

LITIGANT RESPONSIBILITY: FEDERAL RULE OF CIVIL PROCEDURE 11 AND ITS APPLICATION

The fundamental goal of federal civil procedure is to secure the speedy and inexpensive determination of every action on the merits.¹ This goal underlies the Federal Rules of Civil Procedure, and federal courts have held that each rule must be construed in accordance with it.² In this way the rules promote effective and just adjudication.³

Many judges and commentators contend that litigant irresponsibility impedes the attainment of the goal of securing a speedy and inexpensive resolution on the merits.⁴ This irresponsibility or abuse often assumes the form of frivolous lawsuits and combative motion practices, which increase costs and delay and obstruct justice.⁵ Federal Rule of Civil Procedure 11 was enacted to address the problem of litigant irresponsibility.⁶

¹ FED. R. CIV. P. 1. Rule 1 reads as follows:

These rules govern the procedure in the United States district courts in all suits of a civil nature whether cognizable as cases at law or in equity or in admiralty, with the exceptions stated in Rule 81. They shall be construed to secure the just, speedy, and inexpensive determination of every action.

Id. See also *Foman v. Davis*, 371 U.S. 178, 181-82 (1962); *Brennan v. O'Donnell*, 426 F.2d 218, 221 (5th Cir. 1970); *Woodfork By and Through Houston v. Gavin*, 105 F.R.D. 100, 103 (N.D. Miss. 1985).

² *United States v. Pinto*, 44 F.R.D. 357, 359 (W.D. Mich. 1968). See also *Schaedler v. Reading Eagle Publication, Inc.*, 370 F.2d 795, 798 (3d Cir. 1967); *United States v. Purdome*, 30 F.R.D. 338, 339-40 (W.D. Mo. 1962).

³ See *Conley v. Gibson*, 355 U.S. 41, 47 (1957); *Brennan*, 426 F.2d at 221. See also C. WRIGHT & A. MILLER, *FEDERAL PRACTICE AND PROCEDURE* § 1029 (1969).

⁴ See, e.g., *Burger Urges Fines for Frivolous Suits*, Boston Globe, Dec. 30, 1985, at 3, col. 2; Miller, *The Adversary System: Dinosaur or Phoenix*, 69 MINN. L. REV. 1, 17 (1984) [hereinafter cited as Miller, *The Adversary System*]; Schwarzer, *Sanctions Under the New Federal Rule 11 — a Closer Look*, 104 F.R.D. 181, 182 (1985). See also *Burnett v. Grattan*, 105 S. Ct. 2924, 2930 n.13 (1984). See generally W. McLAUCHLAN, *FEDERAL COURT CASELOADS* 1-3 (1984); Soafer, *Sanctioning Attorneys for Discovery Abuse Under the New Federal Rules: On the Limited Utility of Punishment*, 57 ST. JOHN'S L. REV. 680 (1983).

⁵ See, e.g., Miller, *The Adversary System*, *supra* note 4, at 17; Underwood, *Curbing Litigation Abuses: Judicial Control of Adversary Ethics — the Model Rules of Professional Conduct and Proposed Amendments to the Rules of Civil Procedure*, 56 ST. JOHN'S L. REV. 625, 626-28 (1982) [hereinafter cited as Underwood, *Curbing Litigation Abuses*]. See also McMillan & Siegel, *Creating a Fast-Track Alternative Under the Federal Rules of Civil Procedure*, 60 NOTRE DAME LAW. 431, 432-33 (1985).

⁶ FED. R. CIV. P. 11; FED. R. CIV. P. 11 advisory committee note. Rule 11 reads as follows:

Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign his pleading, motion, or other paper and state his address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is abolished. The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief, formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the

Rule 11 seeks to deter abusive practices and to streamline litigation by decreasing meritless claims and defenses.⁷ The rule requires the signer of a paper to accept responsibility for his or her document.⁸ The signature certifies that to the best of the signer's knowledge, information, and belief, formed after reasonable inquiry, the paper is factually and legally warranted and that it is not interposed for any improper purpose.⁹ According to the rule, a court shall sanction an attorney, or a party proceeding pro se, for signing a paper in violation of the rule.¹⁰ The rule provides that the court shall impose an appropriate sanction, which may include an order to pay expenses incurred by one's opponent, including a reasonable attorney's fee.¹¹

This note will examine Rule 11, as amended in 1983, and will survey the federal courts' application of the rule. The first section will briefly examine the former version of Rule 11 as background to the current rule. The second section will discuss the current rule's new standard of conduct, a standard of reasonableness under the circumstances,¹² and will survey the federal courts' application of that standard. The third section will discuss the current rule's provisions for enforcing the new standard of conduct. This discussion will examine and survey Rule 11's sanctions: their mandatory nature, appro-

extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

FED. R. CIV. P. 11.

⁷ FED. R. CIV. P. 11 advisory committee note.

⁸ See FED. R. CIV. P. 11; FED. R. CIV. P. 11 advisory committee note. This note will use the term "paper" to include pleadings, motions, and other papers.

⁹ FED. R. CIV. P. 11. The language of the amended rule is ambiguous on at least one point. A reasonable inquiry must inform a signer's belief that a pleading, motion, or other paper is well grounded in fact and warranted by existing law or by a good-faith argument for a change in existing law. But must a reasonable inquiry also inform a signer's belief as to the purpose of a pleading, motion or other paper? At least one court suggests that the requirement of reasonable inquiry also applies to the purpose of a pleading, motion, or other paper. *Westmoreland v. CBS, Inc.*, 770 F.2d 1168, 1174 (D.C. Cir. 1985) (court may impose sanctions if a reasonable inquiry discloses that the pleading, motion, or paper is "(1) not well grounded in fact, (2) not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, or (3) interposed for any improper purpose such as harassment or delay"). Most courts, however, suggest that the signer certifies only that a reasonable inquiry informs his or her belief as to the facts and the law. See, e.g., *Zaldivar v. City of Los Angeles*, 780 F.2d 823, 830-31 (9th Cir. 1986); *Eastway Constr. Corp. v. City of New York*, 762 F.2d 243, 253-54 (2d Cir. 1985); *McLaughlin v. Western Casualty and Sur. Co.*, 603 F. Supp. 978, 981 (S.D. Ala. 1985). The advisory committee note to the amended rule supports the majority view: "[t]he new language stresses the need for some prefiling inquiry into both the facts and the law to satisfy the affirmative duty imposed by the rule." FED. R. CIV. P. 11 advisory committee note.

¹⁰ FED. R. CIV. P. 11.

¹¹ *Id.*

¹² See FED. R. CIV. P. 11 advisory committee note; *Zaldivar*, 780 F.2d at 829; *Westmoreland*, 770 F.2d at 1177; *Davis v. Veslan Enter.*, 765 F.2d 494, 499-500 (5th Cir. 1985).

priateness, and application to attorney and client. The note will conclude that, as cases interpreting Rule 11 since it was amended in 1983 indicate, the rule effectively furthers the purpose of deterring litigation abuses and streamlining litigation without stifling creative and zealous advocacy.

I. THE FORMER VERSION OF RULE 11

Rule 11 was amended in 1983 because it had failed to deter abuses in the signing of pleadings.¹³ To understand the change in Rule 11, it is necessary to examine the rule's predecessor.¹⁴ Rule 11's predecessor required that all pleadings¹⁵ be signed by an attorney of record¹⁶ or by a party, if unrepresented.¹⁷ By signing a pleading, an attorney¹⁸ certified that he had read it¹⁹ and "that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay."²⁰

Uncertainty arose as to the standard of conduct imposed by the former rule.²¹ First, the former rule did not specify whether the required "good ground of support" had to

¹³ FED. R. CIV. P. 11 advisory committee note.

¹⁴ Former Rule 11 read as follows:

Every pleading of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign his pleading and state his address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is abolished. The signature of an attorney constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If a pleading is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken as sham and false and the action may proceed as though the pleading had not been served. For a willful violation of this rule an attorney may be subjected to appropriate disciplinary action. Similar action may be taken if scandalous or indecent matter is inserted.

FED. R. CIV. P. 11, 28 U.S.C. app. 540-41 (1982).

¹⁵ The former rule's caption and text referred only to pleadings, but motions and other papers were incorporated by reference in Rule 7(b)(2). FED. R. CIV. P. 7(b)(2), 28 U.S.C. app. 537 (1982).

¹⁶ *Id.* The phrase "attorney of record" is ambiguous. As one commentator asks, "[d]oes this mean that an attorney must have filed a formal appearance to be subject to the signature requirement, or that by complying with the signature requirement an attorney becomes an attorney of record?" Risinger, *Honesty in Pleading and its Enforcement: Some "Striking" Problems with Federal Rule of Civil Procedure 11*, 61 MINN. L. REV. 1, 7 (1976) [hereinafter cited as Risinger, *Some Striking Problems*]. Because the thrust of the current rule is to make the signer responsible for the filing, the latter interpretation seems correct. See FED. R. CIV. P. 11 advisory committee note. The litigant's signature identifies the signer as someone whom the court may hold responsible for the paper. See *Zaldivar*, 780 F.2d at 830.

¹⁷ FED. R. CIV. P. 11, 28 U.S.C. app. 540 (1982).

¹⁸ Under the terms of the former rule, the certification requirement applied only to attorneys. FED. R. CIV. P. 11, 28 U.S.C. app. 540-41 (1982).

¹⁹ *Id.* Current Rule 11 also requires the signer to certify that he has read the paper. FED. R. CIV. P. 11. See *supra* note 6 for the text of current Rule 11. The apparent purpose of this requirement is to preclude the use of ignorance as an excuse. See Schwarzer, *supra* note 4, at 186-87.

²⁰ FED. R. CIV. P. 11, 28 U.S.C. app. 540 (1982).

²¹ FED. R. CIV. P. 11 advisory committee note.

be factual, legal, or both.²² Moreover, because good ground of support is a nebulous concept resistant to definition,²³ judicial interpretations of the good-ground standard differed markedly.²⁴ Most significantly, perhaps, phrases such as "to the best of his knowledge, information and belief," "intent to defeat," and "willful violation" suggested that an attorney could satisfy the rule by signing a pleading with an honest belief that there were good grounds for it.²⁵ Courts interpreting the former rule construed the rule's certification requirement subjectively: an attorney could satisfy the rule by certifying that, to his personal knowledge, information, and belief, there were good grounds for the pleading.²⁶ Consequently, the courts held that a willful violation, or bad faith, was a prerequisite for subjecting an attorney to disciplinary action.²⁷

Uncertainty also arose as to when sanctions should be imposed on an attorney and as to the nature of the sanctions authorized by the rule.²⁸ The former rule did not direct courts to sanction attorneys who violated its provisions.²⁹ Rather, under the old rule, the decision to sanction a violation and the selection of an appropriate sanction were left to the discretion of the court.³⁰ The rule provided little guidance to courts regarding the nature and appropriateness of sanctions: "[f]or a willful violation of this rule an attorney may be subjected to appropriate disciplinary action. Similar action may be taken if scandalous or indecent matter is inserted."³¹ In effect, enforcement of the rule was permissive.

The framers of the 1983 amendment to Rule 11 intended to make the signer of a paper accept responsibility for the contents of his paper and the consequences of filing it by encouraging courts to use the rule.³² The framers sought to accomplish this by clarifying the rule's standard of conduct and the means of enforcing that standard.³³ As the advisory note states, "[t]he new language is intended to reduce the reluctance of courts to impose sanctions . . . by emphasizing the responsibilities of the attorney and reenforcing those obligations by the imposition of sanctions."³⁴

²² Fed. R. Civ. P. 11, 28 U.S.C. app. 540-41 (1982).

²³ See Risinger, *Some Striking Problems*, *supra* note 16, at 9-14.

²⁴ See, e.g., *Kinee v. Abraham Lincoln Fed. Savings & Loan Ass'n*, 365 F. Supp. 975, 982-83 (E.D. Pa. 1973) (pleading must have a reasonable basis of support); *Heart Disease Research Found. v. General Motors Corp.*, 15 Fed. R. Serv. 2d (Callaghan) 1517, 1519 (S.D.N.Y. 1972) (pleading requires an honest belief that there are facts and law to support it); *Murchison v. Kirby*, 27 F.R.D. 14, 19 (S.D.N.Y. 1961) (pleading should be stricken only when it appears beyond peradventure that it is sham, false and devoid of factual basis).

²⁵ See Fed. R. Civ. P. 11, 28 U.S.C. app. 540-41 (1982); *Heart Disease*, 15 Fed. R. Serv. 2d at 1519.

²⁶ See *Heart Disease*, 15 Fed. R. Serv. 2d at 1519. See also *Badillo v. Central Steel & Wire Co.*, 717 F.2d 1160, 1167 (7th Cir. 1983); *Nemeroff v. Abelson*, 620 F.2d 339, 350 (2d Cir. 1980); *Kinee v. Abraham Lincoln Fed. Savings & Loan Ass'n*, 365 F. Supp. 975, 982-83 (E.D. Pa. 1973).

²⁷ See, e.g., *Badillo*, 717 F.2d at 1167; *Nemeroff*, 620 F.2d at 350-51. See also *Mohammed v. Union Carbide Corp.*, 606 F. Supp. 252, 260 (E.D. Mich. 1985).

²⁸ Fed. R. Civ. P. 11 advisory committee note. See also Risinger, *Some Striking Problems*, *supra* note 16, at 14-17.

²⁹ Fed. R. Civ. P. 11, 28 U.S.C. app. 540-41 (1982).

³⁰ *Id.*

³¹ *Id.* See also Fed. R. Civ. P. 11 advisory committee note.

³² Fed. R. Civ. P. 11 advisory committee note. See Fed. R. Civ. P. 11.

³³ See Fed. R. Civ. P. 11 advisory committee note.

³⁴ *Id.*

II. RULE 11'S NEW STANDARD OF CONDUCT

A. *The Objective Standard of Reasonableness Under the Circumstances*

The current rule's standard of conduct contrasts sharply with that of its predecessor.³⁵ As amended in 1983, Rule 11 requires an attorney or party to certify that a reasonable inquiry informs his or her belief that a paper is factually and legally warranted and that the paper is not interposed for any improper purpose.³⁶ The current rule's elimination of the willful violation requirement and its new requirement of reasonable inquiry indicate that the rule's framers intended to make the standard of conduct an objective one.³⁷ Furthermore, courts applying the current rule uniformly have employed an objective test by examining the circumstances of the case rather than the mental state or intent of the litigant or attorney.³⁸

Eastway Construction Corp. v. City of New York,³⁹ a 1985 decision by the United States Court of Appeals for the Second Circuit, illustrates the use of the objective standard of reasonable inquiry.⁴⁰ Eastway was a general contractor engaged in publicly financed housing construction in New York City.⁴¹ The city instituted a new policy under which it forbade companies under city supervision from contracting with firms in default.⁴² Because Eastway's principals had defaulted on low-interest loans made by the city,⁴³ the new city policy put Eastway out of business.⁴⁴ Eastway challenged the new policy in the New York state courts, but lost.⁴⁵

Eastway then brought an action against the city and other defendants in the United States District Court for the Eastern District of New York,⁴⁶ alleging that the defendants had conspired to injure Eastway's trade in violation of the Sherman Antitrust Act.⁴⁷ In

³⁵ Compare FED. R. CIV. P. 11 with Fed. R. Civ. P. 11, 28 U.S.C. app. 540-41 (1982).

³⁶ FED. R. CIV. P. 11. See *supra* note 6 for text of current Rule 11.

³⁷ See FED. R. CIV. P. 11; FED. R. CIV. P. 11 advisory committee note. See also *Frazier v. Cast*, 771 F.2d 259, 263 (7th Cir. 1985); *Eastway Constr. Corp. v. City of New York*, 762 F.2d 243, 253-54 (2d Cir. 1985); *Weir v. Lehman Newspapers, Inc.*, 105 F.R.D. 574, 576 (D. Colo. 1985); *McLaughlin v. Western Casualty and Sur. Co.*, 603 F. Supp. 978, 982 & n.2 (S.D. Ala. 1985).

³⁸ See, e.g., *Frazier*, 771 F.2d at 263-65; *Westmoreland v. CBS, Inc.*, 770 F.2d 1168, 1177 (D.C. Cir. 1985); *Eastway*, 762 F.2d at 253-54; *McLaughlin*, 603 F. Supp. at 981-82.

In August, 1984, the United States Court of Appeals for the Seventh Circuit decided a case that arose under old Rule 11, *Suslick v. Rothschild Sec. Corp.*, 741 F.2d 1000, 1002 (7th Cir. 1984). The *Suslick* court mistakenly cited the text of the current Rule 11 in a footnote. See *id.* at 1003 n.3. See also *In re Ronco, Inc.*, 105 F.R.D. 493, 497 (S.D. Fla. 1985) (court notes the *Suslick* error). This mistake has created some confusion, because at least one court, following *Suslick's* error, seems to have interpreted Rule 11 subjectively. See *Marco Holding Co. v. Lear Siegler, Inc.*, 606 F. Supp. 204, 215 (D.C. Ill. 1985). In a recent case, the Seventh Circuit expressly disavowed any subjective interpretation of Rule 11. *Frazier*, 771 F.2d at 265 n.4. The *Frazier* court noted that it had decided *Suslick* under the former rule. *Id.*

³⁹ 762 F.2d 243 (2d Cir. 1985).

⁴⁰ *Id.* at 253-54.

⁴¹ *Id.* at 246.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.* at 247.

⁴⁶ *Id.* at 248.

⁴⁷ *Id.*

this action, however, Eastway failed to allege the elements of an antitrust claim.⁴⁸ For example, Eastway did not allege any facts evidencing concerted action by the defendants, who were non-competitors.⁴⁹ Furthermore, Eastway failed to allege an antitrust injury, or anticompetitive effect.⁵⁰ The district court granted summary judgment to the defendants, but denied defendants' Rule 11 motion for attorneys' fees.⁵¹

The court of appeals reversed that part of the judgment denying defendants' Rule 11 motion for attorneys' fees.⁵² The court held that Eastway's counsel had violated Rule 11 because after reasonable inquiry a competent attorney would not have pursued the antitrust claim.⁵³ While recognizing that Eastway may not have brought its antitrust claim in bad faith,⁵⁴ the court concluded that the new rule establishes an objective, not a subjective, standard of conduct.⁵⁵ In applying this new standard to the case before it, the court stated that "[Eastway's] claim of an antitrust violation by non-competitors, without any allegation of an antitrust injury, was destined to fail. Moreover, a competent attorney, after reasonable inquiry, would have had to reach the same conclusion."⁵⁶ Thus, the Second Circuit held that the district court erred in denying defendants' Rule 11 motion for attorneys' fees.⁵⁷

At least two courts have expanded the requirement of objectively reasonable inquiry by ruling that the requirement is continuous and survives the filing of the paper.⁵⁸ For example, in the 1985 case of *Woodfork By and Through Houston v. Gavin*,⁵⁹ the United States District Court for the Northern District of Mississippi ruled that a signer must continually review and reassess his position in light of subsequently acquired information and knowledge.⁶⁰ A signer's failure to conduct such a re-appraisal may not constitute reasonable inquiry and, thus, may violate Rule 11.⁶¹

B. Rule 11's Three-Pronged Test

Under Rule 11's new standard of conduct, an objectively reasonable inquiry must reveal that a paper is well grounded in fact (factual prong), warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law (legal prong), and the paper must not be interposed for any improper purpose (motivational prong).⁶² Thus, the current rule requires the signer of a paper to certify that

⁴⁸ *Id.* at 250.

⁴⁹ *Id.* at 250, 251 n.5.

⁵⁰ *Id.* at 250-51.

⁵¹ *Id.* at 246.

⁵² *Id.* at 254. The court of appeals affirmed the summary judgment. *Id.*

⁵³ *Id.* at 253-54.

⁵⁴ *Id.* at 254.

⁵⁵ *Id.* at 253-54.

⁵⁶ *Id.* at 254.

⁵⁷ *Id.*

⁵⁸ *Erie Conduit Corp. v. Metropolitan Asphalt Paving Ass'n*, 106 F.R.D. 451, 456-57 (E.D.N.Y. 1985); *Woodfork By and Through Houston v. Gavin*, 105 F.R.D. 100, 104 (N.D. Miss. 1985). The advisory committee note refers to the time the paper is submitted. FED. R. CIV. P. 11 advisory committee note. Rule 11 itself is silent on this issue. *Cf.* FED. R. CIV. P. 11. See *supra* note 6 for the text of current Rule 11.

⁵⁹ 105 F.R.D. 100 (N.D. Miss. 1985).

⁶⁰ *Id.* at 104.

⁶¹ *Id.*

⁶² FED. R. CIV. P. 11. See *supra* note 6 for the text of current Rule 11.

the paper meets this three-pronged test.⁶³ Accordingly, the courts are deciding what would be reasonable to believe about the facts, the law, and the purpose underlying a paper.⁶⁴

I. Well Grounded in Fact

Because a reasonable inquiry must reveal that a paper is well grounded in fact,⁶⁵ a signer cannot satisfy Rule 11's factual prong by relying solely on his personal interpretation of facts or on conclusory allegations of fact.⁶⁶ For example, in *Davis v. Veslan Enterprises*,⁶⁷ the United States Court of Appeals for the Fifth Circuit affirmed a district court's order sanctioning an attorney under Rule 11, in part because a reasonable inquiry would have revealed that the attorney's paper was not well grounded in fact.⁶⁸ In *Davis*, a tractor-trailer ran a traffic signal and killed a young man.⁶⁹ The plaintiff, decedent's mother, a Texas resident, sued two Texas defendants in a Texas state court.⁷⁰ Plaintiff later added two non-Texas residents as defendants.⁷¹ During his closing argument, plaintiff's counsel maintained that the nonresident defendants were primarily liable.⁷² The jury exonerated the Texas defendants, and awarded plaintiff \$13 million in compensatory and punitive damages against the out-of-state defendants.⁷³

On the day before a hearing on plaintiff's motion for judgment on the verdict, one of the out-of-state defendants petitioned for removal to federal court on grounds of diversity.⁷⁴ The petition for removal prevented the state court from entering judgment.⁷⁵ Because Texas law allowed interest to accrue only from the date of entry of judgment, the defendant benefited financially by delaying the entry of judgment.⁷⁶ The defendant argued that the plaintiff had abandoned her claim against the Texas defendants by telling the jury that they were not guilty,⁷⁷ and that because only the claim against the nonresident defendants remained, the petition for removal was proper.⁷⁸

The court of appeals agreed with the district court that the defendant's petition for removal violated Rule 11.⁷⁹ According to the court of appeals, an objectively reasonable inquiry revealed that defendant's counsel could not have believed that the plaintiff had

⁶³ See FED. R. CIV. P. 11; *Westmoreland v. CBS, Inc.*, 770 F.2d 1168, 1174 (D.C. Cir. 1985).

⁶⁴ See, e.g., *Westmoreland*, 770 F.2d at 1177; *Davis v. Veslan Enter.*, 765 F.2d 494, 497-500 (5th Cir. 1985); *McLaughlin*, 603 F. Supp. at 981-82.

⁶⁵ FED. R. CIV. P. 11. See *supra* note 6 for the text of current Rule 11.

⁶⁶ See *Davis*, 765 F.2d at 498-99 (defendant's interpretation of plaintiff's closing argument not well grounded in fact). See also *Frazier*, 771 F.2d at 263 (allegation based on deposition testimony not well grounded in fact).

⁶⁷ 765 F.2d 494 (5th Cir. 1985).

⁶⁸ *Id.* at 498-500.

⁶⁹ *Id.* at 495.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.* at 499.

⁷³ *Id.* at 496.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.* at 498-500.

abandoned her claim against the Texas defendants.⁸⁰ The court found that defendant's petition for removal was not well grounded in fact.⁸¹ The court's examination of the plaintiff's closing argument disclosed that plaintiff had not exonerated anyone.⁸² Rather, according to the court, the plaintiff had merely focused on the out-of-state defendants by stating that an accident can have many causes, but that the nonresidents were most responsible for the accident.⁸³ Thus, the *Davis* court indicated that the signer's belief in his factual allegation must be objectively credible.⁸⁴

Although the paper must be well grounded in fact, the advisory committee note to Rule 11 states that the signer may rely on another person's information or investigation.⁸⁵ Courts have concluded, however, that the evidence upon which the signer relies must be sufficient to sustain a reasonable belief.⁸⁶ Therefore, the signer often may have to conduct some independent investigation to verify his or her belief, especially if additional evidence is readily available.⁸⁷

2. Legally Warranted

Under Rule 11's legal prong, a reasonable inquiry must inform a signer's belief that his or her paper is warranted by existing law or by a good-faith argument for the extension, modification, or reversal of existing law.⁸⁸ For example, one court has applied the legal prong by ruling that a signer may violate Rule 11 by failing to discover controlling law.⁸⁹ If a signer fails to uncover the controlling law when a reasonable inquiry would disclose it, the signer violates Rule 11.⁹⁰ District courts have held that the signer's inquiry is not reasonable if the law is discoverable by using the resources available to him or her.⁹¹ For example, failure to use basic legal research tools, such as citators, digests, and annotated codes may not constitute reasonable inquiry.⁹² Similarly, failure to conduct a computerized search, if available to the signer, may not be reasonable inquiry.⁹³

⁸⁰ *Id.* at 497-500. The district court granted plaintiff's motion for remand to the state court. *Id.* at 496. The district court also granted plaintiff's Rule 11 motion for attorneys' fees incurred in contesting defendant's motion for remand, as well as interest accrued because of the delay in entry of the state court judgment. *Id.*

⁸¹ *Id.* at 496-97.

⁸² *Id.* at 499.

⁸³ *Id.*

⁸⁴ *See id.* The court of appeals upheld the sanction that the district court imposed, including interest accrued because of the delay in entry of the state court judgment. *Id.* at 499-500.

⁸⁵ FED. R. CIV. P. 11 advisory committee note.

⁸⁶ *See, e.g., Frazier*, 771 F.2d at 263-65; *Florida Monument Builders v. All Faiths Mem. Gardens*, 605 F. Supp. 1324, 1326-27 (S.D. Fla. 1984).

⁸⁷ *See Florida Monument Builders*, 605 F. Supp. at 1326-27 (facts revealed that plaintiff relied on an attorney's beliefs and experience and failed to conduct an independent investigation before filing complaint, even though plaintiff could easily have conducted such an investigation).

⁸⁸ FED. R. CIV. P. 11. *See supra* note 6 for the text of current Rule 11.

⁸⁹ *See McLaughlin*, 603 F. Supp. at 980-82 (petition for removal not filed within 30 days, as required by statute).

⁹⁰ *See Golden Eagle Distrib. Corp. v. Burroughs Corp.*, 103 F.R.D. 124, 128-29 (N.D. Cal. 1984) (counsel could have discovered controlling law by shepardizing principal authority).

⁹¹ *See, e.g., Blake By and Through Blake v. National Casualty Co.*, 607 F. Supp. 189, 191 n.4 (C.D. Cal. 1984); *Golden Eagle*, 103 F.R.D. at 128-29.

⁹² *See Blake*, 607 F. Supp. at 191 n.4.

⁹³ *See Golden Eagle*, 103 F.R.D. at 128-29. In *Golden Eagle*, the defendant moved to dismiss

Some courts have held that a signer also violates the rule's legal prong by misapplying the law when a reasonable inquiry would have revealed the correct application.⁹⁴ According to these courts, such a paper is not warranted by existing law.⁹⁵ In *Davis*, for example, a reasonable inquiry would have revealed that a retrial in federal court was impossible because of lack of diversity.⁹⁶

A paper not warranted by existing law may be warranted by a good-faith argument for the extension, modification, or reversal of existing law.⁹⁷ At least two courts have ruled that the paper must make it clear that the argument is being presented as an extension, modification, or reversal of law and not as an argument warranted by existing law.⁹⁸ Thus, a litigant may not be able to advance an argument that qualifies as a good-faith attempt to extend, modify, or reverse the law as if it were an argument warranted by existing law.⁹⁹ As one court has noted, when a litigant submits a paper purporting to be warranted by existing law but misapplies the law, and a reasonable inquiry would have revealed the law's correct application, the litigant may violate the rule even if a good-faith argument for changing the law could have been made.¹⁰⁰

Despite the subjective connotation of "good faith argument,"¹⁰¹ the courts have interpreted this phrase objectively.¹⁰² The issue is whether a reasonable inquiry would reveal a good-faith argument to extend, modify, or reverse the law.¹⁰³ As the United States Court of Appeals for the Ninth Circuit recently ruled, a claim is meritless and violates Rule 11 if an examination of the facts and law reveals that the claim does not constitute a good-faith argument for change.¹⁰⁴ The Ninth Circuit stated, "the conclusion drawn from the research undertaken must . . . be defensible."¹⁰⁵ As one district court has noted, however, determining whether a claim is so meritless that the argument for it does not constitute a defensible good-faith argument is a difficult task requiring

plaintiff's claim for economic loss arising from negligent manufacture. *Id.* at 125. In support of the motion to dismiss, defendant cited a 1965 decision, but failed to cite more recent adverse authority. *Id.* at 128-29. The United States District Court for the Northern District of California directed counsel for defendant to submit a memorandum explaining why Rule 11 sanctions should not be imposed. *Id.* at 125. In the Rule 11 memorandum, counsel for defendant cited a Lexis copy of unreported decisions as authority supporting the motion to dismiss. *Id.* at 129. The court noted that counsel's ability to find supporting authority by using Lexis indicated that he or she had the capacity to find adverse authority and that the previous failure to do so was inexcusable. *Id.*

⁹⁴ *Westmoreland*, 770 F.2d at 1175-78 (reasonable inquiry would have revealed that a deposition subpoena is not a court order compelling a witness to testify). See also *Davis*, 765 F.2d at 498-500.

⁹⁵ See *Westmoreland*, 770 F.2d at 1175-78. See also *Davis*, 765 F.2d at 499.

⁹⁶ *Davis*, 765 F.2d at 499.

⁹⁷ FED. R. CIV. P. 11. See *supra* note 6 for the text of current Rule 11.

⁹⁸ See *Golden Eagle*, 103 F.R.D. at 126-28; *WSB Elec. v. Rank & File Comm. to Stop 2-Gate Sys.*, 103 F.R.D. 417, 420 (N.D. Cal. 1984).

⁹⁹ *Golden Eagle*, 103 F.R.D. at 127.

¹⁰⁰ *Id.* at 125-27.

¹⁰¹ FED. R. CIV. P. 11. See *supra* note 6 for the text of current Rule 11.

¹⁰² See, e.g., *Zaldivar*, 780 F.2d at 831; *Weir v. Lehman Newspapers, Inc.*, 105 F.R.D. 574, 576 (D. Colo. 1985). See also *Westmoreland*, 770 F.2d at 1174; *Eastway*, 762 F.2d at 253-54. But see *Pudlo v. Director, I.R.S.*, 587 F. Supp. 1010, 1011 (N.D. Ill. 1984).

¹⁰³ See FED. R. CIV. P. 11. See also *Zaldivar*, 780 F.2d at 831. In *Zaldivar*, the Ninth Circuit stated that "[a] good-faith belief in the merit of a legal argument is an objective condition which a competent attorney attains only after reasonable inquiry." *Zaldivar*, 780 F.2d at 831.

¹⁰⁴ *Zaldivar*, 780 F.2d at 831.

¹⁰⁵ *Id.*

sensitivity by the court.¹⁰⁶ In making such a determination, at least two district courts have concluded that an argument that ignores relevant contrary authority of which the litigant knows or should know cannot constitute a good-faith argument for legal change.¹⁰⁷ These courts have suggested that if a reasonable inquiry would have disclosed relevant law, a good-faith argument for change must cite and distinguish the law, or cite the law and argue for a modification.¹⁰⁸

3. Not Improperly Interposed

Under the current rule, a litigant's signature certifies that "the paper has not been interposed . . . for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation."¹⁰⁹ This language is more expansive than that of the old rule, which proscribed only delay.¹¹⁰ Courts have applied Rule 11's motivational prong objectively by examining the circumstances surrounding the paper's submission to decide whether the paper was intended to harass,¹¹¹ to delay,¹¹² or to waste judicial resources.¹¹³ For example, in the 1984 case of *WSB Electric v. Rank & File Committee to Stop the 2-Gate System*,¹¹⁴ the plaintiff filed a complaint based on defendant's picketing of plaintiff's jobsite.¹¹⁵ The United States District Court for the Northern District of California noted that the plaintiff could have sought immediate injunctive relief in state court, and that the plaintiff had pursued discovery of sensitive and "marginally relevant matters."¹¹⁶ The court stated that these circumstances raised a strong inference that the plaintiff sought to harass the defendant rather than to secure relief against picketing.¹¹⁷ The court granted defendant's Rule 11 motion for attorneys' fees in the amount of \$6,125.¹¹⁸

Rule 11's three prongs function independently and a person can violate Rule 11 by signing a paper in violation of any one of the prongs.¹¹⁹ When deciding if a paper violates the motivational prong because it has been improperly interposed, however, the courts

¹⁰⁶ *Blake*, 607 F. Supp. at 192. The advisory committee note to Rule 11 states that the rule is not intended to chill an attorney's creativity or enthusiasm in pursuing factual or legal theories. FED. R. CIV. P. 11 advisory committee note.

¹⁰⁷ See *Blake*, 607 F. Supp. at 191-92; *Golden Eagle*, 103 F.R.D. at 128-29.

¹⁰⁸ See *Blake*, 607 F. Supp. at 192; *Golden Eagle*, 103 F.R.D. at 128-29.

¹⁰⁹ FED. R. CIV. P. 11. See *supra* note 6 for the text of current Rule 11.

¹¹⁰ Compare FED. R. CIV. P. 11 with Fed. R. Civ. P. 11, 28 U.S.C. app. 540-41 (1982).

¹¹¹ *WSB Elec.*, 103 F.R.D. at 420-21.

¹¹² *Davis*, 765 F.2d at 500.

¹¹³ *Sanders v. City of Fort Wayne*, 616 F. Supp. 467, 470-71 (N.D. Ind. 1985).

¹¹⁴ 103 F.R.D. 417 (N.D. Cal. 1984).

¹¹⁵ *Id.* at 418-19.

¹¹⁶ *Id.* at 420-21.

¹¹⁷ *Id.* at 421.

¹¹⁸ *Id.*

¹¹⁹ For a case in which a court imposed Rule 11 sanctions for a violation of the factual prong, see *United Food & Commercial Workers v. Armour and Co.*, 106 F.R.D. 345, 347-48 (N.D. Cal. 1985) (Rule 11 violated because complaint not well grounded in fact). For a case in which a court imposed Rule 11 sanctions for a violation of the legal prong, see *Eastway*, 762 F.2d at 254 (Rule 11 violated because complaint not warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law). For a case in which a court imposed sanctions for a violation of the motivational prong, see *Sanders*, 616 F. Supp. at 470-71 (Rule 11 violated because attempt to relitigate a claim evidenced an intent to waste judicial resources).

generally consider whether the paper is factually and legally meritless.¹²⁰ In *Davis*, for example, the defendant's petition for removal to federal court was factually and legally unwarranted.¹²¹ The *Davis* court noted that the petition's lack of plausibility, combined with defendant's financial incentive to delay, justified an inference of improper purpose.¹²²

C. Violating the New Standard of Conduct: Circumstances to be Weighed

The advisory committee note to the current rule states that courts should consider certain factors when deciding whether a litigant has violated the new standard of reasonableness under the circumstances.¹²³ According to the advisory committee, when assessing the reasonableness of the inquiry, a court may consider: how much time a signer had for investigation;¹²⁴ whether the signer had to rely on a client for factual information;¹²⁵ whether the paper was based on a plausible legal theory;¹²⁶ and whether the signer relied on another attorney.¹²⁷ Courts in recent decisions have weighed these and other factors.¹²⁸

One case in which a court considered the time available for research to be a factor was *Pudlo v. Director, I.R.S.*, decided in 1984.¹²⁹ In *Pudlo*, the plaintiff filed a petition to quash an I.R.S. summons within twenty days of receiving notice.¹³⁰ The relevant statute required filing of such a petition not later than twenty days after notice is given.¹³¹ Plaintiff interpreted the statute to mean twenty days after receipt of notice.¹³² Recent court decisions had held that a petition must be filed within twenty days after the issuance of notice, which made plaintiff's filing one day late.¹³³ The United States District Court

¹²⁰ *Davis*, 765 F.2d at 500; *McLaughlin*, 603 F. Supp. at 982.

¹²¹ *Davis*, 765 F.2d at 500.

¹²² *Id.*

¹²³ FED. R. CIV. P. 11 advisory committee note. The advisory note states:

The rule is not intended to chill an attorney's enthusiasm or creativity in pursuing factual or legal theories. The court is expected to avoid using the wisdom of hindsight and should test the signer's conduct by inquiring what was reasonable to believe at the time the pleading, motion, or other paper was submitted. Thus, what constitutes a reasonable inquiry may depend on such factors as how much time for investigation was available to the signer; whether he had to rely on a client for information as to the facts underlying the pleading, motion, or other paper; whether the pleading, motion, or other paper was based on a plausible view of the law; or whether he depended on forwarding counsel or another member of the bar.

Id.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.* The advisory committee note suggests that a court may consider whether an attorney had to rely on a client for factual, but not legal, information. *Id.* See also *Blake*, 607 F. Supp. at 193; *Weir v. Lehman Newspapers, Inc.*, 105 F.R.D. 574, 576 (D. Colo. 1985).

¹²⁸ See, e.g., *Pudlo*, 587 F. Supp. at 1011-12 (court considered the amount of time available for investigation); *Leema Enter., Inc. v. Willi*, 582 F. Supp. 255, 257 (S.D.N.Y. 1984) (court considered the complexity of the law).

¹²⁹ 587 F. Supp. 1010 (N.D. Ill. 1984).

¹³⁰ *Id.* at 1010-12.

¹³¹ *Id.* at 1012.

¹³² *Id.*

¹³³ *Id.* at 1010, 1012.

for the Northern District of Illinois dismissed plaintiff's petition, but refused to impose Rule 11 sanctions.¹³⁴ The court reasoned that the statute could be interpreted in either way, and that the cases clarifying the statute's meaning were very recent.¹³⁵ Furthermore, according to the district court, the twenty-day timetable made it difficult to conduct a thorough inquiry.¹³⁶ The court held that plaintiff's inquiry was reasonable under these circumstances; therefore, the plaintiff satisfied Rule 11's objective test.¹³⁷

Other courts have examined a person's status, legal expertise, and resources when assessing the reasonableness of his or her inquiry.¹³⁸ For example, in two recent cases, district courts considered a party's pro se status when deciding whether he had violated the rule, and held the unrepresented party to a less stringent standard.¹³⁹ Similarly, an attorney's expertise may be a relevant factor for a court to consider.¹⁴⁰ One court has suggested that a specialist in a particular area of law may have to conduct a more exacting inquiry than a novice.¹⁴¹ Moreover, an attorney who has access to computerized research tools may have to conduct a more thorough and up-to-date inquiry.¹⁴²

Whether an inquiry is reasonable also may depend upon the complexity and clarity of the law in the relevant area.¹⁴³ If the law in a particular area is confusing or complicated, litigants and courts may experience difficulty in identifying and applying the controlling law. Consequently, a litigant may reach an incorrect conclusion even after reasonable inquiry.¹⁴⁴ In such a case, a court may be unwilling to find a Rule 11 violation.¹⁴⁵ For example, in the 1984 case of *Leema Enterprises, Inc. v. Willi*,¹⁴⁶ the United States District Court for the Southern District of New York dismissed a complaint against a Swiss bank for lack of personal jurisdiction and improper venue,¹⁴⁷ but the court found no Rule 11 violation.¹⁴⁸ The court held that the bank's passive maintenance of four correspondent accounts did not constitute the minimum contacts necessary to satisfy due process.¹⁴⁹ The court also held that venue was improper.¹⁵⁰ Nevertheless, the court noted

¹³⁴ *Id.* at 1011, 1012.

¹³⁵ *Id.* at 1011-12.

¹³⁶ *Id.* at 1012.

¹³⁷ *Id.* at 1011-12.

¹³⁸ See, e.g., *Hilgefurd v. People's Bank*, Portland, Indiana, 607 F. Supp. 536, 537 (N.D. Ind. 1985), *aff'd*, 776 F.2d 176, 179 (7th Cir. 1985); *Johnson v. United States*, 607 F. Supp. 347, 349 (E.D. Pa. 1985); *Blake*, 607 F. Supp. at 192.

¹³⁹ *Hilgefurd*, 607 F. Supp. at 537; *Johnson*, 607 F. Supp. at 349. The courts hold unrepresented parties to a less stringent standard. The standard, however, is objective, and courts impose sanctions when the inquiry that a reasonable unrepresented party would make would reveal no basis for the paper. *Johnson*, 607 F. Supp. at 349-50 (plaintiff's use of form petition identical to petitions used in cases whose holdings contradicted plaintiff's position demonstrated a lack of reasonable inquiry).

¹⁴⁰ See *Blake*, 607 F. Supp. at 192.

¹⁴¹ See *Heuttig & Schromm v. Landscape Contractors Council*, 582 F. Supp. 1519, 1522 (N.D. Cal. 1984) (because counsel, a specialist in labor law, brought a meritless labor claim, strong inference of improper purpose arises).

¹⁴² See *Golden Eagle*, 103 F.R.D. at 129 (if attorney has access to Lexis, failure to use Lexis may not constitute reasonable inquiry).

¹⁴³ See, e.g., *Robinson v. C.R. Laurence Co., Inc.*, 105 F.R.D. 567, 568 (D. Colo. 1985); *Blake*, 607 F. Supp. at 192; *Leema Enter., Inc. v. Willi*, 582 F. Supp. 255, 257 (S.D.N.Y. 1984).

¹⁴⁴ See *Leema*, 582 F. Supp. at 257.

¹⁴⁵ *Id.*

¹⁴⁶ 582 F. Supp. 255 (S.D.N.Y. 1984).

¹⁴⁷ *Id.* at 256.

¹⁴⁸ *Id.* at 257.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at 256.

that the jurisprudence of personal jurisdiction "is an occasionally confusing and complex area of the law."¹⁵¹ Because of the confusion and complexity, the court was unable to find that the complaint lacked a reasonable legal basis.¹⁵²

Like time, litigant expertise, and complexity of law, mistake is a circumstance that courts may weigh when interpreting Rule 11.¹⁵³ If a mistake might have occurred despite reasonable inquiry, a court may be reluctant to find a Rule 11 violation.¹⁵⁴ For example, in the 1985 case of *Baranski v. Serhant*,¹⁵⁵ the plaintiffs' attorneys filed complaints which advanced claims on behalf of forty-six plaintiffs.¹⁵⁶ Because eight of these claims were time-barred, attorneys for the defendant moved for Rule 11 sanctions for failure to conduct a reasonable inquiry into the facts and law.¹⁵⁷ Plaintiffs' attorneys corrected the error immediately, and argued that the mistake was inadvertent and undeserving of Rule 11 sanctions.¹⁵⁸ The United States District Court for the Northern District of Illinois held that imposing sanctions for an inadvertent error would be inconsistent with Rule 11, which seeks to deter abusive pleading and motion practices.¹⁵⁹ The court noted that the lawsuit was large and complex, that oversights are inevitable, and that even the defendants' attorneys did not recognize the error immediately.¹⁶⁰ The court thus suggested that the mistake might have occurred despite a reasonable inquiry, and that inadvertent mistakes should not automatically trigger Rule 11 sanctions.¹⁶¹

Mistake, however, is not always a defense against a Rule 11 motion. In the 1984 case of *Weisman v. Rivlin*,¹⁶² plaintiff's attorney mistakenly assumed that his client was incorporated in Maryland, the state of its headquarters, when in fact it was incorporated in Delaware.¹⁶³ The plaintiff filed in United States District Court for the District of Columbia, based solely on diversity jurisdiction.¹⁶⁴ Because diversity of citizenship was the only basis for federal jurisdiction, the court held that plaintiff's counsel had a duty to undertake a reasonable inquiry into the question of diversity.¹⁶⁵ Because, in this instance, a reasonable inquiry would have revealed the lack of diversity, the court found that mistake was no excuse, and imposed sanctions under Rule 11.¹⁶⁶ Thus, as the *Baranski* and *Weisman* decisions indicate, mistake is a circumstance courts can weigh in deciding whether to invoke Rule 11, and an inadvertent error does not violate the rule if a reasonable inquiry might not have revealed or prevented the error.¹⁶⁷

As the foregoing discussion demonstrates, no two cases share identical circumstances. Yet, the discussion also demonstrates that the standard of conduct under Rule 11 remains the same for each case: a standard of reasonableness under the particular circum-

¹⁵¹ *Id.* at 257.

¹⁵² *Id.*

¹⁵³ See *Baranski v. Serhant*, 106 F.R.D. 247, 249-50 (N.D. Ill. 1985).

¹⁵⁴ *Id.*

¹⁵⁵ 106 F.R.D. 247 (N.D. Ill. 1985).

¹⁵⁶ *Id.* at 249.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.* at 250.

¹⁶⁰ *Id.* at 249, 250.

¹⁶¹ *Id.* at 250.

¹⁶² 598 F. Supp. 724 (D.D.C. 1984).

¹⁶³ *Id.*

¹⁶⁴ *Id.* at 725.

¹⁶⁵ *Id.* at 726.

¹⁶⁶ *Id.* The court imposed a sanction of two hundred dollars on plaintiff's attorney. *Id.*

¹⁶⁷ Compare *Baranski*, 106 F.R.D. at 249-50, with *Weisman*, 598 F. Supp. at 726.

stances.¹⁶⁸ As the advisory committee note indicates, the current standard is stricter than the good-faith standard of the former rule, and it is expected "that a greater range of circumstances will trigger its violation."¹⁶⁹ The current standard is more demanding because the attorney or party must conduct an objectively reasonable inquiry into the facts and the law, and must certify that the paper is not improperly interposed.¹⁷⁰ Moreover, the duty of reasonable inquiry is continuous; it survives the filing of the paper.¹⁷¹ That is, the signer must continually reassess his or her position because an uncritical pursuit of a once meritorious position may not constitute reasonable inquiry.¹⁷² Thus, under the current rule, by signing a paper, an attorney or party assumes a continuing obligation of objective, reasonable inquiry regarding the facts and law, and certifies that the paper is properly motivated.

III. ENFORCEMENT OF THE NEW STANDARD: SANCTIONS

A. The Mandatory Nature of Sanctions

The 1983 amendment to Rule 11 changed not only the standard of conduct from a subjective one to an objective one of reasonableness under the circumstances, but also changed the method of enforcing the standard of conduct.¹⁷³ Under the old rule, sanctions were completely discretionary.¹⁷⁴ The former rule did not direct courts to impose sanctions,¹⁷⁵ and courts rarely imposed them.¹⁷⁶

Rule 11, as amended, requires courts to sanction infractions.¹⁷⁷ The rule's language is imperative. For example, if a signed paper violates the rule, the court "shall impose

¹⁶⁸ FED. R. CIV. P. 11 advisory committee note. See *supra* text accompanying notes 35-57.

¹⁶⁹ FED. R. CIV. P. 11 advisory committee note.

¹⁷⁰ See *id.* See also *supra* text accompanying notes 35-122.

¹⁷¹ See *Erie Conduit Corp.*, 106 F.R.D. at 457 n.9; *Woodfork By and Through Houston v. Gavin*, 105 F.R.D. 100, 104 (N.D. Miss. 1985). See also *supra* text accompanying notes 58-61.

¹⁷² See *Woodfork*, 105 F.R.D. at 104.

¹⁷³ Compare FED. R. CIV. P. 11 with Fed. R. Civ. P. 11, 28 U.S.C. app. 540-41 (1982). See *supra* note 6 for the text of current Rule 11. See *supra* note 14 for the text of former Rule 11.

¹⁷⁴ See Fed. R. Civ. P. 11, 28 U.S.C. app. 540-41 (1982). The former rule stated:

If a pleading is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken as sham and false and the action may proceed as though the pleading had not been served. For a willful violation of this rule an attorney may be subjected to appropriate disciplinary action. Similar action may be taken if scandalous or indecent matter is inserted.

Id. See *supra* note 14 for the complete text of former Rule 11.

¹⁷⁵ Fed. R. Civ. P. 11, 28 U.S.C. app. 540-41 (1982). See *supra* note 14 for the complete text of former Rule 11.

¹⁷⁶ See *Risinger, Some Striking Problems*, *supra* note 16, at 34-38; *Schwarzer, supra* note 4, at 183.

¹⁷⁷ FED. R. CIV. P. 11. The current rule states in pertinent part:

If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

Id. See *supra* note 6 for the complete text of current Rule 11.*

... an appropriate sanction"¹⁷⁸ Because sanctions now are mandatory, a district court may commit error by failing to impose sanctions on an individual who violates Rule 11.¹⁷⁹ In the 1985 case of *Westmoreland v. CBS, Inc.*,¹⁸⁰ for example, the United States Court of Appeals for the District of Columbia Circuit ruled that the district court erred in not invoking Rule 11 sanctions.¹⁸¹ In *Westmoreland*, defendant CBS obtained a subpoena to depose former Central Intelligence Agency Director Richard Helms, a nonparty witness.¹⁸² The subpoena was silent as to the manner of recording the deposition.¹⁸³ When Helms arrived at the defendant's offices, CBS announced its intention to videotape his deposition.¹⁸⁴ Although he was willing to testify before a stenographer, Helms refused to be videotaped.¹⁸⁵ Theorizing that the subpoena was a court order compelling Helms to testify, CBS petitioned the court to hold Helms in contempt instead of moving the court to order videotaping as prescribed by rule 30(b)(4).¹⁸⁶ In rejecting CBS's reasoning,¹⁸⁷ the district court treated the petition as a request for a Rule 30(b)(4) order to require videotaping, which it denied.¹⁸⁸ The court of appeals reversed, holding that because CBS's contempt petition lacked a reasonable factual and legal basis, the district court erred in not sanctioning CBS as required under Rule 11.¹⁸⁹

B. Appropriateness of Sanctions

Although sanctions are mandatory upon a Rule 11 violation,¹⁹⁰ the rule requires that the sanctions imposed in a particular case be "appropriate."¹⁹¹ The rule states that a court should not strike an unsigned paper unless the litigant fails to sign it promptly upon learning of the omission.¹⁹² Similarly, Rule 11 stipulates that a court may award expenses and attorneys' fees incurred because of the violation, but the amount awarded must be reasonable.¹⁹³ The advisory committee note to Rule 11 indicates that to ensure

¹⁷⁸ FED. R. CIV. P. 11. The advisory committee note emphasizes the mandatory nature of the sanction by stating that "... the words 'shall impose' ... focus the court's attention on the need to impose sanctions for pleading and motion abuses." FED. R. CIV. P. 11 advisory committee note. Furthermore, the rule authorizes a court to impose sanctions on its own initiative. FED. R. CIV. P. 11.

¹⁷⁹ *Westmoreland*, 770 F.2d at 1174-75. See also *Chevron U.S.A., Inc. v. Hand*, 763 F.2d 1184, 1187 (10th Cir. 1985) (the court noted that Rule 11 states that a court shall impose an appropriate sanction upon finding a violation); *Eastway*, 762 F.2d at 254 n.7 (the court noted that the rule's drafters meant to stress the mandatory nature of sanctions, and stated that upon finding a violation a district court must fashion a proper sanction).

¹⁸⁰ 770 F.2d 1168 (D.C. Cir. 1985).

¹⁸¹ *Id.* at 1174-75.

¹⁸² *Id.* at 1170-71.

¹⁸³ *Id.* at 1171.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.* (citing FED. R. CIV. P. 30(b)(4)).

¹⁸⁷ *Id.* at 1171.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.* at 1177-78.

¹⁹⁰ See FED. R. CIV. P. 11. See *supra* note 6 for the text of current Rule 11.

¹⁹¹ FED. R. CIV. P. 11.

¹⁹² *Id.*

¹⁹³ *Id.*

that the sanction is appropriate or reasonable, a court should tailor the sanction to fit the circumstances of the case.¹⁹⁴

The courts are tailoring sanctions by various means.¹⁹⁵ Although the rule speaks in terms of the paper as a whole,¹⁹⁶ several courts have sanctioned only those claims or parts of a paper that are factually, legally, or motivationally unwarranted.¹⁹⁷ For example, in *Mohammed v. Union Carbide Corp.*,¹⁹⁸ the plaintiff filed a fourteen-count complaint against several defendants.¹⁹⁹ In April, 1984, the United States District Court for the Eastern District of Michigan granted defendant's motion for summary judgment on one of plaintiff's counts, a defamation claim.²⁰⁰ In October, 1984, the court granted defendant's motion for summary judgment on the remaining claims.²⁰¹ Defendant moved for expenses and attorneys' fees incurred defending against plaintiff's entire complaint.²⁰² The court found that only plaintiff's defamation claim violated Rule 11.²⁰³ Therefore, the court held that defendant was not entitled to the entire amount of expenses and fees incurred defending against the complaint,²⁰⁴ but was only entitled to expenses and fees incurred in the litigation until April, 1984, when the court granted summary judgment on the defamation claim.²⁰⁵ The court also allowed plaintiff twenty days in which to file objections to defendant's itemized statement of expenses and fees.²⁰⁶

Similarly, several recent cases indicate that courts also tailor Rule 11 sanctions by imposing reasonable, rather than actual, expenses and fees on a party found guilty of violating Rule 11.²⁰⁷ Thus, a party who prevails on a Rule 11 motion for expenses and fees may not be entitled to actual expenses and fees incurred due to the violation, because those expenses and fees may not be reasonable.²⁰⁸ Furthermore, two recent cases indicate that there is a duty to mitigate those costs.²⁰⁹ For example, in the 1985 case of

¹⁹⁴ FED. R. CIV. P. 11 advisory committee note.

¹⁹⁵ See, e.g., *Rodgers v. Lincoln Towing Serv., Inc.*, 771 F.2d 194, 205 (7th Cir. 1985), *aff'd* 596 F. Supp. 13 (N.D. Ill. 1984); *Mohammed v. Union Carbide Corp.*, 606 F. Supp. 252, 262 (E.D. Mich. 1985).

¹⁹⁶ See FED. R. CIV. P. 11. The advisory committee note states that the rule is intended to lessen frivolous claims and defenses. FED. R. CIV. P. 11 advisory committee note.

¹⁹⁷ *Rodgers*, 771 F.2d at 205-06; *Fleming Sales Co. v. Bailey*, 611 F. Supp. 507, 520 (N.D. Ill. 1985); *Mohammed*, 606 F. Supp. at 261-62. In *Rodgers*, the court required plaintiff's attorney to pay one-third of the expenses and fees incurred by the defendant in dismissing the complaint. *Rodgers*, 771 F.2d at 205. The court concluded that this amount represented the cost of defending against the complaint's meritless claims. *Id.* But see *Martinez, Inc. v. H. Landau & Co.*, 107 F.R.D. 775, 777-78 (N.D. Ind. 1985) (court suggests that Rule 11 applies only to a paper as a whole and not to the severable claims within a paper).

¹⁹⁸ 606 F. Supp. 252 (E.D. Mich. 1985).

¹⁹⁹ *Id.* at 254.

²⁰⁰ *Id.* at 256.

²⁰¹ *Id.*

²⁰² *Id.* at 259-60.

²⁰³ *Id.* at 262.

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.* at 263.

²⁰⁷ See, e.g., *United Food*, 106 F.R.D. at 349, 350; *Weisman*, 598 F. Supp. at 726-27.

²⁰⁸ See *United Food & Commercial Workers v. Armour and Co.*, 106 F.R.D. 345, 349, 350 (N.D. Cal. 1985). See also *Taylor v. Prudential-Bache Sec., Inc.*, 594 F. Supp. 226, 228 (N.D.N.Y. 1984) (hours of work by counsel exceeded what was necessary, and some of counsel's work was duplicative), *aff'd*, 751 F.2d 371 (2d Cir. 1985).

²⁰⁹ See *United Food*, 106 F.R.D. at 349-50; *Weisman*, 598 F. Supp. at 726.

United Food & Commercial Workers v. Armour and Co.,²¹⁰ plaintiffs filed a factually unwarranted complaint,²¹¹ but the court concluded that the defendant could have mitigated its costs by informing the court of the complaint's meritlessness more quickly and easily than it did.²¹² In holding that defendant had a duty to mitigate its costs, the court asserted:

The duty is one of mitigation; it rests on the concept that the victim of a frivolous lawsuit must use reasonable means to terminate the litigation and to prevent the costs of that frivolous suit from becoming excessive. If a party eventually wins Rule 11 sanctions, but has failed to use the least expensive route to early resolution, the court may rule that not all the expenses the successful party incurred in making formal motions were reasonable attorney's fees that should be awarded under rule 11.²¹³

According to the court, the defendant could have requested a status conference or a telephone status conference with the court and the plaintiffs.²¹⁴ The court then might have resolved the lawsuit without the formal motion and hearing for summary judgment that ensued.²¹⁵ Moreover, the court noted that if a conference had failed to resolve the dispute, the defendant could have moved for summary judgment.²¹⁶ Consequently, the court awarded the defendant \$7,500 in attorney's fees instead of the \$22,046.68 the defendant had requested.²¹⁷

Another factor that may influence a court's choice of an appropriate sanction is the litigant's state of mind or intent.²¹⁸ Although a litigant's mental state is irrelevant when determining whether he or she violated Rule 11,²¹⁹ the advisory committee note reveals that willfulness is relevant in selecting a sanction.²²⁰ The courts are heeding this admonition by considering the conduct of the attorney or party who violated the rule when choosing a sanction.²²¹ For example, in *Stevens v. Lawyers Mutual Liability Insurance Co. of North Carolina*,²²² the United States District Court for the Eastern District of North Carolina found that a complaint was "clearly meritless."²²³ Although the complaint

²¹⁰ 106 F.R.D. 345 (N.D. Cal. 1985).

²¹¹ *Id.* at 347-48.

²¹² *Id.* at 349-50.

²¹³ *Id.* at 350.

²¹⁴ *Id.* at 349.

²¹⁵ *Id.*

²¹⁶ *Id.* at 350.

²¹⁷ *Id.* at 346, 350.

²¹⁸ See, e.g., *Stevens v. Lawyers Mut. Liab. Ins. Co. of North Carolina*, 107 F.R.D. 112, 116 (E.D.N.C. 1985).

²¹⁹ *Id.* See *supra* notes 15-57 and accompanying text for a discussion of the old subjective test and the new objective test.

²²⁰ FED. R. CIV. P. 11 advisory committee note. The advisory note states:

The reference in the former text to willfulness as a prerequisite to disciplinary action has been deleted. However, in considering the nature and severity of the sanctions to be imposed, the court should take account of the state of the attorney's or party's actual or presumed knowledge when the pleading or other paper was signed.

Id.

²²¹ See, e.g., *Stevens*, 107 F.R.D. at 116; *Weisman*, 598 F. Supp. at 727. See also *Pudlo*, 587 F. Supp. at 1012.

²²² 107 F.R.D. 112 (E.D.N.C. 1985).

²²³ *Id.* at 114.

indicated that plaintiff had not satisfied Rule 11's reasonable inquiry requirement, the court found that the plaintiff had not filed his claim deceitfully or in bad faith.²²⁴ Under the circumstances, the court decided that a formal reprimand constituted an appropriate sanction.²²⁵

While *Stevens* indicates that a litigant's intention in filing a paper may influence sanction selection,²²⁶ a litigant's conduct before or after filing the paper may also influence the court.²²⁷ For example, in *Weisman v. Rivlin*,²²⁸ the United States District Court for the District of Columbia noted that the plaintiff had attempted to settle the case before filing his complaint.²²⁹ The court reasoned that the effort to settle demonstrated that the complaint, though legally unwarranted, was not interposed for an improper purpose.²³⁰ The court considered this circumstance relevant to its choice of an appropriate sanction.²³¹

C. Whom to Sanction: Attorney or Client

When selecting an appropriate sanction, a court may sanction the signer, or a represented party, or both.²³² Therefore, the court may reach beyond the attorney who signs a paper to sanction a client responsible for the violation.²³³ In the 1985 case of *Chevron v. Hand*,²³⁴ the United States Court of Appeals for the Tenth Circuit upheld a district court decision sanctioning the client rather than the signing attorney.²³⁵ In *Chevron*, the litigants had entered into a stipulation agreement dismissing their lawsuit.²³⁶ One of the defendants, after having agreed to the stipulation, hired a new attorney to move to set aside the agreement.²³⁷ The court found that the defendant's purpose was merely to delay the implementation of the agreement.²³⁸ The court then sanctioned the defendant, rather than the signing attorney, because the defendant was the "catalyst behind this frivolous motion."²³⁹

Although Rule 11 states that a court may sanction a represented party who does not sign a paper,²⁴⁰ the rule does not provide for sanctioning an attorney who does not sign, even if that attorney is responsible for preparing the paper.²⁴¹ At least one court,

²²⁴ *Id.* at 116.

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ See, e.g., *Weisman*, 598 F. Supp. at 727; *Pudlo*, 587 F. Supp. at 1012.

²²⁸ 598 F. Supp. 724 (D.D.C. 1984).

²²⁹ *Id.* at 727.

²³⁰ *Id.*

²³¹ *Id.*

²³² FED. R. CIV. P. 11. See *supra* note 6 for the text of current Rule 11.

²³³ FED. R. CIV. P. 11 advisory committee note. See FED. R. CIV. P. 11.

²³⁴ 763 F.2d 1184 (10th Cir. 1985).

²³⁵ *Id.* at 1187.

²³⁶ *Id.* at 1186.

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ *Id.* at 1187.

²⁴⁰ FED. R. CIV. P. 11. See *supra* note 6 for the text of current Rule 11.

²⁴¹ See FED. R. CIV. P. 11. Rule 11 states that if a paper violates the rule the court shall sanction "the person who signed it, a represented party, or both . . ." *Id.* See also *Rodgers*, 596 F. Supp. at 28 (court refused to sanction an attorney because the attorney had participated in the case but had not signed the defective pleading).

however, has assessed fees against the attorney responsible for preparing a paper, although that attorney did not sign it.²⁴² The court also sanctioned the local counsel who signed the paper by criticizing him for his neglect.²⁴³

In summary, the current Rule 11, as written and applied, enforces its new standard of conduct by requiring courts to impose appropriate sanctions upon persons responsible for violating its provisions.²⁴⁴ Although sanctions are mandatory upon a violation,²⁴⁵ the courts are imposing appropriate sanctions by tailoring the sanctions to fit the circumstances of the individual case.²⁴⁶ Most courts are sanctioning only those elements of a paper that violate the rule.²⁴⁷ Similarly, courts are assessing reasonable fees and expenses,²⁴⁸ are imposing a duty to mitigate upon the party who moves for Rule 11 sanctions,²⁴⁹ and are considering whether the violation was willful when selecting a sanction.²⁵⁰ Finally, the courts are attempting to sanction the party responsible for the violation.²⁵¹

IV. DETERRING ABUSES AND STREAMLINING LITIGATION WITHOUT STIFLING CREATIVE AND ZEALOUS ADVOCACY

Rule 11's purpose is to deter improper litigation tactics and to streamline litigation by decreasing meritless claims and defenses.²⁵² The authors of Rule 11, however, anticipated that courts might misapply the rule.²⁵³ Thus, the advisory committee note cautions that Rule 11 is not intended to chill the enthusiasm or creativity sometimes needed to pursue novel factual or legal theories.²⁵⁴ Since 1983, when Rule 11 was amended, federal courts, and litigants, have used the rule frequently.²⁵⁵ By examining the decisions handed down by the courts since the rule's amendment, this section will attempt to determine the effect that the amended rule has had on the legal community. This section will conclude that the cases interpreting the rule since its amendment in 1983 indicate that Rule 11 has furthered the purpose of deterring abuses and streamlining litigation without stifling creative and zealous advocacy.

²⁴² *Golden Eagle*, 103 F.R.D. at 125 n.1. One commentator contends that the rule's purpose is to sanction the person responsible for the violation, regardless of who signed the paper. Schwarzer, *supra* note 4, at 185.

²⁴³ *Golden Eagle*, 103 F.R.D. at 125 n.1.

²⁴⁴ See FED. R. CIV. P. 11. See *supra* text accompanying notes 177-89.

²⁴⁵ FED. R. CIV. P. 11. See *Westmoreland*, 770 F.2d at 1174.

²⁴⁶ See, e.g., *Rodgers*, 771 F.2d at 205-06; *Mohammed*, 606 F. Supp. at 262. See *supra* text accompanying notes 191-231.

²⁴⁷ See, e.g., *Rodgers*, 771 F.2d at 205; *Mohammed*, 606 F. Supp. at 261-62.

²⁴⁸ See, e.g., *United Food*, 106 F.R.D. at 349; *Weisman*, 598 F. Supp. at 726-27.

²⁴⁹ See *United Food*, 106 F.R.D. at 350.

²⁵⁰ See *Weisman*, 598 F. Supp. at 727. See also *Stevens*, 107 F.R.D. at 116.

²⁵¹ See, e.g., *Chevron*, 763 F.2d at 1187; *Gilmer v. City of Cleveland*, 617 F. Supp. 985, 988 (N.D. Ohio 1985); *Golden Eagle*, 103 F.R.D. at 125 n.1.

²⁵² FED. R. CIV. P. 11; FED. R. CIV. P. 11 advisory committee note.

²⁵³ FED. R. CIV. P. 11 advisory committee note.

²⁵⁴ *Id.*

²⁵⁵ See, e.g., *Westmoreland v. CBS, Inc.*, 770 F.2d 1168 (D.C. Cir. 1985); *United Food & Commercial Workers v. Armour and Co.*, 106 F.R.D. 345 (N.D. Cal. 1985); *Woodfork By and Through Houston v. Gavin*, 105 F.R.D. 100 (N.D. Miss. 1985); *Florida Monument Builders v. All Faiths Mem. Gardens*, 605 F. Supp. 1324 (S.D. Fla. 1984); *Rodgers v. Lincoln Towing Serv. Inc.*, 596 F. Supp. 13 (N.D. Ill. 1984), *aff'd*, 771 F.2d 194 (7th Cir. 1985).

Two misapplication problems might arise in the courts' use of the current rule. First, courts could misuse Rule 11 by misapplying the reasonable inquiry requirement.²⁵⁶ The reasonable inquiry requirement enables courts to find violations by providing an objective standard to which a signer must conform.²⁵⁷ The standard is flexible: courts must be able to adapt it to different circumstances.²⁵⁸ Thus, courts must be sensitive to the circumstances surrounding the signing of the paper in order to determine whether the inquiry was reasonable.²⁵⁹ For example, a court can only decide whether a signer violated the legal prong of Rule 11 by determining whether a reasonable inquiry would have revealed that the paper was warranted by existing law or by a good-faith argument for the extension, modification, or reversal of existing law.²⁶⁰ Because it is flexible, however, courts might misapply the standard by failing to weigh the relevant circumstances. If a court ignores or discounts the circumstances and demands too much inquiry, then the court may sanction litigants for making a legal argument that should be protected by the rule. The line between creative, innovative legal argument and frivolity is particularly fine.²⁶¹

Second, courts could misuse Rule 11 by misapplying the rule's sanctions. When a court finds a violation, a sanction is mandatory.²⁶² Moreover, Rule 11 grants a court great discretion in selecting the sanction. Nevertheless, the use of the words "appropriate" and "reasonable"²⁶³ indicate that the sanction must fit the circumstances of the individual case.²⁶⁴ For example, an award of expenses or attorneys' fees must be reasonable under the circumstances.²⁶⁵ If courts sanction litigants unjustifiably or excessively, they may inhibit advocacy and impede a determination on the merits by deterring meritorious claims and acceptable pleading and motion practices.

An examination of the nascent Rule 11 jurisprudence indicates, however, that the federal courts have applied the current rule sensitively in accordance with its purpose.²⁶⁶ Courts have recognized that litigants are responsible for conducting an objectively reasonable inquiry into the factual and legal bases of each paper, and have recognized that the paper's purpose must be proper.²⁶⁷ Nevertheless, the courts have carefully weighed the relevant circumstances to determine whether litigants have satisfied the rule.²⁶⁸ Time,²⁶⁹ litigant expertise,²⁷⁰ resources available,²⁷¹ complexity of law,²⁷² and inadvertent

²⁵⁶ See, e.g., Rothschild, Fenton, & Swanson, *Rule 11: Stop, Think and Investigate*, 2 LITIGATION 13, 13-14 (1985); Snyder, *The Chill of Rule 11*, 2 LITIGATION 16, 55 (1985).

²⁵⁷ See *Westmoreland*, 770 F.2d at 1174-75; *Eastway*, 762 F.2d at 253-54.

²⁵⁸ See FED. R. CIV. P. 11 advisory committee note.

²⁵⁹ See *id.*

²⁶⁰ FED. R. CIV. P. 11. See *supra* note 6 for the text of current Rule 11.

²⁶¹ Snyder, *supra* note 256, at 55.

²⁶² FED. R. CIV. P. 11. See *supra* note 6 for the text of current Rule 11.

²⁶³ FED. R. CIV. P. 11. See *supra* note 6 for the text of current Rule 11.

²⁶⁴ FED. R. CIV. P. 11 advisory committee note.

²⁶⁵ See, e.g., *United Food*, 106 F.R.D. at 349.

²⁶⁶ See, e.g., *Mohammed*, 606 F. Supp. at 261-62; *Pudlo*, 587 F. Supp. at 1011-12; *Leema*, 582 F. Supp. at 257.

²⁶⁷ See, e.g., *Westmoreland*, 770 F.2d at 1174-75; *Davis*, 765 F.2d at 498-500. See *supra* text accompanying notes 35-122.

²⁶⁸ See, e.g., *Baranski*, 106 F.R.D. at 249-50; *Pudlo*, 587 F. Supp. at 1011-12. See *supra* text accompanying notes 123-67.

²⁶⁹ See *Pudlo*, 587 F. Supp. at 1011-12.

²⁷⁰ See *Blake*, 607 F. Supp. at 192.

²⁷¹ See *Golden Eagle*, 103 F.R.D. at 129.

²⁷² See *Leema*, 582 F. Supp. at 257.

error²⁷³ are among the circumstances that courts have considered when deciding whether a litigant violated Rule 11. The courts' weighing of these factors indicates a willingness to consider the circumstances of the individual case when determining whether an inquiry is reasonable or a motive is proper. By using the correct standard of reasonableness under the circumstances of the case, the courts are encouraging litigants to act responsibly without imposing upon them a standard of behavior that they cannot satisfy.

Similarly, while recognizing that sanctions under Rule 11 are mandatory,²⁷⁴ courts have tailored the sanctions to fit the circumstances of the individual case.²⁷⁵ The courts have imposed appropriate sanctions by sanctioning only the parts of a paper that violate the rule,²⁷⁶ by imposing reasonable, rather than actual, attorneys' fees,²⁷⁷ and by sanctioning the party responsible for the violation.²⁷⁸ Most significantly, perhaps, the courts have developed a duty to mitigate the costs incurred because of a Rule 11 violation.²⁷⁹ The party moving for sanctions under the rule must attempt to mitigate his or her costs by responding to the Rule 11 violation responsibly and expeditiously.²⁸⁰ The development and use of this affirmative duty to mitigate indicates that the courts are applying Rule 11 carefully and fairly by imposing sanctions appropriate to the particular case.

Although, if misused, Rule 11 could inhibit creative advocacy, the courts have applied the rule judiciously, in accordance with its purpose. By carefully weighing the circumstances before finding a violation or imposing a sanction, the courts are deterring abusive practices rather than meritorious claims and defenses. This sensitive application of Rule 11 may expedite litigation and lower its costs while enabling litigants to reach the merits of their cases.²⁸¹

CONCLUSION

Rule 11 was amended in 1983 because it had failed to deter abuses in the signing of pleadings. The framers of the current rule intended to make the signer of a paper accept responsibility for the paper and the consequences of filing it. To accomplish this task, the framers clarified Rule 11's standard of conduct and its method of ensuring enforcement of that standard.

Rule 11's new standard of conduct is one of reasonableness under the circumstances. According to the rule, a signer of a paper must certify that a reasonable inquiry informs his or her belief that a paper is well grounded in fact, warranted by existing law or by a good-faith argument for the extension, modification, or reversal of law, and that it is not interposed for any improper purpose. The courts have applied the new standard of conduct objectively by weighing the circumstances of each case. The courts' basic inquiry has been whether, under the circumstances, a competent attorney or litigant could reasonably believe that his or her paper is factually, legally, and motivationally warranted.

²⁷³ See *Baranski*, 106 F.R.D. at 250.

²⁷⁴ See, e.g., *Westmoreland*, 770 F.2d at 1174-75; *Chevron*, 763 F.2d at 1187.

²⁷⁵ See, e.g., *Stevens*, 107 F.R.D. at 116; *United Food*, 106 F.R.D. at 349-50; *Weisman*, 598 F. Supp. at 726. See *supra* text accompanying notes 191-231.

²⁷⁶ See *Mohammed*, 606 F. Supp. at 262.

²⁷⁷ See *United Food*, 106 F.R.D. at 349, 350.

²⁷⁸ See *Chevron*, 763 F.2d at 1187; *Golden Eagle*, 103 F.R.D. at 125.

²⁷⁹ See *United Food*, 106 F.R.D. at 349-50; *Weisman*, 598 F. Supp. at 726.

²⁸⁰ See *United Food*, 106 F.R.D. at 350.

²⁸¹ See generally Miller, *The Adversary System*, *supra* note 4, at 30-31; Comment, *Deterring Dilatory Tactics in Litigation: Proposed Amendments to Rules 7 and 11 of the Federal Rules of Civil Procedure*, 26 Sr. Louis U.L.J. 895, 912-13 (1982).

Rule 11 provides for enforcement of the new standard of conduct by mandating that courts sanction litigants who violate the rule. Sanctions are mandatory, and a district court may commit error by failing to impose a sanction on an individual who violates the rule's provisions. While it mandates sanctions, Rule 11 also requires that sanctions be appropriate. The courts are imposing appropriate sanctions by tailoring the sanctions to fit the circumstances of the individual case.

Although its purpose is to deter abuses and to streamline litigation, Rule 11, if misapplied, might inhibit zealous, creative advocacy and prevent litigants from reaching the merits of their cases. The nascent Rule 11 jurisprudence indicates, however, that the federal courts are applying the objective standard of reasonableness by carefully weighing the circumstances of the case and by tailoring sanctions to fit those circumstances. The courts' judicious application of Rule 11 should help to secure the speedy and inexpensive determination of every action on the merits by deterring irresponsible litigation tactics without stifling enthusiastic and creative advocacy.

MICHAEL E. PEEPLES