

Letter Requesting a Change to Rule 11

To: H. Thomas Byron III, Secretary
Committee on Rules of Practice and Procedure
From: Joseph Leckenby
Date: May 10, 2023
Re: Proposed change to USCS Fed Rules Civ Proc R 11(c)(1)

Dear Secretary H. Thomas Byron III,

I, a private citizen of the United States of America, am submitting a proposed change to USCS Fed Rules Civ Proc R 11(c)(1). *See* Appendix A.

The United States of America is a nation built upon checks and balances, with each of three branches of government working hard to ensure that its two sister branches do not wield undue control over the government. The idea of checks and balances has been cited in several court cases. *See Bond v. U.S.*, 564 U.S. 211, 223 (2011) (noting that individuals, too, are protected by the operations of separation of powers and checks and balances); *Carrick v. Locke*, 125 Wash. 2d 129, 135 (1994) (stating “The different branches must remain partially intertwined if for no other reason than to maintain an effective system of checks and balances, as well as an effective government.”); and *Ralston v. State*, 522 P.3d 95, 101 (Wash. Ct. App. 2022) (stating “good government is better assured by allowing the branches to check each other's exercise of powers in certain circumstances in order to stop a single branch from overreaching.”)

As one of the three branches of government, Congress has tried to prevent frivolous lawsuits. Attempting to curb abusive class action lawsuits, in 1995, Congress passed the Private Securities Litigation Reform Act of 1995 (PSLRA). The PSLRA mandates that Rule 11 sanctions be issued for violations that occur in actions brought under the statute. *See* 15 U.S.C. § 78u-4-(c)(2) (LexisNexis, Lexis Advance through Public Law 117-362, approved January 5, 2023) (stating in part “If the court makes a finding under paragraph (1) that a party or attorney violated any requirement of Rule 11(b)... the court **shall** impose sanctions on such party or attorney in accordance with Rule 11 of the Federal Rules of Civil Procedure.”) (emphasis added). In the case of *Scott v. Vantage Corp.*, 64 F.4th 462 (3d Cir. 2023), the court held that a court must impose Rule 11 sanctions if a statute requires it to do so. *Id.* (Holding that a district court abused its discretion when it did not impose sanctions as the PSLRA required it to do).

However, USCS Fed Rules Civ Proc R 11(c)(1) does not explicitly a court to impose Rule 11 sanctions if a statute requires it to do so. *See Id.* (using the permissive word “may”). My proposed amendment makes it clear that congress has the power to mandate Rule 11 sanctions in specific circumstances while also balancing judicial discretion in other circumstances.

Sincerely,
Joseph D. Leckenby

APPENDIX A – PROPOSED AMENDED RULE

The amended Fed. R. Civ. P. 11(c)(1) would read as follows, with the new proposed language in underscore:

(1) *In General.* If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may in its discretion impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. However, if Congress has mandated by statute that Rule 11 sanctions be impose for violations of Rule 11 (b) which occur in suits brought under Federal statutes, then the court must impose sanctions. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.