

RULE 11 - SUMMARY¹

As the textbook makes clear, Federal Rule of Civil Procedure 11 acts as a constraint on what otherwise appears to be Rule 8's license to get into court quite easily. It does so by making both the lawyer and the client investigate the facts of a potential claim and the law that applies to that claim before suit has been filed. I think of Rule 11 as falling into four parts: the technical requirements; what you substantively must do and not do; how you can be punished (or sanctioned) for non-compliance; and how the rule relates to discovery. Each of these areas is described below:

I. The Technicalities

Rule 11(a) Signature. “Every pleading, written motion, and other paper shall be signed . . .”

What does it mean when you sign? It means:

- a. You have read the pleading;
- b. The pleading was not prepared for any improper purpose; and
- c. You have satisfied the substantive requirements of the rule as described below.

The same standard applies to attorneys and parties. The third sentence under Rule 11(a) states that if you do not sign the pleading, it may be stricken unless corrected.

II. Substance of Rule

Rule 11(b) Representations to Court. “By presenting to the court (whether signing, filing, submitting, or later advocating) . . .”

Under the rule, you may be sanctioned not only for what you write, but for what you later advocate. Rule 11(b) tells you to what standard you will be held: an “inquiry reasonable under the circumstances.” What does “reasonable under the circumstances” mean?

Example: If the statute of limitations is going to run out in 24 hours, you may have to take what your client is telling you at face value. In other words, you are not going to be able to inquire into much, if anything, with a 24 hour deadline if you are to preserve your client’s potential claim. However, if the statute of limitations does not run out for two

¹This summary is adapted from one prepared by Professor Dorothea Beane.

months, you have time to investigate the potential claim, both as to the law and the facts. Similarly, even if speed is important at the start, you need to investigate further as soon as time permits.

Rule 11 requires that you make a reasonable investigation into two areas, in addition to certifying that the pleading is not being filed for an improper purpose. The two areas to investigate are:

1. The facts (Rule 11(b)(3))
2. The law (*i.e.*, that you have a good claim or that you have a good faith basis for arguing to expand or modify the law to make it a good claim) (Rule 11(b)(2))

Rule 11(b)(1) “it is not being presented for an improper purpose . . .”

You can’t file a lawsuit, knowing that you will lose, just for the sake of irritating somebody or getting back at them by making them spend money trying to dismiss your complaint. (This is important because a big client may ask you to file a complaint that you know is frivolous. Don’t do it. It only takes one Rule 11 violation to ruin your career. Sometimes in practice you need to say “no” to your own client, for both your sakes.)

Rule 11(b)(2) “. . . a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law”

Again, you must have a legal basis for your argument or claim. You must do legal research and make sure you are on good legal footing.

Rule 11(b)(3) “the allegations and other factual contentions have evidentiary support . . .”

You must have evidentiary support for your allegations and factual contentions.

Rule 11(b)(4) “the denials”

Your answer or denial is held to the same standards as the complaint is. If you say you lack information or belief, you had better lack information or belief, *i.e.*, it had better be true that you don’t know and can’t find out.

* * *

[Good faith. What kind of good faith does Rule 11 call for? Is it subjective or objective good faith? Subjective good faith is what you personally believe to be true. Subjective good faith is called the ‘good heart, empty head’ defense. Objective good faith is what the reasonable person would believe to be true. The advisory committee notes suggest that the standard should be objective.]

III. Sanctions

Rule 11(c) Sanctions. “If after notice and reasonable opportunity to respond . . . the court may . . . impose an appropriate sanction . . .”

What does it mean to be sanctioned? Does your case get dismissed? Do you get fined? Do you get fined by the Bar? Possibly all three. Sanctions are discretionary with the goal being to impose the sanction most likely to deter similar conduct in the future.

Rule 11(c)(1)(A) How Initiated. By Motion. “A motion for sanctions under this rule shall be made separately from other motions or requests . . .”

The most common way Rule 11 matters begin is by a motion that is served upon you. The motion is not filed. Instead, there is a period of time known as the ‘safe harbor’. The wording for this is found under Rule 11(c)(1)(A). . . . “but shall not be filed with or presented to the court unless within 21 days after service of the motion . . . the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected . . .” In other words, you have the opportunity to modify the document or withdraw it. If you modify or withdraw it within the requisite number of days, the Rule 11 motion is never filed. You have reached the safe harbor. Some critics say that you have one shot at being frivolous.

Rule 11(c)(1)(B) On Court’s Initiative. “On the court’s initiative, the court may enter an order . . .”

The court can enter an order describing the specific conduct that appears to violate subdivision (b), and direct that an attorney, law firm, or party show that it has not violated subdivision (b).

Rule 11(c)(2) Nature of Sanctions, Limitations. “A sanction imposed for violation of this rule shall be limited to what is sufficient . . .”

As a general matter, this section of the rule gives the court broad discretion to decide what sanction is necessary under the circumstances to avoid further problems. There are some limits on that latitude:

Rule 11(c)(2)(A) — “Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2).

Look at (b)(2). There must be a legal basis for the claim. So what is the purpose of 11(c)(2)(A)? It is the lawyer who is the professional armed with the understanding of the law and how the law should be interpreted. This subdivision of the rule gives the represented party the benefit of the doubt that it is unsophisticated in the area of law. Moreover, this portion of the rule recognizes that it is the lawyer who has the last clear chance to make an appropriate legal argument. By carving out this exception to (b)(2),

the rule also indirectly states that a represented party can be sanctioned for violation of the other provisions under rule 11(b)(1), (3) & (4). Please note, however, that this subdivision does not mean that a represented party may not be held liable for violating Rule 11(b)(2). It means only that monetary sanctions may not be awarded against such a party.

Rule 11(c)(2)(B) — “Monetary sanctions may not be awarded . . .”

If the court sees a violation in front of it, it must hold a ‘show cause’ hearing. In other words, if the court sees a violation of Rule 11, a sanction is not automatic. Although sanctions may be swift, you cannot lose due process.

Rule 11(c)(3) — “Order. When imposing sanctions, the court shall describe the conduct . . .”

Simply, the court must outline what you did wrong so that you (and an appellate court) know what violation the court has determined you have committed.

IV. Discovery

Rule 11(d) — Inapplicability to Discovery

Rule 11 does not apply to discovery. Rule 26(g) is Rule 11's corollary when it comes to discovery. We will study that rule later in the course.