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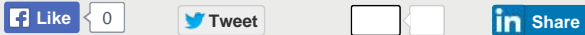
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FRAUD ON THE COURT IN FLORIDA LAWSUIT ? -- here's what you need to know if you suspect fraud on the court in a Florida lawsuit



By [John Pankauski](#) of Pankauski Law Firm PLLC on Wednesday, February 26, 2014.

One of the worst things that can happen to our judicial process in Florida, indeed to our civil procedure in Florida, is for there to be a fraud on the court. Serious, experienced - - - real - - - Palm Beach trial lawyers and Palm Beach litigators know from years of experience that fraud on the court is a serious accusation. My time in Palm Beach County probate courts and the civil division of Palm Beach County circuit courts has suggested that a lot of inexperienced attorneys make an allegation of fraud on the court, sometimes where none exists. Oftentimes, this improper allegation is made by probate lawyers who don't handle trial work, who don't try cases, but believe they know the law in Florida. What is fraud on the court and why's it so important?

A recent Florida appeals court case from Florida's fifth District Court of Appeal deals with fraud on the court in Florida trials.

There was a personal injury case where the plaintiff was asked if he had ever been involved in prior accidents. One of the documents which he produced through discovery before the trial was a note which suggested that there was one previous accident. When the plaintiff's deposition was taken, he answered "no" when he was asked if he had ever been involved in a car accident prior to a certain date. Further investigation revealed that the plaintiff had indeed been involved in a prior accident.

The defendant to this Florida lawsuit filed a motion to dismiss based on fraud on the court. The trial court granted the defendant's motion finding that the nondisclosure rose to a "scheme to

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defraud."

This is serious stuff. Very, very serious stuff for Florida trial lawyers, particularly those who defend lawsuits. Truthfulness is the backbone of our civil procedure and our judicial process.

Each party to a Florida lawsuit is required to be truthful, candid and not play games, let alone lie. "Convenient amnesia" or "I don't recall" are not permissible. Truthfulness is.

That's why you need a Palm Beach attorney or Palm Beach probate litigator who knows how to examine witnesses and parties to a Palm Beach lawsuit. You also need adequate and thorough discovery and investigation of the facts and allegations surrounding the lawsuit. Get serious or get going.

This fraud on the court case went to the appellate court. An appellate court reviews the dismissal of a lawsuit based on fraud on the court for "abuse of discretion" by the trial judge.

That standard on appellate review is somewhat "narrowed" because the dismissal must be established by clear and convincing evidence.

In other words, if a trial judge dismisses someone's lawsuit based on fraud on the court, it will be upheld on appeal if the fraud was established by clear and convincing evidence -- and the trial court did not abuse its discretion.





More specifically, to prove fraud on the court, the moving party must show:

- by clear and convincing evidence
- that a party engaged in an "unconscionable scheme calculated to interfere with the judicial system's ability" to impartially adjudicate a matter
- by improperly influencing the court or the jury or
- unfairly hampering the presentation of the imposing parties claim or defense

Experienced probate litigators know that the dismissal of a complaint is to be done so sparingly: it is warranted only when there is egregious conduct. Dismissal based on fraud on the court is an "extraordinary remedy".

Experienced estate litigators from Palm Beach Gardens, Florida to Fort Lauderdale, know that you need evidence to prove the facts and to prove the scheme and to prove the fraud. Serious trust litigators also know that you want to request that the trial court make very specific findings of fact to support what you are seeking. In this recent case, the record did not establish, by clear and convincing evidence that a deliberate scheme to subvert the judicial process occurred. The case went back down to the trial court.

For a detailed discussion of what "clear and convincing evidence" is, or how to prove that a fraud on the court has occurred, speak with an experienced probate litigator in Palm Beach County or Broward County. There are many excellent probate lawyers from Palm Beach, to Boca Raton, to Fort Lauderdale. But you also need someone with serious trial experience in Florida courts and Florida probate courts. Luckily there are a handful of very good Palm Beach probate litigators and Ft. Lauderdale probate litigators who understand this.

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