

Trial Law TIPS

Roy D. Wasson's
TIP #52

ROY D. WASSON is board certified in Appellate Practice with extensive courtroom experience in more than 750 appeals and thousands of trial court cases, civil, criminal, family and commercial. AV-rated.

Motions for Costs and Attorneys' Fees— Timeliness is All-Important

Introduction

You have won your hard-fought trial and the jury's verdict has been reduced to a final judgment. In addition to the decent damage award you earned for your client, you are entitled to recover those enormous costs for expert witness fees, deposition transcripts, expensive trial exhibits, and so on. Plus, you are relishing the thought of the attorneys' fee award you will recover under the statute or contract which provides for such fees.

It has been more than three weeks since your judgment was entered, but you have not yet filed your motion for costs and attorneys' fees. The first week you spent basking in the glory of the verdict and catching-up on your rest after those all-nighters preparing for trial and presenting your case to the jury. The second

week you spent starting to organize your cost records, make sure that all bills from experts were received, locating and expert to testify that your fees, and so on. The third week since your verdict, you have spent checking and double-checking the calendar and your incoming mail, hoping that the time for the Defendant to appeal will expire before you find that notice of appeal in your “inbox.” The last thing you want to do is remind the D.A. about the case by filing your motion to tax costs and attorneys’ fees, you have decided. As soon as they get that motion and see how much more they are going to have to pay, they will for sure file an appeal, you decide.

Such a strategy may cost you and your client tens of thousands of dollars.

It was not that long ago that motions to assess costs and attorneys’ fees following entry of a judgment in favor of the prevailing party had no firm time deadline. Instead, the prevailing party simply had to file such a motion “within a reasonable time after the final judgment.” *Southford v. Hatton*, 566 So. 2d 527, 528 (Fla. 2d DCA 1990). The courts were extremely flexible about what constituted a “reasonable” time, depending upon whether one of the parties had appealed, execution efforts were ongoing, and so forth. *See, e.g., Jeffcoat v. Henicka*, 436 So. 2d 1042 (Fla. 2d DCA 1983). All that has changed now.

Four years ago, the Supreme Court adopted Fla. R. Civ. P. 1.525 for the express purpose of establishing a time requirement to serve motions for costs and attorneys’ fees. That rule provides as follows:

Any party seeking a judgment taxing costs, attorneys’ fees, or both shall serve¹ a motion within 30 days after filing of the judgment, including a judgment of dismissal, or the service of a notice of voluntary dismissal.

¹ For the difference and “service” and “filing” the reader is directed to Trial Law Tip #34.

Unlike many of the civil rules, Rule 1.525 has no exceptions which would permit trial courts to extend the time for such a motion to be filed.

Effect of Reservation of Jurisdiction

The district courts of appeal are split on the question whether a trial court's reservation of jurisdiction to award costs and attorneys' fees will extend the thirty-day period under Rule 1.525. The Second DCA and the Fifth DCA have held that the reservation of jurisdiction is insufficient to extend the time and denied costs and attorneys' fees to prevailing parties whose motions were served after the thirty-day period, notwithstanding such reservations of jurisdiction. *See Gulf Landings Ass'n v. Hershberger*, 845 So. 2d 344 (Fla. 2d DCA 2003); *Wentworth v. Johnson*, 845 So. 2d 296 (Fla. 5th DCA 2003). On the other hand, the Fourth DCA has held that the time to for serving a motion to tax costs and fees is automatically extended by a trial court's reservation of jurisdiction for same. *See Fisher v. John Carter & Associates*, 864 So. 2d 493 (Fla. 4th DCA 2004). Because the Supreme Court could go either way on the issue, you should not rely upon such a reservation of jurisdiction but should make sure your motion is timely served under the rule.

Necessity of Affidavits and Supporting Documentation

Do not delay filing your motion for fees or costs on the ground that you have not been able to obtain necessary invoices, affidavits, and other documentation to support the motion. The cases which have decided the issue have held that a "bare bones" motion filed within the thirty-day period is sufficient without supporting affidavits and so on.

In *P & R Smith Corp., v. Arrola*, 864 So. 2d 584 (Fla. 3d DCA 2004), the Third District reversed an order denying costs and attorneys' fees which had been based upon the failure of the prevailing party to file supporting documentation within the thirty-day period under Rule 1.525. The court held: "Because the rule is silent as to the timing of the filing of the supporting documentation, the trial court erred by striking the lower case defendants' motion based solely upon the failure to file supporting documentation within thirty days of the filing of the final judgment as this is not

required by Rule 1.525.” *P & R Smith Corp., v. Goyarrola*, 864 So. 2d 584 (Fla. 3d DCA 2004). The Fourth District also has held that the supporting documentation can be served later, so long as the motion is timely. *Silver Springs Properties, L.L.C. v. ERA Murray Realities, Inc.*, No. 4D03-3274, 2004 Fla. App. LEXIS 7746 (Fla. 4th DCA June 2, 2004).

Conclusion

Don’t let the thrill of a nice verdict allow you to forget the important procedural step of timely requesting an award of fees and costs from the trial court. Calendar the thirty-day deadline just as you would the deadline for appealing a final judgment if you were not the prevailing party. Nothing spoils a trial court victory like the realization that you anticipated court-awarded lodestar fee is going to be replaced by a percentage fee in a much smaller number than would otherwise would have been realized. Your client will not want to bear the costs which should be taxed against the other side.

And above all, remember to:

Keep Tryin!

Roy