

MINUTES

ATTORNEY'S FEES/PRACTICE RELATED/FUNDING SUBCOMMITTEE JANUARY 21, 2010 * Telephonic Meeting

1. WELCOME AND CALL TO ORDER:

The meeting was called to order by the Chair, G.M. Robert Jones, at 12:00 p.m.

2. IN ATTENDANCE:

G.M. Robert Jones
Lawrence Datz
Juliette Lippman
Jack Moring
David Riggs

3. NOT IN ATTENDANCE:

Thomas Duggar
Judge Paul Kanarek
David Manz
Rosemarie Roth
Matt Capstraw

4. ASSIGNED BILLS:

- A. HB 449 and identical Bill – SB 1108
- B. HB 13 (Similar Bill – SB 130)
- C. HB 310 (No Similar or Identical SB)
- D. SJR 440 (Similar – HJR 241)
- E. SB 606 (Identical Bill – HB 415)
- F. SJR 718 (Similar – HJR 27 and HJR 39)
- G. HB 465

5. BILL SUMMARIES AND SUBCOMMITTEE ACTIONS:

A. HB 449 (Identical Bill – SB 1108)

Under s. 57.105 F.S. a party who “should have known,” (an objective standard) may be sanctioned by the court, along with their lawyer, if the lawyer 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 standard) that their lawyer is making a legally baseless argument and the party is sanctioned by the court, splitting equally the expense of the court's sanction.

Recently, the First District Court of Appeals noted the disparity between the treatment s. 57.105 F.S. provides to a lawyer 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 a lawyer who presents a legally baseless argument: Section 57.105 allows an award of fees to be paid solely by the litigant if counsel can show that he "acted in good faith, based on the representations of [the] client as to the existence" of material facts. On the other hand, section 57.105 does not allow for an award of fees to be paid solely by an attorney when the client acts "in good faith, based on the representations of" the attorney as to the legal sufficiency of claim or defenses. If the law allowed, we would order the fees to be paid solely by counsel.

Under HB 449, sanctions for a lawyer's legally baseless argument would not be authorized against a represented party unless the court finds that the party actually knew that their lawyer's argument had no legal basis. Therefore under the bill, absent such a finding, a lawyer will be solely responsible for paying the cost of court imposed sanctions for raising such arguments.

Under the bill, **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. ***On the other hand***, the bill provides that monetary sanctions may not be awarded by the Court on the Court's own initiative unless the sanctions are **awarded** before the entry of a voluntary dismissal of the case or settlement of the claim.

QUERY: Is there a conflict between the last sentence of proposed s. 57.105(3)(b) and proposed s. 57.105(3)(d)?

Note: The bill recently passed out of the House Civil Justice & Courts Policy Committee by an 11 to 0 vote. It has at least two more committee stops.

******* Subcommittee action:** Lawrence Datz made a motion to have **HB 449 and SB 1108** monitored and to provide technical assistance to the Legislature in light of the possible conflict or inconsistency between the last sentence of proposed s. 57.105(3)(b) and proposed s. 57.105(3)(d)? Jack Moring seconded the motion. The Motion passed by a 4 to 0 vote.

B. HB 13 (Similar Bill – SB 130)

This bill amends s. 25.073, 2 F.S. by providing that the chief judge of a judicial circuit may, subject to approval by the Chief Justice of the Supreme Court, establish a program for retired justices or judges to preside over civil cases and trials upon written request of one or more parties. The program shall be developed and operated so as to ensure that one of the parties to the lawsuit shall pay the cost of the retired justice or judge.

For a retired justice or judge to hear motions, the written request may be made by any party to the action. The bill provides that the written request must include the reasons for the request.

The bill provides the allowable grounds for use of a retired justice or judge. The bill also provides that only retired justices or retired judges who are on the list approved by the Chief Justice are eligible for appointment in the program.

For a retired justice or judge to conduct a trial of an action, the written request may be requested by all of the parties to the action. For a retired justice or judge to conduct a trial of an action, all of the parties must agree to the request and sufficient court resources must be available to accommodate the request.

The written request(s) must be addressed to the chief judge of the circuit. The chief judge must consider the reasons for the request and shall grant or deny the request in writing within 5 days. The Bill provides that a request shall not be granted if it is apparent that a party is only seeking an appointment of a retired justice or retired judge in order to avoid the assigned trial judge.

The bill provides the compensation procedures and amount(s) such the retired justices or judges. The bill provides that the per diem payments shall be deposited into the Operating Trust Fund within the state court system under s. 25.3844 F.S.

The bill provides that the costs of the retired justice or judge to hear motions or conduct trials may be taxable against the non-prevailing party under chapter 57 or the rules of court if all of the parties requested the appointment but the costs of a retired justice or judge to hear motions may not be taxable against the non-prevailing party where the request was may by a party.

*******Subcommittee action: Lawrence Datz made a motion to have the Bill monitored. David Riggs seconded the motion. The Motion passed by a 4 to 0 vote.**

C. HB 310 (No Similar or Identical SB)

This bill provides that proprietary confidential business information held by an agency before, on, or after July 1, 2010 is confidential and exempt from public records requirements. The bill includes definitions for "Proprietor" and "Proprietary confidential business information."

The bill requires the granting of a request under s. 119.07(1) to inspect or copy a record which contains proprietary confidential business information if the proprietor fails to verify to the agency, via a written declaration in the manner provided by s. 92.525, certain specific conditions.

The bill authorizes any person to petition a court for the public release of those portions of a record made confidential and exempt by the act. The bill provides that the action must be brought in Leon County and provides that action must be served on the custodial agency and, if determinable upon diligent inquiry, the proprietor. The bill specifies the findings that have to be made by the court in its order public releasing the record.

The bill provides that the act does not supersede any other applicable public records exemptions that existed before July 1, 2010, or created thereafter.

*******Subcommittee action:** Lawrence Datz made a motion that no action be taken with regard to the Bill. David Riggs seconded the motion. The Motion passed by a 4 to 0 vote.

D. SJR 440 (Similar – HJR 241)

This Senate Joint Resolution proposes amendments to Section 24 of Article I and Sections 4, 7, and 19 of Article III of the Florida State Constitution to make the legislative process more open to the public.

*******Subcommittee action:** Jack Moring made a motion to have the Bill monitored. David Riggs seconded the motion. Motion passed by a 4 to 0 vote.

E. SB 606 (Identical Bill – HB 415)

The bills propose amendments to Florida’s Landlord-Tenant statute (Chapter 83, Florida Statutes). The bill creates new section 83.683 which provides that a purchaser of foreclosed real property, upon issuance of the certificate of title, becomes, in essence, the landlord of any tenant who is in possession of the property, and authorizes the purchaser to terminate any rental agreement upon delivery of a 90-day written notice (however, if the tenant held possession pursuant to a valid lease entered into prior to the issuance of the certificate of title, the tenant can remain in possession until the end of the lease term, or 90 days after receipt of the notice, whichever is later). But, if the purchaser at foreclosure sells the property to someone who intends to occupy the property as a primary residence, then the purchaser at foreclosure can terminate the lease upon 90 days written notice (presumably even if a valid lease is for a longer period). The bill provides that the newly created section is *effective upon becoming law but expires on December 31, 2012*.

*******Subcommittee action:** Jack Moring made a motion to oppose SB 606 and HB 415 because of concerns that, as written, the created statute may unconstitutionally impair contracts. Lawrence Datz seconded the motion. The Motion passed by a 4 to 0 vote.

F. SJR 718 (Similar – HJR 27 and HJR 39)

Proposes amendments to the State Constitution to prohibit increases in the assessed value of homestead property if the fair market value of the property decreases.

*******Subcommittee action:** Jack Moring made a motion to have the Bill monitored. David Riggs seconded the motion. Motion passed by a 3 to 0 vote.

G. HB 465: Although this bill was filed on December 8, 2009, it was withdrawn prior to introduction on Monday, December 14, 2009

*******Subcommittee action: No action is required because the Bill was withdrawn.**