



PROFESSOR LEX

BY HARVEY I. HAUER

Dear Professor Lex:

I am a personal injury attorney beginning to handle domestic relations cases. I currently have a divorce case in which I represent the wife. She is reliant upon her husband for support. Throughout the case, husband has refused to comply with discovery requests, and has missed payments that were required by the Court's Status Quo Order. The husband's attorney does not seem interested in getting his client to curtail his inappropriate behavior. During the case, I Motioned the Court to enter an Order compelling answers to husband's interrogatories, which the Court did order. Yet, despite the Order, husband's answers are incredibly deficient; in fact, his answers are practically meaningless. It appears that he is intent on destroying my client. Do you have any suggestions for an appropriate course of action?

Dear Practitioner:

Welcome to the practice of family law. I assure you that the majority of family law attorneys do not conduct themselves as does your opposing counsel.

You may consider filing a motion requesting the Court to sanction husband. "Severe sanctions are generally appropriate...when a party flagrantly and wantonly refuses to facilitate discovery[.]" *Bass v Combs*, 238 Mich App 16, 26 (1999)(overruled on other grounds by *Dimmitt & Owens Financial, Inc v Deloitte & Touche (ISC), LLC*, 481 Mich 618, 628 (2008)). In those cases where sanctions are sought for the withholding of discovery by a party,

the "record should reflect that the trial court gave careful consideration to the factors involved and considered all its options in determining what sanction was just and proper in the context of the case before it." *Id.* Factors a court will consider in awarding sanctions, in such a case, include:

- (1) [W]hether the violation was wilful or accidental;
- (2) the party's history of refusing to comply with discovery requests (or refusal to disclose witnesses);
- (3) the prejudice to the [other party];
- (4) actual notice to the [other party] of the witness and the length of time prior to trial that the [other party] received such actual notice;
- (5) whether there exists a history of [the party] engaging in deliberate delay;
- (6) the degree of compliance by the [party] with other provisions of the court's order;
- (7) an attempt by the [party] to timely cure the defect, and
- (8) whether a lesser sanction would better serve the interests of justice. [*Id.* at 26-27(quoting *Dean v Tucker*, 182 Mich App 27 (1990).]

As I am not familiar with all of the facts of your case, I leave the decision on how to proceed to you.

Answer respectfully submitted by Harvey I. Hauer, Hauer & Snover.

The above response is not meant to serve as a solution to a case. That would require complete disclosure of all facts in the case, including client consultation. Rather, the intent is to provide informal guidance based upon the facts that have been presented. The inquiring lawyer bears full legal responsibility for determining the validity and use of the advice provided herein.

