

A distributor brought a diversity action against a manufacturer in federal district court for breach of contract. The district court ordered the parties' attorneys to attend a pretrial conference to obtain admissions and stipulations about the facts in the case. When the conference started, the manufacturer's attorney announced that his client had not authorized him to make admissions or stipulations. The district court canceled the conference as a result. This was the third time the court had to cancel a pretrial conference due to the attorney's failure to obtain authorization to make admissions or stipulations on behalf of his client.

After the conference, the district court issued an order that struck one of the manufacturer's affirmative defenses and required the manufacturer to pay the attorney's fees incurred by the distributor for attending the pretrial conference. At the conclusion of trial, the manufacturer appealed the order.

Is the appellate court likely to reverse the district court's order?

- A. No, because the district court has absolute discretion to issue sanctions.
- B. No, because the order was reasonable under the circumstances.
- C. Yes, because the district court is limited to requiring the manufacturer to pay the distributor's attorney's fees.
- D. Yes, because the manufacturer did not authorize the attorney to make admissions or stipulations.

Explanation:

A federal district court may order the attorneys and any unrepresented parties to attend one or more **pretrial conferences**. These conferences are designed to improve the trial's quality, facilitate settlement, and expedite litigation (eg, by obtaining admissions and stipulations). To promote those goals, a district court **may impose reasonable sanctions** on any **party or attorney** who:

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

Here, the manufacturer's attorney was substantially unprepared to participate in the pretrial conference because he failed to obtain the manufacturer's authorization to make admissions and stipulations. This led the district court to strike one of the manufacturer's affirmative defenses. This sanction was reasonable since this was the third time the court had to cancel a pretrial conference due to the attorney's failure to obtain such authorization **(Choice C)**.

Additionally, a court **must order** a noncompliant party and/or attorney to **pay the other party's reasonable expenses**, including attorney's fees, unless (1) the noncompliance was substantially justified or (2) the payment would be unjust. The attorney's unpreparedness was *not* substantially justified because he should have obtained the manufacturer's authorization before the conference **(Choice D)**. And since there is no indication that awarding attorney's fees would be unjust, the appellate court will likely affirm the order.

(Choice A) Although the district court has discretion to decide which sanctions to impose, this discretion is not absolute. The reason is that an appellate court has the power to reverse a district court's arbitrary or unreasonable sanction as an abuse of discretion (not seen here).

Educational objective:

A federal court *may* issue reasonable sanctions against any party or attorney who is substantially unprepared to participate in a pretrial conference. Additionally, a court *must* order the payment of the opposing party's reasonable expenses unless (1) noncompliance was substantially justified or (2) the payment would be unjust.

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 and/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

