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Feature

LEVYING THE ULTIMATE SANCTIONS: PUNISHMENT BY DISMISSAL OR DEFAULT IN FLORIDA

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The ultimate sanctions in civil litigation are the dismissal of a plaintiff's cause of action and the entry of a default against a defendant. In theory, the standard of review for these sanctions leaves the trial courts with wide discretion: The reviewing court must affirm unless no reasonable person would rule as the trial court did. [1] In fact, the appellate courts routinely reverse the use of these sanctions, noting that they should be used only in exceptional circumstances. [2]

Such reversals frustrate judges and lawyers who confront disobedient parties. At worst, the system seems out of control, with fingers of blame pointing up the court hierarchy. One judge explained as much while dissenting from a reversal of sanctions:

> Bemoaning the loss of professionalism, members of the Bar often suggest that the trial bench bears some of the responsibility because judges are reluctant to impose sanctions. The trial judges respond that when they attempt to impose those sanctions, they are not supported, but rather are reversed by the appellate courts. In my opinion, it is time the appellate courts assist, rather than hinder, the trial courts. Enough is enough! [3]

A degree of frustration is inevitable. On one hand, justice demands resolving cases on their merits rather than by summary punishment. [4] On the other hand, “justice delayed is justice denied.” A trial judge should be able to terminate the case of a party who has stymied the progress to trial, not only to punish the party, but also to deter others. [5]

To help clarify matters, this article surveys the requirements for applying ultimate sanctions: willful disobedience, substantive constitutional limitations, proportionality, and the procedural requirements for dismissal and default.

Willful Disobedience

Punishment by default or dismissal requires establishing, at a minimum, that the party has willfully disobeyed the court's order despite having the ability to obey. [6] In turn, proving willful disobedience requires a showing that the party (and not the party's attorney) was notified of the court's order but intentionally disobeyed that order.

• Notice

A party should have unambiguous prior notice that particular behavior will result in default or dismissal. [7] Such notice may be necessary to satisfy constitutional due process. [8]

The extremity of dismissal and default means that even a slight ambiguity in the notice to the party may cause a reversal. [9] For example, in Cadwell v. Cadwell, 549 So. 2d 1133 (Fla. 3d DCA 1989), a party disobeyed a court order to execute certain documents. Subsequently, the trial court entered an agreed order holding the party in contempt and requiring her to execute the

documents and appear for deposition to purge herself. Under the order, if she failed to execute the documents, her pleadings would be stricken and a default entered. She did execute the documents, but did not appear for deposition. As a result, the court struck her pleadings and entered a default against her.

The Third District reversed. By stating that failure to execute documents would result in default, the appellate court reasoned, the trial court's order implied that the failure to appear at deposition would result in a lesser sanction. This implication was enough to overturn the default. Nevertheless, the trial court was free to impose a ***38** different punishment on remand.

The underlying concern is obvious. If the court's order is ambiguous, the party may misunderstand the order's requirements or ramifications, and therefore may not disobey willfully. But the ambiguity can be cured by a hearing to determine that the party in fact understood the order. If the party did, the existence of any ambiguity should become irrelevant. [10]

• Pattern of Noncompliance

Proof of willful disobedience requires proof of intent, to the exclusion of mistake or mere neglect. Such proof is problematic, of course, because no one can look into someone's head. Typically disobedience will be indirect, occurring outside the presence of the court. The nonfeasant party will probably offer some type of excuse, which often cannot be rebutted. Often no direct evidence will be available. No one besides the party's counsel may know whether the party actually received a copy of the order, whether the secretary left the hearing off the calendar, and the like.

To support a finding of willfulness thus often requires showing a pattern of noncompliance. For example, in Arango v. Alvarez, 585 So. 2d 1131 (Fla. 3d DCA 1991), pro se defendants were sued on a promissory note. After repeatedly failing to follow discovery orders, the defendants failed to attend a calendar call. They claimed that they did not understand the trial court's order requiring personal attendance at the calendar call, despite a specific instruction to that effect. The trial court entered a default judgment against the defendants.

In a divided opinion, the Third District affirmed. The entire panel agreed that the defendants' purported misunderstanding did not constitute excusable neglect. A majority also held that the defendants' earlier disregard of orders gave the trial court sufficient basis to conclude that they had willfully failed to appear at the calendar call.

Without a valid excuse, however, a party can lose its case for even its first violation of an order. As long as the trial court logically concludes that the first violation was willful, the sanction should withstand appellate review. Such a situation arose in Florida's wellspring case on willful disobedience, Mercer v. Raine, 443 So. 2d 944 (Fla. 1983).

Florida's appellate courts have frequently reversed the ultimate sanction when levied for attorney malfeasance

In Mercer, a defendant responded to discovery requests by filing a motion to dismiss, motion for extension of time to respond to discovery, and objections to interrogatories on the ground that they should not be answered prior to resolution of the motion to dismiss. The trial court denied the motion to dismiss and ordered the defendant to respond to the discovery requests. Although the defendant answered the complaint, he did not respond to the discovery. The plaintiff then moved for sanctions. Also, the defendant's counsel moved to withdraw, citing lack of the client's help with the discovery, among other reasons. The trial court subsequently allowed the attorney to withdraw, struck the defendant's pleadings, and entered a default judgment.

Affirming the Fourth District, the Florida Supreme Court approved the trial court's sanction. To review the sanction, the court adopted the reasonableness test it had earlier set out in Canakaris v. Canakaris, 382 So. 2d 1197 (Fla. 1980). Under that test, “[i]f reasonable men could differ as to the propriety of the action taken by the trial court, then the action is not unreasonable and there can be no finding of an abuse of discretion.” [11] The court held that the trial judge's sanction had to be affirmed because “the record contains a logical basis for the exercise of his discretion.” [12] The trial court expressly found that the defendant

"knew what was going on" and had a "total disregard for the consequences." [13] These "facts" were sufficient to justify a finding of willfulness. [14]

The trial court's findings in Mercer related to factual conclusions rather than facts themselves. In reality, the court had few facts. One was that the defendant failed to assist counsel. Another was that the defendant had filed certain motions and objections. Coupled with the court's experience, these motions indicated that the defendant wanted merely to delay or discourage discovery. From this the trial judge came to conclusions about the defendant's knowledge and attitude. This is little different from the judge's conclusion in Arango that, based upon their prior misbehavior, the defendants knew they should appear at calendar call. Thus, Mercer's mandate--that the reviewing court should not look behind the trial court's conclusions about intent-- applies with equal force to each case.

• Attorney Malfeasance

Willful disobedience by the party, not the party's attorney, must be shown. Florida's appellate courts have frequently reversed the ultimate sanction when levied for attorney malfeasance. [15] In such cases, they reason, default or dismissal punishes one person--the party--for another person's wrong.

Nevertheless, the Florida Supreme Court has recently indicated that, following a careful analysis, trial courts can apply the ultimate sanction for an attorney's extreme misconduct. Kozel v. Ostendorf, 629 So. 2d 817 (Fla. 1993).

In Kozel, the plaintiff's complaint was dismissed with 20 days' leave to amend. More than five months passed before plaintiff's counsel filed an amended complaint. On motion, the trial court dismissed the complaint with prejudice, and the Second District affirmed.

The Florida Supreme Court quashed the Second District's decision and remanded the case for reconsideration. To help determine whether dismissal with prejudice is warranted, the court provided a set of six factors:
(1) whether the attorney's disobedience was willful, deliberate, or contumacious, rather than an act of neglect or inexperience;

(2) whether the attorney has been previously sanctioned;

(3) whether the client was personally involved in the act of disobedience;

(4) whether the delay prejudiced the opposing party through undue expense, loss of evidence, or in some other fashion;

***39** (5) whether the attorney offered reasonable justification for noncompliance; and

(6) whether the delay created significant problems of judicial administration. [16]

In dictum the court referred to these factors as guidelines in "sanctioning parties and attorneys for acts of malfeasance and disobedience." [17] Nevertheless, two districts already have limited Kozel to cases where an attorney alone is responsible. [18]

Substantive Constitutional Limitations

It should be clear that a sanction by default or dismissal risks violating constitutional due process. If too easily granted, it may deprive the party of a "day in court." Moreover, in sanctioning by default or dismissal, courts rarely examine the actual effect on the party. On the face of the opinions, the $10 million wrongful death claim is resolved in the same way as a $15,000 or a $50 claim.

Unsurprisingly, the U.S. Supreme Court has ruled that the Fourteenth Amendment forbids entering a default against a party for disobedience unrelated to the merits of the case. This limitation was first announced in a 19th century opinion, Hovey v. Elliott, 167 U.S. 409, 17 S. Ct. 841, 42 L. Ed. 2d 215 (1897), but was substantially modified in Hammond Packing Co. v. Arkansas, 212 U.S. 322, 29 S. Ct. 370, 53 L. Ed. 2d 530 (1909).

In Hovey, a defendant answered but refused to obey an order to deposit funds in a state court's registry. The trial court struck the party's defenses and entered a default. In an opinion that exhaustively traces the history of contempt sanctions, the Supreme Court reversed, holding that a party cannot lose the right to defend a lawsuit as a sanction for contempt.

Soon the question arose whether the trial court can constitutionally terminate a party's case through pretrial sanctions where a state's rules of procedure permit such a punishment. In Hammond Packing the Supreme Court held such rules of procedure constitutional. [19] The court reasoned that those rules merely authorize the presumption in certain instances that the party does not have a meritorious defense. The presumption is akin to that used when a default is entered for failing to respond to the complaint.

A presumption implies the possibility of a rebuttal. Hammond Packing thus indicates that if the party does have a meritorious case, the ultimate sanction is improper even for willful disobedience.

For example, in Phoceene Sous-Marine, S.A. v. U.S. Phosmarine, Inc., 682 F.2d 802 (9th Cir. 1982), the defendant deceptively claimed that he was took sick to attend trial. A resident of France, the defendant had his sister send a telegram, under his doctor's name, stating that he had to refrain from stressful activity. The defendant then lied further to cover up the fraudulent telegram. First, he said the doctor's assistant had sent it. When he confessed that his sister had sent the telegram, he claimed that French medical practice authorized her to do so.

The trial court found, and the appellate court agreed, that the defendant had willfully deceived the court. The trial court struck the defendant's pleadings and entered a default judgment. But the Ninth Circuit reversed. It reasoned that the deception related to a “peripheral matter”--the defendant's illness--and not to the merits of the controversy. Based on the due process concerns of Hovey and Hammond Packing, the default was improper.

Phoceene stretches the limits of constitutional due process restrictions on sanctions. The rationale of Hammond Packing is that certain disobedience permits the trial court to conclude that a party does not have a meritorious case. Disobedience that resists due process itself, such as avoiding trial by deception, should be sufficient to show that the disobedient party's case does not have merit, and so allow terminating the trial process.

The Phoceene case may also be unusual because the party's disobedience did not involve the violation of the rules of civil procedure. The rules effectively define some instances when the trial court may presume that a party's case does not have merit. [20] The Supreme Court has noted that, when a party violates an order based on such a rule, the due process limitation is essentially co-extensive with the rule itself. [21]

For disobedience occurring outside the rules, the effect of the due process ***42** limitation remains uncertain. The only Florida decision to address this issue squarely [22] is Whiteside v. Whiteside, 468 So. 2d 407 (Fla. 4th DCA 1985), which held that default is always improper where not permitted by the rules of civil procedure. This may overstate the due process limitation. Hammond Packing explained that the rules operate as a presumption that the disobedient party's case does not have merit. To satisfy due process in other contexts, the court could determine through a hearing that the party has shown its case does not have merit.

Whatever the extent of the due process limitation, it should consistently apply in one context: When a party fails to obey. This inability may arise not only from some physical constraint, but also when the party would be placed in an untenable position

by compliance. In Societe Internationale Pour Participations Industrielles et Commerciales, S.A. v. Rogers, 357 U.S. 197, 78 S. Ct. 1087, 2 L. Ed. 2d 1255 (1958), the plaintiff could not obey a production order without violating the law of its home country. The Court held that dismissal was improper as a sanction in those circumstances. Notably, the party had made every reasonable effort to comply within the law. The party was forgiven because its failure was "due to inability, and not to willfulness, bad faith, or any fault of [its own.]" [23]

Sanction by dismissal or default requires requires two basic procedures: a hearing, followed by written findings by the trial court

Proportionality

Florida courts have often held that the trial court exceeds its discretion by terminating a party's case where the party's malfeasance does not harm the opposing party or prevent the trial. [24] This rule is based upon the principle of proportionality--that " t he severity of the sanction must be commensurate with the violation." [25] Thus, only egregious conduct justifies the extreme punishment of dismissal or default.

The proportionality principle often prevents dismissal or default in setting discovery sanctions. [26] There appellate courts use proportionality to explain reversals where a nonfeasant party shows that it may have acted in good faith (i.e., that it may not have willfully disobeyed). For example, an ultimate sanction has been reversed where a party produced some but not all court-ordered records. [27] Similarly, where a party fails to attend a court-ordered deposition, but has a good faith excuse such as an illness, dismissal or default will be improper. [28]

Proportionality has also been behind the reversal of sanctions in settings outside of discovery. In Passori v. Passori, 644 So. 2d 121 (Fla. 3d DCA 1994), the trial court improperly struck a pro se party's pleadings for failing to attend a hearing on her own motions. The punishment was excessive because the court could have simply treated the motions as abandoned.

Despite its rhetorical justifications, the proportionality test has substantial defects. First, it rests on the presumption that the malfeasant party indeed has a meritorious case. Accordingly, the reviewing court is easily convinced that terminating the party's case is too severe a punishment for the party's disobedience. But the appellate court may as well begin with the opposite perspective. Using the Hammond Packing rationale, the court could assume from the disobedience itself that the party does not have a meritorious case. Besides, if the party did have a good case, it probably would have been more diligent in the first place.

More importantly, as a reviewing tool, proportionality does not mesh with the discretion vested in the trial court. It is difficult to see why appellate judges can weigh the balance of disobedience and discipline, but the trial judge cannot. For this very reason the Florida Supreme Court adopted the reasonableness standard in Mercer v. Raine.

Significantly, the defendant in Mercer argued that, as a prerequisite to imposing a default, the trial court needed to find that his disobedience resulted in undue prejudice. [29] This is another way of arguing proportionality: Saying that the defendant's crime did not justify the court's punishment. The Florida Supreme Court implicitly rejected this argument. Instead, it affirmed the trial court's sanction using the reasonableness standard. In doing so, the court provided three policies that justify deferring to trial court sanctions: 1) the trial court "sees the parties first-hand and is more fully informed of the situation"; [30] 2) violations are too diverse to be governed by a general rule of law; and 3) the trial court needs sanctioning power to "promote the orderly movement of litigation." [31]

Using proportionality in appellate review frustrates each of the policies announced in Mercer. Most obviously, the appellate court by its nature considers the circumstances secondhand. But beyond this, proportionality often operates more as meaningless maxim than a rule of law. The appellate court can only state the facts, recite the proportionality catchphrase, and conclude

that the punishment "is too severe a sanction" for the disobedience. [32] As such rulings become precedents, trial courts may find their sanctioning power shot through with exceptions. This promotes not the orderly movement of litigation, but more appeals of sanctions.

Procedural Limitations

Sanction by dismissal or default requires two basic procedures: a hearing, followed by written findings by the trial court. These requirements stem from Commonwealth Federal Savings and Loan v. Tubero, 569 So. 2d 1271 (Fla. 1990), in which the Florida Supreme Court held that the trial court must find in writing what amounts factually to a willful refusal to obey a court order. [33]

The written finding requirement has two purposes. First, it assures that the trial court has made "a conscious determination that the noncompliance was more than mere neglect or inadvertence." [34] Second, it helps the appellate court resolve conflicts where the record may be ambiguous. [35]

Alone, the second purpose would not ***43** support a written finding requirement. The court could have as easily held that such a finding is implied in an order applying sanctions. In fact the court noted that "no 'magic words' are required." [36] Moreover, the problem of ambiguous records should already be satisfied by the abuse of discretion standard. On appeal any conflicts should be resolved in support of the trial court's ruling, unless it is utterly unreasonable.

On the other hand, the first purpose--assuring "a conscious determination"-- means much. This purpose implies that the trial court must hold a hearing to determine willfulness. Thus from the written finding requirement stems a second, preliminary requirement: The party must have an opportunity to be heard to explain the improper behavior and offer an excuse or mitigating circumstances. [37] As the Supreme Court explained in Hovey v. Elliott,

The fundamental conception of a court of justice is condemnation only after hearing. To say that courts have inherent power to deny all right to defend an action, and to render decrees without any hearing whatever, is, in the very nature of things, to convert the court exercising such authority into an instrument of wrong and oppression, and hence to strip it of that attribute of justice upon which the exercise of judicial power necessarily depends. [38]

A hearing on sanctions allows the court to consider any explanation or excuse the nonfeasant party might have. For example, in Tri Star Investments, Inc. v. Miele, 407 So. 2d 292 (Fla. 2d DCA 1981), the plaintiff told the court that its corporate officers would be unable to appear at trial because of an airline strike. The judge's secretary called the airline; from that information, the court concluded that the plaintiff falsely represented its officers were unavailable. Consequently, the court summarily dismissed the plaintiff's complaint with prejudice.

On appeal, the Second District reversed and remanded for further proceedings. The court recognized that the trial court has the inherent power to dismiss a case where a party commits a fraud on the court. Nevertheless, the district court held that the trial court "should carefully adhere to established due process, adversarial practice, and evidentiary rules in conducting an inquiry into such charges." [39]

Conclusion

Terminating a party's meritorious case is an extreme punishment. But faced with serious or persistent disobedience, the trial court may rightly conclude that the party's case has no merit and should be terminated. To form such a conclusion, the court should hold a hearing ensuring 1) that the party had notice or knowledge of the court's requirements; and 2) that the party's conduct evinces disobedience which was willful, was of the party's own design, and did not stem from the parties' inability to comply with the order. Paying due deference to the trial court's first-hand knowledge, as well as the institutional need for sanctioning

power, the appellate court should approve each reasoned decision. Reversal should be reserved for those rare instances where, truly, no reasonable ***44** person would permit such a result.

Footnotes

1 Mercer v. Raine, 443 So. 2d 944, 946 (Fla. 1983) (adopting the reasonableness standard for abuse of discretion laid out in Canakaris v. Canakaris, 382 So. 2d 1197 (Fla. 1980)).

2 See, e.g., Lahti v. Porn, 624 So. 2d 765, 766 (Fla. 4th D.C.A. 1993); World on Wheels of Miami, Inc. v. International Auto Workers, Inc., 569 So. 2d 836 (Fla. 3d D.C.A. 1990); J.B. Muros Corp. v. International Mall, 534 So. 2d 818 (Fla. 3d D.C.A. 1988).

3 Kelley v. Schmidt, 613 So. 2d 918, 922 (Fla. 5th D.C.A. 1993) (Goshorn, J., dissenting); see also Lahti v. Porn, 624 So. 2d at 769 (Stone, J., dissenting).

4 See, e.g., Sekot Labs., Inc. v. Gleason, 585 So. 2d 286, 289 (Fla. 3d D.C.A. 1991).

5 National Hockey League v. Metropolitan Hockey Club, Inc., 427 U.S. 639, 643, 96 S. Ct. 2778, 2781, 49 L. Ed. 2d 747 (1976).

6 Commonwealth Fed. Sav. & Loan v. Tubero, 569 So. 2d 1271 (Fla. 1990); Wallraff v. TGI Friday's, Inc., 490 So. 2d 50 (Fla. 1986); Mercer v. Raine, 443 So. 2d 944, 946 (Fla. 1983).

7 Cadwell, 549 So. 2d at 1133; Crowder v. Orowheat Foods Co., 447 So. 2d 1038, 1040 (Fla. 2d D.C.A. 1984); see also FLA. R. CRIM. P. 3.840(a) (requiring an order to show cause stating the essential facts constituting criminal contempt).

8 Choice Hotels Int'l, Inc. v. Goodwin & Boone, 11 F.3d 469, 471 n.2 (4th Cir. 1993).

9 See, e.g., Cadwell, 549 So. 2d 1133; see also Lahti, 624 So. 2d at 769-70 (Warner, J., concurring) (justifying reversal in part because the trial court's notice stated that failure to appear “may” result in dismissal). Compare Sienkiewitz v. Aqua Lift, Inc., 586 So. 2d 92 (Fla 4th D.C.A. 1991) (dismissal justified in part because pretrial order provided “unequivocal” notice).

10 See Edward L. Nezelek, Inc. v. Sunbeam Tel. Corp., 413 So. 2d 51 (Fla. 3d D.C.A. 1982); Crowder v. Orowheat Foods Co., 447 So. 2d 1038, 1040 (Fla. 2d D.C.A. 1984).

11 Canakaris, 382 So. 2d at 1203, quoted in Mercer, 443 So. 2d at 946.

12 Id. at 946.

13 Id.

14 Id.

15 See, e.g., Lahti v. Porn, 624 So. 2d 765 (Fla. 4th D.C.A. 1993); Kelley v. Schmidt, 613 So. 2d 918 (Fla. 5th D.C.A. 1993); Smalley v. Lane, 428 So. 2d 298 (Fla. 3d D.C.A. 1983).

16 Kozel, 629 So. 2d at 818.

17 Id. The court followed the suggestion of the dissent of Judge Altenbernd below in Kozel v. Ostendorf, 603 So. 2d 602, 605 (Fla. 2d D.C.A. 1992), and generally adopted Judge Altenbernd's factors. Kozel, 629 So. 2d at 818.

18 Ramp Int'l East Coast, U.S.A., Inc. v. Oshkosh Trucking Corp./ Trailer Div., 634 So. 2d 215 (Fla. 2d D.C.A. 1994); Levine v. Del American Props, Inc., 642 So. 2d 32 (Fla. 5th D.C.A. 1994).

19 Hammond Packing, 212 U.S. at 351-52, 29 S. Ct. at 380-81.

20 Id. The Florida Rules of Civil Procedure that allow default and/or dimissal are Rules 1.200(c) (failure to attend pretrial conference), 1.380(b)(2)(C) (failure to comply with discovery order), and 1.500(b) (failure to plead or otherwise defend). See also FED. R. CIV. P. 16(f), 37(b)(2), 55(a) (analogous federal rules).

21 Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 706, 102 S. Ct. 2099, 72 L. Ed. 2d 492 (1982).

22 The Third District has refrained from directly reaching the issue. Cadwell, 549 So. 2d at 1135 n.3; see also Ganem v. Ganem, 269 So. 2d 740, 744-45 (Fla. 3d D.C.A. 1972) (mentioning Hovey and Hammond Packing and holding that default was justified under the rules).

23 Societe Internationale Pour Participations Industrielles et Commerciales, S.A. v. Rogers, 357 U.S. 197, at 212, 78 S. Ct. 1087, at 1096, 2 L. Ed. 2d 1255 (1958). Florida courts have reversed sanctions due to a party's inability, but typically they do not refer to the constitutional limitation. Instead they reason that a party without the present ability to obey did not willfully disobey. See, e.g., Gomez-Bonilla v. Apollo Ship Chandlers, Inc., 650 So. 2d 116 (Fla. 3d D.C.A. 1995).

24 Beauchamp v. Collins, 500 So. 2d 294, 295 (Fla. 3d D.C.A. 1986), rev. denied, 511 So. 2d 297 (Fla. 1987); Lahti v. Porn, 624 So. 2d 765, 766 (Fla. 4th D.C.A. 1993); see also Smalley v. Lane, 428 So. 2d 298 (Fla. 3d D.C.A. 1983) ("The punishment for disregard of a court order should fit the crime . . . .").

25 Beauchamp, 500 So. 2d at 296.

26 See generally Pilkington PLC v. Metro Corp., 526 So. 2d 943, 944 (Fla. 3d D.C.A. 1988) (outlining cases in the context of discovery where punishment was too severe considering the violation).

27 Neal v. Neal, 636 So. 2d 810 (Fla. 1st D.C.A. 1994); Reep v. Reep, 565 So. 2d 814 (Fla. 2d D.C.A. 1990).

28 Momenah v. Ammache, 616 So. 2d 121 (Fla. 2d D.C.A. 1993).

29 Mercer, 443 So. 2d at 945.

30 Id. (quoting Farish v. Lum's, Inc., 267 So. 2d 325, 327-28 (Fla. 1972)).

31 Id.

32 Smalley, 428 So. 2d at 299; see also Passori v. Passori, 644 So. 2d at 121 (Fla. 3d D.C.A. 1994).

33 Commonwealth Fed. Sav. & Loan v. Tubero, 569 So. 2d 1271, 1272 (Fla. 1990).

34 Id. at 1273.

35 Id.

36 Id.

37 Franchi v. Shapiro, 650 So. 2d 161 (Fla. 3d D.C.A. 1995); Tri Star Inv., Inc. v. Miele, 407 So. 2d 292, 293 (Fla. 2d D.C.A. 1981); Momenah, 616 So. 2d at 124; see also FLA. R. CRIM. P. 3.840(d) (requiring the court to conduct a hearing to determine indirect criminal contempt).

38 Hovey v. Elliott, 167 U.S. 409, at 413-14, 17 S. Ct. 841, at 843.

39 Tri Star Investments, Inc. v. Miele, 407 So. 2d 292, at 293 (Fla. 2d D.C.A. 1981).

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