

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT COURT,
IN AND FOR PALM BEACH COUNTY, FLORIDA

DAWN PARDO,

Case No.:502006CA014101XXXXMB AA

Petitioner,

vs.

JIM JACKSON, NORMA DUNCOMBE,
VANESSA LEE, ELIZABETH WADE,
ANN ILES, as city council members of
the City of Riviera Beach, a municipality
of the State of Florida, CARRIE WARD,
as city clerk of the City of Riviera Beach,
a municipality of the State of Florida,
and CITY OF RIVIERA BEACH, a municipality
of the State of Florida

Respondents.

MOTION FOR SANCTIONS PURSUANT TO SECTION 57.105, FLORIDA STATUTES
(Served but not filed.)

Petitioner Dawn Pardo moves for sanctions pursuant to Section 57.105, Florida Statutes. As set forth in the motion Respondents and their counsel knew or should have known that the claims set forth in this motion were not supported by the material facts necessary to establish the claims or would not be supported by the application of any existing law to the material facts.

BACKGROUND

1. On December 21, 2006 Petitioner filed this Complaint for issuance of Alternative Writ of Mandamus commanding respondents to perform their legal duty (1) with respect for two petitions to amend the City Charter and (2) with respect for a referendum petition to repeal an ordinance.
2. On January 8, 2007 the Court found that the Complaint showed a prima facie

case for relief and issued an Alternative Writ of Mandamus.

STANDARD FOR SANCTIONS

2. PARDO seeks sanctions against Respondents and their counsel, equally, pursuant to Section 57.105(1), Florida Statutes, which allows for the recovery of attorneys fees to be paid to the prevailing party in equal amounts by the losing party and the losing party's attorney on any claim that the losing party or the losing party's attorney knew or should have known that the claim:
 1. Was not supported by the material facts necessary to establish a claim or defense; or
 2. Would not be supported by the application of then existing law to those material facts.
3. As explained by the Fifth District Court of Appeal in *Albritton v. Ferrera*, 913 So.2d 5 (Fla. 5th DCA 2005)¹, the current version of the statute differs sharply for its predecessor. The statute no longer requires "complete absence of justiciable issue of law or fact". Instead the statute only requires that the "the party or its counsel knew or should have known that the claim asserted was not supported by the facts or any application of then existing law". Sanctions can be awarded even though it may not have been frivolous when filed. *Id.*
4. A court may assess sanctions under Section 57.105 against a party who has asserted an unsupportable claim even though that party might ultimately prevail in the case on some other ground. *Barthlow v. Jett*, 900 So.2d 739 (Fla. 1st DCA

¹The Fourth District concurs with the Fifth District as explained in *Forum v. The Boca Burger, Inc.*, 788 So.2d 1055 (Fla. 4th DCA 2001) even though it was reversed and remanded in part in *Boca Burger, Inc. v. Forum*, 912 So.2d 561 (Fla. 2005).

2006). The court is not required to measure damages from the date the motion for sanctions is filed, but is free to measure the attorney's fees from the time it was known or should have been known that the claim had no basis in fact or law. *Yakavonis v. Dolphin Petroleum, Inc.* 4D05-3653 (Fla. 4th DCA July 26, 2006).

UNSUPPORTED CLAIMS

1. In the Motion to Quash Petition for Issuance of Alternative Writ of Mandamus and other correspondence and papers, Respondents and their counsel, assert that the petitions to amend the City Charter require 15 percent of the registered electors when Section 166.031 clearly provides that a petition to amend a municipal charter only requires 10 percent.
2. In the Motion to Quash Petition for Issuance of Alternative Writ of Mandamus and other correspondence and papers, Respondents and their counsel, assert that the petitions to amend the City Charter are invalid because persons other than the petition committee circulated the petitions when there is clearly no requirement in Section 166.031 for a petition committee to circulate the petitions. All that is required under Section 166.031 is that 10 percent of the registered electors sign the petition.
3. In the Motion to Quash Petition for Issuance of Alternative Writ of Mandamus and other correspondence and papers, Respondents and their counsel, assert that the petition to repeal Ordinance 3016 by referendum is invalid because the five members of the Petition Committee did not circulate the petition papers. However, the City Charter clearly states that the Petition Committee need only "be responsible for circulating the Petition . . ." The City Charter does not require

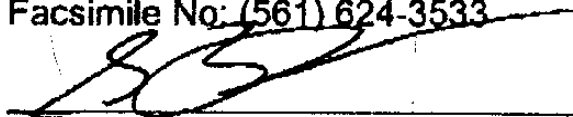
the Petition Committee "to circulate the Petition".

4. Respondents and their counsel filed a motion to dismiss the alternative writ of mandamus. Respondents and their counsel knew or should have known that a motion to dismiss is improper. A motion to dismiss challenges the sufficiency of the allegations. The Court in issuing the Alternative Writ of Mandamus/Order to Show Cause has already determined that the Petitioner made a preliminary basis for relief. See Fla. R. Civ. P. 1.630(d) ("If the complaint shows a prima facie case for relief, the court shall issue: . . . (3) an alternative writ in mandamus that may incorporate the complaint by reference only"). Respondents and their counsel filed the motion to dismiss to delay these proceedings.
5. In the Motion to Quash Petition for Issuance of Alternative Writ of Mandamus and other correspondence and papers, Respondents and their counsel, assert that the petitions to amend the City Charter are governed by Article X of the City Charter. However, Article X of the City Charter applies to the power of the voters to propose **ordinances** through initiative and the power of the voters to require reconsideration of adopted **ordinances** through referendum. Article X of the City Charter does not apply to charter amendments.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Facsimile and U.S. Mail to: Brian B. Joslyn, Esq., 515 North Flagler Drive, Suite 1900, West Palm Beach, FL 33401 and Richard A. Jarolem, Esq., Casey, Ciklin, Lubitz, Martens & O'Connell, 515 North Flagler Drive, 18th Floor, West Palm Beach, FL 33401 on this 22nd day of January, 2007.

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