

ITEM 1.06 | SANCTIONS FOR FAILURE TO OBEY COURT ORDER

If a party or its designated representative fails to obey a prior order to provide or permit discovery, the court in which the action is pending may make any of the orders set forth under the Rules. As an example, not a limitation, Fla. R. Civ. P. 1.380(b)(2) lays out specifically permissible sanction orders including:

- A. An order that the matters regarding which the questions were asked or any other designated facts, shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order.
- B. An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence.
- C. An order striking out pleadings or parts of them or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part of it, or rendering a judgment by default against the disobedient party.
- D. Instead of any of the foregoing orders or in addition to them, an order treating as contempt of court the failure to obey any orders except an order to submit to an examination made pursuant to Rule 1.360(a)(1)(B) or subdivision (a)(2) of this Rule.
- E. When a party has failed to comply with an order under Rule 1.360(a)(1)(B) requiring that party to produce another for examination, the orders listed in paragraphs (A), (B), and (C) of this subdivision, unless the party failing to comply shows the inability to produce the person for examination.

Instead of any of the foregoing orders or in addition to them, the court shall require the party failing to obey the order to pay the reasonable expenses caused by the failure, which may include attorneys' fees, unless the court finds that the failure was justified or that other circumstances make an award of expenses unjust.

Such sanctions may be imposed only where the failure to comply with the court's order is attributable to the party. If the failure is that of another party or of a third person whose conduct is not chargeable to the party, no such sanction may be imposed.³⁹ For example, it is an abuse of discretion to strike a party's pleadings based on a nonparty's refusal to comply with discovery requests.⁴⁰



For the trial court to be on solid footing it is wise to stay within the enumerated orders set forth in Fla. R. Civ. P. 1.380(b)(2). If the enumerated orders are utilized, it is doubtful that they will be viewed as punitive and outside the discretion of the court. Due process and factual findings do, however, remain essential, in ensuring the order will withstand appellate scrutiny.

Trial Lawyers Section of the Florida Bar
Conference of Circuit Court Judges
Conference of County Court Judges

Footnotes

³⁹ *Zanathy v. Beach Harbor Club Assoc.*, 343 So. 2d 625 (Fla. 2d DCA 1977).

⁴⁰ *Haverfield Corp. v. Franzen*, 694 So. 2d 162 (Fla. 3d DCA 1997).

