SANCTIONS IN FEDERAL COURT: RISK MANAGEMENT

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This paper offers suggestions on Risk Management to minimize exposure to sanctions in federal court cases. The unifying theme of the sanctions limitations on conduct by attorneys and litigants is their common purpose: protecting of the judicial system against abuse. They are not intended as tools for tyrannical judges, nor as a means of redress for perceived offenses by one attorney against another, nor as a protection for litigants against the hazards or costs inherent in litigation. Attorneys seeking to avoid claims must bear in mind that these limitations seek only to protect the integrity of judicial process, *see, e.g., Cooter & Gell v. Hartmarx Corp.*., 496 U.S. 384, 397, 110 S.Ct. 2447, 2457 (1990).

It may not be possible to avoid becoming the subject of a sanctions motion, but it is possible to minimize such motions and eliminate liability while still vigorously and zealously pursuing a client's rights. Certain types of clients and situations create an increased risk of sanctions situations and are responsible for most such problems. Many of these also create exposure to malpractice claims. They are readily avoidable.

Risk Management By Self-Examination

A candid self-audit can lead to steps that minimize the risk of both sanctions and malpractice that result from our own behavior patterns. Consider the traits listed below and the extent to which each manifests itself in your personality and legal practice. Each is typically tied to, perhaps makes possible, some positive characteristic that makes you effective. Every attorney has the ability to minimize the risks that flow from personality and practice style. Before listing the common characteristics that lead to sanctions and malpractice problems, consider the tools that are available to counteract them.

Strategies To Minimize Risks Caused By Personal Characteristics

There are at least three ways to deal effectively with risks caused by personal characteristics: (1) habits that counteract the characteristic; (2) accepting restrictions that keep the vulnerabilities they create under control; (3) systems and resources that compensate for the risks that they create.

Habits are powerful things. Adhered to long enough, they can even modify the personal characteristic that creates problems. In the meantime, they can keep us out of trouble. Habits can be intentionally created and maintained by unyielding vigilance in the face of impulse and temptation. For example, one useful habit might be an intentional delay in making a decision to commit to an assignment or plead a claim until it has been thought over. Another might be to review the latest case stating the elements of a claim or defense or the actual text of an applicable rule or statute before starting to write a motion, pleading or discovery response. Still another might be to set aside anything written in anger for rewriting the next day. Habits are difficult to establish, but may be the most productive risk management tool.

Voluntary Restrictions are imposed through some system outside our own control and/or are occasioned by another person's systematic intervention. If no assignment can be accepted and no pleading filed without review by a second person, risk can be kept in check. Others will quickly pick up on the areas where you tend to create vulnerabilities. Having a "chief of staff" responsible for identifying and ensuring follow-up on key steps will limit one's flexibility, but can make sure that important steps are not overlooked. Harnessing the power of systemized activity, peer pressure and human ingenuity to cabin one's own self-destructive tendencies can be highly effective. It is limited only by shortcomings in the system and the person responsible for enforcement.

Compensating Practices provide a different strategy. This approach accepts the characteristic and tries to counteract the specific problems it can lead to. Compensating practices are particularized to specific situations where a risk is identifiable. If I tend to shoot from the hip legally, having a good researcher draft the motion ensures that someone has actually looked at the applicable law and either found support for my intuitive approach or can confront me with the lack of support for it. If I tend to be overly influenced by clients and their needs, someone else may need to be in the room while I meet with the client to say "that's not going to work" before I steer things in the direction the client prefers into potential disaster.

Personal Characteristics and the Risks They Create

Now consider these personal qualities, contemplate the sanctions problems they can create and ask if they describe you:

Am I Hardworking? You work long hours. You are thorough. This gets results. But as the Pennsylvania Dutch saying goes, "the hurrieder I go, the behinder I get." The more hours you work, the more work will find you. Unless you have strong time and work management skills, you still run out of time. You regularly confront two choices: do a slipshod job, or delay. Litigators' deadlines are notoriously flexible, but there are plenty of judges in the federal system who are unwilling to be forgiving about delays. Others are equally unforgiving of a second-rate work product.

Do I Want To Be A Hero? You easily become emotionally involved with your clients and persist in pursuit of the client's interests beyond a reasonable point. Or you become overly committed to the positions you take in a case, losing the capacity for critical analysis. You have a strength for connecting with your clients and your persistence pays off, but your desire to benefit a client can also expose you to risks.

Am I Disorganized? You lose track of deadlines and you cannot get motivated to do research or answer discovery. You sometimes misplace papers and waste time looking for what you need to complete a project. Perhaps by nature you do not worry about a lot; perhaps you are so overwhelmed that you cannot even remember what to be worried *about*. You may respond to inspiration rather than being focused on research and precedent. You have a strength for accomplishing a great deal under pressure, but that ability prevents your from doing a professional job on each assignment.

Am I A Superwoman/Superman? You take on more than you can handle. New assignments seem intriguing or to present a stimulating challenge; you may feel a sense of responsibility to complete more than is reasonably possible. You are probably working very long hours. You "live on the edge" professionally and can even become addicted to the excitement of it. In the end, you will need to cut corners and something will either be left undone, or will be done less than adequately.

Am I Overconfident? You have mastered your craft, and you are able to accomplish great results for your clients. Your sense of assurance infects clients, judges and even opposing counsel. If you have heard yourself called stubborn or arrogant more than once in the past decade, this is you. You can be blinded to an Achilles heel in your case or you may ignore a problem with a case it expecting that no one else will notice it. This behavior leads almost inexorably to sanctions.

Am I Imaginative? You have an open mind and imaginative approaches appeal to you. Winning a case through a clever argument or changing the law through a new insight jazzes you. You win cases because people do not see where you are coming from until it is too late. But the ability to find a different way to achieve the client's objectives can blind you to the fact that

sometimes there *is* no way to get there. This will lead you to take unwarranted risks, particularly if you also have the "hero" or overconfidence characteristics.

Am I Quick But Sloppy? You are nimble, able to complete tasks with great speed. Thoughts roll out of your head into the Dictaphone or keyboard and are filed. You can keep your adversary off balance with your unexpected initiatives. The pleadings you create contain aggressive statements that will be examined with care by your adversary seeking significant errors and omissions. You may also take factual information the client reports to you at face value and without critical analysis. If so, you are likely to be made acutely aware of how often it is that clients lie or omit important facts—and you not are using your knowledge to protect clients from themselves.

Am I More Practical Than Scholarly? You are focused on achieving the client's objectives, and have learned that for every legal argument that can be made on one side of a case, there is one to be made on the other. You focus on the facts, and do not get distracted by the details of legal analysis. Your research is focused on finding cases that support your position, not on understanding the law in depth. This approach can easily lead you to overlook a binding precedent that defeats your position, until it is called to your attention by a Rule 11 motion.

Am I Versatile? You have never handled a RICO or malpractice or securities fraud or federal employee or mechanics lien case before, but you are a quick study. You can grasp the key points of the applicable law in no time, and you can figure out the business context almost immediately. *You* are at greatest risk because once you stray out of the central area of your competence, and you will blissfully unaware of the traps for the unwary and can miss something crucial. Liability to your client will be premised on the standard of care of attorneys practicing in that field. The judge will hold you to the same standard.

What's Your Problem? You probably see a lot of the above that apply to you. A few moments of reflection will reveal to you the top five characteristics that create your greatest risk of malpractice or sanctionable conduct. With your own list in mind, reflect on problems you have narrowly escaped (or not escaped) in the past and the role your personal approach to the practice of law played. Think about times you have recreated these same kinds of risks in the last six months.

Do not succumb to the temptation simply to resolve to yourself that you will change. It will not happen. *First, write it all down.* Identify habits, restrictions on yourself, and compensating practices that will prevent your characteristics from creating problems for you. *Second, write down the solutions and start implementing them immediately.* If something doesn't work or feel right, try something else. This activity will keep the problem in your mind and focus you on finding the approach that works for you. *Third, review how you are doing twice a year.* If you have not made progress, this will help bring you back to paying attention to it. If you designate two dates each year when you will spend some time on risk management, you are less likely to put off dealing with it to avoid feeling bad about the fact that you have been neglecting it for so long.

Managing Risk By Declining Assignments

Most situations that can lead to a risk of sanctions wave a red flag as they come in the door. Being aware of them provides the opportunity to eliminate the risk by declining representation. Typically, the assignment that creates a risk of sanctions is also an unpleasant professional experience. Just as often, it is financially unrewarding. Everyone is entitled to representation, but not everyone is entitled to be represented by *you*. Refusing to accept a client

or assignment is a simple way to avoid endless grief, of which a sanctions motion may only be a part.

Review the following checklist before accepting a new client or assignment:

Does the client have unreasonable expectations?

Clients with unreasonable expectations will inevitably have disappointed expectations. Many have already fired a previous lawyer (a telltale sign of unreasonable expectations). This client will put you under pressure to achieve impossible things and you will become overly aggressive. This is sanctions territory, because your professional judgment will be affected by your desire to please this client.

Because of the disappointed expectations, this client will also not want to pay you, will complain a lot, and will make demands on you for things you cannot deliver. This client is also frequently known as a "legal malpractice plaintiff." You don't want to accept work from this client. Just say "No."

Are the time demands inconsistent with my existing obligations?

For some of us, the slow pace of the cases we are handling now makes a new case irresistible. New legal issues, new people to deal with, a new set of dynamics to figure out, a new challenge to our professional skills. But time is a finite resource, and it may be impossible at the start of an assignment to know whether it will ultimately consume a great deal of time over a long period or be resolved quickly with only minimal time invested. The probabilities should at least be assessed before accepting an assignment or deciding on the staffing.

If you are "fully utilized," do not give in to the magical thinking that this assignment will not interfere. Often the key to accomplishing the client's objective is requires immediately available time to understand the dispute and push it aggressively towards a conclusion. Unless you are in a position to staff up your practice if time begins to get short, it is irresponsible,

unethical and unfair to the client to accept an assignment that you cannot properly handle because of other commitments. It is also irresponsible, unethical and unfair to your existing clients for you to attempt it. Your other commitments and clients include your family and personal life, as well getting a good night's sleep every night.

Inadequately researched positions, failure to obtain important factual information and failure to comply with discovery orders are all frequently the result of not having enough time to get the job done right. Often the problem is work habits, but when it is not, this is invariably the problem. Don't fall into the trap

Is there enough at stake for me to do a competent professional job?

This is another cause of sanctions. The limited amount at stake in a case can limit your capacity to do a job properly. Depending on the client, there may be plenty at stake without regard to the dollar amount in dispute, but be sure you get a commitment to that from the client. If the client does not have that attitude and you are being paid hourly, you are likely to encounter payment problems.

Just because the amount at stake does not justify complete research or investigation does not mean that the court will excuse you from them. Generally, when the amount at stake is small, you should take a pass except where the case is in the dead center of your existing competence and is not factually complicated. The case should be handled by someone whose practice can handle it economically, or perhaps the case is not worth litigating over.

Is this unfamiliar territory?

There are two possibilities. First, that you invest a great deal of uncompensated time learning the field in depth from reading, attending seminars, and paying consulting fees to lawyers who do practice in the area. Second, you will try to figure it out as you go along and play it by ear. You know which one are you really going to do. Think of the times you have

dealt with lawyers who do not know *your* area—advantages have you enjoyed, what have you been able to accomplish because of it. Being new to a field of practice is a huge disadvantage.

Since that you will likely take the second route, you are also likely to overlook something important. If your client loses a benefit a competent lawyer knowledgeable in the field would have spotted, you could be contacting your malpractice carrier. If the judge loses patience with the obvious errors your adversary will be prepared to point out, you could be sanctioned.

Am I up to date on the applicable law?

This is a variation on the "unfamiliar field" problem. Federal judges are up to date on the recent developments in many fields simultaneously, and they presume that you are at least up to date on your own field. Appellate opinions on sanctions sometimes track recent appellate meanderings on "hot issues," and the judges sometimes conclude that a particular position was not frivolous *before* a certain opinion was handed down, but became so immediately after the decision was rendered. If you are entering an area you have not dealt with recently, particularly one in which new legislation has recently been adopted, consider it unfamiliar territory until you get current.

Do the financial arrangements make the assignment rewarding?

It can be difficult to allocate time and attention to a case because of things we do not control. A difficult judge or opposing counsel, a body of law we find boring or factual issues in the case that make working on it tedious can make working on a case feel like root canal work. One factor that affects us, whether we like it or not, is whether the case is rewarding financially. Occasionally cases are fascinating enough that you would work on them for free. But rarely. There is something truly demoralizing about working on a case in which you are convinced that you will not be compensated appropriately.

A case taken on a *pro bono publico* basis is accepted from the inception for the collateral rewards of championing a meritorious cause and serving the profession, and that may be an exception. A case that becomes *pro bono* because the client does not pay the bills offers no compensating rewards for continued work.

Contingent fee cases can generate motivation because of the belief that the financial reward is affected by the amount and quality of work done on it. But the motivation dims as prospects for success because the client was not up front about harmful facts, because you did not see the problems coming or because the client is not responsive to the needs of the case. Low rates and slow-paying clients consistently produce unmotivated attorneys. Corners are more likely to be cut, leading to sanctions. Thus, regardless of the basis of payment, do not accept a case where there is reason to believe that it will prove financially unrewarding.

Is this a client I can work with comfortably?

If you like, or can at least get along well with, the client, you are likely to do a better job. In most assignments, difficult moments and problems will be encountered. Your working relationship with the client, whether it is an individual, an entrepreneur, an insurance adjuster or an in-house lawyer, can be tested. If the client is someone you can work with comfortably, you are less likely to come under pressure to do less than competent, professional work (to cut costs, for example), less likely to be forced into aggressive positions you cannot defend to please the client, and less likely to become frustrated about the case and respond emotionally rather than professionally to the provocation that pervades litigation.

Managing Risk Before Filing A Pleading, Motion or Discovery Response

Here is another risk management checklist:

Know your adversary

Some lawyers are just difficult. Those that are more prone to aggressive positions, or to sanctions motions, should put you on your toes. They may try to distract you from the issues in the case and drag you into petty disputes because they are skilled at setting up opposing counsel and arguing such things. Good lawyers let a lot slide off their backs and remain focused on what is important in the case. If someone's game is provocation, it takes great patience not to be baited into responding in kind. Knowing that it is coming is the best way to avoid being provoked into doing something unprofessional.

Know your judge

Some judges are difficult. Those who are demanding generally follow predictable patterns. If the judge is one of those who revels in sanctioning lawyers, all you can do is refuse to present the opportunity. It will pay not only to do a competent professional job, but to document the fact that you are as you go along. Unfounded charges, whether from opposing counsel or the court, can be based on supposition and appearances, and the rules promise an opportunity to be heard before sanctions are imposed. A well-documented file will allow you to defend yourself if you ever need to do so.

Reasonable Investigation

The case law provides no bright line saying that you can rely blindly on your client, particularly if the information you get is second-hand. If the story seems improbable, if the explanation is convoluted or if the client's story has internal contradictions, it should not be taken at face value—even when it is "fixed" once you point out the problems with it.

The proper scope of an investigation is a function of what information is available to the pleader, and if the allegations of the pleading turn out to be dead wrong, it helps considerably if you have spoken with multiple witnesses who confirm your view of the case. Where denials come from the adversary but there are objectively suspicious circumstances, facts may safely be pled, at least on information and belief.

One tactic worth considering is to present your view of the case to the other side and ask for information—documents and witness interviews—before the pleading is filed. In *Hoffman-LaRoche, Inc. v. Invamed Inc.,* 213 F.3d 1359, 1393 (Fed.Cir. 2000), a drug company suspected that the manufacturer of a generic substitute was infringing on the patent on its manufacturing process, but it was unable to know whether its competitor had developed its own process. It inquired of the generic manufacturer, who refused to provide this confidential information. Although it turned out that there was no infringement, the court observed that there was nothing the plaintiff company could do but file suit and seek discovery. Indeed, the complaint even recited "plaintiffs resort to the judicial process and the aid of discovery to obtain under appropriate judicial safeguards such information as is required to confirm their belief and to present to the Court evidence that each and every defendant infringes one of more claims of the…patents." *Id.,*at 1394.

Think about the trial

When drafting a pleading, providing a concise but complete picture of the case in the complaint or answer is only the start. Under Rule 11, you will be certifying that you have conducted a reasonable inquiry, that the factual information set forth is well-founded and that the case is supported by existing law or a good faith argument for an extension, modification or change in the existing law. The burden is not heavy for most cases, but satisfying it requires that

you actually take a critical look at your case or defense of a case when you sit down to draft the pleading.

Witnesses and exhibits. To assess whether there is an adequate factual basis for the claim or defense, think about the witnesses who would be called to testify to it, and what they now say. Think about what evidence is contained in the documents, about the admissions made in pre-suit correspondence or, if you are filing an answer or counterclaim, about the facts admitted in the complaint. Would the evidence you could marshal now, arrayed against the evidence your opponent claims to have, be sufficient to sustain the claim or defense against a directed verdict motion if the trial was today? If not, what specifically do you expect to find in discovery that will defeat that motion, and can you articulate a good explanation of why you expect to find it?

Careful analysis of documents. If a contract, statute, regulation, insurance policy, benefit plan or other document forms the basis of the claim or defense, *read every word of the document.* Keep out a critical eye for how each provision could affect your case favorably or unfavorably. Do not fall victim to the temptation to overlook the problem provisions. Where the problem provision or a provision on which you will rely might have been the subject of reported case law, research the case law. You will have to do it eventually anyway. You could find support for your position; you could find a Rule 11 motion waiting to happen.

Jury instructions. Go down the list of elements required to be shown for each claim or defense, as they are listed in a published opinion case factually similar to yours. Does your evidence satisfy that test? Are you relying on facile, "cute" arguments about the facts or the law? Conjure up your opponent's argument and think of whether you have a convincing answer.

Consider, if you are drafting a complaint, the probable defenses you will likely face from your opponent. Look over the affirmative defenses listing in Rule 8(c), defenses that are

regularly presented in cases like the one you are bringing, defenses that have been asserted in pre-suit correspondence or filings, and defenses that jump out from the facts of the case. Research them. This may lead you to additional investigation or to even to reconsider the case.

Legal Research

Is there legal ambiguity, given the factual situation that raises a question about any of the elements of your claim or defense? Are there like cases that have held against you? Your legal research should identify the points of *weakness* in your case—no one will make a Rule 11 motion against you for a position that is plainly right. Can you advance a fair argument based on the existing precedent? If not, do you have a fair argument flowing from the leading case(s) that logically supports either distinguishing the instant case from opposing cases or that cries out for a change in the law?

If the point where you have a problem is one for which there is a basic legal obstacle, such as the language of the statute or a fundamental principle that extends beyond your particular case, you are making an argument you should abandon. If your theory of the case is one rejected in a leading case, particularly from the State Supreme Court or the U.S. Supreme Court, then you should eliminate the claim or defense unless the only point of your case is to change that law. This process is worthwhile not only for sanctions risk management. If you find yourself resisting this, ask yourself why you would waste time and money on briefing at every turn a position and that is certain to be rejected.

Risk Management While The Case Is Pending

Rule 11 obligations do not stop when the pleadings are filed. They are not limited to new motions and responses that you may draft. Substantive grounds for sanctions motions can develop as the inevitable surprises in every case come out. Each side must consider whether

such developments call for revision of its position or of the case as a whole. In addition, the manner in which the parties and attorneys conduct themselves during the litigation may form the basis for conclusions such as "bad faith" (which justifies sanctions against client or attorney under the court's inherent power), "improper purpose" (which justifies sanctions under Rule 11), or "unreasonable multiplication of proceedings" (which justifies an award of fees against an attorney under 28 U.S.C. §1927). Rule 37 sanctions *only* arise from pretrial discovery acts and omissions.

Some suggestions:

Engage your adversary

Advocates' positions get overly aggressive when the advocates are not communicating about the case. Opposing counsel will debunk your more outlandish theories, and talk you out of your more radical positions if you provide the opportunity. You will likely have the same moderating influence, even if the litigation culture prevents either side from acknowledging that it pays heed to anything the other side says.

Good professional relations can also prevent a sanctions motion from being made, as your adversary considers the potential consequences of making that motion. Your opposing counsel has a great deal to say about whether you will be portrayed in a bad light to the judge. He or she can either be looking for excuses to seek sanctions or counseling the adversary that it is a waste of time and money. Courtesy, friendliness and reasonableness can not only make the case a better experience at a personal level, it can protect you from unfounded attacks, and even from some that are well-founded.

Correct clear mistakes

If unexpected testimony, a newly discovered document or a decision from the Court of Appeals defeats a claim or defense, or renders your allegations erroneous, it is wise to be the first

one to point that out and revise what has been said before. First, a stubborn failure to do so can lead to sanctions. Second, taking that affirmative step, especially before your opponent demands it, demonstrates your professionalism to the court and is important evidence of how you conduct yourself that can be cited in your defense if a sanctions motion is made at some point. Third, if the position has become a loser anyway, why prolong the agony? It only gives the other side a win.

Pick your battles

Not every fight is worth fighting. Any motion brought during a case should be brought for some purpose that advances the client's cause (as distinguished from the attorney's ego) in a meaningful way, and no motion should be brought if the cost of making it outweighs the probable benefit obtained. The more your case stands out as one characterized by bickering and needless motions, the more likely it is that the judge will be inclined to impose sanctions on someone. The chances are 50-50 that you will be the one the judge picks.

Always use a respectful, professional tone

See the "bickering" point above. Persistent personal attacks can prompt a judge to enter sanctions as soon as someone steps out of line.

Be candid about it if you are taking an aggressive position

Rule 11 specifically permits "a nonfrivolous argument for the extension, modification or reversal of existing law or the establishment of new law." Taken to its logical extreme, this can even permit a party to take a position that stands against Circuit case law, *Nisenbaum v. Milwaukee County,* 333 F.2d 804, 809 (7th Cir. 2003)("courts do not penalize litigants who try to distinguish adverse precedents, argue for the modification of existing law, or preserve positions for presentation to the Supreme Court"). "Although arguments for a change of law are not

required to be specifically so identified, a contention that is so identified should be viewed with more tolerance under the rule," *Margo v. Weiss,* 213 F.3d 55, 64 (2d Cir. 2000).

Make a record

Before relying on a witness or client whose assertions seem unreliable or unlikely, but which cannot be disproven based on the information that is available, it is wise to commit the statement to writing, and even more beneficial to have sent something in writing to the client or witness confirming the statement. When making a concession to the other side that is not worthy of an amendment to a pleading or motion, memoralizing the step in writing helps make clear that you have complied with Rule 11 and withdrawn an unwarranted position. There are doubtless many other circumstances where making a record is prudent.

Do the homework

Clients do not understand document production requests. They cannot translate the "all documents relating to" into their own record-keeping systems, nor are they inclined to seek out evidence for the other side, nor do they have time for such exercises even if they were so inclined. Counsel must police compliance aggressively to ensure that it actually occurs.

Clients typically rely on hearsay information in doing business and assert as facts understandings that do not capture the entire story. There is no substitute for speaking with those having firsthand knowledge when answering interrogatories or requests to admit.

When clients claim not to have documents or information that logic says they should have, it is critical to explain the tactical disadvantage, repetition of depositions, and loss of credibility that will result when they are inevitably discovered during someone's deposition.

It is not reasonable to ask a client to come up with documents in one week to respond to a document request that has been sitting on your desk for a month. Discovery requests should be relayed to the client as quickly as possible, and more often than not, the client will be prepared to

respond timely. If not, it is counsel's job to ensure that the motion to compel for a complete failure to comply with discovery can never be brought.

Take threats of sanctions seriously

Some clients are unreasonable (see "unreasonable expectations") and there is a fair chance this applies to your adversary. They will take aggressive, blustering positions, whether to intimidate, to mask weaknesses in their case or defense, or because of an emotional reaction. A lawyer representing a client like this will be making motions for sanctions, or threatening them, almost from the start of the case. Threats of sanctions can satisfy the Rule 11 "safe harbor" requirement when the court is so inclined, and should be taken seriously.

Seek expert advise if you need it

The rules of ethics provide that an attorney who is not expert in a particular field may rely on someone who is. The same approach is worth considering where there is a concern that a position on the law might be deemed frivolous by the court (or where opposing counsel has already so characterized it). The key in such situations is to ensure that all of the pertinent facts get into the hands of the "expert," and that the expert is prepared to argue the cases if push comes to shove, as opposed to simply giving a curbside opinion. Specific elaboration on the logic of the position in the expert's opinion can be helpful as well, as are academic credentials. You will want a record showing that you sought the expert opinion before asserting the position in court, as opposed to after the sanctions motion was made.

Finally, A List of Risk Management "Don't Ever's"

Don't ever ignore service of a Rule 11 "safe harbor" notice, whether by motion (as it should be) or by letter. Further investigation, critical analysis of information, legal research and considerable soul-searching should occur during any "safe harbor" period.

Don't ever get personal with opposing counsel or the opposing party.

Don't ever get petty with opposing counsel or the court.

Don't ever refile a case in federal court after previously losing the same issue before—this is a favorite ground for Rule 11 sanctions.

Don't ever be dishonest or play tricks with the court or opposing counsel. This is an engraved invitation to sanctions.

Don't ever advocate a position because it is to your momentary advantage to do so where you do not have supporting authority or sound logic from the cases to support it.

Don't ever mislead the court about the facts or the applicable law. You lose credibility, invite sanctions and subject all future arguments to being discounted.