

Rule 375. Failure to Comply With Rules; Frivolous Appeals—Sanctions

(a) Failure to Comply With Appeals Rules. If after reasonable notice and an opportunity to respond, a party or an attorney for a party or parties is determined to have wilfully failed to comply with the appeal rules, appropriate sanctions may be imposed upon such a party or attorney for the failure to comply with these rules. Appropriate sanctions for violations of this section may include an order that a party be barred from presenting a claim or defense relating to any issue to which refusal or failure to comply with the rules relates, or that judgment be entered on that issue as to the other party, or that a dismissal of a party's appeal as to that issue be entered, or that any portion of a party's brief relating to that issue be stricken. Additionally, sanctions involving an order to pay a fine, where appropriate, may also be ordered against any party or attorney for a party or parties.

(b) Appeal or Other Action Not Taken in Good Faith; Frivolous Appeals or Other Actions. If, after consideration of an appeal or other action pursued in a reviewing court, it is determined that the appeal or other action itself is frivolous, or that an appeal or other action was not taken in good faith, for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, or the manner of prosecuting or defending the appeal or other action is for such purpose, an appropriate sanction may be imposed upon any party or the attorney or attorneys of the party or parties. An appeal or other action will be deemed frivolous where it is not reasonably well grounded in fact and not warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law. An appeal or other action will be deemed to have been taken or prosecuted for an improper purpose where the primary purpose of the appeal or other action is to delay, harass, or cause needless expense.

Appropriate sanctions for violation of this section may include an order to pay to the other party or parties damages, the reasonable costs of the appeal or other action, and any other expenses necessarily incurred by the filing of the appeal or other action, including reasonable attorney fees.

A reviewing court may impose a sanction upon a party or an attorney for a party upon the motion of another party or parties, or on the reviewing court's own initiative where the court deems it appropriate. If the reviewing court initiates the sanction, it shall require the party or attorney, or both, to show cause why such a sanction should not be imposed before imposing the sanction. Where a sanction is imposed, the reviewing court will set forth the reasons and basis for the sanction in its opinion or in a separate written order.

Adopted June 19, 1989, effective August 1, 1989; amended December 17, 1993, effective February 1, 1994.

Committee Comments (August 1, 1989)

Paragraph (a) is intended to cover those situations where a party or his attorney or both fail to comply with the appeals rules. The sanctions under this paragraph are intended to apply in those circumstances where the party or attorney wilfully fails to comply with the rules. No sanction is intended to be imposed under this paragraph for an inadvertent violation of the appeals rules. No formal hearing process is envisioned before a sanction will be imposed; rather, any sanction

imposed will be by a procedure summary in nature and will not involve the formalities required in procedures for citations of contempt of court. (See *People v. Waldron* (1986), 114 Ill. 2d 295.) However, the sanctions imposed under this paragraph are only those that would be typically inherently available to a reviewing court in enforcing its rules, and the imposition of small fines similar to those imposed for petty offenses. (See old section of Title 18 of the United States Code, Crimes & Criminal Procedure, 18 U.S.C. §1 (1982) (repealed October 30, 1984); Pub. L. 98-596, §8, 98 Stat. 3138 (1984); see also Ill. Rev. Stat. 1987, ch. 38, par. 1005-5-1; Ill. Rev. Stat. 1987, ch. 24, pars. 1-2-1, 1-2-1.1.) Furthermore, before any sanction is imposed, a party and/or attorney will receive notice of the violation and a reasonable opportunity to correct it.

Paragraph (b) is derived from the current appellate Rule 38 of the Federal Rules of Appellate Procedure, section 1912 of the Judicial Code (28 U.S.C. §1912) and section 1927 of the Judicial Code (28 U.S.C. §1927). It is also similar to the requirements set forth in Rule 7-102 of the Illinois Code of Professional Responsibility and Rule 3.1 of the ABA Model Rules of Professional Conduct, and adopts a modified version of Federal Rule 11. Moreover, appeals courts have been recognized to have inherent authority to impose sanctions for taking a frivolous appeal or for abusive tactics in the conduct of the appeal. See *Roadway Express Inc. v. Piper* (1980), 447 U.S. 752, 65 L. Ed. 2d 488, 100 S. Ct. 2455.

However, this paragraph relates not only to frivolous appeals, *i.e.*, those without merit and no chance of success, but also to appeals which are conducted in a frivolous manner, *i.e.*, those whose primary purpose is to delay enforcement of the judgment, to cause a party to incur unnecessary expense, or which are generally prosecuted in bad faith. The determination that the appeal is frivolous or the conduct is improper is based on an objective standard of conduct, *viz.*, an appeal will be found to be frivolous if a reasonable prudent attorney would not in good faith have brought such an appeal, or the appeal conduct will be found to be improper if a reasonable prudent attorney would not have engaged in such conduct. If an appeal is found to be frivolous, or the conduct improper, the subjective nature of the conduct is then important to determine the appropriate nature and amount of the sanction. A party or attorney will be given notice before any sanction is imposed, either by the motion of an aggrieved party or by a rule to show cause issued by the court. A party or attorney who is a subject of a proposed sanction where the proposed sanction is initiated by the court is entitled to respond before any sanction is imposed. If a sanction is imposed, as noted, the court in its opinion or in a separate written order will provide a statement of reasons or basis for the imposed sanction.

Under paragraph (b), a penal fine may be imposed if the conduct in a particular case also constitutes a violation of the civil appeals rules as set forth in paragraph (a) above.

Commentary
(December 17, 1993)

The rule has been modified to make clear that any action pursued in the reviewing court is subject to sanctions if the conduct constitutes a violation of the rule.