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WHAT IS THE COURT'S AUTHORITY TO ASSESS ATTORNEY'S FEES
AGAINST A LAWYER?

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Moakley v Smallwood, 27 F.L.W. S175 (Fla. Feb. 28, 2002) arose out of a hotly contested post-dissolution proceeding. There was protracted and acrimonious litigation that had previously resulted in an award of attorney's fees against one of the attorneys. The recipient of that fee was subpoenaed in an effort to obtain a document and the trial court found that the subpoena was issued without any reasonable explanation. As a consequence, the trial court awarded attorney's fees against the subpoenaing client and her attorney. The attorney appealed and the Third District affirmed.

On appeal to the Supreme Court, the principle issue was whether the trial court had inherent authority to assess attorney's fees for the alleged misconduct of the lawyer in question. The Supreme Court analyzed numerous Florida and out of state opinions which upheld the imposition of attorney's fees against an attorney based upon the inherent power of the trial court. The Court pointed out that the trial court's authority over an attorney is equal to if not greater than the trial court's jurisdiction over the client. Citing Roadway Express, Inc. v Piper, 447 U.S. 752 (1980), the Court found that the inherent authority of a trial judge to assess attorney's fees against counsel for bad faith conduct has been widely recognized.

The Court, however, pointed out that the right of the trial court to assess attorney's fees against a lawyer is not unlimited. The right of a trial court to control the litigants and lawyers before it must be tempered with the right of an attorney to vigorously advocate a client's position before the Court. The Court thus imposed stringent guidelines on the procedure to be utilized when a trial court seeks to impose attorney's fees against a lawyer.

We thus hold that a trial court possesses the inherent authority to impose attorneys' fees against an attorney for bad faith conduct. In exercising this inherent authority, an appropriate balance must be struck between condemning as unprofessional or unethical litigation tactics undertaken solely for bad faith purposes, while ensuring that attorneys will not be deterred from pursuing lawful claims, issues, or defenses on behalf of their clients or from their obligation as an advocate to zealously assert the clients' interests. The inherent authority of the trial court, like the power of contempt, carries with it the obligation of restrained use and due process.

Accordingly, we conclude that the trial court's exercise of the inherent authority to assess attorneys' fees against an attorney must be based upon an express finding of bad faith conduct and must be supported by detailed factual findings describing the specific acts of bad faith conduct that resulted in the unnecessary incurrence of attorneys' fees. Thus, a finding of bad faith conduct must be

predicated on a high degree of specificity in the factual findings. In addition, the amount of the award of attorneys' fees must be directly related to the attorneys' fees and costs that the opposing party has incurred as a result of the specific bad faith conduct of the attorney. Moreover, such a sanction is appropriate only after notice and an opportunity to be heard – including the opportunity to present witnesses and other evidence. Finally, if a specific statute or rule applies, the trial court should rely on the applicable rule or statute rather than on inherent authority.

Thus, the Supreme Court of Florida has recognized that a trial court does have inherent authority over an attorney to impose attorney's fees under conditions where the attorney is guilty of unprofessional conduct. There must, however, be an express finding of bad faith, a detailed recitation of the underlying facts upon which the order is based, an award of fees consistent with the actual loss to the client, all due process rights afforded and the use of the inherent right only if a specific statute or rule does not apply.

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