

Appeals from Sanctions Orders

Obtaining, Avoiding, Appealing and Keeping Them

Scott Rothenberg,
Law Offices of Scott Rothenberg
Bellaire, Texas

University of Texas School of Law CLE
33rd Annual Conference on State and Federal Appeals
June 8-9, 2023
The Sheraton Austin Hotel at the Capitol,
Austin, Tx., and live webcast

1

Mandatory Disclaimer:

I am a panel chair for the Harris County District 4-6 Grievance Committee, and a past Director of the State Bar of Texas. However, **NOTHING** that I say in this program is on behalf of any entity or organization in any manner whatsoever. **Everything** I say in this program is solely in my capacity as Texas attorney who has been licensed to practice law in the State of Texas for 37 years and has no findings of professional misconduct, legal malpractice, or sanctionable conduct, against him. So far. Knock on wood.

2

Sanctions orders - potentially ruinous.
Have represented attorneys in 2 \$1.3 million sanctions cases and 1 \$150,000 sanctions case.
Handling sanctions matters is potentially dangerous in three important ways.

3

Determine if sanctions are requested the attorney, the client, or both. Why? “[T]he sanction should be visited upon the offender,” so that the trial court must attempt to determine whether the discovery failure is attributable to counsel, or to the party, or both. *TransAmerican Natural Gas Corp. v. Powell*, 811 S.W.2d 913, 917 (Tex. 1991). A party should not be punished for its counsel’s conduct “unless the party is implicated apart from having entrusted its legal representation to counsel.” *Glass v. Glass*, 826 S.W.2d 683, 687 (Tex. App.–Texarkana 1992, writ denied).

4

Substantial monetary sanctions sought against both lawyer and client for failing to timely produce requested, highly relevant documents.

Lawyer did not produce because even though requested from client, the client withheld them until the sanctions motion was filed.

5

TDRPC 1.06(b)(2):

[A] lawyer shall not represent a person if the representation of that person. . . become[s] adversely limited by the lawyer's or law firm's own interests.

However....

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Appeals from Sanctions Orders

Also available as part of the eCourse

[2023 eConference on State and Federal Appeals](#)

First appeared as part of the conference materials for the 33rd Annual Conference on State and Federal Appeals session "Appeals from Sanctions Orders"