ROBERT B. KEATY, THOMAS S. KEATY AND KEATY AND KEATY	*	**NO. 2000-CA-0221**
	*	**COURT OF APPEAL**
VERSUS	*	**FOURTH CIRCUIT**
ROY A. RASPANTI	*	**STATE OF LOUISIANA**
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TOBIAS, J., CONCURS

I respectfully concur in the reversal of the ruling of the trial court.

The majority adopts one year as the liberative prescription period for requesting sanctions pursuant to La. C. C. P. art. 863. Our statutory law establishes no formal period of time. In *Connelly v. Lee*, 96-1213 (La. App. 1 Cir. 5/9/97), 699 So.2d 411, which is the only Louisiana appellate court that has addressed the issue, the First Circuit Court of Appeal has adopted the federal jurisprudenial rule of reasonableness – a period of time that is not inordinate.

In *Reeder v. North*, 97-0239 (La. 10/21/97), 701 So.2d 1291, the Louisiana Supreme Court has determined that La. R.S. 9:5605 is a three year peremptive period for malpractice claims against lawyers. The rule is, in my opinion, unduly harsh given that a lawyer's client does not generally know

of the act of malpractice committed by the lawyer until the case is over. Moreover, the ruling places a client in the untenable position of having to file suit against the lawyer while the lawyer is still in active representation of the client's claim.

I recognize that lawyers are reluctant to file claims for sanctions against other lawyers. When a lawyer makes such a claim, the lawyer technically opens himself or herself to a claim of defamation or for a counterclaim for sanctions. And the counterclaim opens up the possibility of a further counterclaim by the lawyer who originally sought sanctions. Theoretically, no end exists to counterclaims.

In the case at bar, I find that the appellant waited a reasonable period of time to file his claim for sanctions, namely, until the Court of Appeal had rendered its decision in the underlying case. That is, the appellant did not wait an inordinate period of time to file his claim. Common sense dictates that, absent an extraordinary set of facts, a period of one year from the entry of a final and definitive judgment is the outer limit for filing a claim for sanctions. (Such does not mean that in this case the appellee's pleadings are subject to sanctions because that issue is not presently before this Court.)

Inasmuch as a prescriptive period is subject to interruption, I do not find a period of one year is unreasonable. I would, however, not set a time limit but would shift the burden of proof to the proponent of the sanctions after one year from a definitive judgment relating to the conduct that is subject to sanctions.