

24-6013 **ORIGINAL**

No. \_\_\_\_\_

IN THE

SUPREME COURT OF THE UNITED STATES

FILED  
SEP 17 2024

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

SHERRIE CLEMENTS — PETITIONER

Vs.

CLUB SPACE — RESPONDENT(S)

AKA

CLUB SPACE MANAGEMENT LLC

ON PETITION FOR A WRIT OF CERTIORARI TO  
FLORIDA THIRD DISTRICT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

Sherrie Clements

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Phone Number (786) 753-8498 (786) 355-2212 (please  
try both numbers numbers, sometimes my cell is not  
working.)

## **QUESTION(S) PRESENTED**

Question as to Hidden Disability Discrimination within the Courts.

Question as to whether the Judge erred and was Erroneous in his Order Dated October 25<sup>th</sup>, 2022, dismissing the case with prejudice.

Question as to Cognitive disabilities being recognised with the same importance and with the same speed of accommodation / accommodating modalities, rules, procedures etc. as for the Physically Challenged, Blind, Deaf, Blind and Deaf within our government agencies and accommodated in the proper manner as set forth by the ADA rather than being ignored.

## **LIST OF PARTIES**

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition as follows:

## **RELATED CASES**

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APPENDIX E - Oct. 6<sup>th</sup>, 2022 letter

APPENDIX F - Record On Appeal

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#### TABLE OF AUTHORITIES CITED

CASES	PAGE N
Section 393(3)- Florida Statute, protects the rights of all persons with disabilities.	
Section \$184 – Court imposed conditions allowing party to vitiate or forestall dismissal - In cases involving dismissal for failure to comply with an Order of the Court, certain circumstances are usually precedent to dismissal with prejudice.	
Nenow v. Ceilings & Specialties, Inc., 151 So. 2d 28 (Fla. 2d DCA 1963); Thus, where a case is dismissed there is often an accompanying order permitting the dismissed party to vitiate the dismissal by some act, Diaz v. Bushong, 619 So. 2d 1020 (Fla. 3d DCA 1993); Dewitt v. Rossi, 559 So. 2d 659 ( Fla. 5 <sup>th</sup> DCA 1990); or directing some act to forestall the dismissal.	

Sneider v. Park View Island Corp., 140 So. 2d (Fla. 3d DCA 1962) Dismissals for failure to comply with a court order arise from orders clearly made conditions to continued maintenance of the action. Nenow v. Ceilings & Specialties, Inc., 151 So. 2d 28 (Fla. 2d DCA 1963);

SECTION §181 Dismissal for failure to comply with court order or rule, generally.

SECTION §181 - Where dismissal is to be with prejudice on the merits, it must be for violation of an order of the court and not for a mere failure to abide procedural step. Gaines v. Placilla, 634 So. 2d 711 (Fla. 1<sup>st</sup> DCA 1994) Diaz v. Bushong, 619 So 2d 1020 (Fla. 3d DCA 1993) Dewitt v. Rossi, 559 So 2d 659 (Fla. 5<sup>th</sup> DCA 1990) Sneider v. Park View Island Corp., 140 So 2d 136 (Fla. 3d DCA 1962)

Section §183 Finding of willful or deliberate refusal to obey court order. A dismissal with prejudice as a sanction for failing to comply with a court order is permitted in the most

egregious circumstances of intentional defiance and contumacious disregard of the court's authority. *Wheeler v. Hajianpour*, 688 So.2d 423 (Fla. 4<sup>th</sup> DCA 1997).

Section §183 - A finding of a willful or Deliberate refusal to obey a court order or requisite for a sanction of dismissal. *Leaonardo v. Grimming*, 740 So. 2d 580 (Fla. 4<sup>th</sup> DCA 1999) It is an abuse of the trial court's discretion to dismiss action for failure to obey a court order without making express written finding of fact supporting the conclusion that the failure to obey the court order demonstrated willful or deliberate disregard . *Hawthorne v. Wesley*, 82 So. 3d 1183 (Fla. 2d DCA 2012) While no 'magic Words' are required, the trial court must make a 'finding that conduct upon which the order is based was equivalent to willfulness or deliberate disregard.' *Hawthorne v. Wesley*, 82 So. 3d 1183 (Fla. 2d DCA 2012)

Generally court have been reluctant to uphold a dismissal where there has been no finding

of willful noncompliance or bad faith.

Littlefield v. Torrence, 778 So. 2d 368 (Fla. 2d DCA 2001) An express written finding of a willful disregard of an order of the court is essential to justify the severe sanction of dismissal. Hill v. Greyhound Lines, Inc., 988 So. 2d 1250 (Fla. 1<sup>st</sup> DCA 2008); SPS Development Co., LLC. v DS Enterprises of Palm Beaches, INC., 970 So. 2d 495 (Fla. 4<sup>th</sup> DCA 2007); Carr v. Dean Steel Bldgs., Inc., 619 So. 2d 392 ( Fla. 1<sup>st</sup> DCA 1993); Lenfesty v. U.S. Ballon Corp., 699 So. 2d 850 (Fla. 4<sup>th</sup> DCA 1997).

The failure of the trial court to make a requisite finding of willful noncompliance prior to dismissing a plaintiff's claim with prejudice for failure to comply with a court order warrants reversal and reinstatement of the plaintiff's claim. Zaccaria v. Russell, 700 So. 2d 187 (Fla. 4<sup>th</sup> DCA 1997);

**Rules**

Fla. R. App. P. 9.210 .....Page 12,13  
Fla. R. Civ. P. 1.380 .....passim

## STATUTES AND RULES

## OTHER

Whether a state court Judge needs to provide an opinion or explanation when dismissing a case depends on the jurisdiction and the type of dismissal. In general, here are the common practices:

### **1. With Prejudice vs. Without Prejudice:**

- **Dismissal with Prejudice:** This means the case is dismissed permanently, and the plaintiff cannot bring the same claim again. Typically, judges provide an explanation or opinion, especially if a party requests one, since this is a final decision on the merits of the case.
- **Dismissal without Prejudice:** This allows the plaintiff to refile the case, and an explanation may not always be required. However, judges often still provide one to clarify the reasoning.

### **2. Discretionary Decisions:**

- In some cases, state court judges have discretion on whether to provide a detailed opinion. For example, a simple procedural dismissal (such as for failure to prosecute or failure to comply with court orders) may not require an extensive written explanation.

### **3. Summary Judgment and Motions to Dismiss:**

- When a judge grants a **motion to dismiss** (before trial) or **summary judgment** (when no factual disputes exist), a written opinion is usually provided. This ensures the decision can be properly reviewed on appeal and helps clarify the judge's reasoning, especially if the dismissal is based on legal arguments (e.g., lack of jurisdiction, failure to state a claim).

### **4. Appellate Review:**

- For dismissals that could be appealed, many jurisdictions require judges to provide at least a brief explanation of the grounds for the dismissal. This is crucial for the appellate court to assess whether the lower court's decision was appropriate.

### **5. Local Rules and Judicial Practice:**

- Some states have specific rules that require a judge to give an opinion or written explanation when dismissing a case. Others may allow dismissals without a formal opinion, but judges often still provide reasoning, particularly in complex cases or those that involve constitutional or substantial legal questions.

For example, many state courts follow rules similar to the Federal Rules of Civil Procedure, which generally require explanations in significant rulings, such as granting a motion to dismiss under Rule 12(b)(6) (failure to state a claim) or for summary judgment under Rule 56.

In practice, while a state court judge might not always be legally required to provide an opinion for every dismissal, it is often expected, especially when the case is dismissed with prejudice or when there are important legal issues involved.

Florida state rules on whether a Judge needs to give an opinion on his dismissing a case with prejudice due to non compliance of order.

In **Florida**, if a judge dismisses a case **with prejudice** due to non-compliance with a court order, the rules generally require the judge to provide an explanation for the dismissal. This is because a dismissal with prejudice is a severe sanction that prevents the case from being refiled, and Florida courts typically require judges to justify such a decision, especially when it is based on a party's failure to comply with court orders.

### **Key Points under Florida Law:**

1. **Dismissals with Prejudice:** Florida courts treat dismissals with prejudice as an extreme measure, often used when no lesser sanction would suffice. The judge must make clear that the dismissal is a result of **willful or flagrant disobedience** of a court order, as opposed to simple negligence or a minor mistake.
2. **Due Process Considerations:** Florida courts are guided by principles of due process, which require that litigants are given notice and an opportunity to correct their non-compliance before a case is dismissed with prejudice. If the non-compliance is considered egregious or repeated after warnings, a dismissal with prejudice may follow.
3. **Florida Rules of Civil Procedure 1.420(b):**
  - Under **Rule 1.420(b)** of the Florida Rules of Civil Procedure, a court may dismiss an action if the plaintiff fails to comply with a court order. While the rule does not explicitly require a written opinion in every case, Florida case law suggests that judges should provide a rationale, especially when imposing such a drastic sanction as a dismissal with prejudice.
4. **Case Law:**
  - Florida courts have consistently ruled that dismissing a case with prejudice due to failure to comply with a court order should only occur after the judge considers whether lesser sanctions might be effective. The court must explain why dismissal is the appropriate remedy, particularly because it precludes the plaintiff from pursuing the case further.

- For example, in **Kozel v. Ostendorf**, 629 So. 2d 817 (Fla. 1993), the Florida Supreme Court established factors that a trial court should consider before dismissing a case with prejudice, including:
  - Whether the attorney's disobedience was willful or intentional.
  - Whether the attorney or party has been previously warned.
  - Whether the client is personally responsible.
  - Whether the non-compliance prejudiced the other party.
  - Whether a lesser sanction would be effective.

The judge should reference these factors, or similar ones, when issuing a dismissal with prejudice due to non-compliance.

**Conclusion:**

In Florida, while there may not be an absolute rule requiring a written opinion every time a case is dismissed with prejudice due to non-compliance with a court order, the courts generally expect judges to provide an explanation. This is especially important for ensuring that the dismissal is fair, justified, and can withstand appellate review if necessary.

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

[ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix  
to the petition and is \_\_\_\_\_; or,

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported;  
or, [ ] is unpublished.

The opinion of the United States district court appears at Appendix  
to the petition and is \_\_\_\_\_

[ ] reported at ; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

[ ] reported at ; or,  
[ ] has been designated for publication but is not yet reported;  
or,  is unpublished.

The opinion of the Eleventh Judicial Circuit Court for Miami Dade, Florida court appears at Appendix B to the petition and is

[ ] reported at ; or,  
[ ] has been designated for publication but is not yet reported;  
or,  is unpublished. 1.

## **JURISDICTION**

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was June 19<sup>th</sup>, 2024.

No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: ~~and a copy of the order~~ denying rehearing appears at Appendix .

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including (date) on (date) in Application No. \_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[X ] For cases from **state courts**:

The date on which the highest state court decided my case was January 24<sup>th</sup>, 2024. A copy of that decision appears at Appendix A.

[ ] A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including (date) on (date) in Application No. \_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

2.

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

### **Constitutional Provisions**

- **Article III of the U.S. Constitution:** Establishes the judicial branch of the federal government, including the U.S. Supreme Court. It defines the jurisdiction of the federal courts, the role of the judiciary, and the tenure of judges ("during good behavior").
  - **Section 1:** Establishes the Supreme Court and provides that Congress may establish lower courts.
  - **Section 2:** Defines the jurisdiction of the Supreme Court, including both original and appellate jurisdiction. It also specifies cases the Court can hear (cases arising under the Constitution, laws of the U.S., and treaties, cases involving ambassadors, etc.).

### **Article VI: Supremacy Clause**

- This article establishes the Constitution, federal laws, and treaties as the "supreme law of the land." The Supreme Court interprets and enforces the supremacy of federal law over state law when conflicts arise.

### **Judicial Review (Implied Power)**

- The power of **judicial review**—the authority of the Supreme Court to invalidate laws and executive actions that violate the Constitution—was established by the landmark decision in **Marbury v. Madison** (1803). While not explicitly stated in the Constitution, judicial review has become a central aspect of the Court's role in interpreting constitutional law.

### **Amendments To The Constitution:**

**First Amendment** (1791): Protects freedoms of speech, religion, press, assembly, and petition.

**Fifth Amendment** (1791): Protects against double jeopardy, self-incrimination, and guarantees due process of law.

**Sixth Amendment** (1791): Guarantees the right to a fair, speedy, and public trial, as well as the right to counsel.

**Ninth Amendment** (1791): Declares that the listing of individual rights in the Constitution is not exhaustive; people have other rights not listed.

**Fourteenth Amendment** (1868): Grants citizenship to all persons born or naturalized in the U.S., guarantees equal protection under the law, and includes the Due Process Clause.

**Fourteenth Amendment:** Contains the Equal Protection Clause and the Due Process Clause, which are central to many civil rights cases and have been used to apply the Bill of Rights to the states (via the Incorporation Doctrine).

### **FEDERAL STATUTES:**

#### **28 U.S. Code, Chapter 1 (The Judiciary and Judicial Procedure):**

- 28 U.S.C. § 1: Establishes the number of justices on the Supreme Court (currently set at 9).
- 28 U.S.C. § 1251: Specifies the Supreme Court's original jurisdiction, primarily in cases involving states.
- 28 U.S.C. § 1253: Allows for direct appeals from three-judge district court rulings to the Supreme Court in certain cases.
- 28 U.S.C. § 1254: Governs appeals and certiorari from the federal courts of appeals to the Supreme Court.

- 28 U.S.C. § 1257: Establishes the Supreme Court's ability to review decisions from state courts that involve federal law or constitutional issues.

## **STATUTES OF U.S. LAW:**

**Federal Statutes:** Laws passed by Congress that apply to the entire country, covering issues like immigration, interstate commerce, bankruptcy, civil rights, and national security.

**State Statutes:** Each state in the U.S. has its own laws and legal code, and state legislatures are responsible for passing statutes that govern issues within their borders, like family law, property law, and local criminal offenses.

### **Statutory Interpretation by Courts:**

- **Federal courts, particularly the U.S. Supreme Court, play a crucial role in interpreting statutes. This is often necessary when there is ambiguity or disagreement about how a law should be applied.**
- **Judicial Review: Courts have the power to strike down statutes if they are found unconstitutional, a function established in Marbury v. Madison (1803).**

## **United States Code (U.S.C.)**

**Title 1:** General Provisions

**Title 5:** Government Organization and Employees

**Title 28:** Judiciary and Judicial Procedure

**Title 42:** Public Health and Welfare

**Americans with Disabilities Act (1990):** Prohibits discrimination against individuals with disabilities in public life, including jobs, schools, transportation, and all public and private places open to the public.

### **42 U.S. Code § 12131 - Definitions**

As used in this subchapter:

**1. Public entity**

- The term "public entity" means—
  - (A) any State or local government;
  - (B) any department, agency, special purpose district, or other instrumentality of a State or States or local government; and
  - (C) the National Railroad Passenger Corporation, and any commuter authority (as defined in section 24102(4) of Title 49).

**2. Qualified individual with a disability**

- The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

**42 U.S. Code § 12132 - Discrimination**

Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

Under the **Americans with Disabilities Act (ADA)**, Title II governs **state and local government services**, and state agencies are required by law to provide access to **public services, programs, and activities** to individuals with disabilities. This includes ensuring that people with disabilities are not excluded from participation, denied benefits, or discriminated against.

State agencies, as **public entities**, must ensure that the services they provide are accessible to individuals with disabilities, which includes:

**1. Access to Services, Programs, and Activities**

State agencies must ensure that individuals with disabilities have full access to any public service, program, or activity they offer. This may include:

- **Educational Services:** Public schools, colleges, and universities must ensure equal access for students with disabilities.
- **Public Safety Services:** Police, fire, and emergency services must be accessible.
- **Health and Human Services:** Public health services, social services, and housing assistance must be available and accessible.
- **Court Services:** Courts must provide accessible facilities and services for individuals with disabilities, including interpreters or assistive technologies for people with hearing impairments.
- **Voting:** Voting facilities and systems must be accessible to individuals with disabilities.

## **2. Reasonable Modifications**

State agencies are required to make **reasonable modifications** to policies, practices, or procedures to avoid discrimination. This may include:

- Modifying rules and procedures to accommodate individuals with disabilities.
- Providing flexible policies for individuals with mobility, cognitive, or sensory disabilities.

## **3. Removal of Architectural Barriers**

If a state agency operates out of a physical building, they are required to ensure that the building is accessible. This includes:

- Ensuring accessible parking spaces.
- Providing ramps and elevators where necessary.
- Installing accessible restrooms, doorways, and signage.
- Removing physical barriers that would prevent individuals with disabilities from accessing the facility.

## **4. Communication Access**

State agencies are required to provide **effective communication** for individuals with disabilities. This includes:

- **Auxiliary Aids and Services:** These may include qualified sign language interpreters, assistive listening devices, Braille or large print materials, and screen reader-compatible digital resources.
- **TTYs and Video Relay Services (VRS):** Telephone communications must be accessible to individuals with hearing or speech impairments.
- **Accessible Websites:** Websites and digital communications must be accessible, ensuring that individuals with disabilities can navigate and interact with online services.

## **5. Public Transportation**

If a state agency operates or provides public transportation, it must be accessible to individuals with disabilities. This includes:

- **Wheelchair-accessible buses and trains.**
- **Paratransit services** for individuals who cannot use standard public transportation due to their disabilities.
- Ensuring transportation facilities such as stations and platforms are accessible.

## **6. Accessible Voting and Public Meetings**

State agencies are required to make polling places accessible to individuals with disabilities, as well as public meetings or hearings. This includes:

- Ensuring that polling locations are physically accessible.
- Providing accessible voting machines for people with visual impairments.
- Offering accommodations such as sign language interpreters or alternative formats for public meetings.

## **7. Public Accommodations Within State-Operated Facilities**

For public accommodations operated by the state (such as museums, parks, libraries, and other public facilities), the state agency must ensure:

- **Physical Accessibility:** The facility must be accessible to individuals with physical disabilities.
- **Accessible Exhibits and Programs:** The content of the services, exhibits, or programs must be accessible to individuals with visual, auditory, or cognitive disabilities (e.g., providing audio descriptions or captioning).

## **8. Equal Participation**

State agencies cannot deny individuals with disabilities the opportunity to participate in or benefit from public services, programs, or activities, or provide them with services that are not as effective as those provided to others.

**Civil Rights Act of 1964:** Prohibits discrimination based on race, color, religion, sex, or national origin.

## **STATEMENT OF THE CASE AND FACTS**

This appeal stems from lengthy litigation regarding a 2016 incident wherein Appellant, claims that a security guard employed by Club Space pushed her, causing her to fly backwards through the air hitting a metal railing causing her to flip backwards over said metal railing landing upside down on her head neck and shoulders, on a concrete floor, with her legs and feet falling down off the metal railing shortly after, resulting in injury.(R05-08-2018,pages38–41)

Appellant, filed her Lawsuit against on May 8, 2018 against Club Space. (R05-08-2018,pages38–41) Arbitration hearing on January 25, 2022. (R10-07-2021,pages389–393)(R02-02-2022,pages404–405). Appellant moved for a trial de novo (R10-07-2021,pages389–393)(R02-02-2022,pages404–405)(R02-07-2022,pages406) March 7<sup>th</sup>, 2022 Appellant's attorney filed motion to withdraw (R03-07-2022,page421) March 30<sup>th</sup>, 2022, Order of withdrawal as attorney of record (R03-30-2022,pages425-427)April 26<sup>th</sup>, 2022 (R04-26-2022,pages442-447) the Judge issued an Order Setting

Jury Trial, to commence on October 17<sup>th</sup>,2022 or as soon as possible thereafter, with a Calendar Call on

October 10<sup>th</sup>,2022. August 18, 2022, hearing on Appellant's Motion for Extension of Time to serve answers to Club Space's discovery requests. (R07-25-2022,pages456-457)

(R08-22-2022,pages462-463)

September 14, 2022, Club Space filed a Motion to Strike Plaintiff's Pleadings for Failure to Comply with August 22, 2022 Order. (R09-14-2022,pages705–711)

October 5, 2022, Judge granted Order to Compel Plaintiff's responses to pre-trial and expert interrogatories within 3 days. (R10-05-2022,pages724-725,725–750)

On October 11, 2022, Club Space filed it's Second Motion to Strike the Pleadings for Failure to Comply with the October 5, 2022 Order. (R10-11-2022, pages 888-950) With a Hearing date set for October 18, 2022. (R09-07-2022, pages 607-645) (R09-15-

2022, pages 716-717) (R10-05-2022, pages 751-752) (R10-11-2022, pages 951-952) At the October 18, 2022, Club Space had two pending Motions to Strike. Supp. R.

48-53. The Judge dismissed Appellant's case (R10-25-2022, pages 2584-2585) Supp. R. 54-55.

November 23<sup>rd</sup>, 2022 Appellant filed an appeal with the Third District Court Of Appeals. (R11-23-2922, pages 2547-2549)

On January 24<sup>th</sup>, 2024, Third District Court Of Appeals issued their Opinion and Decision on the case.

4.

#### REASONS FOR GRANTING THE PETITION

I believe the decision of the lower court was, in my case, erroneous for the following reasons:

- I successfully filed the answers to the discovery questions and witness interrogatories within the deadline specified on the Judge's order, to the best of my ability at the time. ( non-compliance of that order is why my case was dismissed with prejudice.)
- I submitted a letter to the Judge explaining what difficulties I was having trying to submit my documents on Oct 7<sup>th</sup>, 2022.
- Having a documented cognitive disability and not receiving any of the help mentioned below, makes all of these tasks very difficult and sometimes unsuccessful.
- Along with multiple other attempts at filing more complete answers with an affidavit – which unfortunately were not successful.
- All of the above actions should prove to the courts that any non-compliance, was not a deliberate, willful or intentional act on my part.
- I have a disability that was ignored and not taken into account, and as such, I was not given an equal opportunity in court.

I believe that my cognitive disabilities were overlooked and ignored and feel that this not only effects myself but all people with cognitive disabilities - that are not necessarily obvious, which leaves some people to think there is nothing wrong with you, that you have no disability.

I believe that there is a national importance of having the Supreme Court decide my questions involved for the importance of the case not only to me but to others similarly situated.

**In Florida**, if a judge dismisses a case **with prejudice** due to non-compliance with a court order, the rules generally require the judge to provide an explanation for the

dismissal. This is because a dismissal with prejudice is a severe sanction that prevents the case from being refiled, and Florida courts typically require judges to justify such a decision, especially when it is based on a party's failure to comply with court orders.

**Key Points under Florida Law:**

5. **Dismissals with Prejudice:** Florida courts treat dismissals with prejudice as an extreme measure, often used when no lesser sanction would suffice. The judge must make clear that the dismissal is a result of **willful or flagrant disobedience** of a court order, as opposed to simple negligence or a minor mistake.
6. **Due Process Considerations:** Florida courts are guided by principles of due process, which require that litigants are given notice and an opportunity to correct their non-compliance before a case is dismissed with prejudice. If the non-compliance is considered egregious or repeated after warnings, a dismissal with prejudice may follow.

**7. Florida Rules of Civil Procedure 1.420(b):**

- Under **Rule 1.420(b)** of the Florida Rules of Civil Procedure, a court may dismiss an action if the plaintiff fails to comply with a court order. While the rule does not explicitly require a written opinion in every case, Florida case law suggests that judges should provide a rationale, especially when imposing such a drastic sanction as a dismissal with prejudice.

**8. Case Law:**

- Florida courts have consistently ruled that dismissing a case with prejudice due to failure to comply with a court order should only occur after the judge considers whether lesser sanctions might be effective. The court must explain why dismissal is the appropriate remedy, particularly because it precludes the plaintiff from pursuing the case further.

- For example, in **Kozel v. Ostendorf**, 629 So. 2d 817 (Fla. 1993), the Florida Supreme Court established factors that a trial court should consider before dismissing a case with prejudice, including:

- Whether the attorney's disobedience was willful or intentional.

*Answer – I was not willful or intentional in my missing deadlines or non-compliance of the Judge's order. I actually complied with the Judges order, I just was not given a chance to retrieve the document from the online system to show the Judge and he said he did not have the time to go through the online system to find the document. I was trying very hard to complete documents on time and e-file them. I even wrote a letter to the Judge explaining how I was having technical problems trying to file my documents on October 7th, 2022. I have difficulties with focus and concentration, memory and sometimes comprehending what I am reading just does not want to work and other times I get it completely wrong and think it is saying this when in fact it is saying the opposite. I thought my hearing was going but after testing, I found out it is the signal in my brain that is delayed in sending the signal from what hear to my brain to understand what I have just hear. I have difficulties comprehending sometimes and catching on to what someone has said and technical computer stuff I have great difficulties. I hit the wrong buttons accidentally erasing stuff, or sending when I don't want to send I have impulse control issues with the signal from my brain to my hands by the time I figure out I do not want to push that or click on that etc. it is too late my hand is already doing the thing I did not want to do. Basically I have cognitive issues, which effect my daily life.*

*I was not intentionally nor willfully disregarding the Courts orders or deadlines, I have a cognitive disability which effects my being able to successfully complete tasks no matter how hard I try.*

- Whether the attorney or party has been previously warned.

*Answer - Yes I had been warned and was complying.*

- Whether the client is personally responsible.

*Answer – Yes, but my disability was not taken into account, plus I did comply, I attempted to answer the Discovery and witness interrogatories the best I could.*

- Whether the non-compliance prejudiced the other party.

*Answer – I am not a lawyer, but in my personal non-lawyer opinion, the witness and exhibit interrogatories were mute because the opposing counsel had filed 3 Motions in Limine preventing me from having any exhibits or any witnesses professional or not or having any professional reports or opinions etc. and I had been deposed twice.*

*I believe the questions about the costs possibly yes not having the costings information would prejudice the opposing counsel. Even upon answering the Discovery questions I did not know how to correctly answer a lot of the questions, I tried my best.*

- Whether a lesser sanction would be effective.

*Answer – again I'm not a lawyer but in my opinion yes a lesser sanction would have been effective as we were choosing the Jury that morning and my Trial was that afternoon, the Judge had mentioned that he thought it would be only an afternoon Trial as there were no witnesses possibly only myself. So yes, in my non-lawyer opinion a lesser sanction would have been effective as I had answered the questions and filed them and my Trial was set for that afternoon.*

The judge should reference these factors, or similar ones, when issuing a dismissal with prejudice due to non-compliance.

My case was dismissed for non-compliance, not completing the discovery questions and witness interrogatories - I had completed them and filed them and emailed them.

I did not realise that, that the Discovery document was queued in my email and had not successfully gotten sent.

The Judge expressed that my attempting to send the email and it actually being successfully sent are two different things.

I explained that I had also filed the same discovery document, the Judge looked and asked me where it was in the computer docket system, but I had no clue.

The Judge said that he did not have the time to go through the docket to find the document.

So, because I did not have the document to hand nor knew where it was in the computer system, the Judge dismissed my case with prejudice for non-compliance of the Judge's order to answer the discovery questions and witness interrogatories.

However, I had complied with the Judge's order and filed the document with an affidavit as well, as without an affidavit.

After my case was dismissed with prejudice, I was still having filing rejections for different errors and trying to re-file my documents online, I tried many times to successfully e-file them, in the end they were moved to abandoned and I was no longer able to do anything with them.

- The above facts, along with the above and below laws, statutes etc. I believe is reason to grant my Writ Of Certiorari.

Accommodations are given to people with disabilities to avoid discrimination and create an equal environment and opportunities.

- **Court Services:** Courts must provide accessible facilities and services for individuals with disabilities, including interpreters or assistive technologies for people with hearing impairments.

## **2. Reasonable Modifications**

State agencies are required to make **reasonable modifications** to policies, practices, or procedures to avoid discrimination. This may include:

- Modifying rules and procedures to accommodate individuals with disabilities.
- Providing flexible policies for individuals with mobility, cognitive, or sensory disabilities.

Many U.S. state courts provide accommodations for individuals with cognitive impairments or other disabilities to ensure they have equal access to the justice system, as required by the Americans with Disabilities Act (ADA). Each state has

its own procedures for requesting accommodations, but common accommodations include:

**1. Assistance with Forms and Paperwork:**

- Courts often provide assistance with filling out legal forms, which can be challenging for individuals with cognitive impairments.
- Some courts have self-help centers or staff specifically trained to assist with these tasks.

**2. Extended Time:**

- Individuals with cognitive impairments may be granted additional time to complete forms, participate in hearings, or meet other court deadlines.

**3. Clear Communication:**

- Simplified language or explanations may be provided for individuals who have difficulty understanding legal terminology.
- Some courts offer the assistance of court interpreters or advocates trained to work with individuals with cognitive impairments.

**4. Modified Scheduling:**

- Courts may offer flexible or adjusted scheduling to accommodate the needs of individuals who may tire easily or need frequent breaks.

**5. Representation and Advocacy:**

- Courts often allow advocates, social workers, or legal representatives to accompany individuals with cognitive disabilities to help them navigate the process.

**6. Alternative Formats:**

- Documents and court communications may be made available in formats that are easier to understand, such as large print or audio recordings.

**7. Technology Aids:**

- Some courts may allow the use of assistive technology (like speech-to-text programs or other cognitive aids) to help individuals with impairments.

**8. Guardians ad Litem or Conservatorships:**

- In cases where individuals cannot represent themselves due to significant cognitive impairments, courts may appoint a guardian ad litem or a conservator to assist or represent them.

**9. Special Accommodations for Testimony:**

- Cognitive impairments may make it difficult for individuals to testify in court. Accommodations such as allowing breaks during testimony or

giving testimony in a more relaxed setting (e.g., via video or outside the formal courtroom) are sometimes permitted.

5.

## **CONCLUSION**

The petition for a writ of certiorari  
should be granted.

Respectfully submitted,

Sherrie Clements

Date: September 17th, 2024

6.

Amended Oct. 18<sup>th</sup> 2024

No.

IN THE

SUPREME COURT OF THE UNITED STATES

SHERRIE CLEMENTS — PETITIONER (Your Name)

VS.

CLUB SPACE — RESPONDENT(S)