

Appendix A – Blackline of Proposed Amendments to Rules 11, 26

Rule 11. Signing Pleadings, Motions, and Other Documents; Representations to the Court; Sanctions; Assisting Filing by Self-Represented Person

(a) Signature.

- (1) **Generally.** Every pleading, written motion, and other document filed with the court or served 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 court must strike an unsigned document unless the omission is promptly corrected after being called to the filer's attention.
- (2) **Electronic Filings.** A person may sign an electronically filed document by placing the symbol “/s/” on the signature line above the person's name. An electronic signature has the same force and effect as a signature on a document that is not filed electronically. The court may treat a document that was filed using a person's electronic filing registration information as a filing that was made or authorized by that person.
- (3) **Filings by Multiple Parties.** A person filing a document containing more than one place for a signature—such as a stipulation—may sign on behalf of another party only if the person has actual authority to do so. The person may indicate such authority either by attaching a document confirming that authority and containing the signatures of the other persons who have authority to consent for such parties, or, after obtaining a party's consent, by inserting “/s/ [the other party's or person's name] with permission” as any non-filing party's signature.

(b) Representations to the Court. By signing a pleading, motion, or other document, the attorney or party certifies that to the best of the person'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 factual contentions are well grounded in fact;
- (3) the denials of factual contentions are well grounded in fact or, if specifically so identified, are reasonably based on lack of knowledge or information sufficient to form a belief.
- (4) the claims, defenses, and other legal contentions are warranted by existing law or by a ~~nonfrivolous~~ colorable argument for extending, modifying, or

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reversing existing law or for establishing new law. A legal contention may be colorable even if it does not succeed on the merits.

- ~~(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 belief or a lack of information.~~

(c) Sanctions.

- (1) **Generally.** If a pleading, motion, or other document is signed in violation of this rule, or if a party fails to participate in good faith in the consultation required under Rule 11(c)(2), the court—on motion or on its own—may must impose on the person who signed it, a represented party, or both, an appropriate sanction. The sanction may include an order to pay to the other party or parties the amount of the reasonable expenses incurred, including a reasonable attorney’s fee, because of the filing of the document or because of the party’s failure to participate in the required Rule 11(c)(2) consultation. In considering an appropriate sanction, the court must take into account the opportunities provided to the person or party violating Rule 11 to withdraw or correct the alleged violation under Rule 11(c)(2). The sanction otherwise required by this rule is not applicable if the party seeks in good faith to vindicate a constitutional right. It is an abuse of discretion to fail to impose an appropriate sanction when the standards of this rule are met.
- (2) **Consultation.** Before filing a motion for sanctions under this rule, the moving party must:
 - (A) attempt to resolve the matter by good faith consultation as provided in Rule 7.1(h); 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 under this rule must:
 - (A) be made separately from any other motion;

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- (B) describe the specific conduct that allegedly violates Rule 11(b);
- (C) be accompanied by a Rule 7.1(h) good faith consultation certificate; and
- (D) attach a copy of the written notice provided to the opposing party under Rule 11(c)(2)(B).

(d) Assisting Filing by Self-Represented Person. An attorney may help draft a pleading, motion, or other document filed by an otherwise self-represented person, and the attorney need not sign that pleading, motion, or other 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 case the attorney must make an independent reasonable inquiry into the facts.

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Rule 26. General Provisions Governing Discovery

(a) Discovery Methods. A party may obtain discovery by any of the following methods:

- (1) depositions by oral examination or written questions under Rules 30 and 31, respectively;
- (2) written interrogatories under Rule 33;
- (3) requests for production of documents or things or permission to enter onto land or other property for inspection and other purposes, under Rule 34;
- (4) physical and mental examinations under Rule 35;
- (5) requests for admission under Rule 36; and
- (6) subpoenas for production of documentary evidence or for inspection of premises under Rule 45(c).

(b) Discovery Scope and Limits.

(1) *Scope in General.* Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

(2) *Limitations on Frequency and Extent.*

(A) *When Permitted.* The court may alter the limits in these rules on depositions, interrogatories, and requests for admission consistent with the procedures in Rule 26.2(g) and (h).

(B) *Specific Limits on Discovery of Electronically Stored Information.*

(i) *Generally.* A party need not provide discovery or disclosure of electronically stored information from sources that the party shows are not reasonably accessible because of undue burden or expense, including sources that are unduly burdensome or expensive to access because of the party's past good-faith operation of an electronic information system or good-faith and consistent application of a document retention policy. If a party makes that showing, the court may nonetheless order disclosure or discovery from such sources if the

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requesting party shows good cause, considering the limits of Rule 26(b)(1). The court may specify conditions for the disclosure or discovery. Rule 26(e) applies in determining whether electronically stored information is not reasonably accessible as provided in this rule.

(ii) *Specific Limits.* A party is not entitled to obtain discovery of electronically stored information that is sought for purposes unrelated to the case. A party is not entitled to image or inspect an opposing party's data sources or data storage devices, or to discover electronically stored information that would require restoration of data through forensic means, unless the court finds: (1) that the information sought is relevant to a claim of fraud or other intentional misconduct; (2) that restoration is reasonably required to address prejudice arising from spoliation of evidence or a party's failure to comply with its obligation to preserve evidence under Rule 37(g); or (3) other good cause.

(C) *When Required.* On motion or on its own, the court must limit the frequency or extent of discovery otherwise allowed by these rules if it determines that:

- (i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;
- (ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or
- (iii) the proposed discovery is outside the scope permitted by Rule 26(b)(1).

(D) *Contractual Limits.* In determining the permissible scope of discovery, the court must enforce any mutually and freely negotiated pre-litigation contract between business organizations (as defined in Experimental Rule 8.1(a)(3)) limiting the obligations of the contracting parties to preserve information, or to provide disclosure or discovery. Nothing in this subdivision impairs the rights of non-parties to the contract.

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