Florida Alert

Florida: Should plaintiffs pay for frivolous suits?

Overview

Parties, but not their attorneys, could be spared sanctions for frivolous litigation if they do not understand their cases were baseless under House Bill 449, which cleared the Florida House of Representatives Civil Justice and Court Committee in January 2010. Section 57.105, Florida Statutes, provides courts with authority to impose sanctions against a party or a party’s attorney for bringing a civil claim, or raising a defense in a civil cause of action, that has no genuine legal or factual basis. Currently, a court may impose sanctions if it finds that a losing party, or the losing party’s attorney, knew or should have known that a claim or defense, when initially presented or at any time before trial, was either: (a) not supported by facts necessary to establish the claim or defense or, (b) not supported by law. The sanctions are equally split between the party and the party’s attorney.

Current statute

Under the current statute, a party who “should have known” (an objective standing) may be sanctioned by the court, along with their attorney, if the attorney makes an argument that lacks a good faith legal basis. Thus, there may be instances where a party represented by an attorney does not actually know (a subjective standing) that their attorney is making a legally baseless argument and the party is sanctioned by the court, equally splitting the expense of the court’s sanction.

Proposed bill

In Gopman v. Department of Education, 974 So.2d 1208 (Fla. 1st DCA 2008), the First District Court of Appeals noted the disparity between the treatment §57.105, Florida Statutes provides to an attorney acting in good faith on the factual representations of a client, compared to the outcome it compels when a client relies in good faith on an attorney who represents a legally baseless argument. Under House Bill 449, sanctions for an attorney’s legally baseless argument would not be authorized against a represented party unless the court finds that the party actually knew that their attorney’s argument had no legal basis. Therefore, under the proposed bill, absent such a finding, an attorney will be solely responsible for paying the cost of court imposed sanctions for raising such arguments.

In addition, under the proposed bill, a court can impose sanctions on its own initiative where the sanctions were ordered against a party before the entry of a voluntary dismissal of the case or settlement of the claim. However, once a party is placed on notice by the court that it may impose sanctions, a party’s subsequent entry of a voluntary dismissal will not preclude a court from imposing sanctions as a matter of discretion. An identical bill, SB 1108, has been introduced to the Florida Senate and is waiting Committee review.
Comment

There is no doubt that debate over the proposed bills will raise issues of a potential violation of the attorney-client privilege if the court inquiry requires a disclosure of communications between the party and their attorney. In addition, the proposed bills, if passed in their present form, would also place a higher burden on attorneys when deciding to accept case assignments for prosecution or the assertion of defenses, which could be scrutinized later on as the case progresses.

Wilson Elser will continue to monitor the current legislative session and debate over the proposed bills. We will provide an update upon their disposition by the both the Florida House of Representatives and Senate.

For more information, please contact via e-mail Ricardo J. Cata at ricardo.cata@wilsonelser.com or Alan Fiedel at alan.fiedel@wilsonelser.com. They can also be contacted by phone in our Miami office at 305.374.4400.