

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

H

1

HOUSE BILL 965

Short Title: Extend Civil Procedure Rule 11.

(Public)

Sponsors: Representatives Lemmond and McMahan.

Referred to: Rules, Calendar, and Operations of the House.

April 12, 1995

A BILL TO BE ENTITLED

1
2 AN ACT TO REVISE RULE 11 OF THE NORTH CAROLINA RULES OF CIVIL
3 PROCEDURE TO COMPLY WITH RULE 11 OF THE FEDERAL RULES OF
4 CIVIL PROCEDURE IN ORDER TO PROVIDE STRICTER SANCTIONS FOR
5 FILING UNWARRANTED OR FRIVOLOUS ACTIONS.

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 1A-1, Rule 11, reads as rewritten:

8 "Rule 11. Signing and verification of pleadings, motions, and other papers;
9 representations to court; sanctions.

10 (a) ~~Signing by Attorney.~~— ~~Every pleading, motion, and other paper of a party~~
11 ~~represented by an attorney shall be signed by at least one attorney of record in his~~
12 ~~individual name, whose address shall be stated. A party who is not represented by an~~
13 ~~attorney shall sign his pleading, motion, or other paper and state his address. Except~~
14 ~~when otherwise specifically provided by rule or statute, pleadings need not be verified or~~
15 ~~accompanied by affidavit. The signature of an attorney or party constitutes a certificate~~
16 ~~by him that he has read the pleading, motion, or other paper; that to the best of his~~
17 ~~knowledge, information, and belief formed after reasonable inquiry it is well grounded in~~
18 ~~fact and is warranted by existing law or a good faith argument for the extension,~~
19 ~~modification, or reversal of existing law, and that it is not interposed for any improper~~
20 ~~purpose, such as to harass or to cause unnecessary delay or needless increase in the cost~~

1 of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless
2 it is signed promptly after the omission is called to the attention of the pleader or movant.
3 If a pleading, motion, or other paper is signed in violation of this rule, the court, upon
4 motion or upon its own initiative, shall impose upon the person who signed it, a
5 represented party, or both, an appropriate sanction, which may include an order to pay to
6 the other party or parties the amount of the reasonable expenses incurred because of the
7 filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

8 (b) ~~Verification of pleadings by a party. — In any case in which verification of a~~
9 ~~pleading shall be required by these rules or by statute, it shall state in substance that the~~
10 ~~contents of the pleading verified are true to the knowledge of the person making the~~
11 ~~verification, except as to those matters stated on information and belief, and as to those~~
12 ~~matters he believes them to be true. Such verification shall be by affidavit of the party, or~~
13 ~~if there are several parties united in interest and pleading together, by at least one of such~~
14 ~~parties acquainted with the facts and capable of making the affidavit. Such affidavit may~~
15 ~~be made by the agent or attorney of a party in the cases and in the manner provided in~~
16 ~~section (c) of this rule.~~

17 (e) ~~Verification of pleadings by an agent or attorney. — Such verification may be~~
18 ~~made by the agent or attorney of a party for whom the pleading is filed, if the action or~~
19 ~~defense is founded upon a written instrument for the payment of money only and the~~
20 ~~instrument or a true copy thereof is in the possession of the agent or attorney, or if all the~~
21 ~~material allegations of the pleadings are within the personal knowledge of the agent or~~
22 ~~attorney. When the pleading is verified by such agent or attorney, he shall set forth in the~~
23 ~~affidavit:~~

24 (1) ~~That the action or defense is founded upon a written instrument for the~~
25 ~~payment of money only and the instrument or a true copy thereof is in~~
26 ~~his possession, or~~

27 (2) a. ~~That all the material allegations of the pleadings are true to his~~
28 ~~personal knowledge and~~

29 b. ~~The reasons why the affidavit is not made by the party.~~

30 (d) ~~Verification by corporation or the State. — When a corporation is a party the~~
31 ~~verification may be made by any officer, or managing or local agent thereof upon whom~~
32 ~~summons might be served; and when the State or any officer thereof in its behalf is a~~
33 ~~party, the verification may be made by any person acquainted with the facts.~~

34 (a) Signature. — Every pleading, written motion, and other paper shall be signed by
35 at least one attorney of record in the attorney's individual name, or, if the party is not
36 represented by an attorney, shall be signed by the party. Each paper shall state the
37 signer's address and telephone number, if any. Except when otherwise specifically
38 provided by rule or statute, pleadings need not be verified or accompanied by affidavit.
39 An unsigned paper shall be stricken unless omission of the signature is corrected
40 promptly after being called to the attention of attorney or party.

41 (b) Representations to court. — By presenting to the court, whether by signing,
42 filing, submitting, or later advocating, a pleading, written motion, or other paper, an

1 attorney or unrepresented party is certifying that to the best of the person's knowledge,
2 information, and belief, formed after an inquiry reasonable under the circumstances:

- 3 (1) It is not being presented for any improper purpose, such as to harass or
4 to cause unnecessary delay or needless increase in the cost of litigation.
5 (2) The claims, defenses, and other legal contentions therein are warranted
6 by existing law or by a nonfrivolous argument for the extension,
7 modification, or reversal of existing law or the establishment of new
8 law.
9 (3) The allegations and other factual contentions have evidentiary support
10 or, if specifically so identified, are likely to have evidentiary support
11 after a reasonable opportunity for further investigation or discovery.
12 (4) The denials of factual contentions are warranted on the evidence or, if
13 specifically so identified, are reasonably based on a lack of information
14 or belief.

15 (c) Sanctions. – If, after notice and a reasonable opportunity to respond, the court
16 determines that subsection (b) of this rule has been violated, the court may, subject to the
17 conditions stated in subdivision (2) of this subsection, impose an appropriate sanction
18 upon the attorneys, law firms, or parties that have violated subsection (b) or are
19 responsible for the violation.

20 (1) How Initiated. –

- 21 a. By Motion. – A motion for sanctions under this rule shall be
22 made separately from other motions or requests and shall
23 describe the specific conduct alleged to violate subsection (b) of
24 this rule. It shall be served as provided in Rule 5, but shall not be
25 filed with or presented to the court unless, within 21 days after
26 service of the motion or such other period as the court may
27 prescribe, the challenged paper, claim, defense, contention,
28 allegation, or denial is not withdrawn or appropriately corrected.
29 If warranted, the court may award to the party prevailing on the
30 motion the reasonable expenses and attorneys' fees incurred in
31 presenting or opposing the motion. Absent exceptional
32 circumstances, a law firm shall be held jointly responsible for
33 violations committed by its partners, associates, and employees.
34 b. On Court's Initiative. – On its own initiative, the court may enter
35 an order describing the specific conduct that appears to violate
36 subsection (b) of this rule and directing an attorney, law firm, or
37 party to show cause why it has not violated subsection (b) of this
38 section with respect thereto.

- 39 (2) Nature of Sanction; Limitations. – A sanction imposed for violation of
40 this rule shall be limited to what is sufficient to deter repetition of such
41 conduct or comparable conduct by others similarly situated. Subject to
42 the limitations in sub-subdivisions a. and b. of this subdivision, the
43 sanction may consist of, or include, directives of a nonmonetary nature,

1 an order to pay a penalty into court, or, if imposed on motion and
2 warranted for effective deterrence, an order directing payment to the
3 movant of some or all of the reasonable attorneys' fees and other
4 expenses incurred as a direct result of the violation.

5 a. Monetary sanctions may not be awarded against a represented
6 party for a violation of subdivision (2) of subsection (b) of this
7 rule.

8 b. Monetary sanctions may not be awarded on the court's initiative
9 unless the court issues its order to show cause before a voluntary
10 dismissal or settlement of the claims made by or against the party
11 that is, or whose attorneys are, to be sanctioned.

12 (3) Order. – When imposing sanctions, the court shall describe the conduct
13 determined to constitute a violation of this rule and explain the basis for
14 the sanction imposed.

15 (d) Inapplicability to discovery. – Subsections (a) through (c) of this rule do not
16 apply to disclosures and discovery requests, responses, objections, and motions that are
17 subject to the provisions of Rules 26 through 37."

18 Sec. 2. This act becomes effective January 1, 1996, and applies to any
19 pleadings, motions, and other paper presented to the court on or after that date.