



To: Benjamin Robinson/DCA/AO/USCOURTS@USCOURTS,
Cc:
Bcc:
Subject: Fw: Comment submitted in Opposition to proposed changes to Fed. R. Civ. P. 11
From: LiAnn Shepard/DCA/AO/USCOURTS - Wednesday 10/19/2011 11:55 AM

History: This message has been forwarded.

----- Forwarded by LiAnn Shepard/DCA/AO/USCOURTS on 10/19/2011 11:55 AM -----

From: "Joseph Johnson, Jr." <jjohnson531@gmail.com>
To: liann_shepard@ao.uscourts.gov, rkohn@kohnlawgroup.com, jmccarthy@sgrlaw.com
Date: 10/18/2011 03:25 PM
Subject: Comment submitted in Opposition to proposed changes to Fed. R. Civ. P. 11

Ms. Shepard,

The purpose of this email is to submit a comment on the proposed revision of Rule 11 of the Federal Rules of Civil Procedure.

Congress is currently considering revision Rule 11 sanctions, including: 1. Removing the existing 21 day "safe harbor" provision which requires that you send your motion to the opposing party and give them 21 days to remedy the alleged Rule 11 violation before filing the motion with the Court; and 2. Making an award of fees and costs related to a winning Rule 11 motion automatic, instead of discretionary.

These proposed amendments is an invitation to infringe upon the Constitutional rights of pro se litigants. The vast majority of suits that are filed by pro se litigants are often misguided, either in fact or law. The proposed amendment to Rule 11 would permit a litigant to seek sanctions against a pro se litigant simply because the pro se litigant, who is untrained in the law, filed a pleading not well-grounded in fact or law. Indeed, many litigants in prison file Federal claims based on prison conditions. In this scenario, a pro se prisoner litigant that filed a paper in court that was frivolous would automatically be faced with an attorney fees under the proposed Amendment to Rule 11 because the proposed amendment would make the award of fees and costs related to the winning Rule 11 motion automatic, providing the trial judge with no discretion. One could imagine the result of imposing a mandatory attorneys' fee on a pro se prisoner who obvious has no substantial means of paying fees or costs.

Further, if a pro se litigant (prisoner or otherwise) filed a pleading that was misleading, he would have no effective chance to correct it before the opponent files a Rule 11 Motion. For example, a pro se prisoner complaining about prison conditions which is either not grounded in fact or law would automatically be subject to fees and costs. The courts are places where litigants are given the Constitutional right to redress grievance and the proposed Amendments would appear to deter litigants from filing claims that may have colorable merit. The Rule in its current version is effective because it not only provides the opponent with an adequate opportunity to correct his pleadings before be subject to an automatic award of fees, but it also enables the Court to make the discretion of whether to impose fees and costs.

Accordingly, I oppose any amendment to Rule 11 of the Federal Rules of Civil Procedure.