

PLAINTIFF'S VERIFIED MOTION TO STRIKE DEFENDANT'S SANCTIONS MOTION AS VOID,
FILED WITHOUT JURISDICTION, REPETITIVE, AND ABUSIVE UNDER § 57.105, FLA. STAT.,
AND TO PRESERVE DUE PROCESS AND APPELLATE RIGHTS

**IN THE CIRCUIT OF THE 15TH JUDICIAL CIRCUIT IN AND
FOR PALM BEACH COUNTY, FLORIDA**

MARCIO SOUSA SALES,

Plaintiff,

CASE NO: 50-2025-CA-000969-XXA-MB

vs.

ANTONIO DE ANDRADE,

Defendant,

_____/

**PLAINTIFF'S VERIFIED MOTION TO STRIKE DEFENDANT'S
SANCTIONS MOTION AS VOID, FILED WITHOUT
JURISDICTION, REPETITIVE, AND ABUSIVE UNDER § 57.105,
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APPELLATE RIGHTS**

COMES NOW the Plaintiff, Marcio Sousa Sales, appearing pro se and pursuant to
Florida Rules of Civil Procedure and constitutional protections, and hereby
respectfully moves this Court to strike the Defendant's renewed Motion for
Sanctions filed May 12, 2025, as:

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Procedurally improper,

Legally unauthorized post-dismissal,

Filed in bad faith under Fla. Stat. § 57.105, and

A continuing pattern of abuse and judicial manipulation aimed at silencing a pro se
litigant in violation of due process rights.

INTRODUCTION & BACKGROUND

This motion seeks to protect the integrity of the judicial process, preserve appellate jurisdiction, and assert the inviolable constitutional rights of a pro se litigant who has been systematically ignored, silenced, and disadvantaged at every procedural step.

The Court's previous May 14, 2025, Order dismissing this case without prejudice divested it of jurisdiction. Despite this, Defendant's counsel improperly refiles a previously served § 57.105 sanctions motion — seeking attorney's fees after the case is closed and while a valid Notice of Appeal and Motion to Stay are pending.

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The undersigned urges this Court to strike the sanctions motion, hold further proceedings in abeyance, and take judicial notice of its own consistent failure to rule on Plaintiff’s fully briefed and procedurally proper motions in violation of due process and equal access to justice.

LEGAL STANDARDS & ARGUMENT

I. The Court Lacks Jurisdiction to Hear Sanctions Post-Dismissal

Once a case is dismissed—especially **without prejudice**—the trial court’s jurisdiction is extinguished except to enforce that specific dismissal or entertain post-judgment motions explicitly authorized by law.

The **Defendant’s May 12, 2025, sanctions motion** is untimely, procedurally void, and legally unsupportable. The Court cannot rule on it while the case is on appeal and **no order staying appellate proceedings has been entered**.

See,

- **Andrews v. Palmer**, 598 So. 2d 167 (Fla. 1st DCA 1992): Once an appeal is taken, the trial court is without jurisdiction to act except on matters not affecting the subject of the appeal.
- **Beekman v. Beekman**, 53 So. 3d 166 (Fla. 5th DCA 2011): The trial court lacked jurisdiction to enter post-dismissal sanctions after notice of appeal.
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- **Rubenstein v. Friedlander**, 64 So. 3d 541 (Fla. 3d DCA 2011): Post-dismissal sanctions require jurisdiction and express findings not present here.
- **M.K. v. Dep't of Children & Families**, 104 So. 3d 1265 (Fla. 1st DCA 2013): Absent prejudice or procedural order authorizing continued action, post-dismissal proceedings are void.
- **Lee v. Batmasian**, 202 So. 3d 899 (Fla. 4th DCA 2016): Filing sanctions after case dismissal is jurisdictionally defective unless the issue is collateral.
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II. The Motion Violates § 57.105's Safe Harbor Rule and Is Repetitive and Retaliatory

The Defendant served the original sanctions motion **on or around April 14, 2025**, triggering the 21-day safe harbor period. However:

- Plaintiff objected on May 2, 2025;
- The motion was never ruled on;
- The case was dismissed on May 14, 2025;
- And now the motion is refiled in retaliation for the **Plaintiff's Notice of Appeal**.

This refiled motion is procedurally improper and retaliatory, especially in a case where the Plaintiff is a pro se litigant with protected constitutional rights.

See,

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- **Yaklin v. Yaklin**, 296 So. 3d 531 (Fla. 2d DCA 2020): § 57.105 must strictly comply with safe harbor provision; refiling same motion is not permitted.
- **Weatherby Assocs., Inc. v. Ballack**, 783 So. 2d 1138 (Fla. 4th DCA 2001): Duplicative sanctions motions designed to harass violate § 57.105.
- **Kushner v. Beck**, 679 So. 2d 840 (Fla. 4th DCA 1996): Re-filing a sanctions motion after dismissal renders it jurisdictionally improper.
- **Moakley v. Smallwood**, 826 So. 2d 221 (Fla. 2002): Sanctions require a finding of bad faith and must not be weaponized against unrepresented parties.
- **Read v. Read**, 217 So. 3d 71 (Fla. 4th DCA 2017): Sanctions must not chill the rights of pro se litigants to access courts.

III. The Court Has Demonstrated Systematic Bias Against the Plaintiff by Ignoring All Motions Filed

The docket shows a troubling and consistent pattern: **none of Plaintiff's 17+ motions were ruled upon**, including:

- Emergency motions to strike hearings;
- Motions for protective orders;
- Requests to clarify procedural irregularities.

In contrast, the Court granted or conducted hearings on all of Defendant's filings—even when **procedurally unauthorized** or not properly served. This violates Article I, Section 21 of the Florida Constitution and Fla. R. Jud. Admin. 2.515.

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See,

- **Am. Pioneer Cas. Ins. Co. v. Dev. of Va., Inc.**, 684 So. 2d 834 (Fla. 2d DCA 1996): Repeated failure to rule on party's motions is grounds for reversal.
- **Blackburn v. State**, 723 So. 2d 875 (Fla. 1st DCA 1998): Pro se litigants must be afforded equal procedural protection under the law.
- **Kelly v. Schmidt**, 816 So. 2d 631 (Fla. 4th DCA 2002): Trial courts cannot act arbitrarily or demonstrate appearance of bias against pro se parties.
- **In re Amendments to Fla. Rule Jud. Admin. 2.515**, 236 So. 3d 1127 (Fla. 2018): Courts must consider pro se filings in good faith and respond with due diligence.

IV. Any Hearing on a Sanctions Motion Now Violates Due Process and Exceeds This Court's Authority

Even if this motion had any legal merit, **no hearing can lawfully occur while this case is under appellate jurisdiction.**

Plaintiff filed a **Notice of Appeal on June 5, 2025**, and a **Motion to Stay Proceedings** the same day. The Court has not ruled on the stay, but is barred from conducting further proceedings that affect the merits or penalize the Appellant.

See,

- **Becerra v. Rodriguez**, 841 So. 2d 488 (Fla. 4th DCA 2003): Trial court cannot proceed on substantive matters while appeal is pending.
- **Fla. R. App. P. 9.130(f)**: Filing notice of appeal automatically transfers jurisdiction to the appellate court.

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- **Nicholson-Kenny Capital Mgmt., Inc. v. Steinberg**, 932 So. 2d 321 (Fla. 4th DCA 2006): Conducting a hearing while motion to stay is pending is procedural error.
- **Bailey v. Bailey**, 392 So. 2d 49 (Fla. 4th DCA 1981): Hearings conducted without jurisdiction are void ab initio.

PRAYER FOR RELIEF

WHEREFORE, based on the foregoing facts, statutory authorities, constitutional rights, and controlling precedent, Plaintiff MARCIO SOUSA SALES respectfully requests this Honorable Court to:

STRIKE Defendant's May 12, 2025 "Motion for Sanctions" as:

Improperly filed after dismissal;

Jurisdictionally barred due to pending appeal;

In violation of the safe harbor provisions of Fla. Stat. § 57.105;

A continuation of a pattern of procedural abuse and retaliation;

DENY ANY HEARING related to said sanctions motion while appellate jurisdiction is active;

ISSUE AN ORDER clarifying that no further sanctions or substantive rulings will occur until the pending appellate review is completed;

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REPRIMAND COUNSEL for Defendant for improper conduct and continued
violation of ethical and procedural duties under the Florida Bar Rules of Professional
Conduct, including but not limited to:

Rule 4-3.1 (Meritorious Claims and Contentions),

Rule 4-4.4 (Respect for Rights of Third Persons),

Rule 4-8.4(d) (Conduct Prejudicial to the Administration of Justice);

GRANT SUCH OTHER AND FURTHER RELIEF as justice may require under
Fla. R. Civ. P. 1.540, Article I § 21 of the Florida Constitution, and the inherent
powers of this Court to protect due process and deter abusive litigation tactics.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Plaintiff's MOTION TO STRIKE
DEFENDANT'S REPEATED SANCTIONS MOTION AS PROCEDURALLY
VOID, ABUSIVE, AND FILED IN VIOLATION OF JUDICIAL ECONOMY,
PENDING APPEAL, AND DUE PROCESS RIGHTS was served on Antonio de
Andrade, at his e-mail tjlmable@yahoo.com as well his attorney
seth@kellergibson.com on this June 6, 2025.

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