

ORDINANCE

SUBJECT: COSTS UPON FRIVOLOUS COMPLAINTS

COMMITTEE: EXECUTIVE COMMITTEE

FIRST CONSIDERATION: SEPTEMBER 17, 2009

FINAL CONSIDERATION: OCTOBER 15, 2009

ORDINANCE # 75 – 10/09 **PUBLICATION DATE** OCTOBER 23, 2009

The County Board of Supervisors of La Crosse County does ordain as follows:

**AN ORDINANCE TO CREATE SECTION 2.04(10)(b)11. OF CHAPTER 2, CODE OF ETHICS,
OF THE GENERAL CODE OF LA CROSSE COUNTY,
WISCONSIN REGARDING COSTS UPON FRIVOLOUS COMPLAINTS**

ANALYSIS

Under the authority of Wis. Stat. s. 19.59(4), La Crosse County has adopted an Ethics Code that regulates the conduct of its officials and employees. This ordinance adds a provision to the Ethics Code that provides for costs to be awarded to a party wronged by frivolous complaints brought under the Ethics Code. Section 2.04(1)(b)11 is patterned after similar provisions in the federal and state rules, specifically Rule 11 of the Federal Rules of Civil Procedure and Wis. Stats., ss. 227.483 and 802.05(3). Factors that the Ethics Board may consider in imposing sanctions for frivolous ethics complaints include the following: (1) Whether the alleged frivolous complaint was part of a pattern of activity or an isolated event; (2) Whether the frivolous complaint infected the entire pleading or was an isolated claim; and (3) Whether the attorney or party has engaged in similar conduct in other litigation. Sanctions authorized under this section may include an award of actual fees and costs to the party victimized by the frivolous conduct. The Ethics Board has significant discretion in determining what sanctions, if any, should be imposed for a violation, subject to the principle that the sanction should not be more severe than reasonably necessary to deter repetition of the conduct by the offending person or comparable conduct by similarly situated persons. The section authorizes the Ethics Board, if requested in a motion and if so warranted, to award attorney fees and costs to a party. Any such award to a party, however, should not exceed the expenses and attorneys' fees for the services directly and unavoidably caused by the violation. The sanctions should be imposed on the persons – whether attorneys, law firms, or parties – who have violated the rule or who may be determined to be responsible for the violation.

Explicit provision is made for litigants to be provided notice of the alleged violation and an opportunity to respond before sanctions are imposed. If the Ethics Board imposes a sanction, it must, unless waived, indicate its reasons in a written order or on the record; the Ethics Board should not ordinarily have to explain its denial of a motion for sanctions. Whether a violation has occurred and what sanctions, if any, to impose for a violation are matters committed to the discretion of the Ethics Board.

The rule provides that requests for sanctions must be made as a separate motion, i.e. not simply included as an additional prayer for relief contained in another motion. The motion for sanctions is not, however, to be

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this period, the alleged violation is corrected, as by withdrawing (whether formally or informally) the complaint or some allegation or contention, the motion should not be filed with the Ethics Board. These provisions are intended to provide a type of "safe harbor" in that a party will not be subject to sanctions on the basis of another party's motion unless, after receiving the motion, it refuses to withdraw that position or to acknowledge candidly that it does not currently have evidence to support a specified allegation. The timely withdrawal of a complaint or contention will protect a party against a motion for sanctions.

The power of the Ethics Board to impose sanctions on its own initiative is included, but with the condition that this be done through a show cause order. This procedure provides a person with notice and an opportunity to respond. A monetary sanction may be imposed after an Ethics Board initiated show cause order only if the show cause order is issued before any voluntary dismissal or an agreement of the parties to settle the claims made by or against the litigant. Parties settling a case should not be subsequently faced with an unexpected order from the Ethics Board leading to monetary sanctions that might have affected their willingness to settle or voluntarily dismiss a case. Since show cause orders will ordinarily be issued only in situations that are akin to a contempt of court, the rule does not provide a "safe harbor" to a litigant for withdrawing a claim, after a show cause order has been issued on the Ethics Board's own initiative. Such corrective action, however, should be taken into account in deciding what -- if any -- sanction to impose if, after consideration of the litigant's response, the Ethics Board concludes that a violation has occurred.

INFORMATION:

County Board Rules: Governing Body s. 2.02(8) states, in part: Ordinances are drafted by the Corporation Counsel. After the ordinance has been reviewed by a standing committee, each Supervisor will be given a copy of the ordinance showing the deleted language (grayed) and the new language (underlined) and an analysis of the intent of the ordinance. After introduction to the County Board, the ordinance shall be referred to the next monthly meeting unless waived by a 2/3 vote of the Supervisors present and a public hearing may be held if requested by a Supervisor. An amendment may be introduced and debated at either the original or the referred meeting. Copies of the ordinances of the County of La Crosse in their entirety are available with Corporation Counsel, County Clerk, or www.co.la-crosse.wi.us/code/.

(Rev. 3/03)

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The County Board of Supervisors of the County of La Crosse does ordain as follows:

Section 1. Section 2.04(10)(b)11. is created to read:

2.04(10)(b)11. Costs upon frivolous complaints.

a. If the Ethics Board finds, at any time during the proceeding, that an ethics complaint commenced or continued by a party is frivolous, the Ethics Board may award the successful party the costs and reasonable attorney fees that are directly attributable to responding to the frivolous complaint.

b. If the costs and fees awarded under sub. a. are awarded against the party, those costs may be assessed fully against either the party or the attorney representing the party or may be assessed so that the party and the attorney each pay a portion of the costs and fees.

c. To find an ethics complaint to be frivolous under sub. a., the Ethics Board must find at least one of the following:

1. That the complaint was commenced, used, or continued in bad faith, solely for purposes of harassing or maliciously injuring another; and/or

2. That the party or the party's attorney knew, or should have known, that the complaint was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification, or reversal of existing law.

d. How sanctions are initiated.

1. By motion. A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate sub. a. The motion shall be served as provided in Wis. Stat. s. 801.14, but shall not be filed with or presented to the Ethics Board unless, within 21 days after service of the motion or such other period as the Ethics Board may prescribe, the challenged paper, complaint, claim, contention or allegation is not withdrawn or appropriately corrected. If warranted, the Ethics Board may award to the party prevailing on the motion reasonable expenses and attorney fees incurred in presenting or opposing the motion.

2. On Ethics Board Initiative. On its own initiative, the Ethics Board may enter an order describing the specific conduct that appears to violate sub. a. and directing an attorney, law firm, or party to show cause why it has not violated sub. a. with the specific conduct described in the order.

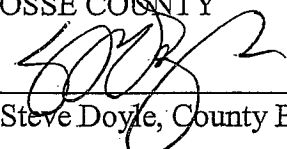
e. Nature of sanction. A sanction imposed for violation of this rule may be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. The sanction may consist of, or include, directives of a nonmonetary nature and/or an order directing payment to the movant of some or all of the reasonable attorney fees and other expenses incurred as a direct result of the violation. Monetary sanctions may not be awarded on the Ethics Board initiative unless the Ethics Board issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned.


f. Order. If the Ethics Board elects to impose sanctions, the Ethics Board shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

Section 2. This Ordinance shall take effect the day after passage and publication.

Dated this 15 day of OCTOBER, 2009.

LA CROSSE COUNTY

By: 
Steve Doyle, County Board Chair

By: 
Linda Stone, County Clerk

PASSED: 10/15/09
PUBLISHED: 10/23/09

STATE OF WISCONSIN
COUNTY OF LA CROSSE

I, Linda A. Stone, County Clerk of La Crosse County do hereby certify that this document is a true and correct copy of the original ordinance required by law to be in my custody and which the County Board of Supervisors of La Crosse County adopted at a meeting held on the 15th day of October, 2009.


Linda A. Stone, La Crosse County Clerk