

New York Court of Appeals Clarifies Lawyer Misconduct Subject to N.Y. Judiciary Law § 487

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On March 31, 2020, the New York Court of Appeals issued a significant decision concerning the scope of New York Judiciary Law § 487. See *Bill Birds, Inc. v. Stein Law Firm, P.C.*, --- N.E.3d ----, 2020 WL 1521903 (N.Y. Mar. 31, 2020) (“*Bill Birds*”).

Judiciary Law § 487 prohibits a lawyer from, among other things, engaging in “any deceit or collusion . . . with [the] intent to deceive the court or any party.” To establish liability under this statute, a plaintiff must show that a lawyer acted intentionally (*i.e.*, with scienter), but need not demonstrate that the deceived party justifiably relied on the lawyer’s false statements or other deception.

In recent years, we have seen an increase in plaintiffs asserting Judiciary Law § 487 claims in actions involving alleged misconduct by lawyers, including legal malpractice actions. An allegation that a lawyer violated Judiciary Law § 487 is a serious matter. The statute subjects the lawyer to both misdemeanor criminal penalties and treble damages in any civil action in which the claim is proved.

In recognition of the seriousness of such liability, the Court of Appeals in *Bill Birds* limited the type of attorney misconduct that is actionable under Judiciary Law § 487. In *Bill Birds*, a former client alleged that the defendant law firm lied about the merits of the client’s potential trademark infringement claims so that the client would retain the law firm to prosecute a meritless action and pay the firm legal fees. The former client further alleged that, after the action was dismissed on procedural grounds, the law firm concealed the dismissal for months and lied about the reason for the delay.

In determining that Judiciary Law § 487 did not apply to the law firm’s alleged deceitful conduct, the Court observed that it “must be circumspect to ensure that [the criminal] responsibility [imposed by the statute was] not extended beyond the fair scope of the statutory mandate.” *Id.* at *2. The Court found that “the purpose of Judiciary Law § 487(1) is to safeguard an attorney’s special obligation of honesty and fair dealing in the course of litigation.” *Id.* at *3. In that regard, the Court noted that the “language of the statute is aimed at a particular type of deceit or collusion—done by an attorney with the intent to mislead the court or a party.” *Id.* Accordingly, the Court found that “[g]iven the statute’s origins and purpose, [Judiciary Law § 487] provides a particularized civil remedy, and criminal liability, for a specialized form of attorney misconduct occurring **during the pendency of litigation.**” *Id.*

Applying these principles, the Court held that the law firm's alleged deception in inducing its former client to file the meritless lawsuit was not actionable under Judiciary Law § 487 because it had preceded the commencement of the litigation. *Id.* The Court held further that, even if the law firm had deceived plaintiff about the dismissal of the lawsuit, such conduct fell outside the scope of Judiciary Law § 487 because it had occurred after the litigation ended. *Id.*

The *Bill Birds* decision adds clarity to the scope of Judiciary Law § 487 and may mitigate the *in terrorem* effect of a § 487 claim. We may also see a decline in the assertion of such claims. Nevertheless, lawyers should remain vigilant when providing advice in pre-, post- and non-litigation contexts. As the Court of Appeals observed, a variety of "[o]ther mechanisms are available to address the filing of frivolous lawsuits, among other attorney shortcomings, such as litigation sanctions, attorney misconduct proceedings and legal malpractice actions." *Id.* *3 n.3.