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FLORIDA'S BUSINESS LAW FIRM

WHEN DOES LITIGATION MISCONDUCT BECOME FATAL?

How the Florida Supreme Court's Decision in Publix Super Markets, Inc. v. Goga Empowers Trial Courts to Dismiss Cases for Fraud

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In every lawsuit, credibility is currency. On July 9, 2026, the Florida Supreme Court held in Publix Supermarkets, Inc. v. Goga, No. SC2024-0669, that appellate courts should not apply a heightened standard when reviewing trial court dismissals for fraud on the court. The decision confirms that when misconduct compromises a proceeding's integrity, dismissal with prejudice is available—and appellate courts should not strain to undo it.

What Constitutes "Fraud on the Court"?

Fraud on the court is not simply a mistake or exaggeration. Under Florida law, it occurs when a party sets in motion an "unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter." In Goga, the plaintiff claimed extensive physical limitations from a slip-and-fall, but surveillance video showed her doing all of those things without difficulty. The trial court found that her testimony was intentionally false.

In commercial litigation, fraud on the court can take many forms: exaggerating the magnitude of damages, concealing documents that undermine a party's narrative, providing inconsistent testimony across different proceedings, manipulating or selectively producing electronic records, coaching witnesses to present a misleading story, posting social media content that directly contradicts sworn testimony, and failing to implement adequate document preservation after litigation becomes reasonably foreseeable. The common thread is deliberate deception that corrupts the court's ability to reach a just result.

When Can a Judge Dismiss a Case Rather Than Impose a Lesser Sanction?

Dismissal with prejudice—sometimes called the "death penalty" sanction in litigation—is reserved for egregious circumstances. Because Florida's Constitution guarantees access to the courts, dismissal should be employed only when lesser sanctions are inadequate. But Goga reinforces that when fraud "comprehensively infects the integrity" of an action, a trial court may dismiss the entire case rather than surgically preserve individual claims.

Goga changed the appellate framework for reviewing a dismissal sanction. Trial courts now have clearer authority to impose the ultimate sanction when the facts warrant it, and appellate courts are less likely to second-guess that judgment.

What Should Businesses Do to Protect Themselves?

The best protection against a fraud-on-the-court finding is not to engage in conduct that could be characterized as one. In complex litigation, the line between aggressive advocacy and sanctionable misconduct can blur. Businesses should take concrete steps to stay on the right side of that line:

Implement litigation holds early. Document preservation obligations attach when litigation is reasonably anticipated, not when a complaint is filed. A systematic hold process—with written instructions, custodian acknowledgments, and periodic compliance checks—demonstrates good faith and prevents gaps that opposing counsel can characterize as intentional concealment.

Ensure discovery responses are accurate, complete, and consistent. Every interrogatory answer and document production is a representation to the court. Verify factual claims with individuals who have firsthand knowledge, and supplement responses promptly when new information emerges.

Prepare witnesses carefully and ethically. There is an important distinction between helping a witness organize their recollection and coaching them to present a misleading narrative. Witnesses should understand that inconsistencies will be discovered and that exaggeration can be as damaging as outright fabrication.

Monitor and manage social media. Increasingly, social media posts serve the same function as surveillance video. Employees and corporate representatives should understand that their public posts may become evidence—and that posts inconsistent with litigation positions can be devastating.

Conduct internal investigations thoroughly and preserve results. When potential misconduct surfaces, the response should be documented, proportionate, and honest. A company that investigates a problem and addresses it candidly is in a fundamentally different position than one that conceals or minimizes what it finds.

Avoid inconsistent representations across forums. Businesses involved in multiple lawsuits, regulatory matters, or transactions must ensure that positions taken in one forum do not contradict positions taken in another.

Why This Matters Especially in Complex Commercial Litigation

In complex commercial disputes—where document volumes are massive, witnesses are numerous, and the financial pressure to minimize exposure is intense—the temptation to shade the truth grows proportionally. Large commercial cases also attract scrutiny from opposing counsel with resources to hire investigators and cross-reference every representation. The Goga framework gives trial judges clear authority to impose the most severe sanction when that scrutiny reveals systemic dishonesty.

The Takeaway

Credibility is a litigant’s most valuable asset—and it is not divisible. Goga confirms that when a party deliberately destroys its credibility through pervasive fraud, Florida courts have clear authority to dismiss the case with prejudice. If you are pursuing a claim, protect it by ensuring every representation is one you can stand behind. If you are defending, exposing systemic dishonesty is now an even more powerful tool. In either position, the surest path to a favorable outcome runs through integrity.

Berger Singerman’s Dispute Resolution Team represents businesses and individuals in complex commercial litigation and disputes. Please contact a member of our team if you have questions about litigation strategy, discovery obligations, or issues involving potential misconduct or fraud on the court.

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