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## **APPELLATE PRACTICE POINTER**

### *Ham v. Dunmire*

Case No. SC03-2038 (Fla. Dec. 23, 2004)

In *Ham v. Dunmire*, the Supreme Court of Florida, disapproving decisions of the Second, Third and Fourth District Courts, held that a trial court may dismiss an action with prejudice as a sanction for violations of discovery orders even where the client is not personally involved in the misconduct. Client involvement, the Court held, while “extremely important,” is only one of the factors to be considered. Others include the attorney’s willfulness, the imposition of prior sanctions, and prejudice to the opposing party. The Court also held that a trial court is not required to hold a formal evidentiary hearing prior to imposing dismissal as a sanction.

The Court emphasized, however, that the severity of the sanction must bear a reasonable relationship to the infraction. The trial court in *Ham* had dismissed the action based upon the plaintiff’s attorney’s failure to comply with court orders directing plaintiff to answer interrogatories, provide a formal witness list and meet with defendants to discuss trial exhibits. The Court held that these actions did not present the type of extreme circumstances that would warrant dismissal, and remanded the case for a determination of what other sanctions might be appropriate.

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