

ITEM 1.02 | FLORIDA RULE OF CIVIL PROCEDURE 1.380

The language of Fla. R. Civ. P. 1.380 applies to all discovery: depositions, admissions, responses to requests to produce, etc. "If a deponent fails to answer a question propounded or submitted under rule 1.310 or 1.320, or a corporation or other entity fails to make a designation under rule 1.310(b)(6) or 1.320(a), or a party fails to answer an interrogatory submitted under rule 1.340, or if a party in response to a request for inspection submitted under rule 1.350 fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, or if a party in response to a request for examination of a person submitted under rule 1.360(a) objects to the examination, fails to respond that the examination will be permitted as requested, or fails to submit to or to produce a person in that party's custody or legal control for examination, the discovering party may move for an order compelling an answer, or a designation or an order compelling inspection, or an order compelling an examination in accordance with the request." The losing party shall be required to pay "reasonable expenses incurred," including attorneys' fees, in obtaining an order compelling discovery or successfully opposing the motion.⁴

Upon proper showing, the full spectrum of sanctions may be imposed for failure to comply with the order.⁵ The rule sets out possible alternative sanctions: adopting as established facts the matters which the recalcitrant party refused to address or produce; prohibiting the disobedient party from supporting or opposing designated claims or defenses;⁶ prohibiting the introduction of certain evidence;⁷ striking pleadings, which could result in a dismissal of the action; the entry of a default judgment, including an order for liquidated damages;⁸ contempt of court; and the assessment of reasonable expenses or attorney's fees.⁹ The courts have crafted a few additional possibilities: fines;¹⁰ granting a new trial;¹¹ and, in the case of lost or destroyed evidence, creation of an evidentiary inference¹² or a rebuttable presumption.¹³ The court may rely on its inherent authority to impose drastic sanctions when a discovery-related fraud has been perpetrated on the court.¹⁴

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Footnotes

⁴ Fla. R. Civ. P. 1.380(a)(4).

⁵ Fla. R. Civ. P. 1.380(b).

⁶ *Steele v. Chapnick*, 552 So. 2d 209 (Fla. 4th DCA 1989) (reversing dismissal because plaintiff substantially complied with defendant's discovery request, but authorizing alternative sanctions of precluding evidence on issues when plaintiff failed to reply to discovery demands, entering findings of fact adverse to plaintiff on those same issues, or imposing fines and fees).

⁷ *Binger v. King Pest Control*, 401 So. 2d 1310 (Fla. 1981) (trial court may exclude testimony of witness whose name had not been disclosed in accordance with pretrial order).

⁸ *DYC Fishing, Ltd. v. Martinez*, 994 So. 2d 461, 462 (Fla. 3d DCA 2008) (reversing trial court's entry of default final judgment awarding unliquidated damages to the plaintiff and stating that in Florida, default judgments only entitle the plaintiff to liquidated damages). *Bertrand v. Belhomme*, 892 So. 2d 1150 (Fla. 3d DCA 2005)

⁹ Rule 1.380(b)(2)(A)-(E) and (d). See *Blackford v. Florida Power & Light Co.*, 681 So. 2d 795 (Fla. 3d DCA 1996) (reversing summary judgment as sanction for failure to answer interrogatories, but authorizing attorneys' fees and costs); *United Services Automobile Association v. Strasser*, 492 So. 2d 399 (Fla. 4th DCA 1986) (affirming attorneys' fees and costs as sanctions for consistently tardy discovery responses, but reversing default).

¹⁰ *Evangelos v. Dachiel* 553 So. 2d 245 (Fla. 3d DCA 1989) (\$500 sanction for failure to comply with discovery order, but default reversed); *Steele*, 552 So. 2d 209 (imposition of fine and/or attorneys' fees for failure to produce is possible sanction). The imposition of a fine for discovery violations requires a finding of contempt. *Hoffman v. Hoffman*, 718 So. 2d 371 (Fla. 4th DCA 1998). *Channel Components, Inc. v. America II Electronics, Inc.*, 915 So. 2d 1278 (Fla. 2nd DCA 2005) (ordering over \$79,000 as a sanction for violation of certain discovery orders does not constitute abuse of discretion).

¹¹ *Binger*, 401 So. 2d 1310 (intentional nondisclosure of witness, combined with surprise, disruption, and prejudice, warranted new trial); *Nordyne, Inc. v. Florida Mobile Home Supply, Inc.*, 625 So. 2d 1283 (Fla. 1st DCA 1993) (new trial on punitive damages and attorneys' fees as sanctions for withholding documents that were harmful to manufacturer's case but were within scope of discovery request); *Smith v. University Medical Center, Inc.*, 559 So. 2d 393 (Fla. 1st DCA 1990) (plaintiff entitled to new trial because defendant failed to produce map that was requested repeatedly).

¹² *Federal Insurance Co. v. Allister Manufacturing Co.*, 622 So. 2d 1348 (Fla. 4th DCA 1993) (manufacturer entitled to inference that evidence, inadvertently lost by plaintiff's expert, was not defective).

¹³ *Public Health Trust of Dade County v. Valcin*, 507 So. 2d 596 (Fla. 1987) (rebuttable presumption of negligence exists if patient demonstrates that absence of hospital records hinders patient's ability to establish prima facie case); *Amlan, Inc. v. Detroit Diesel Corp.*, 651 So. 2d 701



(Fla. 4th DCA 1995) (destruction or unexplained absence of evidence may result in permissible shifting of burden of proof).

¹⁴ *Tramel v. Bass*, 672 So. 2d 78 (Fla. 1st DCA 1996) (affirming default against sheriff for intentionally omitting portion of videotape of automobile pursuit).

