

BEFORE THE FLORIDA
JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A JUDGE,
THE HONORABLE CARROLL KELLY,
JQC No. 2019-377

No. SC20-649

**JUDGE CARROLL KELLY'S MOTION TO ENFORCE SETTLEMENT
AGREEMENT AND FOR DISMISSAL OF COUNTS 1 AND 2**

The Honorable Carroll Kelly, through undersigned counsel, hereby files her Motion to Enforce Settlement Agreement and for Dismissal of Counts 1 and 2 of the Notice of Formal Charges and in support thereof states as follows:

RELEVANT FACTS

1. On August 7, 2019, Judge Kelly was served with an initial Notice of Investigation in this matter (JQC No. 2019-377) and invited to appear at a Rule 6(b) hearing before the Investigative Panel of the JQC (copy attached as Exhibit 1).
2. On August 22, 2019, Judge Kelly testified under oath at the Rule 6(b) investigative hearing.
3. Thereafter, the Judicial Qualifications Commission (JQC) offered to close the case, with no findings of any ethical violations, if Judge Kelly agreed to stop participating in the Protection Court program. In order to resolve the matter, Judge Kelly accepted the JQC's offer even though it was her firm belief her participation in the program was proper, of significant value to the community and not in violation of any Canon.
4. The agreement between the JQC and Judge Kelly was reduced to writing in a letter, dated September 3, 2019 (copy attached as Exhibit 2). The letter, which was drafted in coordination with JQC General Counsel, included the following specific language approved by JQC General Counsel on behalf of the JQC: "In exchange for the Panel's agreement to close JQC

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case number 2019-377, I agree to immediately inform the production company, Protection Films LLC, and notify Chief Judge Soto and General Counsel Pat Gladson, by letter, that I no longer will participate, in any way, with “Protection Court.” (Emphasis added).

5. In reliance upon the settlement agreement, Judge Kelly immediately informed the production company, Protection Films, LLC, Chief Judge Soto and General Counsel Pat Gladson that she would no longer participate, in any way, with the Protection court program. Consistent with the notification, Judge Kelly ceased her participation, in any way, with the program.

6. After Judge Kelly fully performed under the agreement, the JQC failed to perform its obligations, breaching the agreement by failing to close the case and continuing the investigative proceedings against her.

7. On May 6, 2020, the Notice of Formal Charges was filed by the Commission, including Counts 1 and 2, which are, in sum and substance, the same underlying conduct alleged in the initial Notice of Investigation previously resolved by the agreement between Judge Kelly and the Commission under which Judge Kelly has fully performed.

MEMORANDUM OF LAW

In the State of Florida, settlement agreements “are highly favored and are to be enforced whenever possible.” See *Robbie v. JQC of Miami*, 469 So.2d 1384, 1385 (Fla. 1985); see also *KCG, Inc. v. Rosen*, 730 So.2d 807 (Fla. 3d DCA 1999) (per curiam); *De Cespedes v. Bolanos*, 711 So.2d 216, 218 (Fla. 3d DCA 1998); *Petracca v. Petracca*, 706 So.2d 904, 912 (Fla. 4th DCA 1998); *Sun Microsystems of California, Inc. v. Engineering and Mfg. Sys., C.A.*, 682 So.2d 219, 220 (Fla. 3d DCA 1996) (“The public policy of the State of Florida, as articulated in numerous court decisions, highly favors settlement agreements among parties and will seek to enforce them whenever possible.”); *Metropolitan Dade County v. Fonte*, 683 So.2d 1117, 1118 (Fla. 3d DCA

1996); *American Express Travel Related Services Co., Inc. v. Marrod, Inc.*, 637 So.2d 4, 5 (Fla. 3d DCA 1994) (per curiam).

Where a binding settlement agreement has been found to exist, Florida courts have uniformly enforced the agreement. See, e.g., *Robbie*, 469 So.2d at 1386 (where the court, after determining that the parties had reached agreement on the essential terms of a settlement agreement, held that the agreement should be enforced); *De Cespedes*, 711 So.2d at 218 (“[G]iven the fact that the material elements were agreed upon by the parties . . . , we conclude that the lower court erred in denying the enforcement of this settlement.”); *Fonte*, 683 So.2d at 1119 (finding that, because there was no question of the defendant’s violation of the agreement or the consequences of the breach, the trial court was required to enter judgment accordingly).

Courts in Florida have universally held that settlement agreements are governed by the law of contracts. See *Robbie*, 469 So.2d at 1385 (citing *Dorson v. Dorson*, 393 So. 2d 632 (Fla. 4th DCA 1981)); *De Cespedes*, 711 So.2d at 217 (citing *Suggs v. Defranco’s, Inc.*, 626 So.2d 1100 (Fla. 1st DCA 1993)); *Federal Home Loan Mortgage Corp. v. Molko*, 602 So.2d 983 (Fla. 3d DCA 1992) (per curiam); *Cadle Co., Inc. v. Schecter*, 602 So.2d 984 (Fla. 3d DCA 1992) (per curiam); *Kladke v. Phillips*, 535 So. 2d 712, 714 (Fla. 5th DCA 1989).

Where there is a breach of contract, specific performance is required where damages are inadequate or impracticable. See *Northwestern Nat’l Ins. Co. v. Greenspun*, 330 So.2d 561, 563 (Fla. 3d DCA 1976) (per curiam) (“Jurisdiction to decree specific performance of a contract is exercised in two classes of cases: (1) where the contract’s subject matter is of such a special nature that damages, when ascertained upon legal rules, would be inadequate; (2) or where damages are impracticable in that no real compensation can be arrived at through an action at law.”); see also *Todd v. Hyzer*, 18 So.2d 888, 891 (Fla. 1944) (“[S]pecific performance will be afforded where one

party has performed the contract to such extent that the parties cannot be placed in status quo or damages awarded which would be full compensation.”); *Biscayne Associates, Inc. v. Carson*, 104 So.2d 871, 872 (Fla. 3d DCA 1958) (“[T]he exercise of equity jurisdiction for specific performance depends upon the question of whether damages at law may not in the particular case afford a complete remedy.”).

In this case, the parties entered into a binding settlement agreement, which set forth the rights and obligations of the respective parties. As described above, the JQC has breached that agreement by, among other things, failing to close the case and continuing to pursue charges against Judge Kelly (Counts 1 and 2 of the Notice of Formal Charges) which were previously and finally resolved by a settlement agreement between the parties in this matter. In this particular case, as Judge Kelly has already fully performed her obligations under the terms of the settlement agreement with the JQC, the only way to afford Judge Kelly a complete and appropriate remedy is through specific performance of the settlement agreement by dismissal of Counts 1 and 2.

WHEREFORE, Judge Kelly requests dismissal of Counts 1 and 2, with prejudice, as well as any other additional relief the JQC Hearing Panel deems just and proper.

Respectfully submitted,

ROTHMAN & ASSOCIATES, P.A.
200 S. Biscayne Blvd., Suite 2770
Miami, FL 33131; (305) 358-9000

By: /S/ David B. Rothman

DAVID B. ROTHMAN

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By: /S/ Jeanne T. Melendez

JEANNE T. MELENDEZ

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CERTIFICATE OF SERVICE

I certify this document has been E-filed with the Honorable John A. Tomasino, Clerk of the Supreme Court of Florida, using the E-filing Portal and that a copy has been sent via electronic service on this the 26th day of May, 2020, to: The Honorable Kerry Evander, FJQC Hearing Panel Chair (evanderk@flcourts.org); Lansing C. Scriven, Special Counsel for the Florida Judicial Qualifications Commission, 3903 Northdale Blvd., Suite 100e, Tampa, Florida 33624 (lanse@lansescriven.com); and Alexander John Williams, General Counsel, Counsel for the Florida Judicial Qualifications Commission, P.O. Box 14106, Tallahassee, FL 32303 (awilliams@floridajqc.com).

By: /S/ Jeanne T. Melendez
JEANNE T. MELENDEZ
Florida Bar No. 0027571
jtm@rothmanlawyers.com

EXHIBIT 1

BEFORE THE NINE STATE JUDICIAL
FLORIDA JUDICIAL QUALIFICATION COMMISSION

INQUIRY CONCERNING JUDGE,

JCN 02019-377

HONORABLE L L Y

NOTICE OF INVESTIGATION

TO: Honorable L L Y
Law Enforcement
17 N. W. Avenue
Miami, FL 33128

You are hereby notified that the Florida Judicial
Qualification Commission is conducting an investigation into
your conduct in the performance of your duties as a
Judge of the Court of Appeals, 5th District, in
Miami, Florida.

Amongst the allegations are as follows:

1. You have engaged in conduct that is
unbecomingly unprofessional and
unethical.
2. You have engaged in conduct that is
unbecomingly unprofessional and
unethical.

The foregoing are the allegations.

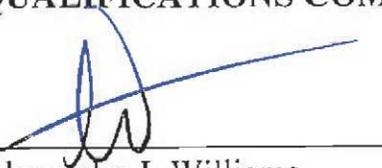
You are hereby invited to appear before the Investigative Panel of the Florida Judicial Qualifications Commission at 2:00 P.M. on Thursday, August 22, 2019, in the London meeting room of the Renaissance Orlando Airport Hotel, 5445 Forbes Pl, Orlando, FL 32812, where you shall be afforded a reasonable opportunity to make a statement before the Investigative Panel, personally or by your attorney, verbally or in writing, sworn or unsworn, explaining, refuting or admitting the alleged misconduct. Your presentation will be limited to 30 minutes. At the proceeding, you will not have a right to present other testimony or evidence, nor have the right to confrontation or cross-examination of any person interviewed by the Investigative Panel during its inquiry. However, the Investigative Panel in its sole discretion may review and consider documentary evidence submitted by you, including affidavits, as prescribed in the Rules of the Florida Judicial Qualifications Commission.

If you wish to submit a written response to the allegations or if you wish to submit documentary evidence which the Panel may consider, eleven paper copies and one electronic copy (in either Word or .pdf format) of the response must be filed with the undersigned at PO Box 14106, Tallahassee, Florida 32317, and awilliams@floridajqc.com, not later than ten days before the scheduled hearing. Documents must not be bound to facilitate mailing to the panel. If you plan to appear at the hearing, please advise the undersigned not later than ten days before to the scheduled hearing.

Dated this 7th day of August, 2019.

**INVESTIGATIVE PANEL
OF THE FLORIDA JUDICIAL
QUALIFICATIONS COMMISSION**

By: _____


Alexander J. Williams
GENERAL COUNSEL
Fla. Bar No. 99225
PO Box 14106
Tallahassee, FL 32317
(850) 488-1581
awilliams@floridajqc.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice of Investigation has been furnished by ~~email~~ *FedEx* to the following parties, on this 7th day of August, 2019:

Hon. Carroll Kelly
Lawson E. Thomas Courthouse
175 N.W. 1st Avenue
Miami, FL 33128

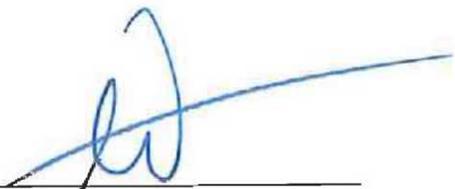

Alexander J. Williams
GENERAL COUNSEL

EXHIBIT 2

September 3, 2019

Via email

Alexander Williams, Esq.
Assistant General Counsel
Florida Judicial Qualifications Commission

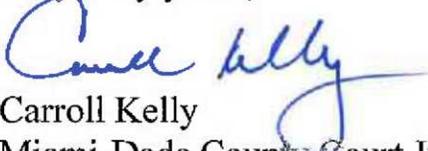
Re: Judge Carroll Kelly

Dear Mr. Williams:

I understand the concerns of the Panel. In exchange for the Panel's agreement to close JQC case number 2019-377, I agree to immediately inform the production company, Protection Films LLC, and notify Chief Judge Soto and General Counsel Pat Gladson, by letter, that I no longer will participate, in any way, with "Protection Court."

In fact, recording stopped on or about August 16 and on Friday, August 31, the production company began removing the cameras from my courtroom. The removal of the cameras was halted due to Hurricane Dorian preparations, but will be finished as soon as practical. I have emailed the letter to the chief judge and general counsel and emailed the letter to Protection Films, LLC. Mr. Rothman will send the letter to the production company, via certified mail. Attached hereto is a copy of both letters.

Very truly yours,



Carroll Kelly
Miami-Dade County Court Judge

enclosures

September 4, 2019

Via email

Chief Judge Bertila Soto
General Counsel Pat Gladson

Dear Judge Soto and General Counsel Gladson:

I am writing to inform you that I am no longer able to participate, in any way, with "Protection Court." A copy of the letter I sent to Protection Films, LLC is attached hereto.

Sincerely,

A handwritten signature in blue ink that reads "Carroll Kelly". The signature is written in a cursive style with a long, sweeping tail that extends to the right.

Judge Carroll Kelly

enclosure

September 3, 2019

Via email and certified mail

Scott Spungin

Protection Films LLC

3575 Cahuenga Blvd. Ste. 330

Universal City, California 90068

Dear Protection Films LLC:

I regret to inform you that I am no longer able to participate, in any way, in the series on which I have been working with you titled "Protection Court".

Sincerely,

A handwritten signature in blue ink, appearing to read "Carroll Kelly", with a long, sweeping underline that extends to the right.

Judge Carroll Kelly