A police officer pulled over a speeding driver and administered a breathalyzer test. The driver failed this test, and the officer peacefully took him into custody. These events were recorded on the officer's dashboard and body cameras.

Six months later, the driver sued the officer in a federal court, claiming that she violated a federal civil rights statute that prohibits police officers from using excessive force. The driver claimed that the officer slammed him against the car and repeatedly punched him in the face while making the arrest.

The officer vehemently believes that the driver has no evidence to support his contention and is only pursuing the suit to harass her. The officer filed an answer denying the driver's allegations and served the driver with a motion for sanctions to recover attorney's fees incurred in filing the answer. Immediately thereafter, the officer filed the motion for sanctions with the court.

Is the court likely to grant the officer's motion for sanctions?

 A. No, because the judge did not issue an order to show cause.
 B. No, because the officer did not wait 21 days before filing the motion with the court.
 C. Yes, because the driver has no evidence to support the facts asserted in his complaint.
 D. Yes, because the officer believes that the driver filed the suit to harass her.

Explanation:

Common FRCP 11 sanctions

Monetary*	• Order fine payable to court • Order payment of opposing party's attorney's fees & other expenses
Nonmonetary	• 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).

Federal Rule of Civil Procedure (FRCP) 11 requires that every pleading, motion, or other document filed with the court be signed by an attorney or an unrepresented party. This **signature certifies** the following to the court:

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.

Here, the officer believes that the driver filed the complaint to harass her and has no evidence to support the facts asserted in his complaint—both violations of FRCP 11 **(Choices C & D)**. These violations can subject a law firm (default), attorney, or party to **sanctions**, including a court order to pay the opposing party's attorney's fees. Sanction proceedings can be initiated:

*   on the **court's own initiative** (ie, sua sponte) – which requires the judge to issue an order to show cause to the alleged violator *or*

*   by a **party's motion** – which **requires** the party to serve the motion on the alleged violator but **refrain from** filing it for **21 days after serving it** to allow any violation to be corrected (ie, **safe-harbor rule**).

Here, the officer served the driver with a motion for sanctions to recover attorney's fees incurred in filing the answer. However, the officer filed the motion with the court immediately thereafter instead of waiting 21 days before filing it. Therefore, the court will likely deny the officer's motion for sanctions.

(Choice A) The judge need not issue an order to show cause when sanction proceedings are initiated by a party's motion (as seen here).

Educational objective:

A party cannot file a motion for sanctions until 21 days after serving that motion on the alleged violator. This safe-harbor rule gives a violator time to correct the violation.

References

- Fed. R. Civ. P. 11 (sanctions).