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How are local professionalism panels working?

By Gary Blankenship

Senior Editor

“It works because we care, and we let them know we care.”

West Palm Beach attorney David Prather identified that as the key to the 15th Circuit’s Local Professionalism Panel, set up under the Supreme Court’s Commission on Professionalism’s plan to have a local means of addressing lawyers’ professional conduct.

The 15th Circuit has heard more cases than any other LPP around the state, a statistic that Amy Borman, who co-chairs the Palm Beach County Bar Association’s Professionalism Commission and who serves on the 15th Circuit LPP, attributes to its taking over for an existing Palm Beach County Bar professionalism effort.

Other circuits have just created or are setting up their own LPPs. In compliance with last year’s order from the Supreme Court to establish the panels, circuits are tailoring their professional programs to meet local needs. However three programs contacted by the *News* — in the 15th, Second, and Fifth circuits — did have one thing in common in that all three include a strong education and training element in their local programs.

“We have power point presentations, which we have through the Palm Beach County Bar Association,” Borman said.

Those are shown at CLEs around the circuit and presented at larger law firms, and the state attorneys and public defenders offices.

“At the end, we talked about if you are dealing with someone who is unprofessional, we want you to make a complaint,” Borman said.

She and Prather said the 15th Circuit had an advantage in that the Palm Beach County Bar Association for years had an ongoing professionalism program, which was adapted to meet the Supreme Court’s order last year.

“We just changed our name from council to panel. We already had it in place,” Borman said. “We were already doing what they asked.”

The panel evaluates the incoming complaints, she said. If the complaint is from a judge, it automatically goes to the panel. If it’s from a lawyer, it is reviewed to make sure it meets the program’s criteria. The panel got nine complaints over the past year and got involved in eight of those. Six or seven members from the larger LPP are chosen to sit on a case.

The panel includes judges, senior lawyers, a local representative from the Bar Board of Governors (Prather, in this case), and others.

"It's been everything from nasty emails to an attorney being disrespectful and rude in the courtroom," Borman said of the complaints. One attorney, originally from out of state and new to the circuit, was unhappy with an answer he got from the clerk's office on an issue and so he filed a motion — and sent a courtesy copy to the judge at home.

"He didn't understand why that wasn't professional because that's what they did in upstate New York," Borman said.

Another attorney kept querying the judge's assistant about when a ruling would be issued.

Many of the complaints, Borman said, involve young attorneys who are practicing without mentors.

"We have some attorneys who come in here and are so appreciative, especially the younger attorneys who are not being mentored," she said. "We find on some of these panels that some of the younger lawyers . . . walk out of there and say, 'Thank you. I didn't know what to do.'"

The Palm Beach County Bar has a new attorney program, which includes a breakfast to encourage the newcomers to get affiliated with a local bar association, to be "some place where they belong where someone can mentor them. Because what we are finding is, between the economy and the way law firms are being run, the mentorship isn't there the way it was years ago," Borman said.

Results from panel actions are published in the Palm Beach County Bar's newsletter, with the names redacted.

Prather said a key part of the program's ongoing success is the approach, which is decidedly not punitive.

"The panel works because the panel has shown in the past they are truly remedial. We stress the importance of ethical and professional behavior in the practice of law, and we explain to the practitioners what they did that was wrong," he said. "It was not a punitive forum, but one to help them identify and correct their conduct so it does not occur again. Many times, they did not realize their conduct was wrong."



Sean Desmond, vice chair of the Second Circuit LPP, said their committee has 39 members who can sit in smaller panels structured to fit the needs of a particular case.

He also said the members are divided into three subcommittees: one to establish rules for hearing complaints, one to work on outreach and education (which has had meetings around the circuit), and the third to address bench and bar relations.

Like other programs, the initial complaint form is available online at the Second Circuit's website. Having a large panel allows selecting specific members to address a complaint, Desmond said. In some cases, it might help to have judges and more experienced lawyers, while in another younger lawyers might have a greater impact.

"It's designed to be an informal process," Desmond said. In fact, it might include just having lunch with a lawyer rather than an informal hearing.

The local control and design of each LPP is also an important factor, he said.

"The whole point was never to become a competitor with the grievance system; no one ever wanted to create a competing infrastructure," Desmond said. "The whole purpose was, let's go ahead and have the local circuits reinvigorate their professionalism panels and start doing something about professionalism before it becomes a [grievance] problem."

It's particularly exciting for Desmond, who is a past chair of the Bar's Committee on Professionalism, which has assisted the Commission on Professionalism in establishing some of the implementing details for the local panels.

In drawing up the plans for the Second Circuit, he said lawyers looked at plans from other circuits around the state and then adapted ideas for the Second Circuit. "We found there was no perfect fit for our circuit, which has some rural areas and outlying counties," Desmond said. "Professionalism is very much a local thing, and it was neat to see how you could adapt locally what would work here but might not work elsewhere in the state."

He also said the professionalism effort can help put the personal touch back in the practice of law, something that can be eroded as practices become more reliant on technology.

"Professionalism is where you learn how to communicate and deal with other people, as opposed to a substantive practice area," Desmond said. "With more technology and people being detached from person-to-person contact, the more at risk we are of unprofessional behavior. It's hard to be unprofessional with someone you had lunch with on Friday."

Fifth Circuit Judge Susan Robbins chairs that circuit's LPP, and she said the effort there geared up last year right after the Supreme Court's order.

The Fifth Circuit LPP functions with subcommittees in each of the circuit's five counties. Complaints are referred to the main panel and the LPP can refer cases to the appropriate county subcommittee. The local county recommendation will be considered by the full LPP, less that county's members.

"All the cases will be treated the same, but we wanted to be able to have local input and be able to investigate things locally," Judge Robbins said.

The Fifth Circuit has had two cases; one is pending and the other was referred to the Bar. (The complaint came from a psychologist who was concerned about the questioning of his patient, a child who was a witness in a court case.)

The circuit is also working on education, and made a presentation at a well-attended circuit-wide professionalism seminar.

"We disseminated information about the procedures and whom to contact," Robbins said. "I think that's the main thing, to make sure everyone knows about the availability [of the program] and what the process is."

Complaint forms are also available on the circuit's website.

The Bar is working on posting contacts on its website for each LPP, and plans to have those online by September 1, at floridabar.org/professionalism. The list also will be published in the September 1 Bar News.