



Virginia Local Government Law

The Locality Strikes Back: Sanctions (Part 1)

By: Andrew McRoberts. *This was posted Friday, September 10th, 2010*

Localities infrequently seek sanctions. Why is this?

In this author's opinion, courts have traditionally been reluctant to grant motions for sanctions. In addition, localities have real or perceived political downside that must be considered. This often means that the possibility of achieving sanctions and even a monetary award has generally been outweighed by the small likelihood of success and the fear of political repercussions.

In two highly-publicized cases in 2010, however, two counties obtained sanctions against plaintiffs that brought lawsuits for improper purpose and/or without the necessary factual or legal foundation in violation of Virginia Code section 8.01-271.1. Interestingly, both involved lawyers acting *pro se* for himself in one case and for herself and others in another.

The first case selected will be addressed today, and the second in a future post.

In Augusta County, a local attorney was sanctioned earlier this year by the circuit court for filing a class action lawsuit on behalf of himself and a class of 10,459 county taxpayers against the County's reassessment. The plaintiff/attorney asked for a writ of mandamus to force the individual members of the Board of Supervisors and the Commissioner of the Revenue to reject the 2009 assessment figures and reinstitute assessments determined in the previous reassessment five years earlier.

The plaintiff/attorney's lawsuit was quickly opposed by Augusta County, which pointed out in its demurrer that class actions were not permitted for this sort of suit in Virginia, that some defendants were named with no allegation of conduct against them, and that the allegations did not describe any ministerial duty to perform the act requested (e.g., reject the new 2009 assessment figures and reinstate the 2005 assessment figures). The plaintiff/attorney attempted to nonsuit, but not before the Court insisted on hearing [Augusta County Attorney Pat Morgan's](#) sanctions motion filed under [Virginia Code 8.01-271.1](#).

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According to the [summary published by the Virginia Lawyers Weekly](#), the judge sanctioned the plaintiff/lawyer \$2,000 for filing a class action when the law did not permit it, naming individual defendants without any allegation against them individually, and asking for inappropriate relief. According to the local newspaper, the sanctioned attorney [paid the fine September 2](#).

It is fine to want to speak truth to power, and most people understand some level of frustration with assessments and taxation from time to time. However, this case shows that even an attorney ostensibly sticking up for the little guys can and will be held to the rule of law. And violations can be expensive.

Next time: An environmental advocacy group gets sanctioned in its lawsuit against Louisa County.

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