

SLAPPED AROUND

Florida Public Employees Suffer Personal Lawsuits for Protecting the Environment

Based on a public records search, Florida Public Employees for Environmental Responsibility (*Florida* PEER) has confirmed a major statewide problem of lawsuits filed against government employees *personally* who attempt to protect the environment.

Sometimes known as SLAPP suits, for "Strategic Lawsuits Against Public Participation," retaliatory lawsuits have long been aimed at individual citizens in Florida and around the country. But in recent years in Florida these suits have been increasingly filed against individual government employees. This means that the employee's home, savings and financial security are put on the line for simply doing their jobs.

Since 1988, at least 15 lawsuits have been filed targeting employees of the Florida Department of Environmental Protection (formerly Department of Environmental Regulation) and the state's water management districts involved in enforcement or permitting, rather than the agencies themselves.

A single Central Florida Aproperty rights@ lawyer has filed approximately 40% of the lawsuits. Several of these retaliatory lawsuits were even continued against against the estate of the deceased DEP employee--interfering in the decedent's elderly mother's ability to receive her son's modest estate.

These numbers do not include lawsuits filed against federal and local government employees. Further, lawsuits have been threatened against Florida public employees in numerous other instances. Thus, the actual lawsuits filed are only the tip of the iceberg.

One DEP attorney who has closely studied the issue wrote in a November 9, 1999 confidential interoffice memorandum:

Several DEP employees have been sued in their individual capacities for millions of dollars for the good faith conduct of their duties. The water management districts have told us that several of their employees have also been sued. We have been informed that employees of some local governments have also been hit by SLAPP suits.

* * *

Under existing Florida statutes, state employees are immune to suit for the good faith conduct of their duties. See section 768.28(9) of the Florida Statutes. A typical SLAPP suit evades this issue by alleging that the employee is not immune because he or she acted in bad faith or with malicious purpose[.] Thus, a hearing or trial is required and the specter of personal bankruptcy hangs over the head of the employee and has a great intimidating effect on not only the target employee but also other employees who fear that they may be next to get hit with a SLAPP suit. Typically, these cases drag on for years before being finally dismissed on the ground of employee immunity. The SLAPP suits thus achieve their intended intimidation for long periods of time.

In order to ease the burden on state employees, the DEP attorney authored proposed legislation to deal with the issue, but the proposal was blocked during the last two legislative sessions.

A powerful developer-industry lobbyist has referred to this proposed legislation as a bureaucrat relief act and questioned whether SLAPP suits against public employees are really a problem at all. This same lobbyist has been a staunch advocate of what has been termed "land grab" legislation that would give sovereign submerged lands away to adjacent timbering and other landholders.

On December 20, 1999, the DEP attorney wrote:

Last year [the lobbyist] killed a similar effort, and I expect that he will try to do so again this year. [He] has been asking us to show that there is a real problem to be solved. In DEP alone, in the past five years we have had the following SLAPP suits against our employees: [lists seven cases]

In summary, in the past five years we have had seven SLAPP suits in which fifteen employees were sued. . . . In response to [the lobbyist's] question, it seems like a real problem to me.

In a multi-part settlement with PEER over alleged mismanagement of sovereign submerged lands, DEP Secretary David B. Struhs, an appointee of Governor Jeb Bush, promised to address the problem. By letter dated April 5, 1999, he committed:

The Department will work with legislators during the interim prior to the 2000 session to encourage the passage of legislation at that session to discourage "SLAPP-like" suits against government employees and the public in general.

Unfortunately, when PEER met with top Struhs aides in July 1999, they were not even aware of Struhs' commitment. In fact, DEP did virtually nothing to work with legislators on the issue until in 2000 after PEER inquired of Struhs about implementation of his commitment. By then, the proposed legislation had little chance of passage, if it ever did, without strong gubernatorial support.

Attempts by PEER to obtain further information from DEP on its efforts to obtain passage of the legislation have been unsuccessful.

Thus, in Florida, public employees will continued to be SLAPPED-around by retaliatory lawsuits for the foreseeable future.

This short shrift to public employees is a corollary to other efforts in the 2000 Florida Legislature to undermine citizen hearing rights, growth management protections, and the public's property rights. If public employees cannot safely work to protect Florida's future, Floridians themselves will be left out to dry.