

A man asked his attorney whether he had a legal basis to challenge a rate increase proposed by his electric utility company. The attorney said that he did and filed a federal action seeking a declaratory judgment that the proposed increase would violate federal law.

Soon thereafter, the court issued an order requiring the man and his attorney to show cause why they should not be sanctioned under Rule 11 and required to pay a monetary penalty to the court for filing a frivolous complaint. The order cited several recent judicial decisions holding that rate increases such as the one proposed do not violate federal law.

May the court impose this monetary sanction on the man?

- A. No, because the court cannot impose a monetary sanction under Rule 11 without a motion seeking such a sanction.
- B. No, because the man is represented by an attorney.
- C. Yes, because the action is not warranted by existing law.
- D. Yes, because the court issued a show-cause order before imposing any sanction.

Explanation:

Common FRCP 11 sanctions

Monetary*	<ul style="list-style-type: none">• Order fine payable to court• Order payment of opposing party's attorney's fees & other expenses
Nonmonetary	<ul style="list-style-type: none">• Strike pleading, motion, or other document• Admonish, reprimand, or censure offending party, attorney, or law firm• Require participation in training/seminar• Refer issue to disciplinary authorities (eg, state legal ethics committee)

FRCP = Federal Rule of Civil Procedure.

*Cannot be imposed on represented party for violation of FRCP 11(b)(2).

Every **pleading**, motion, or other document filed with the court must be signed by an attorney or an unrepresented party. This signature certifies that the document complies with the **provisions of FRCP 11(b)**:

1. The document is presented for a proper purpose—not to harass, cause unnecessary delay, or needlessly increase the cost of litigation.
2. All claims, defenses, and legal contentions are **warranted by existing law** or by a **nonfrivolous argument** for revising or establishing law.
3. All factual assertions have or will have evidentiary support.
4. All factual denials are warranted by evidence or are reasonably based on a belief or a lack of information.

A court can impose sanctions for violations of these provisions but **cannot impose a monetary sanction** on a **party represented by an attorney** for a **violation of FRCP 11(b)(2)**.

Here, the man sought a declaratory judgment that the electric utility company's proposed rate increase would violate federal law even though several recent judicial decisions have held that such increases do not do so. The court issued an order requiring the man and his attorney to show cause why it should not impose monetary sanctions on them for filing a frivolous complaint in violation of FRCP 11(b)(2). But since the man is represented by an attorney, the court may not impose the monetary sanction on the man (**Choice C**).

*The court may still impose a monetary sanction on the man's attorney or the attorney's law firm.

(Choices A & D) A court may impose sanctions on its own initiative (ie, sua sponte) if it previously issued an order to show cause on the alleged violator. Although the court properly issued a show-cause order before imposing a sanction, a monetary sanction cannot be imposed against the man for an alleged violation of FRCP 11(b)(2) since he is represented by an attorney.

Educational objective:

A court cannot impose a monetary sanction on a party represented by an attorney for violating FRCP 11(b)(2). This provision requires that all claims, defenses, and legal contentions be warranted by existing law or by a nonfrivolous argument for revising or establishing law.

References

- Fed. R. Civ. P. 11(c) (sanctions for violating this rule).

Copyright © 2014 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.