

§2.G.00 | FRIVOLOUS MOTIONS – SANCTIONS⁶⁴

A party should file a motion during the course of an appellate proceeding only when necessary to obtain relief that will not be provided by the court's decision on the merits. If a motion is filed for an improper purpose, the appellate court may sanction the offending party or attorney.⁶⁵ The court could impose sanctions for the filing of an excessive number of motions, the filing of an unnecessary motion, or the filing of a motion that is plainly without merit.

Sanctions most often are imposed against an attorney, not against the party he or she represents. Courts also have meted out disciplinary measures against attorneys who file frivolous motions.⁶⁶ As at the trial level, the severity of the penalty will depend on the nature of the violation and the intent of the offending attorney. In some cases, the appellate court has assessed attorneys' fees against the offending lawyer with a direction that the fees not be passed on to the client.⁶⁷ For more serious violations, the court may prohibit a lawyer from filing additional motions in the case.⁶⁸

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Footnotes

⁶⁴. See Padovano, *supra* n. 1, at § 14.8 for the source of the material that is adapted in this Subsection.

⁶⁵. Fla. R. App. P. 9.410. Rule 9.410 permits the imposition of sanctions “for the filing of any proceeding, motion, brief, or other paper that is frivolous or in bad faith.”

⁶⁶. See Sarasota County, 645 S.2d at 8 (declining to impose sanctions, but noting that “attorneys, as officers of the court, . . . must exercise restraint when filing motions”); *In re Order as to Sanctions*, 495 S.2d 187, 187 (Fla. Dist. App. 2d 1986) (warning that the Second District Court of Appeal will impose sanctions for frivolous motions); *Dubowitz*, 381 S.2d at 254 (serving notice on members of the bar that the Fourth District Court of Appeal will impose sanctions for filing frivolous motions).

⁶⁷. The appellate court may assess attorneys’ fees against a lawyer for an abuse of the right to file appellate motions. See *Howard v. Baumer*, 519 S.2d 679, 681 (Fla. Dist. App. 1st 1988) (holding that appellant’s attorneys were guilty of gross abuse of the motion practice and ordering them to certify to the court that they had credited their clients for any fees incurred in connection with preparing the motions in question).

⁶⁸. E.g. *Moral Majority, Inc. v. Broward County Ch. of the Natl. Org. for Women, Inc.*, 606 S.2d 630, 631 (Fla. Dist. App. 4th 1992) (addressing abusive motion practice and entering an order prohibiting the parties from filing further motions).

