

***"Not all Sanctions are Created Equal" –
Failure to Perform a Mediated Settlement Agreement and Rule 1.730(c)***
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Courts have long held inherent powers to sanction bad conduct by parties or their lawyers. Some of this power has been "codified" in statutes and rules, including Florida Rule of Civil Procedure 1.730(c) titled "Completion of Mediation." Rule 1.730(c) states, "Imposition of Sanctions. In the event of any breach or failure to perform under the agreement, the court upon motion may impose sanctions, including costs, attorneys fees, or other appropriate remedies including entry of judgment on the agreement." A very recent appellate opinion offers some helpful analysis of this provision discussing when it is triggered and how sanctions are to be determined.

In Cox v. Great American Insurance Co., No. 4D10-5155, 2012 Fla. App. LEXIS 8741 (Fla. 4th DCA May 30, 2012), the appellate court was presented with a trial court order imposing attorneys fees under Rule 1.730(c), including fees incurred while litigating the amount of the fees. The opinion is lacking details about the underlying conduct and the trial court order was likewise scant. This served as one of the bases for reversal. Nonetheless, several helpful insights can be gleaned from the case.

The low threshold to trigger sanctions. The Cox court discussed three different bases for sanctions. The first is the inequitable conduct doctrine, which "permits the award of attorney's fees where one party has exhibited egregious conduct or acted in bad faith." Another basis for sanctions is Florida Statute 57.105, which allows sanctions for parties facing claims or defenses that are without merit.

The Cox court correctly contrasted the high threshold of those sanctions bases to the low threshold for triggering sanctions under Rule 1.730(c). "Rule 1.730(c) appears to allow for sanctions after relatively mild transgressions--a breach or failure to perform under a mediation agreement. . . . Fees could be justified under rule 1.730(c) for conduct that does not come close to triggering entitlement under the inequitable conduct doctrine." Cox, 2012 Fla. App. LEXIS 8741, at *5.

The high standards for an enforceable sanctions order. While the threshold for bad conduct is low when considered under Rule 1.730(c), one must still obtain a sufficiently detailed Sanctions Order to survive an appellate challenge. The Cox court reversed the pending trial order because of its failure to provide specific findings. It stated:

"To comply with the procedural requirements that Johnson v. Beznar imposes for an attorney's fee award under rule 1.730(c), the trial court should have made specific factual findings detailing Cox's breach or failure to perform under the mediation agreement and identified those attorney's fees and costs that Great American incurred as a result of such conduct. See Moakley, 826 So. 2d at 227. Rather than make the findings with the "high degree of specificity" that Moakley requires, the final judgment summarily grants Great American's motion for attorney's fees. . . .

Moakley's requirement of specificity ensures that the power to sanction is not exercised lightly. Judges must identify the conduct that justifies a sanction. This allows for appellate review of the sanction and the development of a body of law describing the conduct that gave rise to the sanction."

Id. at *3-4. Thus, while the threshold for triggering sanctions under Rule 1.730(c) is much lower than for triggering sanctions under Section 57.105 or the inequitable conduct doctrine, all sanctions orders must meet the same high standards of specificity.

No recovery of attorneys fees incurred in litigating the amount of fees. Lastly, the Cox court reversed the pending sanctions order that awarded attorneys fees for time spent litigating the amount of fees.

"While judgments for fees under the rule, the statute, and the doctrine could all be classified as sanctions, the law in this district is that when it comes to awarding fees for fees, not all sanctions are created equal. . . . Rule 1.730(c), the basis for fees in this case, is closer to section 57.105 than it is to the inequitable conduct doctrine. . . . If an award of attorney's fees for seeking attorney's fees is not appropriate under 57.105, Wood and Yakavonis compel the conclusion that fees for fees are not available for the pursuit of sanctions under rule 1.730(c)."

Id. at *5-6

You should have already been aware of the court's inherent power to reign in those who act poorly in the litigation process. What may be news to you is the particular sanction power associated with mediated settlement agreements. Such sanctions serve "both 'to penalize those whose conduct may be deemed to warrant such a sanction, [and] to deter those who might be tempted to such conduct in the absence of such a deterrent.'" Id., quoting a 1980 U.S. Supreme Court case.

Here's the moral of this article: if you sign an agreement at Mediation, honor your commitment or face the prospects of sanctions. You don't have to be particularly bad to be on the wrong end of a Rule 1.730(c) Sanction Order.

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