



Attorney's Fees Update Shelby O'Brien

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Attorney's Fees Must Be Authorized

Attorney's fees must be authorized by statute, rule,
or contract.

Chapter 38: Breach of Contract Claims

- Still limited to claims against individuals and corporations.
- Legislation failed last two sessions. *See, e.g.*, HB No. 790, 86th Leg., R.S. (2019); H.B. No. 744, 85th Leg., R.S. (2017).

Sanctions

***Nath v. Texas Children’s Hosp. (Nath I)*, 446 S.W.3d 355 (Tex. 2014)**

“[I]f issues asserted in pleadings are revealed to be frivolous, and the defending party delays moving for summary judgment and sanctions, the defending party adopts some responsibility for the overall increase in litigation costs.” *Id.* at 372.

Sanctions

***Christus Health Gulf Coast v. Carswell*, 505 S.W.3d 528 (Tex. 2016)**

- Reversed a sanctions award on grounds that it was an “arbitrary fine without evidentiary support.”
- “[W]hen a party seeks attorney’s fees as sanctions, the burden is on that party to put forth some affirmative evidence of attorney’s fees incurred and how those fees resulted from or were caused by the sanctionable conduct.” *Id.* at 540.

Sanctions

***Nath v. Texas Children’s Hosp. (Nath II)*, 576 S.W.3d 707 (Tex. 2019)**

- Movant has burden of proving the reasonableness and necessity of attorney’s fees awarded as sanctions.
- “Although this case deals with attorney’s fees awarded through a sanctions order, the distinction is immaterial because all fee-shifting situations require reasonableness.” *Id.* at 710.
- Relied on recent *Rohrmoos Venture v. UTSW DVA Healthcare, LLP* decision.

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