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You Gotta Serve Somebody, But You Gotta Do So Correctly: Preserving Sanctions Motions

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Emails can create many problems for litigants and their lawyers, but a recent appellate decision in Florida demonstrates yet another peril: proper service, and thus preservation, of demands for sanctions. In *Isla Blue Dev., LLC v. Moore*, ___ So. 3d ___ 2017 WL 2561000 (Fla. 2d DCA June 14, 2017), Florida's Second District Court of Appeal held that the email service requirements set forth in Florida Rule of Judicial Administration 2.516 did not apply to the safe-harbor provision of Florida Statute section 57.105, which requires advance notice of an intent to move for attorney's fees as sanctions against plaintiff and her counsel. The Court concluded that the email service requirements of Rule 2.516 did not apply to a safe-harbor notice under section 57.105 because such a notice is only *served* on the opposing party in the first instance. It is not *filed* with the court at the time it is initially served. The Second District certified that its decision conflicted with *Matte v. Caplan*, 140 So. 3d 686 (Fla. 4th DCA 2014). That created the potential for discretionary jurisdiction in the Florida Supreme Court, upon the resolution of Appellant's motion for rehearing. In *Matte*, the Fourth District held that "strict compliance with [Rule] 2.516 regarding e-mail service of pleadings is required before a court may assess attorney's fees pursuant to section 57.105, Florida Statutes." *Matte*, 140 So. 3d at 690. It expressly rejected the movant's argument that "substantial compliance" is sufficient by virtue of the other party's actual notice of the motion and its demands. *Id.* Adopting a "bright line rule" of "strict compliance" with the rules, the Fourth District held "[l]itigants should not be left guessing at what a court will deem is 'substantial compliance' with the rules and statutes for the imposition of attorney's fees as a sanction." *Id.* Until the Florida Supreme Court resolves the conflict between these decisions, Florida lawyers should serve section 57.105 sanction notices in full accordance with the rules for both email and mail service. Lawyers in other jurisdictions also should be mindful of counterparts in their local rules, as this problem could arise any time a document is required to be served but not filed—such as in discovery, in connection with sanctions, or in settlement negotiations. Regardless of the jurisdiction, always consider the need to properly preserve the ultimate issue being noticed and the forum's specific procedural mechanisms for doing so.

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