

The Power of C.C.P. Section 128.7 in Litigation Defense Strategy

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Sometimes the best defense is a good offense. This is particularly true in the realm of civil litigation. An offensive approach may be necessary when the other side is hiding the facts or “playing dirty.” For example, what can you do to defend yourself against a frivolous lawsuit? Many people are familiar with malicious prosecution actions. However, a lesser known and quicker option may be to use C.C.P. 128.7 to dispose of an unfounded lawsuit.

Pursuant to C.C.P. section 128.7(b), every paper presented to the court must be signed by an attorney representing a party. In the case of unrepresented parties, the party must sign each paper presented to the court. By signing the document, the attorney or unrepresented party is certifying to the court, to the best of his or her knowledge, information and belief, (1) the document is not being presented for an improper purpose (such as

to harass the opposing party), (2) the claims, defenses and legal contentions are supported by existing law or a non-frivolous argument extending, modifying or reversing existing law, (3) the allegations and factual contentions are likely to have evidentiary support, and (4) the denials of factual contentions are warranted. C.C.P. section 128.7 provides the court may impose appropriate sanctions against attorneys, law firms *and* parties who have violated C.C.P. 128.7(b).

In the case of a frivolous pleading, motion or other document filed with the intent to harass or in violation of the certifications listed above, you may request the opposing party withdraw the document. If the document is not withdrawn after a reasonable period of time, you have the ability to seek sanctions against the attorney and opposing party for allowing the document to remain before the court in violation of C.C.P. section 128.7(b).

Like many good offensive strategies, a motion for sanctions under C.C.P. section 128.7 requires planning. Before filing a motion with the court seeking monetary sanctions for a document filed in violation of 128.7, you must send a written request for withdrawal of the offending document, along with a copy of a motion for sanctions, and allow the offending party 21 days to withdraw their

document. In certain instances, such as a frivolous lawsuit, you may want to develop the record through written discovery and depositions to show the pleading does not have factual support. However, a little bit of planning and the right execution of a C.C.P. section 128.7 strategy can be a great tool in disposing of unwarranted complaints and motions.

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