

Fraud on the Court Will Not Go Unpunished

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In keeping with the theme of this month's *Paraclete*, we wanted to share a topic with you that truly does ensure liberty under the law. That topic is fraud on the court.

Scenario: During discovery, a party provides false or misleading testimony by deliberately misrepresenting or failing to disclose a pertinent fact, which directly relates to the party's own claim. Is such misconduct deemed fraud on the court, and if so, does a trial court have the authority to dismiss the case?

Parties litigating must disclose facts truthfully, in order to preserve the integrity of the litigation process in our judicial system. It is clear that "a system that depends on an adversary's ability to uncover falsehoods is doomed for failure." Cox v. Burke, 706 So.2d 43, 47 (Fla. 5th DCA 1998). Furthermore, "the right to seek redress in a court of law...is as much a privilege of citizenship as a right and can be forfeited." John T. Kolinski, *Fraud on the Court as a Basis for Dismissal with Prejudice or Default*, 78-Feb Fla. B.J. 16 (2004). By providing false testimony during discovery, a party can forfeit their right to have their case heard, if the court rules to dismiss the case with prejudice. See, Cox, 706 So.2d at 47 (*holding that the lower court did not abuse its discretion when it dismissed appellant's case, wherein appellant gave false or misleading answers during discovery*).

Dismissing a case with prejudice is a sanction that is ordinarily reserved for the most serious civil litigation misconduct. Kolinski, *supra*. Generally speaking, misconduct can be characterized as either procedural misconduct or substantive misconduct. An example of procedural misconduct is where a party willfully disobeys or repeatedly refuses to comply with a court order; whereas, an example of substantive misconduct is where a party lies about pertinent facts directly relating to their case, such as the nature and extent of the party's injuries. See, DiStefano v. State Farm Mut. Auto. Ins. Co., 846 So.2d 572, 574 (Fla. 1st DCA 2003) (*affirming the trial court's dismissal with prejudice, wherein appellant gave false testimony during discovery concerning facts directly relating to central issues in appellant's case*). Generally speaking, substantive misconduct is likely to result in dismissal with prejudice as a sanction because such behavior clearly evidences a blatant disregard for the judicial process. Kolinski, *supra*.

In order for misconduct to rise to the level of fraud on the court, it must be willfully or deliberately egregious. For instance, a misrepresentation during discovery that is the result of a party's mere oversight or forgetfulness does not rise to the level of fraud on the court. See, DiStefano, 846 So.2d at 575. Fraud on the court, which must be proven by clear and convincing evidence, occurs where "a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier of fact or unfairly hampering the presentation of the opposing party's claim or defense." Cox, 706 So.2d at 46 (*quoting Aoude v. Mobil Oil Corp.*, 892 F.2d 1115, 1118 (1st Cir. 1989)).

According to the applicable case law, a trial court has the inherent authority, based on sound judicial discretion, to dismiss an action with prejudice for fraud on the court. *See, Kornblum v. Schneider*, 609 So.2d 138, 139 (Fla. 4th DCA 1992). If the misconduct is sufficient enough to be deemed fraud on the court, the sanction of dismissal with prejudice will rarely be reversed by an appellate court on appeal. *Kolinski, supra*.

In conclusion, dismissing a case with prejudice is typically reserved for the most extreme misconduct because it takes away one's right to have their case adjudicated in a court of law. Nevertheless, fraud on the court is serious misconduct because it involves deliberately egregious behavior, making a mockery of our judicial system, which relies upon the truthful disclosure of facts. In order to preserve the integrity of our system, a party cannot purposefully misrepresent or fail to disclose a pertinent fact that directly relates to the party's own claim, without the ramification of the most severe sanction.

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The primary areas of practice of **Iurillo & Associates, P.A.** are Commercial and Bankruptcy Litigation and Debtors'/Creditors' Rights.