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Appeals from Sanctions Orders

Obtaining, Avoiding, Appealing, and Keeping Sanctions Orders

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I. INTRODUCTION

During the first half of my 37 year career as a trial and appellate attorney, it was rare to see substantial sanctions orders against attorneys or their clients. Awards of $250, or $500, or even $1,000 would occasionally be issued, but usually nothing exceptionally large. The second half of my career has been very different. Since the turn of the century, the undersigned has been counsel either post-judgment in the trial court, or on appeal, or both, in litigation involving sanctions orders that awarded $150,000, $1.35 million, and $1.37 million. Clearly, the importance of properly avoiding, obtaining, appealing, and keeping on appeal, sanctions orders, has never been more important.

II. AVOIDING SANCTIONS ORDERS - KNOW WHAT IS EXPECTED

The first step in avoiding sanctions orders is knowing what is expected of us and our clients. Simply put, it is hard to avoid committing (or representing a client who is committing) sanctionable conduct if we do not periodically refresh our recollection about what is expected of us in the conduct of trial and appellate litigation. You would not run your vehicle without performing periodic maintenance. Similarly, we should not run our law licenses without doing the same thing.

Quick. Tell me the bases for the imposition of sanctions. Of course, Texas Rule of Civil Procedure 215 pertaining to discovery sanctions will likely come to mind. By and far, it is the most used sanctions rule based upon number of sanctions appeals over the past quarter century. However, Rule 215 is not the only basis for sanctions. Far from it. In fact, in the past decade, it has become possible for attorneys or their clients (or both) to commit sanctionable conduct without violating any rule or statute at all. More on that in a moment.

If you ask attorneys about sanctions, typically Texas Rule of Civil Procedure 215 (pertaining to discovery sanctions), and the Texas Citizens Participation Act (chapter 27 of the Texas Civil Practice & Remedies Code) will come to mind. But those are only a few of the sanctions available under Texas and federal practice.

What follows is a listing of the most frequently used sanctions rules and statutes in the state and federal trial and appellate courts of Texas. It is not meant to be an exhaustive list. It is meant as a starting point for lawyers to refresh their recollection regarding the professional standards that must be met in order to avoid the imposition of sanctions – some of which can be financially and professionally ruinous.

Texas Rule of Civil Procedure 215.
Texas Rule of Civil Procedure 13.
Texas Rule of Civil Procedure 18a(h).
Texas Rule of Civil Procedure 21b.
Texas Rule of Civil Procedure 166a(h).
Texas Civil Practice & Remedies Code Chapter 9.
Texas Civil Practice & Remedies Code Chapter 10.
Texas Civil Practice & Remedies Code section 27.009.
Texas Civil Practice & Remedies Code Chapter 105.
Texas Rule of Appellate Procedure 45.
Federal Rule of Civil Procedure 11.
Federal Rule of Civil Procedure 37.
28 U.S.C. section 1927 ("Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.").

One might think that with this multiplicity of rules-based, and statute-based sanctions, it would be unnecessary for courts to be able to impose sanctions based upon conduct that is not found to have violated any rule, statute, regulation or other written guideline. But you would be wrong.

"Various rules and statutes imbue courts with authority to sanction attorneys for professional lapses of one kind or another with or without bad faith. Courts also possess inherent powers that aid the exercise of their jurisdiction, facilitate the administration of justice, and preserve the independence and integrity of the judicial system. A court's inherent authority includes the "power to discipline an attorney's behavior."" *Brewer v. Lennox Hearth Prod., LLC*, 601 S.W.3d 704, 717–18 (Tex. 2020).

"With the understanding that inherent powers must be used sparingly, our appellate courts have consistently held that a court's inherent power to sanction "exists to the extent necessary to deter, alleviate, and counteract bad faith abuse of the judicial process ...." Bad faith is not just intentional conduct but intent to engage in conduct for an impermissible reason, willful noncompliance, or willful ignorance of the facts. "Bad faith" includes "conscious doing of a wrong for a dishonest, discriminatory, or malicious purpose." Errors in judgment, lack of diligence, unreasonableness, negligence, or even gross negligence—without more—do not equate to bad faith. Improper motive, not perfection, is the touchstone. Bad faith can be established with direct or circumstantial evidence, but absent direct evidence, the record must reasonably give rise to an inference of intent or willfulness." *Brewer v. Lennox Hearth Prod., LLC*, 601 S.W.3d 704, 718–19 (Tex. 2020).

A new fertile ground for sanctions rules or orders may be found in courts' internal operating procedures and local rules. By way of example, only, Judge Brantley Starr very recently issued the following mandatory certification regarding the use of generative artificial intelligence in matters before his Court in the United States District Courts for the Northern District of Texas:

Title search: Appeals from Sanctions Orders: Obtaining, Avoiding, Appealing, and Keeping Sanctions Orders

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