

## PROBATE CORNER

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ARTICLE: A TRIAL COURT MAY AWARD ATTORNEY'S FEES AND COSTS TO BE PAID FROM THE ESTATE AGAINST A BENEFICIARY'S PORTION OF THE ESTATE ONLY FOR BAD FAITH, WRONGDOING, OR FRIVOLOUS LITIGATION

Sec. 733.106(4), Fla. Stat. reads:

When costs and attorney's fees are to be paid from the estate, *the court may direct from what part of the estate they shall be paid.* [Emphasis added]

In In re Estate of Lane, 562 So. 2d 352 (Fla. 4th DCA 1990), the court held that before the trial court may assess fees against a beneficiary's share of an estate pursuant to §733.106(4), there must be a finding of bad faith or wrongdoing by the beneficiary which would warrant such an assessment.

Additionally, §733.6175(2), Fla. Stat. reads:

Court proceedings to determine reasonable compensation of the personal representative or any person employed by the personal representative, if required, are a part of the estate administration process, and the costs, including attorneys' fees, of the person assuming the burden of proof of propriety of the employment and reasonableness of the compensation shall be determined by the court and paid from the assets of the estate unless the court finds the requested compensation to be substantially unreasonable. *The court shall direct from which part of the estate the compensation shall be paid.* [Emphasis added]

In Geary v. Butzel Long, 13 So. 3d 149 (Fla. 4th DCA 2009), the court expanded the holding in Estate of Lane and held that before the trial court may assess fees against a beneficiary's share of an estate pursuant to §733.6175(2), there must be a finding of bad faith, wrongdoing, or *frivolous litigation* by the beneficiary which would warrant such an assessment.

"Frivolous" is defined as "of little weight or importance; having no basis in law or fact; light, slight, sham, irrelevant, superficial." See Allen v. Estate of Dutton, 384 So. 2d 171 (Fla. 5th DCA 1980), *citing* Webster's Third New International Dictionary (1976). A frivolous claim is "one that is so readily recognizable as devoid of merit on the face of the record that there is little, if any, prospect whatsoever that it can ever succeed" [Wiggins v. Southern Management Corp., 629 So. 2d 1022 (Fla. 4th DCA 1993)], or the action is "so clearly devoid of merit, both on the facts and the law, as to be completely untenable". [United Cos. Fin. Corp. v. Hughes, 460 So. 2d 585 (Fla. 2d DCA 1984)]. "A frivolous argument is one which is so devoid of merit that it can be determined without argument or research." See Smalbein v. Volusia County Sch. Bd., 801 So. 2d 169 (Fla. 5th DCA 2001), footnote 3.

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Query, does the same rule apply to trusts? Refer to §§736.1004(2), 736.1005(2), 736.1006(2), and 736.1007(9), Fla. Stat.