

OPEN NINTH:

CONVERSATIONS BEYOND THE COURTROOM

THE LOST ART OF PROFESSIONALISM

A CONVERSATION WITH THE OCBA PROFESSIONALISM COMMITTEE

EPISODE 76

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(Music)

NARRATOR: Welcome to another episode of “Open Ninth: Conversations Beyond the Courtroom” in the Ninth Judicial Circuit Court of Florida.

And now here’s your host, Chief Judge Frederick J. Lauten.

CHIEF JUDGE LAUTEN: Hello and welcome to Open Ninth. I’m joined today by two super lawyers, well, a super lawyer and an elite lawyer. I’m joined by good friends Lauren Heatwole and Jeffrey Keiner. And when I say super lawyer, I mean Jeff has been recognized as a super lawyer. He is an experienced trial attorney with the Gray Robinson firm. He’s been a trial lawyer for over 30 years. He teaches new lawyers. He mediates. He does it all. I think he might have tried one of the longest civil trials in Florida state history so he’s an active trial lawyer and has been recognized year after year as a superior lawyer and a super lawyer by certain organizations who recognize excellence in the practice of law. And I’m also joined by Lauren Heatwole who has not been practicing quite as long as Jeff, but has been an attorney since 2003, and was an attorney at Lowndes, Drosdick and then at Morgan and Morgan, and now runs her own boutique law firm, and she has been recognized for multiple years as either an elite up and comer in the legal field or as a rising star in the legal field. So for our listeners I’m joined by two highly accomplished recognized trial lawyers, and I’ve asked them to join me today because they are both members of the Orange County Bar Association Professionalism Committee. And we want to talk to our listeners at length about that, but first let me start by saying to Jeff and Lauren, thank you for joining me. I’m glad you’re here today.

MS. HEATWOLE: Thank you. It’s my pleasure to be here.

MR. KEINER: Thank you, Judge.

CHIEF JUDGE LAUTEN: So Jeff, you're the chair of the Professionalism Committee. Why don't you tell our listeners what the committee is all about?

MR. KEINER: Well, the committee was established by an Administrative Order back in 2014 at the direction of the Florida Supreme Court who has long taken an interest in promoting professionalism among all the lawyers in the Florida Bar. So there was an Administrative Order that was established in 2014 which set up a special panel to review and to essentially facilitate and mediate resolution of disputes by, between and among lawyers, clients, members of the public, and judges. So we established a panel at that time for a procedure in which we could do that.

CHIEF JUDGE LAUTEN: Lauren, what's the difference between a grievance committee, Orange County Bar or Florida Bar grievance committee and the Orange County Bar Professionalism Committee? Is there a difference between those two?

MS. HEATWOLE: Yes, there is a difference. The professionalism panel is a lower tier, so to speak. It's not involved with the Florida Bar. It's not an official grievance for your bar license, but it is a path that folks can take to try to resolve some professionalism concerns that may not rise to the level of an ethics violation.

CHIEF JUDGE LAUTEN: Okay, great, so an ethics violation can get you suspended, disciplined, but the professionalism committee doesn't discipline lawyers, is that – is that a correct understanding?

MS. HEATWOLE: Yes. That's a correct understanding.

CHIEF JUDGE LAUTEN: And so how long have both of you been involved in this Professionalism Committee? Jeff, sounds like from the beginning, 2014 –

MR. KEINER: Yeah, I've been involved as chair since the beginning.

CHIEF JUDGE LAUTEN: And Lauren, how about you?

MS. HEATWOLE: I've been involved for many years. I've been appointed more than once.

CHIEF JUDGE LAUTEN: And why would you take valuable time from the practice of law which is your time is money, I know that, and why would you participate in this endeavor when it takes you away from your active practice? Lauren, I'll start with you and then let Jeff respond to that one too.

MS. HEATWOLE: I think it's crucial. I think it's a very important component to being a lawyer is to do so professionally and ethically. I think professionalism goes beyond yourself. It goes to the community. It goes to your peers. It goes to the judges that trial lawyers appear before. I think it goes to your reputation so I think professionalism is just an essence of who you are and who you are as a lawyer. And because of that I think it's very important and I dedicate a lot of time to professionalism both on the panel and on a committee.

CHIEF JUDGE LAUTEN: Great. Jeff, what about you?

MR. KEINER: Well, in my case, I have been practicing a long time and I've watched what I thought was a change in the degree to which lawyers paid attention to professional behavior. And I made a speech very similar to what Lauren just made to the then Chief Judge Belvin Perry, and he said, well, I completely agree. And then I didn't hear anything else until about a year later on a Saturday evening. I got a call on my cell phone and he said, Jeff, this is Judge Perry, how would you like to head up this committee? So in a sense I volunteered for this thing, not knowing that's what was going to –

CHIEF JUDGE LAUTEN: By opening your mouth.

MR. KEINER: I opened – I did. I opened my mouth and now –

CHIEF JUDGE LAUTEN: That's the way it happens sometimes.

MR. KEINER: So we then – yeah, we then developed a protocol of which we could do this because there really wasn't any – at the time, if there were issues involving concerns about professionalism, there really wasn't any path other than to go directly to the Florida Bar which can be somewhat draconian. I mean, it can have very serious consequences. But our professionalism panel does have a provision by which if we are working with people who are unusually recalcitrant, we can send them to the Florida Bar who can then proceed as a grievance. So there is teeth in it.

CHIEF JUDGE LAUTEN: Sounds like the Professionalism Committee is more about counseling lawyers who appear in front of that group than disciplining lawyers who appear in front of the grievance committee, is that a fair assessment too?

MR. KEINER: I would say we don't really discipline, we sort of provide guidance, you know, we shine a bright light – if we have a –

CHIEF JUDGE LAUTEN: So you counsel as oppose to discipline?

MR. KEINER: We counsel, but – and we make recommendations, you know, we can – there are a lot of different suggestions we can make like anger management, for example, if you have something like that. And then if the, you know, if the lawyer doesn't follow up, we'll meet with them again and if they, you know, refuse to take the second recommendation and suggestion, then in consultation with Your Honor, then we can and we do send them to the Florida Bar for further proceedings.

CHIEF JUDGE LAUTEN: How many members are on the committee?

MR. KEINER: There are 18.

CHIEF JUDGE LAUTEN: 18.

MR. KEINER: 19 counting you. You're on it.

CHIEF JUDGE LAUTEN: I'm on it although I don't really meet. I sort of – I get the complaints, for our listeners sake, I get the complaints and then I review them, send them to Jeff for review and between the two of us, we decide is this appropriate for the Professionalism Committee, is it appropriate for the grievance committee? Or sometimes neither. Sometimes it's just someone unhappy with the result in court, but there's been no inappropriate behavior, someone just upset with the result and really their only remedy – the only remedy that's evident is appeal and see if the court committed error. And so sometimes we don't even do anything with the complaints, but about – so the committee's been operating for about five years. Roughly how many cases a year do you think the committee hears?

MR. KEINER: I would say between 15 and 20. And it varies. Some months we get a lot.

CHIEF JUDGE LAUTEN: Right.

MR. KEINER: Some months we get a few.

CHIEF JUDGE LAUTEN: So maybe 100 in the – around 100 since the committee's –

MR. KEINER: Probably – probably done about 100.

CHIEF JUDGE LAUTEN: Close to about 100.

MR. KEINER: We keep – the Supreme Court requires us to keep track of that. We do keep records, but I don't have them with me this morning.

CHIEF JUDGE LAUTEN: So there's 106,000 plus members of the Florida Bar. Orange County Bar has, what, do either of you know, about 3,600 members, maybe?

MS. HEATWOLE: That would be a good guess.

MR. KEINER: Close, I think.

CHIEF JUDGE LAUTEN: So we're talking, you know, 20 cases a year, just to give our listeners an image or an idea, so we're talking about less than one percent of the lawyers end up in front of the Professionalism Committee, which I think is worth noting. That most lawyers, you know, abide by professional standards, and are professional. And my sense, presiding in the court, is that most lawyers want to do it right, try to do it right and are pleasant to deal with, and a pleasure to deal with. But every now and then a lawyer sort of strays from that professional arena and needs someone to talk to them about that's just not the way we do it here, right?

MR. KEINER: Yeah, that's right. And the standard of professionalism that we apply is to the one that is customary within the community in which we practice. So that's the reason we try to get senior lawyers and people from all aspects of the bar. Many different bar associations comprise the committee so we have diversity for that reason. And we try to apply what we think is a proper standard, but in truth most of these – you and I sometimes see them but we're not sure, but many times we look at them and go, we shake our heads –

CHIEF JUDGE LAUTEN: Pretty obvious.

MR. KEINER: -- and say, well, this just isn't right. I think they break down into two types. I think – we have people who consistently breach what we consider to be an appropriate standard, and we see them, and we go, okay, we know who this is, or the referring person has referred more than one. And others we have are simply somebody had a bad day. You know, they said something they shouldn't have said or they behaved in a way that they shouldn't have and they're apologetic about it and they're contrite, and that's the end of it. We don't hear anything further about it.

CHIEF JUDGE LAUTEN: So here's the hard question, and I know it's one that individuals have wrestled with and our professional has wrestled with, but what – how do you

define professionalism? What is the definition of professional behavior? Admittedly that's a tough one. You know, the old saw, I know it when I see it. It's just hard to put it into words which is a famous Supreme Court quote, not about professionalism but about pornography, but –

MS. HEATWOLE: I think to some degree it's you treat others how you want to be treated. So if you're treating someone professionally and with respect, it's the same level of that respect that you would want for yourself. I think there are some basic decorum, such as the Ninth Circuit Courtroom Decorum paper work that we have available and that we've passed out to folks that have come through the professionalism panel so they can be reminded at a minimum of what our – what the Ninth Judicial Circuit's threshold for professionalism is. There's been other situations where we explore what professionalism means and we've recommended professionalism courses, CLE's to help a refresher for the particular attorney. And then sometimes professionalism I think is about procedures within your own firm or within your own practice. If you are not exercising a response time to clients or other attorneys, if you're not complying with an administrative order for good faith conference calls, I think that breeches some professionalism requirements.

CHIEF JUDGE LAUTEN: Jeff.

MR. KEINER: I thought initially when we got into this that I would find two types of violators I would say. I thought we'd find very young ones because as I came up through the practice of law, mentoring was a much more important thing than it seems to be now. And senior lawyers would take the time to work with younger lawyers and say things to them like, just because you can do something doesn't necessarily mean you should. And we have a relatively small professional community in which as Lauren said, you need to treat people as you wish to be treated. And I think all of us, as young lawyers, who want to represent our clients as

vigorous as we can, may lose sight of some of the finer points of how this should be done. But we learn along the way, so I thought we'd get a lot of younger lawyers, but in fact, that is not what has happened.

CHIEF JUDGE LAUTEN: Interesting.

MR. KEINER: Yeah, I think – I think the opposite has been true. Young lawyers I think are more considerate than they get credit for now. People who've been at it longer and who feel the stress, and the difficulty of the practice itself, and especially the practice as a changing business which it is now. Business models and a law practice are changing rapidly primarily because of the internet and the pressures that are being placed upon lawyers now. So I think people may be – more senior lawyers may be a little more inclined to push the envelope than they would.

CHIEF JUDGE LAUTEN: That's interesting.

MR. KEINER: But one point I wanted to make was that in the Administrative Order instead of setting up a new – a new set of professional standards, what the Supreme Court decided was use the ones we have now which include – I'm reading from the order now. 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 decisions and administrative directives of the Florida Supreme Court, who sees these kinds of things from time to time, and the professional standards of the Osceola County Bar and the Orange County Bar Association. So all of those standards are incorporated in the order called the ideal practice standards and that's what we try to apply. So we do have some rules and some guidelines that we can look at, but also as you said, many times it is you know it when you see it and very frequently in the meetings that we have with, you know, with lawyers against whom complaints

have been made, they conceded. Hey, I was having a terrible day, I shouldn't have done what I did, you know, I'll apologize. A letter of apology goes a long way.

CHIEF JUDGE LAUTEN: Right. I want to go back to something Lauren said because I think it's fascinating. You know, one is just don't be a jerk to people. I mean, that's almost street language but that's as calm as it gets. Don't be a jerk. Treat people like you want to be treated. But it's really more than that, because you could be exceptionally nice to people and not be professional with your clients if you miss deadlines or you refuse to return their phone calls, or you didn't keep them informed of the litigation, or you didn't give the case the attention it deserves. You might be very pleasant to deal with but almost ineffective, if not incompetent and so that professionalism spectrum, it's not – it's not merely just sort of nice behavior, but it is – it is practicing your craft at a standard that protects your clients and is acceptable in our community. So that's a fascinating observation, Lauren. It's not just how you behave. That's a critical part of it, but that's not all that it is. And then Jeff, you said something that struck a chord with me because I've been talking about our work force needs which is not the subject of today's podcast, but I know this statistic. When I started – when I was licensed by the Florida Bar, there were about 300,000 lawyers in Florida. There's 106,000 now so in my thirty plus years career as a member of the Florida Bar, the bar has grown by 254 percent, and so that is astronomical growth. And it's interesting because a lot of people say, oh, it's all the young lawyers, but Jeff, you're saying that some of them, more senior lawyers' perspective is the competition is so great, the business has changed, the business model, the internet, how we do business is not how we did business 34 years or 40 years ago, and that's created pressures not just on young lawyers coming out to compete but senior lawyers too. That's a fascinating observation.

MS. HEATWOLE: I've also seen from my experience that it also may come down to a patience level. If the attorney is overworked, or overburdened, or has pressures from, you know, a variety of aspects and their patience is thinner, then they're more apt to fire back perhaps a nasty gram email. They may take an action in court or leading up to a hearing or a trial that isn't compliant with professionalism standards that undercuts the other side or undercuts their own client because they're trying to take shortcuts.

CHIEF JUDGE LAUTEN: Yeah, that's interesting. That's really interesting. And I think Jeff was referring to it and you just mentioned it, so today with emails if somebody says something that aggravates you, in the past if you had to sort of write a letter or dictate a letter and then have someone type it for you and then review it, by the end of that process you might have cooled down and said, maybe the better thing is to just forget about this. But now we just sit at our computers. If somebody sends us something, we can shoot something back in 15 seconds and sometimes we might regret, maybe that wasn't the best wording that I used while I was all flared up because I was upset.

MR. KEINER: For sure. What you used to do is, you know, you'd write the mean spirited letter and then, you know, we'd advise put it in the middle drawer of your desk until the next day. And then you'd look at it the next day and you go, nah, maybe I won't send it. But now you have to think before you click and so I tell young lawyers, put a little sticky right next to your mouse. Think before you click.

CHIEF JUDGE LAUTEN: That's interesting.

MR. KEINER: Because you may say something inappropriate or take an action you don't really want to take. But also because, you know, we have confidentiality concerns and all kinds of electronic media concerns that require a little bit more thought than we used to give.

CHIEF JUDGE LAUTEN: Do you think professionalism is perceived any differently between lawyers and between judges and lawyers, or do you think it's perceived about the same way?

MS. HEATWOLE: I think there's a lot of overlap. I think perhaps judges and lawyers see a lot of the same genre of professionalism concerns. I think there's a higher level with judges, speaking from a non-judge perspective, right.

CHIEF JUDGE LAUTEN: Right.

MS. HEATWOLE: Because judges I think have an extra layer of expectations of professionalism from a lawyer because the judge I would think would want lawyers to be professional amongst each other, professional to their client and professional to the bench and to everyone else in the courtroom, to deputies, to clerks, any other staff members in there. So I think it's a high end level.

CHIEF JUDGE LAUTEN: Yeah, what I struggle with sometimes is, I, you know, for me I can spot professionalism concerns in writing, sometimes I read, you know, complaints or responses and I think, why would you write like that and then the behavior among lawyers and with everybody in the courtroom. But what I do know is there's a lot that's going on that I just don't observe, you know, there's a lot of interaction and sometimes I've heard that a lawyer who's like a perfect, you know, gentleman or gentle woman in the courtroom and being very polite, you know, is purposely acting that way but is impossible to deal with when they're not standing in front of me. And that's like, well, I don't know how to really determine that, and that's kind of why I asked that question. I think, you know, lawyers might see behavior from one another that just doesn't surface in the courtroom and every now and then I hear about that, sometimes directly. Like this person is impossible to schedule with, Judge, I just can't – they

won't even call me about scheduling depositions or scheduling a meeting, you know, meet and confer about a motion. And yet, when they're in front of me, they're just angels with halos and everything is great.

MR. KEINER: You need to know that as practicing, you know, trial lawyers it makes us crazy because we all have people we deal with who are absolutely impossible. They're outrageous, the stuff they do is ridiculous. But when they're in the courtroom, you know, butter would not melt in their mouth. And we're sitting there thinking, how can he – how can the guy – how can he do that? He should be on broad way.

CHIEF JUDGE LAUTEN: Yeah, I've heard. Yeah, sometimes it's – you know, sometimes I get that from the bench. It's like my sense is that this behavior is not what's going on behind the scenes. On the other hand then, I more often see lawyers who are extremely professional to me and my sense is that they're getting along great. So at pretrial conferences, it's like we got no problems, judge, we're going to exchange our expert witness list and we're going to have these depositions done and we'll be ready, you know, to try the case and we get along very well. For our listeners, one thing maybe we should point out for the non-lawyers is, there is this skillset where you're in an adversarial relationship, that is you're zealously representing your client against another lawyer who is zealously representing her client, and it puts you at odds because in a sense you're adversaries, but then we learn the skillset of not taking that personally and not be, you know, not becoming unprofessional while we're adversaries. And that's a skillset you sort of have to learn. They don't really teach you that when you're young in grade school or kindergarten or, you know, and so what are your thoughts about that? Does that take – is that a learned skill to be opposing someone without being obnoxious about it?

MS. HEATWOLE: I think it is a learned skill. I think you do see a lot of that through mentoring, if you have the benefit of having either a formal or informal mentor or mentors as you're growing as a lawyer. I think that that's an important component.

CHIEF JUDGE LAUTEN: Sure.

MS. HEATWOLE: To understand that process.

CHIEF JUDGE LAUTEN: Jeff, if you could change any one thing about the practice of law, the modern practice of law, is there any one thing you would change if you were king and could enter an edict or wave a magic wand and change anything?

MR. KEINER: Oh, well, I'm sure there are.

CHIEF JUDGE LAUTEN: I kind of caught you off guard.

MR. KEINER: Well, one of the – well, let's talk about, you know, the perception of lawyers, you know, among the general public. I know that when I started the practice of law, lawyers could not advertise. And I think that advertising has changed the whole practice of law and it has created an impression of lawyers that's different from what it was when I began, not that it's good or that's it's bad. I think lawyers who advertise and make themselves so available perform an extremely valuable service. But I do think that there's a taste element. I say some of the ads I think cast lawyers generally in a bad light. That does concern me. However, the practice of law touches almost everybody in every way and the very first thing that happens when somebody has a problem is well I need a really good lawyer. So you know, we are I think generally highly regarded and we're seen as necessary to the civilized resolution of disputes. I might tone down the advertising a little bit if I could have the knob and I could do that, just in terms of the tastefulness of it –

CHIEF JUDGE LAUTEN: You wouldn't get rid of it, you might just sort of alter it a little bit?

MR. KEINER: I might tone it – no, I wouldn't eliminate it, no, I would turn it down just a little.

CHIEF JUDGE LAUTEN: Interesting.

MR. KEINER: But other than that I think we provide extremely valuable services and I know that regardless of the outcome, clients, if you've done a good job for them and if you're responsive to them, and you do the very best you can, and if you're aggressive enough, see I think that in conjunction with concerns about professionalism, it's important to remember that almost all clients want us to crush the opposition. They don't want us to be nice to the opposition. They want us to destroy them and they will tell you, I want to destroy the opposition. Well, that's not really what we do. What we do is we do our very best to get, you know, the best result we can, but to do it in a professional way. So there's a little bit of tension between what clients will tell you they really want and what we as professionals know ultimately gets the best result and does the best service for the clients and for the system. But they very rarely – I get a lot of calls and very rarely will clients say, I want you to be nice to these people.

MS. HEATWOLE: I agree and that ties into your prior question, Judge Lauten, which is whether you are aggressive or you're nice, you know, to the other side and the client sometimes have concern with that, or if they see you –

CHIEF JUDGE LAUTEN: Or misperceive it.

MS. HEATWOLE: Right, they misperceive you. If you're in court and you're being friendly to the other attorney because you know them professionally or personally, even though you can be a zealous advocate while you know the clock is running on your hearing time but

afterwards you know, you hold doors open for each other, or you say how are you doing, sometimes clients are put off –

CHIEF JUDGE LAUTEN: Misunderstand that. That's interesting.

MS. HEATWOLE: So I often explain to my clients, you know, the process and that that doesn't mean it's going to hurt their case any. I also sometimes talk – and sometimes in my family law practice, the family law clients have a lot of emotion and distrust going on because of what they're dealing with with their significant other. And so explaining that sometimes you get more by being nice to the other side and understanding that this is a professionalism path, but that it often helps them get what they want for the outcome and for the best interest of the whole family, particularly if there's children involved. And explaining that ahead of time, if you're going into an environment or after an environment, such as a hearing so that the clients don't misperceive what's happening.

CHIEF JUDGE LAUTEN: That's fascinating. I mean I think that that's a pressure sometimes, maybe in this building, the courthouse we forget about which is, yeah, a client might misperceive professionalism as weakness. I did when I was in business court try to stress to the parties at that first meeting where there was a case management, but we required the parties to come, and I expected the lawyers to get along and I expected them to be professional and I spent a minute or two saying that's not a sign of weakness. In fact, you know, it's something that I'm demanding of them so if they agree that they're going to exchange discovery in a certain way, that's not a sign of weakness. I also happened to mention in business divorces which are businesses, you know, breaking up, that parties thought would succeed that in the courtroom all I was going to do was decide where the assets belong and where are the liabilities, and there's nothing I can do to repair the hurt feelings of this sort of sometimes breakdown in trust that

occurred in a business divorce, while in actual divorces it's ten times bigger than that. It's traumatic when families breakup so that's a real challenge I think for practitioners who are in the family law area, that their clients are so emotional and yet the court insists that the lawyers don't become emotional like that. You're a professional, I don't want you screaming, and I don't want you rolling your eyes. I don't want you throwing things at people and I don't want you growling at the other side or interrupting them, so yeah, but families are traumatized often by divorce, certainly at least they're very anxious.

MR. KEINER: I have a point I want to add to that. I think one of things that's important in trying to maintain the expectations that the clients have of lawyers with regard to professionalism is to explain to them that most judges, you know, work very hard at what they do day in and day out, and they spend a lot of time on the bench and they see a lot of cases. And one of the obligations of the judge is to maintain order and to control the courtroom. And if you behave badly, you're not likely to get, you know, favorable view from the judge.

CHIEF JUDGE LAUTEN: That's common sense.

MR. KEINER: Yeah, so what I try to do is, I say look, just because I don't pound on the table and jump up and down doesn't mean I don't have a plan, you know. The plan is I know this judge and I know if you behave badly, you're not going to like the outcome. You're going to see it in small ways, maybe not in the end, the result is going to be fair in the end but interim motions and that kind of thing, you know, if you want to be treated well, you got to treat other people well and be perceived to do that. So that's how you try to manage that expectation. But they still, they want to see blood on the floor of the courtroom and then you try to talk them out of it.

MS. HEATWOLE: I think it goes to credibility too, you know, both to the client's credibility and to the attorney's credibility. I mean, everyone in the courtroom has an obligation to be professional, and so that is both by attorneys observing the rules and complying with obligations procedurally as well as ethically. But also for everyone to have, you know, appropriate behavior. I often remind and recommend to my clients before going into any environment, whether it be court or mediation or deposition, body language is very important. And that judges and the other attorneys, and the other parties pick up on that body language and facial expressions.

CHIEF JUDGE LAUTEN: And jurors, boy, you might have a great case but if you anger jurors somehow or they start perceiving that you're very unpleasant, you know, then you have an uphill battle with jurors.

MR. KEINER: If you see them rolling their eyes you suspect maybe you're not doing –

CHIEF JUDGE LAUTEN: Or sometimes, you know, it's that. That's pretty clear, but I've even seen sort of things that I wonder if lawyers have noticed like all of a sudden all of the jurors have their arms crossed or I've seen jurors almost completely turn their backs to a lawyer. Like, turn around, I don't even want to look at you. And you know that's pretty fascinating when you see it from my perspective which is, you know, on the other end of the courtroom and sort of elevated a little bit. What do you want our listeners to know about the professionalism committee that we might not have covered? Is there an area that – is there a message we would like to get out to all of our listeners about the professionalism committee that we haven't covered?

MR. KEINER: Yeah, I have a thought about that. First, is the accessibility of it. It's really an easy process. There's a one page form that's on the Ninth Judicial Circuit's website and we're going to – in fact, Lauren is in charge of trying to find ways to, you know, make it more accessible to the community so that people can find it. But it's an easy process and it's not – it's not so – it's not such an irrevocable thing that people should be afraid to do it. If people have a concern about professionalism, it's easy to do it. Fill the form out, submit it. It goes to the Chief Judge. The Chief Judge looks at it and if it has merit, it gets passed along to us. And that's what we're here for. We have 18 –

CHIEF JUDGE LAUTEN: And you screen it – you're a second screen –

MR. KEINER: I screen them. I do a second screen on them. If there's a concern about it, whether it is appropriate for further review or not, I would consult with the Chief Judge, with you –

CHIEF JUDGE LAUTEN: Right. And sometimes other members.

MR. KEINER: And sometimes I'll pass it along. I'll give you an example. I don't do criminal work so if it's a complaint involving a criminal lawyer, I'll look through the list and say who have we got here who specializes in that and I'll ask them, what's the – you know, what's the standard and customary practice for this kind of a case in criminal law. Or if it's a tax issue, I'll try to find someone in tax law.

CHIEF JUDGE LAUTEN: Interesting, yeah.

MR. KEINER: Because I don't know everything about everything and it's helpful to know again what the proper standard is within the community. Just because somebody is

unhappy doesn't necessarily mean any standard has been breached so you and I together make that threshold determination but most of the cases I find – I go down the list and I rotate among subcommittee chair persons and as I said before, we have 18 people on the committee. And I try to pass around evenly, and then that person selects two others from the panel. They come up with a three person panel, and then meet in an informal confidential setting and meet with the respondent, you know, the person against who the complaint has been made. And we take it from there. It's a very informal, sort of give and take. It's not adversarial, hopefully, although we have had a few, but those are the ones that go on to the Florida Bar usually.

CHIEF JUDGE LAUTEN: Right. Maybe it's important to add in here that purposefully the committee is comprised of men and women, of individuals with a lot of experience practicing law and some individuals who are much less experienced. That we have membership from a variety of bar associations so that we have ethnic diversity on the committee, we have gender diversity. Because if we're talking about community standards, we don't want one perspective and one perspective only, this sort of old white guy's perspective of what it's like to practice today which is maybe what it was like 30 years ago. And so we I think purposefully have designed this committee to be as diverse as it can be. Lauren, what –

MR. KEINER: I could list them. I've got the list of them right here.

CHIEF JUDGE LAUTEN: Why don't you just mention some of the sort of reps –

MR. KEINER: Yeah, yeah, well, we got the Orange County Bar. We've got the Paul Perkins Bar Association –

CHIEF JUDGE LAUTEN: Which is a predominately African-American.

MR. KEINER: Predominately African-American. The Central Florida Family Law, American Inn of Court, the Orlando Asian American Bar Association, two representatives from the Orange County Bar, one representative of the Osceola County Bar, representative from Central Florida Association for Women Lawyers, Young Lawyer's Division of the Orange County Bar, American Board of Trial Advocates. Let me see who else, Hispanic Bar Association, so it goes on and on. We try very hard to make it as –

CHIEF JUDGE LAUTEN: Yeah, and if you'll allow me to jump in, so you come from a pretty large law firm.

MR. KEINER: I do.

CHIEF JUDGE LAUTEN: Suzanne Gilbert comes from Holland and Knight, very large firm. Lauren runs her own shop. It's important because Lauren's perspective on I don't have a very large law firm supporting my practice and here's – and so if someone comes in who's a solo practitioner, Lauren's perspective is invaluable. If someone comes in from a – with a big firm, you know, background, your perspective is invaluable. And then as you mentioned, I'm glad you did mention it, we have public defenders, prosecutors. We have private practice criminal lawyers so – family lawyers, civil lawyers. We try to cover – that's why it's an 18 person committee. That's a pretty big committee but it needs to be that big for that diversity. What other –

MR. KEINER: And six subpanels altogether so we got three on each –

CHIEF JUDGE LAUTEN: Three panel – three members, six panels.

MR. KEINER: We rotate – we rotate –

CHIEF JUDGE LAUTEN: What other message –

MR. KEINER: I'm looking down here, we got sole practitioners too.

CHIEF JUDGE LAUTEN: Yeah, that's – and as we should. I think it's really important to have that. What else, Lauren?

MS. HEATWOLE: I think it's a positive experience for those that I've seen go through it. I mean, no one likes to be called out that they have not done their best practice or had their best day, but to do so through the professionalism panel and not have it go through the Florida Bar, it's a way to perhaps catch themselves before patterns escalate. And we have recommended, you know, a CLE for professionalism. We've recommended an apology letter. We've also recommended individual practices, here are some things that you can do to better calendar your hearing times, or here's, you know, some plan options, here are some brainstorming things that you can think about how to implement in your practice. And everyone that has come out of the panels that I've been involved with have appeared to be very appreciative to have learned from it.

CHIEF JUDGE LAUTEN: Great. So you're chairing a committee to get the word out about the professionalism committee because it's not very helpful if no one knows about it and so we're doing this podcast to meet one of your suggestions, to get the word out. What else are you doing to get the word out to the public and the bar about the professionalism committee?

MS. HEATWOLE: Well, a couple of things. So we're going to be, at least the first level is to advertise or promote amongst lawyers so that lawyers in our community are aware of it and understand that it's there, and that it's a different path than the Florida Bar grievance and

that it's a path to help encourage professionalism. It helps the community as a whole which is, you know, on a day to day basis, I love when I don't go home stressed. And I'm less stressed at the end of the day if I don't have to deal with frustrations dealing with communications with other lawyers. Sometimes that's one of my biggest pet peeves is someone doesn't respond to me and I'm trying to schedule a hearing and then when you get the hearing time response and they've waited until, you know, the 47th hour out of their 48 hour max time, the hearing time has already gone and we have to start the process all over again. So things like that, if we start to spread out the knowledge of the professionalism panel and start capturing those, you know, less than one percent that we do struggle with, then hopefully that less than one percent can become even smaller and smaller as the years go on.

CHIEF JUDGE LAUTEN: That's the perfect ending. That's a great statement. But before we end, I do want to take this opportunity, my term as Chief Judge and actually my whole term on the bench is coming to a close here in about 60 days and I want to publically thank both of you for your work on this committee. Jeff, I want to thank you for chairing this. It's a herculean task. You have to organize six panels of three members each and I'm constantly sending you things to review and constantly calling you and you've always been available and responsive and extremely professional. And I can't think of a better person to chair the committee and I'm so grateful for the time and the commitment that you've made. And Lauren, your work to promote this and to be a member of the committee is wonderful and it enhances the bar which is a great bar. We should end by saying, we have two great bar associations in Central Florida. And lawyers from around the state have said to me as Chief Judge that it's a pleasure to

come to Central Florida and practice law. So I don't want our listeners, you know, to go away with the perspective, oh, there's all this unprofessional conduct. It's really so minute when you think about how many lawyers we have. And I think that's because of efforts like this committee and because of the efforts that you all have put forward as stellar lawyers to make sure that our community has a standard of professionalism that we live up to so thank you so much for all the work that you've done. I appreciate your time today and I appreciate the effort that you've put into this committee.

MR. KEINER: It's important work. I'm glad to do it.

CHIEF JUDGE LAUTEN: Thanks.

MS. HEATWOLE: Absolutely, thank you.

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