

## **Happy Holidays & Best Wishes for the New Year!**

### **Can Attorneys be Sanctioned if Their Client Fails to Appear at Mediation?**



Increasingly, courts are directing parties to mediate their disputes prior to trial. Failure to appear at the mediation can subject a party to court-imposed sanctions. But may the attorney whose client does not comply with the court's order face sanctions as well? An opinion from the U.S. Court of Appeals for the Eleventh Circuit discussed the circumstances under which such a result might occur. See *Miller v. Midland Credit Management*, Case No. 20-13390 (11th Cir. 2021)

The plaintiff had filed a class action lawsuit, asserting violations of the Fair Debt Collection Practices Act. The district court issued a scheduling order referring the case to mediation, to be conducted by June 4. When that deadline passed and the record did not reflect that the mediation had occurred, the court directed that the parties file a status report.

After some exchanges between the court and the parties, the court noted that the parties had not addressed "why despite their diligence they have been unable to mediate by the mediation deadline." The court, however, did extend the deadline until June 16, and ordered that the parties file a mediation report the following day. The parties were further instructed to explain any additional requests to extend the mediation deadline.

On June 16, the mediator filed a report that the mediation could not proceed because although the plaintiff's attorneys had appeared, the plaintiff had not. The defendant filed a status report requesting that the court enter sanctions against the plaintiff for her failure to appear. One of plaintiff's attorneys also filed a status report noting that he did not know why the plaintiff had not appeared, that he had been in touch with her on June 14 when she had confirmed that she would be attending the mediation, and that despite attempts to reach her, he had not heard back from her.

On June 19, the court entered an order to show cause why the plaintiff failed to appear at the mediation and also "address whether they have regained contact with their client." The court

recognized that while its order may appear to be “harsh in isolation,” “there were many other examples of the plaintiff’s lack of diligence.”

Ultimately, the plaintiff responded that counsel had regained contact with her and explained that she could not attend because she was let out of work late and had no access to a phone to advise her attorneys.

The court then imposed sanctions not only on the plaintiff but also on her attorneys. In setting forth the reasons for imposing sanctions against the attorneys, it stated:

“Had I not entered the order to show cause ... there is no indication that the plaintiff or her counsel would have made known to the court the circumstances surrounding her failure to appear. Counsel should have made a prompt and reasonable investigation into the plaintiff’s failure to appear and immediately informed the court of the reasoning for same. Counsel did not. This led to my entry of the order to show cause and it was only then that counsel investigated and discovered the circumstances surrounding the plaintiff’s failure to appear.”

Following settlement, the court denied the plaintiff’s motion seeking reconsideration of the sanction order, which included details of the efforts the plaintiff’s attorneys had made to reach the plaintiff. The plaintiff’s attorneys appealed.” **[READ MORE..](#)**

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