Motions for Sanctions and Motions to Disqualify

Taft/

Objectives

- Recognize sanctions exposure
- Defend sanctions motions
- Understand disqualification standards

Taft/

Threat Letters

- Treat threats seriously; evaluate deficiencies.



Taft/

FRCP Rule 11

- Certifies filings are legally/factually supported and not for improper purpose.

Taft/

Indiana [or insert your state rule] Trial Rule 11

- Signature certifies good grounds and no delay
- Violations may justify sanctions.



Taft/

Improper Purpose

- Harassment
- Delay
- Needless expense
- Tactical abuse.

Taft/

Reasonable Inquiry

- Investigate facts and law before filing.

Safe Harbor

- Serve motion 21 days before filing to permit withdrawal.

Initial Response ("Breathe")



Stay calm



Assess merits



Preserve documents



Evaluate exposure.

Taft/

Client Communication

- Notify client
- Explain risks
- Costs
- Strategy.



Taft/

Insurance

- Consider malpractice notice obligations.

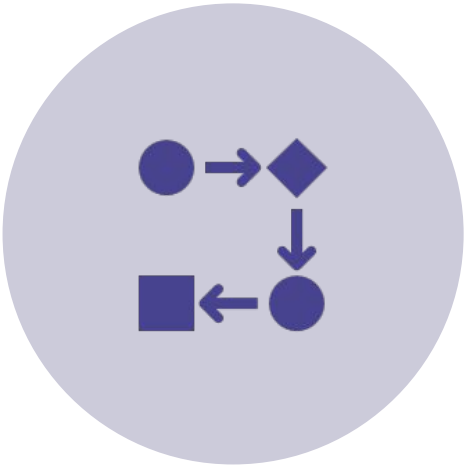


This Photo by Unknown Author is licensed under CC BY-NC

Sanctions Procedure



SEPARATE MOTION



IDENTIFY CONDUCT PRECISELY.

Taft/

Available Sanctions



MONETARY



FEE SHIFTING



DIRECTIVES



NONMONETARY REMEDIES.

Taft/

Timing Matters



TIMING MATTERS



COURTS MAY DEFER UNTIL MERITS RESOLVED.

Taft/

Defenses

- Procedural defects
- Factual support
- Legal basis

Discovery Sanctions

- Rule 37 and Indiana analogs address discovery abuse.

Taft/

Ethics

- Candor (Rules 3 and 4, numerous)
- Competence (Rule 1.1)
- Diligence (Rule 1.3)
- Supervision (Rules 5.1 and 5.3)

Taft/

Hypothetical

- Frivolous complaint after limited investigation.



Taft/

Sanctions Takeaways

- Preparation and documentation reduce risk.

Disqualification



Taft/

Disqualification Overview

- Extraordinary remedy affecting client choice.



Taft/

RPC 1.7

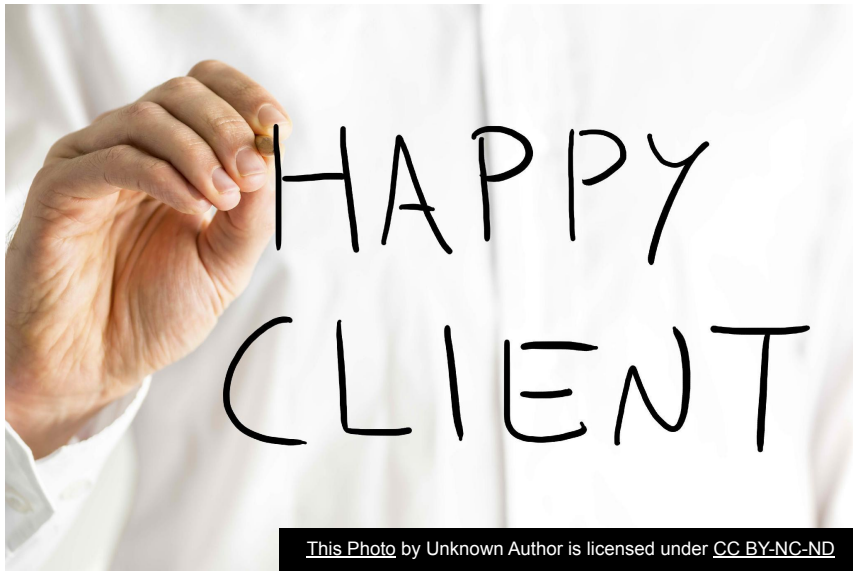
- Current client conflicts.



Taft/

RPC 1.9

- Duties to former clients.



This Photo by Unknown Author is licensed under CC BY-NC-ND

Taft/

RPC 1.10

- Imputation to firm.



This Photo by Unknown Author is licensed under CC BY-SA-NC

Taft/

RPC 3.7

- Lawyer as witness.



This Photo by Unknown Author is licensed under CC BY-SA

Taft/

Standing

- Typically, current or former client affected.

Taft/

Timing

- Delay may support waiver arguments.



Taft/

Burden

- Movant bears burden of proving necessity.



This Photo by Unknown Author is licensed under CC BY-SA

Taft/

Substantial Relationship

- Compare prior and current matters.

Taft/

Screening

- Evaluate whether screening cures conflict.

Responding

Challenge standing

Prejudice

Factual basis.

Evidence



AFFIDAVITS



ENGAGEMENT LETTERS



CONFLICT CHECKS

Taft/

Checklist



INVESTIGATE



DOCUMENT



NOTIFY



PRESERVE.

Taft/

Q&A

Questions and discussion.

Taft/