



ELEVENTH JUDICIAL CIRCUIT OF FLORIDA
LOCAL PROFESSIONALISM PANEL

BERTILA SOTO
CHIEF JUDGE

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November 26, 2014

**RE: ELEVENTH JUDICIAL CIRCUIT LOCAL PROFESSIONALISM
PANEL'S DISPOSITION (#420)**

Pursuant to the Florida Supreme Court's opinion *In re: Code for Resolving Professionalism Complaints*, 116 So. 3d 280 (Fla. 2013) and *In re: Eleventh Judicial Circuit Professionalism and Civility Committee and Local Professionalism Panel*, Fla. 11th Cir. Admin. Order No. 14-01 A1 (July 18, 2014), the duly appointed Local Professionalism Panel ("Panel") began receiving, screening, acting upon, and resolving complaints of unprofessional conduct as of September 1, 2014. The Panel seeks to informally resolve professionalism complaints made by members of the public, attorneys, judges, and/or referred by The Florida Bar's Attorney Consumer Assistance Program (A.C.A.P.), against attorneys practicing in the Eleventh Circuit. All proceedings, communications, documents, and identities are kept strictly confidential. In the interest of promoting awareness and education, noteworthy findings/dispositions of the Panel are to be anonymously published in the DCBA Bulletin as well as the Eleventh Judicial Circuit website.

The Code of Professionalism for resolving professionalism complaints includes the standards codified in the Oath of Admission to the Florida Bar, The Florida Bar Creed of Professionalism, The Florida Bar Ideals and Goals of Professionalism, The Rules Regulating The Florida Bar, The Standards of Professional Courtesy and Civility for South Florida, and the decisions of The Florida Supreme Court relating to professionalism and ethics within the Circuit. Additional information on the Panel is available on the Eleventh Judicial Circuit website at <https://www.jud11.flcourts.org/SCSingle.aspx?pid=693>.

In the present matter, a professionalism complaint was filed by Complainant (a member of the public) against Respondent Attorney, alleging unprofessional conduct related to an alleged improper and prejudicial withdrawal of representation. Complainant had retained Respondent Attorney for representation in a personal injury suit. The facts and circumstances pertaining to liability and damages were known at the time of the initial consultation/retention and remained unchanged throughout the course of the litigation. Respondent Attorney did not actively litigate the matter. A proposal for settlement was made by the opposing party. Respondent Attorney communicated the proposal for settlement to Complainant, which was rejected.

Respondent Attorney communicated to Complainant that the matter would be noticed for trial. Respondent Attorney noticed the matter for trial hoping to prompt an increased settlement

offer. When it became clear that an increased settlement offer would not be made and as the trial date approached, Respondent Attorney sent Complainant a copy of a motion to withdraw. Respondent Attorney filed the motion with the court, declaring “irreconcilable differences” and a lack of prejudice. The Respondent Attorney’s motion to withdraw was granted. Respondent Attorney also sent Complainant a copy of the court’s order on withdrawal. Shortly thereafter, Complainant’s case was dismissed and attorney’s fees and costs, pursuant to the proposal, were sought.

Upon receipt of the Complaint, the Panel reviewed, screened, and investigated the matter. The Complainant and Respondent Attorney were individually contacted to discuss the complaint as well as to provide any additional information and/or supporting documentation. An informal hearing was noticed and held, during which Respondent Attorney voluntarily appeared before and fully cooperated with the members of the Panel. The Respondent Attorney admitted that the primary reason for withdrawal was the cost of taking the case to trial.

Following the aforementioned diligent and thorough investigation, the Panel came to a decision and made the following recommendations, all of which were discussed with the Respondent Attorney: 1) before filing suit, carefully review liability and damages and communicate your initial opinions to the client in writing; 2) before filing suit provide the client with an initial cost estimate in the event the case must be tried; 3) in cases where you are unwilling to advance costs for litigation and trial, before a trial date is set, advise the client in person and in writing, obtain a signed acknowledgment from the client, and request a cost deposit from the client. If the client is unwilling to pay the costs, advise the client of your intent to seek withdrawal on this basis; 4) in order to ensure honesty and candor when seeking withdrawal, review the rules and law relating to “irreconcilable differences”; 5) when seeking to withdraw, file the motion and set it for hearing with ample time to allow the client sufficient opportunity to search for substitute counsel; and 6) when obtaining an order of withdrawal, immediately forward the order to the client via certified and regular mail.

The Panel thanks the Respondent Attorney, the Complainant, and all members of the local circuit for their cooperation with this process and their dedication to maintain the highest standards of professionalism in our community.

Respectfully submitted,

Eleventh Judicial Circuit Professionalism Panel