

Sanctions: Wis. Stat. §938.355(6)

- For procedure for all post-dispositional hearings, see Wis. Stat. §938.299(4)(b)

CASE LAW:

- Sanctions:
 - *In the Interest of B.S.*, 162 Wis.2d 378, 469 N.W.2d 860 (1991) (noting the purpose of sanctions is “to coerce a recalcitrant child to comply with the conditions stated in the court's dispositional order”).
 - *In the Interest of Eugene W.*, 251 Wis.2d 259, 641 N.W.2d 467, 2002 WI App 54 (juvenile must understand the conditions in order to be sanctioned).
 - *In the Interest of Ellis H.*, 274 Wis.2d 703, 684 N.W.2d 157, 2004 WI App 123 (one sanction per “incident” versus rule violation; also reaffirms the purpose of sanctions, utilizing the *B.S.* language).
 - *In the Interest of Richard J.D.*, 297 Wis.2d 207, 24 N.W.2d 665, 2006 WI App 242 (discussing the interplay of sanctions, changes in placement and lifting of a stayed dispositional order).
 - *In the Interest of A.A.*, 391 Wis.2d 416, 941 N.W.2d 260, 2020 WI App 11 (on how to count days for sanctions).

SANCTIONS:

- A motion to signify to the Court an allegation that the juvenile has violated a condition of his/her dispositional order (Wis. Stat. §938.355(6)(a)1).
- Sanction can only be imposed if (Wis. Stat. §938.355(6)(a)2m):
 - The court explained the conditions of the dispositional order to the juvenile, AND
 - The court informed the juvenile of the possible sanctions, OR
 - The juvenile has acknowledged in writing that:
 - He/she has read, or has had read to him/her, the conditions of the dispositional order and the possible sanctions, AND
 - Understands the conditions and possible sanctions [See: Standard Form JD-1749].
- May be filed by (Wis. Stat. §938.355(6)(b)):
 - The person or agency primarily responsible for the provision of the dispositional services,
 - The district attorney or corporation counsel,

- Or the court that entered the dispositional order (though if initiated by the court, the court is disqualified from hearing the motion).
- Must be a hearing, at which juvenile is entitled to counsel and to present evidence (Wis. Stat. §938.355(6)(c)).
- Court must find the violation by a preponderance of the evidence (Wis. Stat. §938.355(6)(d)).
 - If violation is found, Court may order any of the following sanctions as a consequence for “any incident in which the juvenile has violated one or more conditions”:
 - Placement of the juvenile in a juvenile detention facility or juvenile portion of a county jail ... or in a place of nonsecure custody for not more than 10 days.
 - Suspension of or limitation on the use of the juvenile’s operating privilege, or of any approval issued under ch. 29 (DNR licenses) for a period of not more than 3 years.
 - Detention in the juvenile’s home or current residence for a period of not more than 30 days under rules of supervision specified in the order [including requiring] the juvenile to be monitored by an electronic monitoring system.
 - Not more than 25 hours of uncompensated participation in a supervised work program or other community service work.
 - Participation after school, in the evening, on weekends, on other non-school days, or at any other time that the juvenile is not under immediate adult supervision, in the social, behavioral, academic, community service, and other programming of a youth report center.

Practice Pointers:

- Upon receipt of the motion:
 - If you represented the juvenile at the dispositional hearing, did the court explain all the conditions and provide the warnings about possible sanctions?
 - If you did not represent the juvenile, but you have some reason to believe the conditions weren’t explained and/or the warnings were not given, request a transcript.
 - If the conditions weren’t explained and/or the warnings were not given, was JD-1749 utilized?
 - FILE A MOTION TO DISMISS, with transcript attached.

- Talk with your client about the alleged violations:
 - Is it true?
 - Is it possible that your client did not understand the condition? (see Eugene W., above)
 - Does your client wish to contest?
 - If not, what should we argue for in terms of sanction(s)?
 - What does the Judge normally order?
 - What would actually be “effective” for this client?
 - Has your client been in secure custody/nonsecure before? how many times and for how long?
- Talk with the prosecutor:
 - If your client wishes to contest, what is the evidence upon which the State will rely?
 - Will the state be ok to a stipulation to “x” number of violations in exchange for not making them prove the same?
 - What is the State seeking in terms of sanction(s)?
 - Will the State support what your client is seeking?
- Talk with supervising agent:
 - If he/she filed the motion, what is the evidence upon which he/she relies?
 - What is his/her position with regard to the sanction(s) being sought?
 - Has there been any improvement in your client’s compliance since the motion was filed? (if there has, then the point of all of this (i.e., to turn around behavior) has already been accomplished just by the threat of having to see the court!).
- The hearing itself:
 - The rules of evidence are not applicable (see Wis. Stat. §938.299(4)(b)).
 - Other side does still have a burden of proof, albeit mere preponderance.
 - How many “incidents” are we talking about? (see *Ellis H.*, above)
 - If violation(s) established, what should the Court order?
 - Remind court of the purpose: this is not punishment, but instead “coercion” (see *B.S.* and *Ellis H.*, above).
 - Does this Court utilize “stayed sanctions?”

- If so, what triggers the lifting of the stay?
 - Who has the discretion to so decide?
 - Does your client have any recourse if he/she doesn't believe the lifting of the stay is warranted?
 - What is the expiration of the order/for how long will the sanction be stayed?
- Be sure that the days are properly counted, including possible credit (*see* Wis. Stat. §938.355(6)(d)1. and A.A., above).