

A politician from State A sued a newspaper located in State B in a federal court in State A for \$200,000. The politician claimed that the newspaper invaded his privacy by publishing his federal income tax records.

During a deposition in State B, the politician's attorney asked the reporter who wrote the article to reveal the name of the source who supplied the records. The reporter, who resides in State A, refused to answer the question to preserve an alleged privilege. At the conclusion of the deposition, the politician's attorney filed a motion in the federal court in State B to compel the reporter to answer the question. After a hearing, the court held that no privilege existed and ordered the reporter to reveal the source. The reporter refused to comply with the court order. The court held the reporter in contempt and sentenced him to jail until he reveals the source.

Was the federal court's action proper?

- A. No, because a federal court cannot sentence a person to jail for violating a court order in a civil case.
- B. No, because only a federal court in State A may order the reporter to reveal his source and impose sanctions.
- C. Yes, because a deponent must answer every question at a deposition.
- D. Yes, because the reporter failed to comply with the court's order.

Explanation:

Sanctions for violating discovery order

(FRCP 37(b))

Court location	Sanctions allowed
Where deposition occurred	<ul style="list-style-type: none">• Hold in contempt of court
Where suit is pending	<ul style="list-style-type: none">• Direct that certain facts be construed against violator• Prohibit violator from offering certain evidence• Strike pleadings in whole or in part• Stay further proceedings until order is obeyed• Hold in contempt of court*• Dismiss claims in whole or in part• Issue default judgment against violator• Order payment of reasonable expenses (eg, attorney's fees) caused by violation

FRCP = Federal Rule of Civil Procedure.

*Cannot be imposed for failing to comply with order for physical or mental examination.

When a deponent fails to answer a question at a deposition, Federal Rule of Civil Procedure 37 allows the party conducting the deposition to file a motion to compel a response.* When the deponent is a party, the motion must be filed in the court where the lawsuit is pending. But when the **deponent is a nonparty** (as seen here), the motion must be filed in the **federal district where the deposition occurred**. The court may then grant the motion and order the deponent to respond.

If the deponent **refuses to comply** with the court's order, the court may impose **sanctions**—eg, hold the deponent in criminal or civil **contempt of court**. The purpose of criminal contempt is to *punish* the violator by imposing a fixed monetary fine or jail sentence. The purpose of civil contempt is to *coerce* compliance with the court order by imposing a fine or jail sentence that lasts until the violator complies (eg, reveals a source) **(Choice A)**. And since the reporter here refused to comply with the court order, the court properly held him in civil contempt.

*A motion to compel can also be filed when an opposing party fails to make a required disclosure, answer an interrogatory, or produce a document.

(Choice B) Since the reporter is not a party in this suit, the federal court in State B (where the deposition occurred) may order him to reveal his source and impose sanctions.

(Choice C) A deponent must answer every question at a deposition unless refusing to answer is necessary to (1) enforce a court-ordered limitation, (2) present a motion to terminate or limit the deposition, or (3) preserve a privilege.

Educational objective:

When a nonparty fails to answer a deposition question, the court where the deposition occurred can order the nonparty to answer the question. If the nonparty fails to obey this order, the court can sanction the nonparty by holding him/her in criminal or civil contempt of court.

References

- Fed. R. Civ. P. 37(a)–(b) (motion to compel & sanctions).