this quote in more ways than one. While I have learned the importance of being physically active and the tremendous benefits it has on your physical and mental health (yay endorphins!!), there are other physical aspects of our lives that we can really focus on for self-care. What we fuel our body with is just as important as how we move our body. Now I’m not here to preach about nutrition, because I LOVE the classic pizza and ice cream combo, but when you eat good, you FEEL good. That is not to say that you should not eat those guilty pleasures, because guilty pleasures are part of self-care, but be mindful and listen to your body about what makes you feel best after a meal.

Oh, and a friendly PSA: GET SOME SLEEP! Most adults do not get enough sleep, which leaves us completely drained and lagging throughout the day. I am the GUILTIEST of doing this. No one can be their best selves if they are running off an empty tank and a cup of coffee. I challenge you to take the time to better yourself; do the face mask, sit in a bubble bath, take a nap (my favorite part of the day), and get the recommended amount of sleep each night. This may mean adjusting your alcohol and caffeine intake, setting a regular sleep schedule, cutting off access to electronics hours before bed. Consistency matters. Just remember, this looks different for everyone so do what makes YOU feel the best!

Mentally

I can say that this pandemic has thoroughly made me question every inch of my sanity. I have been isolated, beat down, cried (A LOT), and had the energy seemingly sucked out of me. With my mental health questionable, I tried everything to make it better. Meditation, yoga, turning off my phone--the works honestly. What I realized is that, while these are hailed by professionals as being “the best,” they simply just stressed me out even more. None of this brought me peace of mind or relaxation. During mediation, I could only think about my todo lists (and maybe trying to not doze off due to my horrendous sleep schedule). In yoga I was more worried about the way I looked doing it rather than reaping any benefits, and turning off my phone just filled my millennial brain with more anxiety. What I have come to realize is that the things that bring me peace are walks outside, reading a good book, listening to my favorite Spotify playlists, and even watching Southern Charm (if you know, you know). Maybe one day I will have a fascination with yoga, but until then I am going to focus on the things that truly bring me happiness. I challenge you to reevaluate the way you are spending your time, identify what you truly love, and get rid of the practices that are not serving you to the fullest.

Emotionally

Emotional self-care is critical to our well-being. We are our own worst critic and that can take a severe toll on our emotional well-being. Remember the saying, “Laughter is the best medicine”? This is so cliché, but it also holds so much truth. Laughter has been proven to have a multitude of mental and emotional perks (psst...it also has physical benefits as well!), but it also it encourages you to spend more time with the people you love most and who bring you joy.

It is important to practice emotional self-care and spark joy within daily. Recognize how you speak to yourself and treat yourself with kindness. Practice gratitude. Set boundaries. Allow yourself to make mistakes and treat yourself with compassion. We are human, we are going to make mistakes! Just remember, life is short! Embrace a life you love that is full of joy and love for yourself, as well as for others.

Last, I want everyone to takeaway that Self Care=Self LOVE. Self-care is not a one size fits all strategy, but with 2021 in full swing, it is a great opportunity to take charge of your well-being or, at the very least, start thinking about it more. The more we nurture ourselves and own needs, the more we can give back to others and practices that we are passionate about.
How to Be a True Ally in a Professional Setting
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“We all have a sphere of influence. Each of us needs to find our own sources of courage so that we can begin to speak. There are many problems to address, and we cannot avoid them indefinitely. We cannot continue to be silent. We must begin to speak, knowing that words alone are insufficient. But I have seen that meaningful dialogue can lead to effective action. Change is possible.”
— Beverly Daniel Tatum

Social unrest, discrimination, and systemic racism are not new notions; these concepts have continued to be a major concern for minorities. The development of technology and social media has been a significant tool in pushing these issues to the forefront of the country’s consciousness. It is not as easy to deny the rampant mistreatment that certain members of society face daily. As the outcry against injustice has grown, so has the demand for concrete change. We have seen the efforts of some companies through the issuance of statements and pledges to develop and implement proper diversity and inclusion programs.

While there is a progress in having companies acknowledge these struggles, any efforts on a large scale can only be accomplished through the combined efforts on an individual basis. Change is not the responsibility of some, but the duty of all. Allyship has become a more prevalent component of the conversations on fighting injustice. However, following the historical social unrest of 2020 allyship became more of a performative tag rather than the conscious undertaking it truly is. Merriam-Webster defines allyship as “supportive association with another person or group.”

The reality of the matter is that the individuals facing discrimination are not asking others to become superheroes and save them from the circumstances they face. What is being asked for is that everyone take an active participation in dismantling the discriminatory circumstances. Protesting, signing petitions, donating, and engaging in social media are broad gestures that do not directly address the core concerns of the injustices that are occurring. A decision can be made to push beyond the surface level engagement and truly connect with the heart of allyship.

How can anyone be an ally in a professional setting? The first step is to understand what you are doing and why. Conducting further research into the concept of allyship and educating oneself on the reality of discrimination, injustice, and the systemic issues will be a valuable foundation to putting action behind allyship. It is important to remember that the purpose is not to speak for others and take the focus away from them, but rather to provide compassion and support in challenging oppressive circumstances they are facing.

Allyship actions in the workplace or in school can include vocally supporting underrepresented groups in all settings, and particularly when their own voices are being stifled or ignored. If you notice a peer from a marginalized group may be the only one in a meeting whose ideas are not being heard out, you could speak up and express interest in hearing what they have to say; you could also respectfully address someone if they were interrupting or speaking over your other classmates. You can also be an ally by advocating for others in rooms they might not have access to. If you are in a position of leadership at your firm and notice that minority associates are not being offered the same opportunity of assignments as their non-minority peers, you could advocate for the assignments to be more evenly distributed.

There are many subtle ways to use one’s privilege and influence to stand by members of underrepresented groups in one’s own environment. For true, lasting change to occur the mental and emotional cannot rest solely on the disenfranchised. Collective action must be taken, and the responsibility must be shared with every member of society. Fortunately, we live in a time where there has never been more information available to us. There are plenty of articles, videos, and literature on the topics of systemic racism, workplace discrimination, and allyship. Every person can play a role in the push for change.

Additional articles to gain understanding of allyship in the workplace include:

- Forbes- How to Be an Ally for Colleagues of Color at Work: Three Do’s and Don’ts for Taking Action
- Harvard Business Review- Be a Better Ally
- The Muse- 7 Examples of What Being an Ally at Work Really Looks Like