

A company hired an attorney to sue a former company manager for violating a covenant not to compete. The company's president told the attorney that the manager had begun working for a competitor and gave the attorney a copy of the signed covenant.

The attorney brought a federal diversity action against the manager and attached to the complaint a copy of the signed covenant. The attorney also moved for a preliminary injunction, referring to the attached covenant and submitting a supporting affidavit from the company's president.

At the hearing on the preliminary injunction motion, the manager denied ever having signed such a covenant and conclusively demonstrated that the copy of a signed covenant attached to the company's motion was forged. The court, on its own initiative, ordered the attorney to show cause why the attorney should not be sanctioned under Rule 11.

Would sanctions against the attorney be proper?

- A. No, because the court did not give the attorney notice and 21 days to withdraw the preliminary injunction motion.
- B. No, because the motion was supported by evidence that was likely sufficient to satisfy an objectively reasonable attorney.
- C. Yes, because the attorney filed papers with the court that contained untrue assertions of fact.
- D. Yes, because the attorney should have verified the manager's signature before attaching the covenant to the complaint.

Correct

Collecting Statistics

01 min, 12 secsTime Spent

2023Version

Explanation:

Representations to court

(FRCP 11(b))

Every pleading, motion, or other document filed must be signed by attorney (or unrepresented party), thereby certifying that:

document is presented for proper purpose—not to harass, cause unnecessary delay, or needlessly increase cost of litigation

claims, defenses & legal contentions are warranted by existing law or by nonfrivolous argument for revising or establishing law

factual assertions have or will have evidentiary support *and*

factual denials are warranted by evidence or reasonably based on belief/lack of information

FRCP = Federal Rule of Civil Procedure.

A court can impose sanctions on an attorney for violating FRCP 11(b). Under **FRCP 11(b)**, every [pleading](#), motion, or other document filed with the court must be signed by a represented party's attorney. This **signature certifies** that—to the best of the attorney's knowledge, information, and belief, formed after a reasonable inquiry—all **factual assertions and denials** have or will have **evidentiary support**.^{*} Attorneys **may rely on evidentiary support provided by clients** if an **objectively reasonable attorney** would do so.

Here, the attorney's motion for a preliminary injunction was supported by a signed covenant provided by the company's president. The manager later proved that the covenant's signature was forged. However, there is no indication that the attorney should have questioned the covenant's validity, especially since the president also provided a supporting affidavit. As a result, the motion was supported by evidence that was likely sufficient to satisfy an objectively reasonable attorney. Therefore, sanctioning the attorney would be improper.

^{*}The attorney's signature also certifies that (1) the document is being presented for a proper purpose and (2) all claims, defenses, and legal contentions are warranted by existing law or a nonfrivolous argument for revising or establishing the law.

(Choice A) When sanction proceedings are initiated by a party's motion, the safe-harbor rule requires that party to refrain from filing the motion for 21 days after serving it to allow the violation to be cured. But this rule does not apply when a court initiates sanction proceedings on its own initiative (as seen here).

(Choice C) FRCP 11(b) requires attorneys to certify that the factual assertions they present to the court have or will have evidentiary support—not that those assertions are true.

(Choice D) An attorney must reasonably inquire whether a document complies with the FRCP 11(b) certification requirements—not verify the validity of the document's signatures.

Educational objective:

Under FRCP 11(b), an attorney's signature on a pleading, motion, or other document filed with the court certifies that all factual assertions and denials have or will have evidentiary support. Attorneys may rely on evidentiary support provided by their clients if an objectively reasonable attorney would do so.

References

Fed. R. Civ. P. 11(b) (setting forth the certifications made by signing a document).

5A Charles Alan Wright et al., Federal Practice and Procedure § 1335 (4th ed. 2021) (explaining that certifications require a reasonable inquiry).

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