

Comment to Petition R-15-0004, State Bar of Arizona's Petition to Amend Rule 11, Arizona Rules of Civil Procedure

John Mangum, Co-Chair, Legal, Regulatory, and Financial Services Committee

Steve Twist, Co-Chair, Legal, Regulatory, and Financial Services Committee

Glenn Hamer, President and C.E.O.

Arizona Chamber of Commerce and Industry

3200 N. Central Avenue

Suite 1125

Phoenix, AZ 85012

602-248-9172

ghamer@azchamber.com

015777 (inactive)

Exhibit A

Redline, Arizona Chamber's Proposed Changes to Rule 11

Proposed Amendments to Arizona's Rule 11

Rule 11. Signing of Pleadings Documents; Sanctions.

Rule 11(a). Signing of pleadings, motions and other papers; sanctions Documents.

~~Every pleading, motion, and other paper of a party represented by an attorney shall be document served or filed with the court must be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A name—or by a party personally if the party who is not represented by an attorney shall sign the party's pleading, motion, or other paper and unrepresented. The document must state the party's signer's address, email address. Except when otherwise specifically provided by, and telephone number. Unless a rule or statute, pleadings specifically states otherwise, documents need not be verified or accompanied by affidavit. The rule in equity that the averments of an answer under oath court must be overcome by the testimony of two witnesses strike an unsigned document unless the omission is promptly corrected after being called to the attorney's or of one witness sustained by corroborating circumstances is abolished. The signature of party's attention.~~

Rule 11(b). Representations to the Court and in other Documents.

~~By signing a document, an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; certifies that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry;~~

~~(1) it is well-grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed not being presented for any improper purpose, such as to harass or to cause unnecessary delay, or needlessly increase in the cost of litigation. If a pleading, motion;~~

~~(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;~~

~~(3) the factual contentions have evidentiary support or other paper is not signed, it shall be stricken unless it is signed promptly after, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery;~~

~~(4) the omission is called to the attention of the pleader or movant. If a pleading, motion denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a belief or a lack of information; and~~

~~(5) that if the signer had reason to believe representations made by others and contained in the document were false or materially insufficient, the signer has made an independent~~

reasonable inquiry into the facts.

Rule 11(c). ~~other paper~~ Sanctions.

(1) Generally. If a document is signed in violation of this rule, the court, ~~upon~~ motion or ~~upon~~ its own ~~initiative, shall, must~~ impose ~~upon~~ the person who signed it, a represented party, or both, an appropriate sanction, which ~~may~~ **must** include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the ~~pleading~~ document, including a reasonable ~~attorney's~~ attorney's fee.—, **and must include, as applicable, a dismissal of the document, or dismissal of the count or counts that violate this rule, unless the court sets forth on the record findings of fact, supported by clear and convincing evidence, that show a manifest injustice would result. On appeal, the court's findings are reviewed de novo.**

(2) Consultation. Before filing a motion for sanctions under this rule, the moving party must:

(A) attempt to resolve the matter by in-person or telephonic consultation with the opposing party; and

(B) if the matter is not satisfactorily resolved by consultation, serve the opposing party with written notice of the specific conduct that allegedly violates Rule 11(b). If the opposing party does not withdraw or appropriately correct the alleged violation(s) within 10 days after the written notice is served, the moving party may file a motion under Rule 11(c)(3).

(3) Motion for Sanctions. A motion for sanctions must:

(A) be made separately from any other motion;

(B) must describe the specific conduct that allegedly violates Rule 11(b);

(C) be accompanied by a separate statement of moving counsel certifying that, after in-person or telephonic consultation and good faith efforts to do so, the parties have been unable to satisfactorily resolved the matter; and

(D) attach a copy of the written notice provided to the opposing party under Rule 11(a)(2)(B).

Rule 11(d). Assisting Filing by Self-Represented Person.

An attorney may help ~~to~~ draft a ~~pleading, motion or~~ document filed by an otherwise self-represented person, and the attorney need not sign that ~~pleading, motion, or~~ document. In providing such drafting assistance, the attorney may rely on the otherwise self-represented person's representation of facts, unless the attorney has reason to believe that such

representations are false or materially insufficient, in which instance the attorney ~~shall~~must make an independent reasonable inquiry into the facts.

Rule 11(b). ~~Verification of pleading generally~~(e). Verified Pleadings.

(1) Generally. When in a civil action a pleading is required to be verified by ~~the~~ affidavit of ~~the~~ party, or ~~when in a civil action~~if an affidavit is required or permitted to be filed, the pleading may be verified, or the affidavit made, by the party or by a person acquainted with the facts after independent reasonable inquiry into them, for and on behalf of such party.

(2)

~~Rule 11(c). Verification of pleading when equitable relief demanded~~

When ~~equitable relief is demanded, and the~~*Demanding Equitable Relief.* If a party demanding ~~such relief makes oath that the allegations of the complaint, counterclaim, cross-claim, or third-party claim are true in substance and in fact,~~equitable relief files a verified pleading, then the responsive pleading ~~of the opposite party shall~~must also be ~~under oath, unless the oath is waived in the pleading to which the responsive pleading is filed~~verified, and each material allegation not denied under oath ~~shall be taken as confessed~~is deemed admitted.

Exhibit B

Clean Copy, Arizona Chamber's Proposed Changes to Rule 11

Proposed Amendments to Arizona's Rule 11

Rule 11. Signing of Documents; Sanctions.

Rule 11(a). Signing of Documents.

Every document served or filed with the court must be signed by at least one attorney of record in the attorney's name—or by a party personally if the party is unrepresented. The document must state the signer's address, email address, and telephone number. Unless a rule or statute specifically states otherwise, documents need not be verified or accompanied by affidavit. The court must strike an unsigned document unless the omission is promptly corrected after being called to the attorney's or party's attention.

Rule 11(b). Representations to the Court and in other Documents.

By signing a document, an attorney or party certifies that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry:

(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery;

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a belief or a lack of information; and

(5) that if the signer had reason to believe representations made by others and contained in the document were false or materially insufficient, the signer has made an independent reasonable inquiry into the facts.

Rule 11(c). Sanctions.

(1) **Generally.** If a document is signed in violation of this rule, the court, on motion or on its own, must impose on the person who signed it, a represented party, or both, an appropriate sanction, which must include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including a reasonable

attorney's fee, and must include, as applicable, a dismissal of the document, or dismissal of the count or counts that violate this rule, unless the court sets forth on the record findings of fact, supported by clear and convincing evidence, that show a manifest injustice would result. On appeal, the court's findings are reviewed *de novo*.

(2) **Consultation.** Before filing a motion for sanctions under this rule, the moving party must:

(A) attempt to resolve the matter by in-person or telephonic consultation with the opposing party; and

(B) if the matter is not satisfactorily resolved by consultation, serve the opposing party with written notice of the specific conduct that allegedly violates Rule 11(b). If the opposing party does not withdraw or appropriately correct the alleged violation(s) within 10 days after the written notice is served, the moving party may file a motion under Rule 11(c)(3).

(3) **Motion for Sanctions.** A motion for sanctions must:

(A) be made separately from any other motion;

(B) must describe the specific conduct that allegedly violates Rule 11(b);

(C) be accompanied by a separate statement of moving counsel certifying that, after in-person or telephonic consultation and good faith efforts to do so, the parties have been unable to satisfactorily resolve the matter; and

(D) attach a copy of the written notice provided to the opposing party under Rule 11(a)(2)(B).

Rule 11(d). Assisting Filing by Self-Represented Person.

An attorney may help draft a document filed by an otherwise self-represented person, and the attorney need not sign that document. In providing such drafting assistance, the attorney may rely on the otherwise self-represented person's representation of facts, unless the attorney has reason to believe that such representations are false or materially insufficient, in which instance the attorney must make an independent reasonable inquiry into the facts.

Rule 11(e). Verified Pleadings.

(1) **Generally.** When in a civil action a pleading is required to be verified by affidavit of a party, or if an affidavit is required or permitted to be filed, the pleading may be verified, or the affidavit made, by the party or by a person acquainted with the facts after independent reasonable inquiry into them, for and on behalf of such party.

(2) *When Demanding Equitable Relief.* If a party demanding equitable relief files a verified pleading, then the responsive pleading must also be verified, and each material allegation not denied under oath is deemed admitted.

Exhibit C

Redline to Petition R-15-0004 by State Bar of Arizona, Arizona Chamber's
Proposed Changes to Rule 11

Proposed Amendments to Arizona's Rule 11

Rule 11. Signing of ~~pleadings, motions and other papers~~; sanctionsDocuments; Sanctions.

Rule 11(a). Signing of ~~pleadings, motions and other papers~~Documents.

Every ~~pleading, motion, and other paper of a party represented by an attorney shall be~~ document served or filed with the court must be signed by at least one attorney of record in the attorney's ~~individual name, whose address shall be stated. A name—~~ or by a party personally if the party ~~who is not represented by an attorney shall sign the party's pleading, motion, or other~~ paper and ~~unrepresented. The document must state the party's~~ signer's address, email address. ~~Except when otherwise specifically provided by,~~ and telephone number. Unless a rule or statute, ~~pleadings specifically states otherwise, documents~~ need not be verified or accompanied by affidavit. ~~If a pleading, motion or other paper is not signed, it must be stricken~~ The court must ~~strike an unsigned document unless it is signed promptly after the omission is~~ promptly corrected ~~after being called to the attorney's or party's attention of the pleader or movant.~~

Rule 11(b). Representations to the ~~court~~Court and in other ~~papers~~Documents.

~~The signature of~~ By signing a document, an attorney or party ~~constitutes a certificate by~~ the signer that the signer has read the pleading, motion, or other paper; ~~certifies~~ that to the best of the ~~signer's~~ signer's knowledge, information, and belief formed after reasonable inquiry:

(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; ~~and~~

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a belief or a lack of information; and

(5) that if the signer had reason to believe representations made by others and contained in the document were false or materially insufficient, the signer has made an independent reasonable inquiry into the facts.

Rule 11(c). Sanctions.

(1) Generally. If a ~~pleading, motion or other paper~~document is signed in violation of this rule, the court, ~~upon~~ motion or ~~upon~~ its own ~~initiative~~, must impose ~~upon~~ the person who signed it, a represented party, or both, an appropriate sanction, which ~~may~~must include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the ~~pleading, including a reasonable attorney's fee~~document, including a reasonable attorney's fee, and must include, as applicable, a dismissal of the document, or dismissal of the count or counts that violate this rule, unless the court sets forth on the record findings of fact, supported by clear and convincing evidence, that show a manifest injustice would result. On appeal, the court's findings are reviewed de novo.

(2) ~~A motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b). A request for sanctions shall not be made in any other pleading, motion or other paper filed with the court.~~

(3) Consultation. Before filing a motion for sanctions under this ~~Rule~~rule, the moving party must:

(A) ~~Attempt~~attempt to resolve the matter by in-person or telephonic consultation with the opposing party; and

(B) If the matter is not satisfactorily resolved by ~~telephonic~~ consultation, serve the opposing party with written notice of the specific conduct that allegedly violates Rule 11(b). ~~If the opposing party does not withdraw or appropriately correct the alleged violation(s) within 10 days after being served with the written notice~~ is served, the moving party may file a motion under Rule 11(c)(2)-3.

(4) ~~3~~ 3 Motion for Sanctions. A motion for sanctions ~~under this~~must:

(A) be made separately from any other motion;

(B) must describe the specific conduct that allegedly violates Rule ~~will not be considered unless it is~~11(b);

(C) be accompanied by a separate statement of moving counsel certifying that, after in-person or telephonic consultation and good faith efforts to do so, the parties have been unable to satisfactorily ~~resolve~~resolved the matter; ~~and attaching a copy of the written notice provided under subpart (B).~~

(D) attach a copy of the written notice provided to the opposing party under Rule 11(a)(2)(B).

Rule 11(d). Assisting ~~filing~~Filing by ~~self-represented person~~Self-Represented Person.

An attorney may help ~~to~~ draft a ~~pleading, motion or~~ document filed by an otherwise self-

represented person, and the attorney need not sign that ~~pleading, motion, or~~ document. In providing such drafting assistance, the attorney may rely on the otherwise self-represented person's representation of facts, unless the attorney has reason to believe that such representations are false or materially insufficient, in which instance the attorney ~~shall~~must make an independent reasonable inquiry into the facts.

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(1) Generally. When in a civil action a pleading is required to be verified by ~~the~~ affidavit of ~~the~~a party, or ~~when in a civil action~~if an affidavit is required or permitted to be filed, the pleading may be verified, or the affidavit made, by the party or by a person acquainted with the facts after independent reasonable inquiry into them, for and on behalf of such party.

Rule 11(f). ~~Verification of pleading when equitable relief demanded~~

(2) When ~~equitable relief is demanded, and the~~*Demanding Equitable Relief.* If a party demanding ~~such relief makes oath that the allegations of the complaint, counterclaim, cross-claim, or third party claim are true in substance and in fact,~~equitable relief files a verified pleading, then the responsive pleading ~~of the opposite party shall~~must also be ~~under oath, unless the oath is waived in the pleading to which the responsive pleading is filed~~verified, and each material allegation not denied under oath ~~shall be taken as confessed~~is deemed admitted.