

March 7, 2017

Honorable David G. Campbell
United States District Court
Sandra Day O'Connor U.S. Courthouse, Suite 623
401 West Washington Street, SPC 58
Phoenix, Arizona 85003-2156

Re: Proposed Amendments to Federal Rule of Civil Procedure 11

Dear Judge Campbell:

I have a full appreciation of the difficulties and painstaking process involved in writing amendments to the Rules of Civil Procedure, and I have tremendous respect and gratitude for those who meticulously consider the implications of every comma and word before recommending any proposed amendment to the Rules of Civil Procedures. It is, therefore, with some trepidation that I suggest an addition to Rule 11 to permit it to function without fostering the "satellite litigation" that arose under the pre-1993 version of the Rule. I suggest a new subsection (e) as follows:

Fee Shifting. In lieu of a sanction, if a pleading, written motion, or other paper filed in accordance with this rule is supported by a separate statement of time spent or fees and costs incurred in preparing or responding to the pleading, written motion, or other paper, the court may on its own initiative award some or all of the expense associated with preparing or responding to the pleading, written motion, or other paper as warranted and may enter such other orders as may be appropriate concerning the payment of any such award.

Identifying the expense associated with filings may encourage parties to consider whether the filing is cost justified. The amendment would also provide the court with information to assess the cost and impact of the filing on parties and process. In appropriate instances, the court could shift some or all of the expense associated with a filing from one side to the other. It is expressly not a sanction.

I would be happy to discuss this further if that would be helpful.

Sincerely,



Dale C. Schian

DCS:jsl