

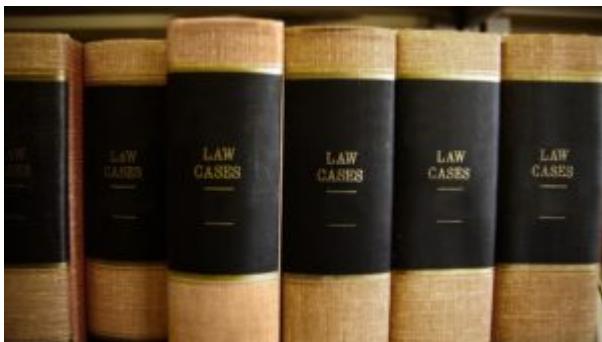


The Future of Punitive Damages Under Pennsylvania's Dragonetti Act – Are Their Days Numbered?

By Gregory F. Brown

Earlier this year, the Supreme Court of Pennsylvania issued its long-anticipated opinion in *Villani v. Siebert*, 159 A.3d 478 (Pa. 2017). In *Siebert*, the court considered an attorney's challenge to the constitutionality of Pennsylvania's wrongful use of civil proceedings statute (the "Dragonetti statute"), codified at 42 Pa.C.S. § 8351, et seq., as it pertains to attorneys.

The challenge in *Siebert* was based on the Pennsylvania constitution's mandate that the judiciary create rules governing the practice of law and admission to the bar, and that all inconsistent laws are "suspended." The attorney who challenged the Dragonetti statute argued that certain differences between the legislatively-created statute, and the judicially-created Rules of Professional Conduct rendered the Dragonetti statute unconstitutional, and void. The court rejected the attorney's broad argument, and concluded that the Dragonetti statute was constitutional because the legislature is permitted to make regressive laws to compensate victims of tortious practices. The court found no reason why attorneys should be entitled to a broad immunity from civil liability for tortious behavior under the statute.



le door open for a more narrow constitutional challenge, and identified two site's "probable cause" standard, which allows a cause

of action where the defendant attorney presents a case that is not viable under

existing law. On the other hand, the judicially-created Rules of Professional Conduct allow an attorney to advocate a client's position based on an argument that existing law should be modified. Another possible challenge to the Dragonetti statute envisioned by the court was a challenge to its punitive damages provision, as the courts already have the ability to impose sanctions under the procedural rules.

It seems more likely that an appeal of an award of punitive damages would reach the court before an actual controversy involving the esoteric distinction between the Dragonetti Act's probable cause standard and the parameters for allowable advocacy set forth in the Rules of Professional Conduct. Moreover, it is not difficult to envision that such a challenge to the Dragonetti Act would be successful. The question of how an attorney should be punished or disciplined for his or her conduct falls well within the province of the judiciary's constitutional mandate, while the remedial purpose of compensating a victim of a wrongful use of civil proceedings is not indicated where only punitive damages are at issue. Further, in *Siebert*, the Pennsylvania Supreme Court virtually invited such a challenge.

In sum, while the Dragonetti statute remains intact after *Siebert*, there are new questions as to the viability of its punitive damages provision, which will likely be the next target of a constitutional challenge. In such a case, the Pennsylvania Supreme Court may consider interesting questions, such as whether the judiciary, through the disciplinary process, or the general public, through the Dragonetti statute, should be able to punish an attorney with monetary sanctions.