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**PLEASE REPLY TO: ORLANDO**

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**ATTORNEYS NOW MAY BE SOLELY  
LIABLE FOR F.S. § 57.105 ATTORNEY'S FEES TO THE OPPOSING PARTY**

In 2010, the Florida Legislature amended F.S. § 57.105, eliminating any liability for attorney's fees on the part of the represented party if the court awards attorney's fees under F.S. § 57.105(1)(b) against the attorney for that party. Additionally, the Florida Legislature added pre-judgment interest on the fees owed on the part of the represented party.

Unfortunately, the Florida Legislature raised more questions than answers with this amendment. For instance, it is not clear whether the attorney responsible for violating F.S. § 57.105(1)(b) will be 100% liable for the entire amount of attorney's fees awarded by the court, or whether the aggrieved party will be limited to a recovery of 50% of attorney's fees from the attorney but nothing from the represented party.

On one hand, F.S. § 57.105(3)(c) must be read in conjunction with F.S. § 57.105(1), which limits the attorney's exposure to 50% of the attorney's fees awarded by the court. On the other hand, it is difficult to believe that the Legislature intended to treat the amount of sanctions awarded for misconduct

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under F.S. § 57.105(1)(a) differently from the amount of sanctions awarded from misconduct under F.S. § 57.105(1)(b).

If the statute were strictly construed, the aggrieved party would have to absorb 50% of the attorney's fees it incurred for being wrongfully forced to litigate an issue that was "not supported by the application of the then-existing law to those material facts."

It would be absurd and unreasonable for an aggrieved party to recover 100% of its attorney's fees for a violation of F.S. § 57.105(1)(a), but only 50% for a violation under F.S. § 57.105(1)(b).

Appellate courts (and perhaps the Florida Supreme Court) will have to resolve the issue of whether an attorney who violates F.S. § 57.105(1)(b) will be responsible for 50% of the attorney's fees incurred by the opposing party, or 100% of such attorney's fees. What is clear, however, is that the Legislature is shifting the blame for misconduct from the client to the attorney.

JLH/SBB/tsr

\*This is a summary of an article that appeared in the September 2011 edition in *The Briefs*.