

A court may dismiss an action as a sanction against a party who fails to obey an order to provide discovery. See Fed. R. Civ. P. 37(b)(2)(C). A court may dismiss an action as a sanction against a party who fails to comply with the Federal Rules of Civil Procedure, including discovery rules, or any order of the court. See Fed. R. Civ. P. 41(b). A court also has the inherent power to dismiss a case that cannot be disposed of expeditiously because of the willful inaction or dilatoriousness of a party. See Chambers v. NASCO, Inc., 501 U.S. 32, 34 (1991); Link v. Wabash R.R. Co., 370 U.S. 626, 630-32 (1962). See also Hewlett v. Davis, 844 F.2d 109, 114 (3d Cir. 1988).

In assessing a motion to dismiss as a sanction, a court generally considers the so-called Poulis factors. See Harris v. Philadelphia, 47 F.3d 1311, 1330 n.18 (3d Cir. 1995); Anchorage Assoc. v. V.I. Bd. of Tax Review, 922 F.2d 168, 177 (3d Cir. 1990); Hicks v. Feeney, 850 F.2d 152, 156 (3d Cir. 1988); Poulis v. State Farm Fire and Cas. Co., 747 F.2d 863, 868 (3d Cir. 1987).¹ Not all of the Poulis factors need be satisfied to warrant such a sanction. See Hicks, 850 F.2d at 156.

¹ These factors include the extent of the party's responsibility for the failure properly to litigate; prejudice to the adverse party; any history of dilatoriness by the recalcitrant party; the willfulness of the offending conduct; the adequacy of any other sanctions; and, the merit of the underlying claims.

There is evidence that plaintiff, who was proceeding pro se when the discovery requests were served and defendant's first motion to compel was filed, has been aware of the discovery requests and his obligation to provide responses. He thus bears or shares responsibility for the failure properly to litigate this action.

The inability during the allotted discovery period to obtain even basic information from a plaintiff regarding his claim is clearly prejudicial to a defendant in his attempt to defend against and obtain a prompt resolution of a lawsuit. See Adams v. Trustees, N.J. Brewery Trust Fund, 29 F.3d 863, 874 (3d Cir. 1994) (prejudice encompasses deprivation of information from non-cooperation with discovery as well as the need to expend resources to compel discovery).

Defendant is not complaining about an isolated breach. Plaintiff has been totally recalcitrant in honoring his discovery obligations and court orders directing him to do so. In the absence of a satisfactory explanation, the persistent failure to honor discovery obligations and court orders must be viewed as "a willful effort to evade and frustrate discovery." Morton v. Harris, 628 F.2d 438, 440 (5th Cir. 1980) (Rule 37(b)(2)(C) dismissal warranted for continuing failure to comply with court ordered discovery). See also Jourdan v. Jabe, 951 F.2d 108, 110 (6th Cir. 1991) (Rule 41(b) dismissal warranted where plaintiff

fails to engage in discovery); McDonald v. Head Criminal Court Supervisor Officer, 850 F.2d 121, 124 (2d Cir. 1988) (Rule 37(b)(2)(C) dismissal warranted for failure to comply with court discovery order); Williams v. Kane, 107 F.R.D. 632, 634 (E.D.N.Y. 1985) (plaintiff's claim dismissed pursuant to Rules 37(b)(2)(C) & 41(b) for failure to provide court ordered discovery); Booker v. Anderson, 83 F.R.D. 284, 289 (N.D. Miss. 1979).

A monetary sanction should be commensurate with and likely to deter the type of violation at issue. See National Hockey League v. Metro. Hockey Club, Inc., 427 U.S. 639, 643 (1976). Plaintiff appears to be a person of limited means. Any meaningful monetary sanction, even one relatively modest to an individual of means, would, if collectible, likely rival dismissal in palatability.

The meritoriousness of a claim must be determined from the face of the pleadings. See C.T. Bedwell Sons v. International Fidelity Ins. Co., 843 F.2d 683, 696 (3d Cir. 1988); Poulis, 747 F.2d at 870. This factor is thus of limited practical utility in assessing dismissal under Rule 37 or 41. If a claim as alleged lacks merit, it would generally be subject to dismissal under Rule 12(b)(6) without the need to weigh other factors. In any event, it is difficult conscientiously to characterize a claim as meritorious when the claimant refuses to

subject it to scrutiny through the normal discovery process.²

Plaintiff's violation of the federal rules and court orders has been persistent and flagrant. It has resulted in a significant delay and diversion of resources. There is an absence of any justification. Plaintiff invoked the judicial process and then effectively thwarted discovery, making impossible the proper and efficient litigation of this action.

The pertinent factors weigh significantly in favor of dismissal.

ACCORDINGLY, this day of October, 1999, upon consideration of defendants' Motion For Sanctions (Doc. #14) and in the absence of any response from plaintiff, **IT IS HEREBY ORDERED** that said Motion is **GRANTED** and the above action is **DISMISSED**.

BY THE COURT:

JAY C. WALDMAN, J.

²The court notes that defendant's representation that at a conference before the late Judge Gawthrop "plaintiff effectively conceded that the derogatory information on his Trans Union report was accurate" is uncontroverted.