

Hell Hath No Fury Like a Lawyer Sued for Malpractice

In a legal malpractice case, the defendant law firm e-mailed a proposed motion for sanctions pursuant to Fla. Stat. 57.105. Such notice did not comply with Florida Rule of Judicial Administration 2.516 which requires (1) the e-mail's subject line contain, in all capital letters, the words "SERVICE OF COURT DOCUMENT" followed by the case number, and (2) the case number, name of the initial party of each side, title of each document served with that e-mail, and the sender's name and telephone number.

The plaintiff's attorney withdrew after the 21-day safe harbor provided by Fla. Stat. 57.105 and the corporate client did not obtain new counsel within the court allotted time resulting in a dismissal. In the subsequent evidentiary hearing on the motion for sanctions, the withdrawing attorney defended due to the noncompliance with Rule 2.516. The trial court agreed relying upon *Matte v. Caplan*, 140 So. 3d 686 (Fla. 4th DCA 2014) which held that service of a section 57.105 safe harbor notice must strictly comply with rule 2.516's e-mail service requirements. The trial court rejected the withdrawing lawyer's reliance upon *Wheaton v. Wheaton*, 261 So. 3d 1236 (Fla. 2019) because *Wheaton* involved the service of a section 768.79 proposal for settlement, not the service of a section 57.105 safe harbor notice.

Sitting en banc, the Fourth District receded from *Matte* due to the *Wheaton* holding and held e-mail service requirements do not apply to service of a [section 57.105](#) safe harbor notice. The case was remanded for the circuit court to determine the amount of attorney's fees due the defendant law firm.

TAKEAWAY - Whenever a possibly meritorious 57.105 motion is filed, the potentially liable attorney must carefully assess the exposure. From the plaintiff lawyer's perspective, you should not handle a case unless you are willing to take it to trial. A defense lawyer needs to be wary of any counterclaim or third party claim. And, if the facts turn out to be different than initially thought, withdraw.