

1 **(b) Would not be supported by the application of**
2 **then-existing law to those material facts.**~~there was a~~
3 ~~complete absence of a justiciable issue of either law or fact~~
4 ~~raised by the complaint or defense of the losing party;~~
5 ~~provided,~~However, ~~that~~ the losing party's attorney is not
6 personally responsible if he or she has acted in good faith,
7 based on the representations of his or her client as to the
8 existence of those material facts. If the court awards
9 attorney's fees to a claimant under this subsection ~~finds that~~
10 ~~there was a complete absence of a justiciable issue of either~~
11 ~~law or fact raised by the defense,~~ the court shall also award
12 prejudgment interest.

13 **(2) Subsection (1) does not apply if the court finds**
14 **that the claim or defense was initially presented to the court**
15 **as a good-faith attempt, having a reasonable probability of**
16 **success, to change then-existing law as it applied to the**
17 **material facts.**

18 **(3) At any time in a civil proceeding or action in**
19 **which the moving party proves by a preponderance of the**
20 **evidence that any action taken by the opposing party,**
21 **including, but not limited to, the filing of any pleading or**
22 **part thereof, the assertion of or response to any discovery**
23 **demand, the assertion of any claim or defense, or the response**
24 **to any request by any other party, was taken primarily for the**
25 **purpose of unreasonable delay, the court shall award damages**
26 **to the moving party for the time necessitated by the conduct**
27 **in question.**

28 **(4) The court also may impose additional sanctions or**
29 **other remedies that are just and warranted under the**
30 **circumstances of the particular case, including, but not**
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1 limited to, contempt of court, award of taxable costs,
2 striking of a claim or defense, or dismissal of the pleading.

3 (5)(2) If a contract contains a provision allowing
4 attorney's fees to a party when he or she is required to take
5 any action to enforce the contract, the court may also allow
6 reasonable attorney's fees to the other party when that party
7 prevails in any action, whether as plaintiff or defendant,
8 with respect to the contract. This subsection applies to any
9 contract entered into on or after ~~act shall take effect~~
10 ~~October 1, 1988, and shall apply to contracts entered into on~~
11 ~~said date or thereafter.~~

12 Section 2. Subsection (7) of section 768.79, Florida
13 Statutes, is amended to read:

14 768.79 Offer of judgment and demand for judgment.--

15 (7)(a) If a party is entitled to costs and fees
16 pursuant to the provisions of this section, the court may, in
17 its discretion, determine that an offer was not made in good
18 faith. In such case, the court may disallow an award of costs
19 and attorney's fees.

20 (b) When determining the entitlement to and
21 reasonableness of an award of attorney's fees pursuant to this
22 section, the court shall consider, along with all other
23 relevant criteria, the following additional factors:

- 24 1. The then apparent merit or lack of merit in the
25 claim.
- 26 2. The number and nature of offers made by the
27 parties.
- 28 3. The closeness of questions of fact and law at
29 issue.
- 30 4. Whether the proposal was reasonably rejected.

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