

A sailor filed a diversity action against a defendant in a federal district court to recover damages for injuries sustained in a boating accident. The district court ordered the attorneys for both parties to attend the first pretrial conference, but the sailor's attorney failed to appear. This was the first and only hearing that the attorney failed to attend. As a result, the district court entered an order dismissing the sailor's action with prejudice. The court also ordered the sailor to pay the expenses incurred by the defendant for attending the conference. The sailor immediately appealed.

What is the sailor's best argument for persuading the appellate court to reverse the dismissal?

- A. The dismissal was unreasonable because the attorney had not shown a pattern of noncompliance or disobedience.
- B. The dismissal was unwarranted because the sailor was also ordered to pay the defendant's expenses.
- C. The district court committed clear error when it dismissed the case before trial.
- D. The district court may sanction a party only when it fails to obey a pretrial order.

Explanation:

Pretrial conferences are designed to improve the quality of trial, facilitate settlement, and expedite litigation. To underscore the importance of these conferences, a federal court typically **must order*** a party and/or attorney to **pay the other party's reasonable expenses** when the party or attorney:

- **failed to attend** a pretrial conference
- was **substantially unprepared** for the conference
- did **not participate** in good faith in the conference *or*
- **failed to obey** a pretrial **order**.

In addition to ordering the payment of expenses, the **court may impose sanctions** on the noncompliant party or attorney **(Choice B)**. The court has discretion to decide which sanction to impose, but the sanction must be **reasonable under the circumstances**—ie, the punishment must fit the violation. Otherwise, an **arbitrary or unreasonable sanction** will be **reversed on appeal** for abuse of discretion.

Here, the district court dismissed the sailor's action with prejudice because the sailor's attorney failed to attend the initial pretrial conference. Dismissal of an action is one of the *harshest* sanctions and is appropriate to punish a pattern of disobedience or noncompliance (not seen here). Therefore, the sailor's best argument to reverse the dismissal is that this sanction was unreasonable under the circumstances.

*A court should not order the payment of the other party's reasonable expenses when (1) the noncompliance was substantially justified or (2) the payment would be unjust.

(Choice C) A district court's factual findings in a bench trial are reviewed for clear error and will only be reversed if no reasonable judge would have made such a finding. But here, the district court's discretionary decision to sanction the sailor's attorney and dismiss the sailor's action with prejudice before trial will be reviewed for abuse of discretion.

(Choice D) A district court may sanction a party if it failed to attend, did not participate in good faith in, or was substantially unprepared for a pretrial conference—not just when it failed to obey a pretrial order.

Educational objective:

A federal court must order the payment of the other party's reasonable expenses and may impose reasonable sanctions on any attorney or party who (1) failed to attend a pretrial conference, (2) was substantially unprepared for the conference, (3) did not participate in good faith in the conference, or (4) failed to obey a pretrial order.

References

- Fed. R. Civ. P. 16(f) (pretrial conference sanctions).

- 6A Charles Alan Wright et al., Federal Practice and Procedure § 1531 (3d ed. 2020) (explaining when sanctions are appropriate for failure to comply with pretrial conference or order).

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Sanctions for noncompliance with pretrial conference or order (FRCP 16)

Sanctionable conduct

- Failure to attend pretrial conference
- Substantially unprepared for conference
- No good-faith participation in conference
- Failure to obey pretrial order



Required sanction

Payment of *reasonable expenses* unless:

- noncompliance substantially justified or
- award of expenses is unjust



Permissible sanctions

- **D**ismiss action in whole or in part
- **S**trike pleadings in whole or in part
- **H**old in contempt of court
- **I**ssue default judgment

