

BAD FAITH BLOG

Judge's Pre-Election Conduct Settling PIP and Bad Faith Claims Warranted Removal from Office

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Summary: The Supreme Court of Florida approved the Florida Judicial Qualifications Commission's ("Commission") Findings and Recommendations that a trial judge's pre-election violations of professional ethics rules warranted her removal from office.

As an attorney, Laura M. Watson entered into a complex agreement with a group of attorneys who were going to assert personal injury protection (PIP) claims against Progressive Insurance Company contending that Progressive had "systematically underpaid healthcare providers in a scheme known as a 'silent PPO'." One of the cases, the "Gold Coast Case," initially involved 40 healthcare providers, but was expected to ultimately involve claims for 441 clients. Another group of attorneys was working on the Gold Coast Case institutional "bad faith claims" arising out of the same "scheme." The attorneys entered into agreements regarding how fees were to be split.

The bad faith attorneys made a demand upon Progressive for \$20,000,000. Progressive's counter-offer was less than one-fifth of that amount. Shortly thereafter the PIP attorneys entered into an aggregate settlement with Progressive "in an undifferentiated amount of \$14.5 million to settle the PIP claims, as well as all bad faith claims, perfected or potential, without notifying the bad faith attorneys." (Emphasis added.) The settlement agreement with Progressive was then memorialized in a "memorandum of understanding" which "made clear that the settlement applied to all PIP claims and bad faith claims irrespective of whether they were perfected." The memorandum of understanding "did not allocate any recovery to the bad faith claims, but required the release of those claims." (Emphasis added.)

Not surprisingly, the bad faith attorneys objected. The PIP attorneys then amended the memorandum of understanding to allocate \$1.75 million to the bad faith claims, and thereafter the bad faith attorneys sued the PIP attorneys “for fraudulent inducement and in *quantum meruit*” for the work they performed. There was a bench trial at the conclusion of which the trial judge awarded the bad faith attorneys additional attorneys’ fees “due to an unjust enrichment the PIP attorneys received and for their costs and the work performed by the bad faith attorneys.”

The trial judge also sent a copy of his Order to the Florida Bar. The trial judge found the PIP attorneys had violated several rules of professional conduct “including the settlement of the bad faith claims without notifying the bad faith attorneys or notifying the clients with bad faith claims that their claims would be released and they would be receiving little to no compensation for those claims.” The trial judge also found the “PIP attorneys exaggerated the number of hours they spent working on these PIP and bad faith claims.”

After Watson was elected a Circuit Court Judge and took her position on the bench, the professional conduct proceedings against her moved from the Bar to the Commission. One of the Commission’s findings was that Judge Watson had been warned “in advance that the PIP claims and bad faith claims were adverse, requiring careful handling throughout settlement negotiations, with full client transparency. When Progressive dangled the pot of money, ethical restraints were swept aside.”

The Commission further found “Watson never told her PIP clients that Progressive paid funds to settle the bad faith claims, and they weren’t allowed to participate in that recovery, despite the fact they were required to release these claims.” In addition, the Commission concluded that she “entered into an undisclosed side deal with Gold Coast, contrary to the interests of the other bad faith claimants, and further concluded that Watson failed to disclose material information to her clients, including the conflicts of interest and the methodology of allocating funds between the PIP and bad faith claims that substantially decreased the funds available for distribution to the clients.” Due to the findings by the Commission, it determined that “Judge Watson ‘sold out her clients, her co-counsel, and ultimately herself.’ This conduct is ‘fundamentally inconsistent with the responsibilities of judicial office,’ and mandates removal.” The Court concluded the findings of the Commission were well-founded and ordered her removal from office.

The *Watson* case points out the dangers of aggregate settlements and the need to make sure attorneys always are looking out for the best interests of their clients rather than their own pocketbooks. In addition, attorneys who have agreed to cooperate with one another must act in accordance with the terms of their agreement. Furthermore, attorneys representing multiple clients must make sure they do not place the interests of one client or one group of clients above the interests of other clients. Although the prosecution of institutional bad faith cases can place a great deal of economic pressure on insurance companies to settle, any resulting settlements must comply with all legal and ethical requirements.

By Anthony L. Martin

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