Rule 11

Final Report to the Advisory Committee on Civil Rules of the Judicial Conference of the United States

Rule 11

Survey of Federal District Court Judges

Study of Rule 11 Cases in Five Federal District Courts

Review of Published District and Appellate Court Opinions

Project Co-Directors

Elizabeth C. Wiggins Thomas Willging

Questionnaire Co-Director

Donna Stienstra

Review of Published Opinions

Michael E. Barnsback

Data Collection and Computer Analysis

Michael E. Barnsback
George Carter
Denise Galambros
Patricia Lombard
James Pettler
George Short
Nicole Spencer

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Overview and Acknowledgments

This is a report of an empirical study of Federal Rule of Civil Procedure 11. The Research Division of the Federal Judicial Center undertook the study to assist the Advisory Committee on Civil Rules in its evaluation of the rule. The study has three major components: (1) a survey of all federal district judges about their experiences with Rule 11; (2) an analysis of all district and appellate opinions published between 1984 and 1989 that address Rule 11 issues; and (3) a study of Rule 11 activity in five district courts. The district court study includes a separate analysis of the application of Rule 11 to civil rights cases in these five courts.

The report includes a summary and a complete report for each component of the study. The summaries are in Sections 1A–1D. Section 2 presents the results of the survey in a commentary (2A) and by superimposing the numerical results on the survey questions (2B). Comments made by judges in the survey follow (2C). The field study (Sections 3A-3E) and its separate civil rights analyses (Sections 4A-4E) are presented in district-by-district reports, all following a standard format. The review of published opinions (Section 5) concludes the report.

We wish to acknowledge the generous and helpful contributions of several units of the third branch. Members of the Advisory Committee, past and present, helped shape the issues and the research approach. Clerks of court and their staffs, including systems administrators, facilitated our identification and study of the cases. District judges took time from their busy schedules to respond to the survey and some of those judges performed double duty by assisting us in a pretest of the survey. We thank them all and hope that they will see their contribution in this final product.

Section 1A
Summary of the Analysis of Judges' Responses to a Questionnaire on Rule 11

At the request of the Advisory Committee on Civil Rules, the Research Division of the Federal Judicial Center sent a questionnaire on Rule 11 to all active and senior United States district judges in November 1989. Of the 751 judges to whom the questionnaire was sent, 583 responded. The judges were asked to evaluate the effectiveness of the rule in light of their experience with it in cases on their dockets. Where the judges were asked to report the Rule 11 activity on their dockets, they were asked to provide estimates, not to consult their own or other court records.

Two themes emerge from the judges' responses. First, most judges think Rule 11 has had a positive effect on litigation in the federal courts, that its benefits have outweighed any additional requirements on judge time, and that the rule should be retained in its current form. Second, most judges report that groundless litigation presents only a small problem on their dockets and that, while Rule 11 has been moderately effective in deterring groundless papers, they have found several other methods more effective than Rule 11 in handling such litigation.

On the first theme, 80% of the judges believe the overall effect of the rule has been positive and favor retaining it in its present form. Seventy-two percent think the benefits of the rule outweigh the expenditure of judge time required to implement it.

On the second theme, few judges see groundless litigation as a large problem. Although 20% believe there is a moderate problem, 75% say there is a small problem or no problem at all. Few believe the problem has increased, whereas 40% say it has decreased since Rule 11 was amended in August 1983.

Rule 11 has been slightly to moderately effective in deterring the filing of groundless pleadings, according to a majority of the judges. About one in ten rate it as very effective, while a somewhat larger portion find it ineffective. The judges think the rule is more effective in deterring groundless complaints than in deterring groundless answers or motions.

The rule is seen as having limited adverse effects on the conduct of litigation. Five percent of the judges say it has impeded development of the law, 9% say it creates a conflict of interest between attorney and client in more than half the cases in which Rule 11 sanctions are sought, 20% say it impedes settlement in more cases than not, and 38% say half or more requests for sanctions are themselves groundless. The greatest adverse effect reported by the judges is the rule's

impact on relationships between attorneys. Fifty percent of the judges say Rule 11 exacerbates contentious behavior between counsel.

Among a variety of rules and procedures available for managing groundless litigation, Rule 11 is seen as less effective than several others. The most effective procedures, according to a majority of the judges, are prompt rulings on motions to dismiss and prompt rulings on motions for summary judgment. The judges also rank informal admonitions and Rule 16 conferences higher in effectiveness than Rule 11.

Most judges report limited use of Rule 11. Twenty-seven percent of the judges say they issued no Rule 11 sanctions orders during the past twelve months. Of the judges who report issuing sanctions orders during that period, over half estimate that they issued three or fewer such orders. Few of these orders were issued sua sponte. These data are congruent with the judges' view that groundless litigation presents a small problem and that Rule 11 is one of several methods for handling that problem.

The judges' responses were examined in relation to a number of measures of judicial experience (for example, number of years on the bench). There were few differences in response by experience, except that recently appointed judges were more likely to say they could not respond. The responses to each question were also examined in relation to other questions. There is great consistency in the judges' responses from one question to another. For example, judges who say Rule 11 causes a problem in one area (such as by the rule's effect on the law) are likely to say that it is causes a problem in another area as well (such as in the weighing of costs and benefits). In general, however, the examination of relationships among responses reveals the same central finding as the basic analysis: Most judges report only a small problem with groundless litigation, find Rule 11 moderately useful, report limited negative consequences, impose few sanctions, and favor retention of the rule in its current form.

Section 1B
Summary of the Study of Rule 11 in Five District Courts

The Research Division of the Federal Judicial Center conducted a study of Rule 11 activity in five districts: the District of Arizona, the District of the District of Columbia, the Northern District of Georgia, the Eastern District of Michigan, and the Western District of Texas. These five districts were selected for study primarily because of the availability of computerized docket information. Four of the courts were pilot courts for the civil Integrated Court Management System (ICMS) and had been using computerized docketing for about three years when the study commenced. The fifth district (Eastern Michigan) had been using computerized docketing for approximately two years. The five courts are located in the District of Columbia, Fifth, Sixth, Ninth, and Eleventh Circuits, are geographically diverse, and all include at least one major metropolitan area. It is important to note at the outset, however, that these courts may not be representative of all courts.

Cases involving Rule 11 activity were identified by electronically searching the courts' ICMS civil databases. We then examined the files of these cases to extract additional information about the Rule 11 activity. We have prepared a separate report of our findings for each district (see Sections 3A–3E). To facilitate comparison, the organization of this summary parallels the organization of those reports. The highlights of our findings are presented here. For more details, see the individual reports.[1]

This summary presents information germane to three issues identified by the Advisory Committee in its Call for Comments on Rule 11[2]: (1) the amount of satellite litigation generated by Rule 11; (2) the extent to which Rule 11 activity has been disproportionately concentrated in specific types of cases or on particular types of litigants; and (3) the amount of judicial variation in sanctioning practices. In addition, information about the procedural process afforded those targeted by a motion for Rule 11 sanctions is interspersed throughout the discussion of the other three issues.

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1. The individual district reports document how missing information was treated in the calculation of percentages presented in this summary. Note also that because of rounding, percentages may sum to slightly more or less than 100.

2. Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, Call for Written Comments on Rule 11 of the Federal Rules of Civil Procedure and Related Rules (August 1990). The Call for Comments was published at 59 U.S.L.W. 2117 and 131 F.R.D. 344.

How much satellite litigation has Rule 11 generated?

In its Call for Comments, the Advisory Committee on Civil Rules asked, "Has the financial cost in satellite litigation resulting from the imposition of sanctions perhaps exceeded the benefits resulting from any increased tendency of lawyers to 'stop and think'?"[3] We were unable to directly address the financial cost of sanctions-related litigation, so we instead examined the amount of satellite litigation. We examined the frequency of Rule 11 activity in each district and the extent to which Rule 11 activity has generated demands on the time of attorneys and judges as evidenced by the filing of pleadings, participation in hearings, presentation and review of evidence, rulings on motions, writing of opinions, and rulings on reconsiderations and appeals.

Incidence of Rule 11 activity

Included in the study were cases filed between the date ICMS was fully implemented and the date the electronic searches were conducted in each district.[4] The sample of cases examined, therefore, included both pending and terminated cases.

Table 1 shows, for each district, the total number of cases filed during the time studied and the number of those cases involving Rule 11 activity. It also shows the number of Rule 11 motions or sua sponte orders (referred to throughout as motions/orders) occurring in the cases having Rule 11 activity. The origin of the motions/orders is shown in Table 2. Most of the sanctions activity began with a motion by an opposing party.

Table 1
Comparison of total caseload with Rule 11 activity

	D. Ariz.	D. D.C.	N.D. Ga.	E.D. Mich.	W.D. Tex.
District caseload	10,776	11,695	11,809	10,946	10,102
Cases involving Rule 11 activity	182	175	166	204	253
Rule 11 motions/orders filed	257	227	233	268	351

3. *Id.* at 3.

4. The ICMS docketing system has been fully implemented in the Eastern District of Michigan since June 15, 1988, and in the four other districts since January 1, 1987. The electronic searches were conducted in late spring and summer of 1990 (see the individual district reports at Sections 3A–3E for exact dates).

Table 2
Source of Rule 11 activity

Source	Number of Rule 11 Motions/Orders				
	D. Ariz.	D. D.C.	N.D. Ga.	E.D. Mich.	W.D. Tex.
Motion	223	219	200	247	308
Sua sponte order	18	7	13	6	23
Subtotal	241	226	213	253	331
Motion for reconsideration of judge's order	13	1	18	10	13
Appeal or objection to magistrate judges' order or recommendation	3	0	2	5	7
Total	257	227	233	268	351

Because of the large number of pending cases included in the study, the percentage of cases in which Rule 11 activity occurs cannot be calculated directly from the information in Table 1. However, this percentage can be *estimated* for each district using a life-table analysis. This technique uses information about the size of a court's caseload, the age of each case when the electronic search was conducted, the number of cases involving a Rule 11 motion or sua sponte order, and the age of a case when the first Rule 11 motion/order was filed. The analysis projects the percentage of cases that will involve Rule 11 activity within a particular number of months from filing; the number of months is equal to the oldest case included in the analysis.

Table 3 shows, for each district, the incidence of Rule 11 activity as estimated by the life-table analyses. For four districts, the oldest case included in the analysis was either thirty-eight or thirty-nine months old. The incidence rate for these districts reflects the percentage of cases that are estimated to involve Rule 11 activity within thirty-eight or thirty-nine months of filing. For example, 2.0% of cases filed in the District of Columbia are expected to have some Rule 11 activity within thirty-eight months of filing. For one district, the Eastern District of Michigan, the oldest case was only twenty-two months old. Accordingly, the incidence rate for that district reflects only the percentage of cases expected to involve Rule 11 activity within twenty-two months of filing. All of the courts have characteristics typically associated with high levels of sanctioning activity, such as location in a major metropolitan area.

Table 3
Incidence of Rule 11 activity

	D. Ariz.	D. D.C.	N.D. Ga.	E.D. Mich.	W.D. Tex.
Estimated percentage of cases in which Rule 11 activity will occur	2.2%	2.0%	2.0%	2.4%	3.1%
Number of months from filing on which estimate is based	39	38	39	22	39

Demands on judges and attorneys

Some of the demands placed on attorneys and judges by Rule 11 are described below. The information is presented in three sections: (1) pre-ruling activity, (2) activity associated with rulings, and 3) post-ruling activity. The third section describes demands placed on attorneys and judges by sanctions-related motions for reconsideration and objections to or appeals from magistrate judges' recommendations and orders. Accordingly, the figures in the first and second sections exclude motions for reconsideration and objections to or appeals from magistrate judges' recommendations and orders.

Pre-ruling activity. The number of pleadings filed and the number of hearings held regarding Rule 11 sanctions provide indirect measures of the demands placed on attorneys and judges. Information about pleadings and hearings are also relevant to the Advisory Committee's concerns about procedural fairness. The Advisory Committee noted that "[s]ome observers have regarded the procedures employed in sanctions matters to be deficient" and that "the failure to provide a formal structure to the proceeding may have resulted in dispositions of sanctions issues that have been too summary."

The number of Rule 11 motions/orders that led to the filing of opposition papers is shown in Table 4. In all districts, opposition papers were filed in response to a majority of the motions/orders. None of the five districts had a local rule stating that a party need not respond to a Rule 11 motion unless directed to do so by the court.

Table 4
Number of Rule 11 motions/orders to which papers were filed in opposition

	D. Ariz.	D. D.C.	N.D. Ga.	E.D. Mich.	W.D. Tex.
Number of Rule 11 motions/orders to which papers were filed in opposition	166	165	143	175	205
As percentage of all Rule 11 motions/orders	69%	74%	68%	72%	65%

Table 5 shows the number of sua sponte orders issued as a percentage of the number of Rule 11 motions/orders, and Table 6 shows the number of show cause orders issued when judges were acting sua sponte. In Arizona, the target of the sua sponte order was a prisoner in all ten instances in which a show cause order was not issued; in Western Texas, the target was a prisoner in four such instances and a pro se party in another such instance; and in Northern Georgia, the target was a pro se party in all four instances when a show cause order was not issued. All the other sua sponte orders for which there was no show cause order involved represented parties.

Table 5
Number of Rule 11 sua sponte orders

	D. Ariz.	D. D.C.	N.D. Ga.	E.D. Mich.	W.D. Tex.
Number of Rule 11 sua sponte orders	18	7	13	6	23
As percentage of all Rule 11 motions/orders	7%	3%	6%	2%	7%

Table 6
Number of show cause orders

	D. Ariz.	D. D.C.	N.D. Ga.	E.D. Mich.	W.D. Tex.
Number of show cause orders	8	6	9	2	8
As percentage of Rule 11 sua sponte orders	44%	86%	69%	33%	35%

Table 7 shows the number of hearings that were held on Rule 11 issues. Because some hearings involved more than one Rule 11 motion/order, the number of motions/orders that were the subject of a hearing are also presented. A larger percentage of the motions in Arizona and Eastern Michigan were the subject of a hearing, compared with the District of Columbia, Northern Georgia, and Western Texas. Except in Western Texas, few of the hearings were evidentiary (see Table 8).

Table 7
Hearings held on Rule 11 motions/orders

	D. Ariz.	D. D.C.	N.D. Ga.	E.D. Mich.	W.D. Tex.
Number of hearings held on Rule 11 motions/orders	83	15	24	96	32
Number of Rule 11 motions/orders heard	96	17	27	110	35
as percentage of all Rule 11 motions/orders	40%	10%	13%	48%	12%

Table 8
Number of evidentiary hearings held on Rule 11 motions/orders

	D. Ariz.	D. D.C.	N.D. Ga.	E.D. Mich.	W.D. Tex.
Number of evidentiary hearings	1	1	2	2	12
As percentage of total number of hearings on Rule 11	1%	7%	8%	2%	38%

Activity associated with rulings. This section describes the outcome of the Rule 11 motions/orders. Most of the information is also depicted in Figure 1 in the individual district reports.

Table 9 shows the number of motions/orders for which there was a ruling, the number of motions/orders that were not ruled on although the underlying issue had been resolved or the case had terminated, and the number of pending motions/orders. Very few of the motions in Arizona and Northern Georgia were pending at the time of data collection, compared with between 15% and 18% of the motions in the other three districts.

Table 9
Outcome of Rule 11 motions/orders

	D. Ariz.	D. D.C.	N.D. Ga.	E.D. Mich.	W.D. Tex.
Number of Rule 11 motions/orders with a ruling	168	109	167	134	191
As percentage of total Rule 11 motions/orders	70%	48%	79%	53%	58%
Number of Rule 11 motions/orders resolved with no ruling	66	82	33	80	81
As percentage of total Rule 11 motions/orders	27%	36%	15%	32%	24%
Number of pending Rule 11 motions/orders	7	35	12	39	59
As percentage of total Rule 11 motions/orders	3%	16%	6%	15%	18%

We next present information about the motions/orders for which there was a ruling. For the districts with a substantial number of pending motions, this information is representative of rulings on Rule 11 motions only to the extent that the pending motions are not different in important ways from the non-pending motions.

The number of memorandum opinions and the lengths of those opinions provide other indirect measures of the impact of Rule 11 on judicial time. As seen in Table 10, rulings were frequently expressed in the form of memorandum opinions in all five districts. Because the opinions sometimes addressed more than one sanctions motion/order, the table presents the number of motions/orders that were the subject of an opinion as well as the number of opinions written. Table 11 shows the average number of pages devoted to Rule 11 in the opinions and the total number of opinion pages on Rule 11 issues.

Table 10
Memorandum opinions addressing Rule 11 issues

	D. Ariz.	D. D.C.	N.D. Ga.	E.D. Mich.	W.D. Tex.
Number of opinions addressing Rule 11 issues	95	56	126	75	104
Number of Rule 11 motions/orders resolved in those opinions	110	63	142	86	122
As percentage of all Rule 11 motions/orders that were ruled on	65%	58%	85%	64%	64%

Table 11
Characteristics of the memorandum opinions

	D. Ariz.	D. D.C.	N.D. Ga.	E.D. Mich.	W.D. Tex.
Average number of pages devoted to Rule 11 in opinions	1.2	2.5	2.1	1.7	1.9
Total number of opinion pages devoted to Rule 11	109	137	260	120	201

The Advisory Committee expressed concern about whether the nature and severity of sanctions are appropriate to achieve their desired deterrent effect. The Committee also noted in this context "the practice of some courts to favor the use of non-financial sanctions where those might be effective to deter misconduct." Therefore, we documented the number of rulings that imposed sanctions, the number and dollar amount of monetary sanctions awarded, and the number and kind of non-financial sanctions awarded (see Tables 12, 13, 14, and 15. A listing of all monetary and non-monetary awards are included in the appendix to each district report.

The overwhelming majority of orders imposing sanctions included monetary fees payable to the opposing party, with the median amount awarded ranging from $1,000 in the Eastern District of Michigan to $3,776 in the District of Columbia.[5] Very few orders imposing sanctions included a fine payable to the court. Indeed, in two districts no such fines were imposed. Most of the non-mon-

5. In each district, the median is the preferred measure of central tendency because the mean is inflated by one or two extraordinarily large awards.

etary sanctions were either (1) reprimands, admonitions, or warnings or (2) prohibitions against or conditions on future filings. Except in the District of Arizona, non-monetary sanctions often supplemented rather than supplanted monetary sanctions. In Arizona, all of the non-monetary sanctions were imposed against pro se prisoner plaintiffs.

Table 12
Number of Rule 11 sanctions imposed

	D. Ariz.	D. D.C.	N.D. Ga.	E.D. Mich.	W.D. Tex.
Number of rulings that imposed sanctions	44	22	42	41	56
As percentage of all rulings on Rule 11 motions/orders	26%	20%	25%	31%	29%

Table 13
Number and type of sanctions imposed

	D. Ariz.	D. D.C.	N.D. Ga.	E.D. Mich.	W.D. Tex.
Number of rulings that awarded fees to opposing party	35	19	38	38	39
As percentage of rulings that imposed sanctions	80%	86%	90%	93%	70%
Number of rulings that imposed fines payable to the court	0	0	3	5	10
As percentage of rulings that imposed sanctions	0%	0%	7%	12%	18%
Number of rulings that imposed non-monetary sanctions	10	6	8	5	21
As percentage of rulings that imposed sanctions	23%	23%	19%	12%	38%

Table 14
Amount of fees awarded to opposing party

	D. Ariz.	D. D.C.	N.D. Ga.	E.D. Mich.	W.D. Tex.
Range	$150–$33,904	$500–$50,000	$100–$50,000	$27–$26,335	$10–$19,552
Median	$2,750	$3,776	$1,601	$1,000	$1,542
Mean (Std. Dev.)	$5,618 ($7,513)	$6,197 ($12,326)	$4,731 ($9,241)	$2,091 ($4,673)	$2,635 ($3,791)

Table 15
Characteristics of non-monetary sanctions

	D. Ariz.	D. D.C.	N.D. Ga.	E.D. Mich.	W.D. Tex.
Reprimand, admonition, or warning	1	–	2	–	8
Prohibition against or conditions on future filings	9	–	4	5	6
Dismissal of complaint, or striking parts thereof; striking of other documents	–	1	1	–	4
Disciplinary proceedings and subsequent suspension from practice of law	–	–	1	–	–
Continuing legal education	–	–	–	–	2
Production of documents and appearance for deposition; preclusion of testimony	–	2	–	–	–
Other	–	2	–	–	1

Post-ruling activity. A notable amount of post-ruling activity occurred in the five districts. Table 16 shows the number of motions seeking reconsideration of judicial sanctions orders and the outcome of those motions. Table 17 provides similar information for orders and recommendations by magistrate judges.[6] De-

6. These figures include only situations in which a party appealed or objected to a magistrate judge's order or recommendation or in which a judge sua sponte decided to alter a magistrate judge's finding. If a motion for reconsideration or an appeal/objection was not ruled on and the case was not pending, the original sanctions decision was treated as affirmed.

tails about the number of opposition papers, hearings, and memorandum opinions related to post-ruling activity are set forth in the reports for each district.

Judges reversed themselves only three times on reconsideration. The imposition of sanctions was reversed once in Arizona and once in Eastern Michigan. The denial of sanctions was reversed once in Northern Georgia. Only one ruling by a magistrate judge was reversed—the sanctions imposed in this ruling were set aside.

Table 18 shows the number and disposition of sanctions rulings that were appealed. Note that many of the appeals were still pending at the time of data collection. In addition, some of the rulings on Rule 11 were in pending cases; these rulings may be appealed after the cases terminate. Orders imposing sanctions were reversed four times on appeal (one order from the District of Columbia, two orders from Northern Georgia, and one order from Eastern Michigan). No orders that denied sanctions were reversed on appeal.

Table 16
Judge orders: reconsiderations

	D. Ariz.	D. D.C.	N.D. Ga.	E.D. Mich.	W.D. Tex.
Affirmed imposition of sanctions	8	0	13	4	8
Reversed imposition of sanctions	1	0	0	1	0
Affirmed denial of sanctions	3	0	2	4	3
Reversed denial of sanctions	0	0	1	0	0
Affirmed in part/reversed in part	0	0	0	0	1
Modified type or amount of sanctions	1	0	2	1	0
Pending	0	1	0	0	1
Total	13	1	18	10	13

Table 17
Orders and recommendations by magistrate judges: appeals and objections

	D. Ariz.	D. D.C.	N.D. Ga.	E.D. Mich.	W.D. Tex.
Affirmed imposition of sanctions	0	0	1	0	4
Reversed imposition of sanctions	0	0	0	1	0
Affirmed denial of sanctions	2	0	0	3	1
Reversed denial of sanctions	0	0	0	0	0
Modified type or amount of sanctions	0	0	1	1	2
Pending	1	0	0	0	0
Total	3	0	2	5	7

Table 18
Appellate court decisions

	D. Ariz.	D. D.C.	N.D. Ga.	E.D. Mich.	W.D. Tex.
Affirmed imposition of sanctions	2	0	3	1	2
Reversed imposition of sanctions	0	1	2	1	0
Affirmed denial of sanctions	1	2	1	3	3
Reversed denial of sanctions	0	0	0	0	0
Appeal dismissed	3	5	6	4	2
Other	0	2	1	0	1
Pending	10	6	10	11	2
Total	16	16	23	20	10

Has Rule 11 activity been disproportionately concentrated in specific types of cases or disproportionately focused on particular types of litigants?

The Call for Comments asks, "Is there any evidence that the sanctions rules have been administered unfairly to any particular group of lawyers or parties?" and "Do sanctions provisions bear, for example, more heavily on plaintiffs' lawyers than defendants' lawyers?" In response, we provide information about the type of activity targeted by the Rule 11 motions/orders. We first present information about the pleadings or papers that were the primary targets of Rule 11 motions/orders. Next, we present information about the targeted person, examining in particular whether plaintiffs are subject to motions for sanctions more frequently than defendants. Finally, we present information about the nature of suits engendering Rule 11 activity, focusing on whether the level of sanctioning activity in civil rights cases is relatively higher than in other types of cases.

The reader should bear in mind the limitations inherent in using recent cases to study current issues in litigation. The significant number of pending motions in the District of Columbia (thirty-five), Eastern Michigan (thirty-nine), and Western Texas (fifty-nine) skews the analysis in the direction of Rule 11 activity occurring early in litigation. In addition, we encourage the reader to refer to the individual district reports for the details of the analyses underlying the conclusions set forth below.

Targeted pleadings and papers

The complaint was the most frequently targeted pleading, being the primary target of 40% of the motions/orders in Arizona, 39% in the District of Columbia, 37% in Northern Georgia, 54% in Eastern Michigan, and 34% in Western Texas. The higher percentage in the Eastern District of Michigan should be interpreted cautiously because that sample consisted of younger cases than the other samples did. In contrast, answers were targeted relatively rarely, by only 4% of the motions/orders in Arizona, 4% in the District of Columbia, 4% in Northern Georgia, 5% in Eastern Michigan, and 4% in Western Texas.

Given the high number of motions targeting the complaint, it is to be expected that a relatively high number of the orders imposing sanctions would relate to the complaint. In all of the districts except Eastern Michigan, this expectation was exceeded: More of the orders imposing sanctions targeted complaints than would be expected even given the higher proportion of motions that targeted the complaint. In Arizona, Northern Georgia, and Western Texas, the percentage of rulings imposing sanctions pursuant to motions that targeted the complaint was higher than the percentage of rulings imposing sanctions pursuant to motions

that targeted all other pleadings or papers; in the District of Columbia, the percentage was slightly higher.[7]

Targeted side of the litigation

In all districts, Rule 11 motions targeted the plaintiff slightly or substantially more frequently than the defendant (see Table 19). In all districts, orders that imposed sanctions also targeted the plaintiff slightly or substantially more frequently than the defendant (see Table 20). Given that more of the motions targeted the plaintiff, it is to be expected that more of the orders that imposed sanctions would also target the plaintiff. In all districts, however, it appears that the difference in the number of motions filed against the plaintiff and defendant do not fully account for the difference in the number of sanctions imposed. There appears to be a disproportionately higher rate of imposition against plaintiffs in Arizona, the District of Columbia, Northern Georgia, and Western Texas and a slightly higher imposition rate in Eastern Michigan.[8]

Table 19
Rule 11 motions/orders: targeted "side" of litigation

	D. Ariz.	D. D.C.	N.D. Ga.	E.D. Mich.	W.D. Tex.
Number of motions/orders that targeted:					
Plaintiff's side	134	133	125	182	173
Defendant's side	97	87	74	64	145
Other	10	6	14	7	13
Total	241	226	213	253	331
As percentage of all motions/orders					
Plaintiff's side	56%	59%	59%	72%	52%
Defendant's side	40%	39%	35%	25%	44%
Other	4%	3%	7%	3%	4%

7. We used the z-statistic to make these comparisons. The z-statistic reflects the number of standard errors by which two percentages differ. We considered a z-statistic of at least 1.65 to reflect a difference between two percentages and a z-statistic between 1 and 1.65 to reflect a slight difference. A difference of at least 1.65 is significant at the traditional significance level of $p \leq .05$ (one-tailed); differences between 1.00 and 1.65 only approach traditional significance ($p \leq .16$, one-tailed). We took this approach in describing the results so that one could better see the relative positions of the percentages.

8. See note 7 above.

Table 20
Orders imposing Rule 11 sanctions: targeted "side" of litigation

	D. Ariz.	D. D.C.	N.D. Ga.	E.D. Mich.	W.D. Tex.
Number of rulings imposing sanctions against:					
Plaintiff's side	35	17	34	33	34
Defendant's side	3	5	4	8	21
Other	6	0	4	0	1
Total	44	22	42	41	56
As percentage of all rulings imposing sanctions					
Plaintiff's side	80%	77%	81%	80%	61%
Defendant's side	7%	23%	9%	20%	38%
Other	14%	0%	9%	0%	2%

Nature of suit

Motions activity. For the analyses involving nature of suit, we combined similar natures of suit into twelve groups following the format used on the civil cover sheet (JS 44). Table 9 in the individual district reports shows the number of filings during the study period for each of these nature of suit groups. Table 10 in the district reports shows the number of cases in each nature of suit group that involved Rule 11 activity. Because some cases involve more than one motion, the number of motions in each nature of suit group is also shown. Table 11 in the district reports shows, for each of twelve nature of suit groups, the incidence of Rule 11 activity as estimated by a life-table analysis. The incidence of Rule 11 activity in contracts cases was estimated twice, the second time excluding cases classified as recovery of overpayment and enforcement of judgment, the Medicare Act, recovery of defaulted student loans, and recovery of overpayment of veterans benefits. The second estimate is the one used below in making comparisons between natures of suit.

Our analysis of Rule 11 motion activity addressed the following questions for each district: (1) In which natures of suit were most of the motions/orders concentrated? (2) How does the incidence of Rule 11 activity, as estimated by the life-table analyses, compare between the natures of suit in which most of the motions were concentrated? Because the incidence of Rule 11 activity in civil rights cases was often higher than that for other natures of suit, we addressed the following additional questions: (1) Are *plaintiffs* disproportionately targeted by Rule 11

motions in civil rights cases, relative to other types of cases? (2) Are *represented parties* disproportionately targeted by Rule 11 motions in civil rights cases, relative to other types of cases? (3) Are *represented plaintiffs* disproportionately targeted by Rule 11 motions in civil rights cases, relative to other types of cases? These comparisons were made between the natures of suit in which the motions were concentrated (excluding prisoner petitions).[9] Below we summarize the findings for each district.

ARIZONA

Most of the motions were concentrated in contract (21%), torts (10%), civil rights (14%), prisoner petitions (21%), and other statutes (17%).

The incidence of Rule 11 activity is higher for other statutes (5.7) and civil rights (6.9) than for the other natures of suit in which the motions were concentrated [contract (3.4), torts (2.3), and prisoner petitions (1.3)].

The percentage of Rule 11 motions targeting plaintiffs in civil rights was comparable to that in contracts, torts, and other statutes.

The percentage of motions targeting represented parties in civil rights was lower than in contract and slightly lower than in torts and other statutes.

The percentage of motions targeting represented plaintiffs in civil rights was lower than in contract and slightly lower than in torts and other statutes.

DISTRICT OF COLUMBIA

Most of the motions were concentrated in contract (28%), torts (19%), civil rights (21%), and other statutes (14%).

The incidence of Rule 11 activity for civil rights (3.6) is comparable to that for contract (3.5), but is higher than that for the other natures of suit in which the motions were concentrated [torts (1.9) and other statutes (1.5)].

The percentage of Rule 11 motions targeting plaintiffs in civil rights was comparable to that in other statutes and contract and lower than that in torts.

The percentage of motions targeting represented parties in civil rights was lower than in torts and other statutes and slightly lower than in contracts.

The percentage of motions targeting represented plaintiffs in civil rights was similar to that in other statutes and lower than that in contract and torts.

NORTHERN DISTRICT OF GEORGIA

Most of the motions were concentrated in contract (26%), torts (15%), and civil rights (34%).

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9. These three comparisons were made using the z-statistic. See note 7 *supra*. We compare the percentages of Rule 11 motions targeting represented parties and represented plaintiffs. Observed differences may reflect differences in the number of pro se versus represented parties across natures of suit rather than differences in underlying Rule 11 activity. Our data are insufficient to address this possibility.

The incidence of Rule 11 activity for civil rights (5.6) is higher than for the other natures of suit in which the motions were concentrated [contract (2.6) and torts (2.0)].

The percentage of Rule 11 motions targeting plaintiffs in civil rights was comparable to that in contract and torts.

The percentage of motions targeting represented parties in civil rights was lower than in contract and torts.

The percentage of motions targeting represented plaintiffs in civil rights was slightly lower than in contract and torts.

EASTERN DISTRICT OF MICHIGAN

Most of the motions were concentrated in contract (21%), torts (9%), civil rights (22%), labor (20%), and other statutes (14%).

The incidence of Rule 11 activity is higher for labor (4.5), other statutes (5.4), and civil rights (6.3) than for the other natures of suit in which the motions were concentrated [contract (2.4) and torts (1.4)].

The percentage of Rule 11 motions targeting plaintiffs in civil rights cases was in the middle of the range compared with the other types of cases where motions were concentrated.

The percentage of motions targeting represented parties was lower in civil rights cases than in the other types of cases where motions were concentrated.

The percentage of motions targeting represented plaintiffs in civil rights cases was in the low range relative to other types of cases in which motions were concentrated.

WESTERN DISTRICT OF TEXAS

Most of the motions were concentrated in contract (23%), torts (12%), civil rights (26%), prisoner petitions (12%), and other statutes (15%).

The incidence of Rule 11 activity for civil rights (6.7) is higher than for the other natures of suit in which the motions were concentrated [contract (3.4), torts (3.5), prisoner petitions (2.7), and other statutes (4.7)].

The percentage of Rule 11 motions targeting plaintiffs was higher in civil rights than in contract, torts, and other statutes.

The percentage of motions targeting represented parties in civil rights was lower than in contract and torts and slightly lower than in other statutes.

The percentage of motions targeting represented plaintiffs in civil rights was higher than in contract and other statutes and slightly higher than in torts.

Orders imposing sanctions. Our analysis of the orders imposing sanctions addressed the following questions: (1) Compared with other types of cases in which the motions were concentrated (excluding prisoner petitions), was the court more likely to grant motions in civil rights cases? Stated differently, is the imposition

rate higher in civil rights cases compared with the other types of cases?[10] (2) In which natures of suit were the orders imposing sanctions concentrated? Perhaps the best way to address the first question would be to examine, across natures of suit, the number of orders imposing sanctions in relation to the number of motions filed. Because some of the motions in our study were pending, we instead examined the number of orders imposing sanctions in relation to the number of orders issued. The findings for the five districts are summarized below. Table 12 in the district reports show the outcomes of the motions/orders by nature of suit. Table 13 shows for each nature of suit, the outcomes of the motions/orders that targeted represented parties.

ARIZONA

Most of the motions were concentrated in contract, torts, civil rights, and other statutes. The imposition rate was comparable for civil rights, contract, and other statutes, but was higher for torts.

Orders that imposed sanctions were concentrated in contract (19%), torts (24%), civil rights (14%), prisoner petitions (14%), and other statutes (14%).

DISTRICT OF COLUMBIA

Most of the motions were concentrated in contract, torts, civil rights, and other statutes. The imposition rate in civil rights was in the middle range, compared with contract, torts, and other statutes..

Orders that imposed sanctions were concentrated in contract (14%), torts (55%), civil rights (23%), and labor (9%).

NORTHERN DISTRICT OF GEORGIA

Most of the motions were concentrated in contract, torts, and civil rights. The imposition rate was slightly higher for civil rights than for contract and torts. If we consider only rulings on motions that targeted a represented party, however, the imposition rates for contract, torts, and civil rights are comparable.

Orders that imposed sanctions were concentrated in contract (14%), torts (14%), civil rights (45%), and other statutes (10%).

EASTERN DISTRICT OF MICHIGAN

Most of the motions were concentrated in contract , torts, civil rights, labor, and other statutes. Considering only contract, civil rights, and labor, the imposition rate was comparable for civil rights and contract, and lower for labor. Too few orders were issued in torts and other statutes to make meaningful comparisons for these categories.

Orders that imposed sanctions were concentrated in contract (24%), civil rights (29%), labor (12%), and other statutes (12%).

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10. We made these comparisons with the z-statistic. See note 7 *supra*.

Most of the motions were concentrated in contract, torts, civil rights, and other statutes. The percentage of orders imposing sanctions was fairly comparable across these natures of suit.

Orders that imposed sanctions were concentrated in contract (21%), torts (11%), civil rights (27%), prisoner petitions (16%), and other statutes (16%).

Are there variations between judges in their application of Rule 11?

The Call for Comments raises the questions of whether "the rule leaves more discretion with the district courts than is necessary or desirable, or perhaps tolerable" and whether "the existing law of sanctions [is] too determinate or too indeterminate." [11] The Committee continues, "[o]ne measure of indeterminacy would be a high degree of difference amongst the individual district judges in the frequency of application of sanctions." In this section we examine that question directly, by looking at the application of Rule 11 by individual judges in the five districts.

Table 14 in each of the district reports shows the number and disposition of motions/orders before each judge. We have grouped as "other judges" senior judges, visiting judges, and newly appointed judges because their experience would likely be different from the experience of judges who were on active status for the entire period of the study. For purposes of this analysis, we excluded motions/orders handled by magistrate judges, as well as motions for reconsideration of judges' orders and appeals or objections to orders or recommendations by magistrate judges.

The first column of figures in Table 14 shows the number and percentage of motions/orders before each judge or group of judges. The second, third, and fourth columns show the outcome of the motions/orders before each judge or group of judges; the percentages are of the number of motions/orders before each judge. We later refer to all non-pending motions collectively as resolved motions. The fifth column shows, for each judge, the number of orders imposing sanctions; the percentages are of the number of motions/orders ruled on by each judge.

For each district, we conducted several statistical analyses to examine the sanctioning practices of the judges who were on active status during the entire study period.[12] These analyses revealed a similar pattern of results for Arizona,

11. *Id.* at 6.

12. The category of "other judges" was excluded from these analyses. A statistical package designed to analyze sparse contingency tables was used to conduct the analyses. A relationship was

Northern Georgia, and Eastern Michigan, and a second pattern for the District of Columbia and Western Texas.

In Arizona, Northern Georgia, and Eastern Michigan, the analyses showed a significant variation in the number of motions before each judge (column 1). In Arizona, for example, the number of motions ranged from 8 motions before Judge 5 to 32 motions before Judge 6. The percentage of motions that were pending (column 2) versus resolved (columns 3 and 4 combined) did not significantly differ between judges. Furthermore, considering only resolved motions, the percentage of motions not ruled on (column 3) versus ruled on (column 4) did not significantly differ between judges. Considering only motions that were ruled on, however, the percentage of rulings imposing sanctions (column 5) significantly varied between judges. In Arizona, for example, none of Judge 8's rulings imposed sanctions and only 11% of Judge 4's rulings did so, whereas 57% of Judge 1's rulings imposed sanctions.

In the District of Columbia and Western Texas, the analyses showed a significant variation in the number of motions before each judge (column 1). In the District of Columbia, for example, the number of motions ranged from 0 motions before Judge 14 and only seven before Judge 4 to 25 motions before Judge 5. In addition, the percentage of motions that were pending (column 2) versus resolved (columns 3 and 4 combined) significantly differed between judges. In the District of Columbia, for example, none of the motions before Judges 1, 4, 9, and 11 were pending whereas 50% of Judge 13's motions were pending. Considering only resolved motions, however, the percentage of motions not ruled on (column 3) versus ruled on (column 4) did not significantly differ between judges. Furthermore, considering only motions that were ruled on, the percentage of rulings imposing sanctions (column 5) did not significantly differ between judges.

Variation between judges in their sanctioning practices may reflect more than just judge's differing receptivity to Rule 11. Significant variation in the number of motions before each judge, as was found in all five districts, may exist because the bar accurately or inaccurately perceives differences between the judges in their receptivity to Rule 11 motions, and acts accordingly. Judges may differ in the amount of sanctions activity they delegate to the magistrate judges working with them. Some judges may diminish the incentive to file a Rule 11 motion by early and active case management—if a judge, for example, dismisses a groundless complaint at the Rule 16 conference, counsel may decide not to pursue a Rule 11 motion because the cost could exceed any potential recovery. We could posit similar explanations to explain the other significant variations that were revealed in the analyses. Our data, however, are ir sufficient to examine the causes of the variations found.

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considered significant when the probability associated with the corresponding Fisher's Exact statistic was less than .05. The Fisher's Exact test examines whether there is a significant relationship between two categorical variables.

Another measure of indeterminacy is the degree to which judges and magistrate judges agree on the imposition or denial of sanctions. As seen in Tables 17 and 18 in this summary, there appears to be a high level of magistrate-judge agreement and a high level of district judge-circuit judge agreement.

Section 1C
Summary of Rule 11 Sanctions in Civil Rights Cases in Five District Courts

At the request of the Advisory Committee on Civil Rules, the Federal Judicial Center conducted a study of Rule 11 activity in five districts. (Their selection and the period of study is described in Section 1B.) Here we examine all civil rights cases in which sanctions were imposed in those districts. The purpose is to identify the types of cases and arguments that were the subject of sanctions in civil rights cases and enable the Advisory Committee on Civil Rules and other interested parties to assess whether the sanctions imposed in these cases represent a threat to the assertion of good-faith arguments for the extension, modification, or reversal of existing law. The information is also relevant to whether Rule 11 has had a disparate and unwarranted impact on civil rights cases.

Using the classification from the civil cover sheet (JS 44) that plaintiffs file with their complaint, we divided civil rights cases into two groups. One was the catchall category labeled "other civil rights" (Administrative Office Nature of Suit Code 440); the other consisted of employment-related civil rights cases (Administrative Office Nature of Suit Code 442). The civil cover sheet also includes subcategories of civil rights cases labeled as voting (Nature of Suit Code 441), housing/accommodations (Nature of Suit Code 443), and welfare (Nature of Suit Code 444). Rule 11 sanctions were not imposed in any of the latter three categories in any of the five districts during the period covered by the field study.

We also present a more detailed summary for each court and descriptions of the individual cases and the arguments that were the object of sanctions, which can be found in Sections 4A–4E. To address the question of whether Rule 11 sanctions have been imposed in cases involving good-faith arguments for change in the law, we recommend that the reader consult the individual case summaries and make an independent evaluation.

Reasons for sanctions

Tables 1 and 2 present the reasons for sanctions in counseled and pro se cases, respectively. Inadequate legal inquiry is the predominant reason in both contexts. An inadequate factual inquiry was infrequently cited as the reason for sanctions in counseled cases and almost never cited as the sole reason for sanctions against pro se litigants. In a substantial number of cases, however, the court found an inadequate legal inquiry combined with an inadequate factual inquiry or an improper purpose. These data suggest that proposals to restrict Rule 11 to factual inquiries would effect a substantial change in its application to civil rights cases.

Table 1
Reasons for sanctions in counseled civil rights cases

	D. Ariz.	D. D.C.	N.D. Ga.	E.D. Mich.	W.D. Tex.
(a) Inadequate legal inquiry	3	2	6	4	5
(b) Inadequate fact inquiry	0	1	1	2	2
(c) Both (a) and (b)	0	0	1	1	2
(d) Improper purpose	0	0	0	0	2
(e) Violation of court order	0	1	0	0	1
Total	3	4	8	7	12

Note: In one case in Western Texas, the finding of improper purpose was combined with a finding of an inadequate legal or factual inquiry.

Table 2
Reasons for sanctions in pro se civil rights cases

	D. Ariz.	D. D.C.	N.D. Ga.	E.D. Mich.	W.D. Tex.
(a) Inadequate legal inquiry	—	2	4	—	1
(b) Inadequate fact inquiry	—	—	—	1	—
(c) Both (a) and (b)	1	—	6	3	2
(d) Improper purpose	1	1	1	—	1
(e) Warning	1	—	—	—	—
Total	3	3	11	4	4

Note: Each of the findings of improper purpose was combined with a finding of an inadequate legal or factual inquiry.

Incidence of civil rights cases

The total number of civil rights cases filed in the five districts during the period of the study and their percentage of the total filings in those district was: Arizona, 550 (5%); District of Columbia, 1,311 (11%); Northern Georgia, 1,421 (12%); Eastern Michigan, 1,021 (9%), and Western Texas, 1,094 (11%). Table 3 shows, for each district, the number of Rule 11 motions/orders in civil rights cases and their dispositions. Some of the civil rights cases were pending when we examined the court files. Information about those cases is necessarily incomplete. A number of cases had no rulings on the sanctions motion even though the underlying issue had been resolved. Table 3 also shows, in the last row, the inci-

dence of Rule 11 activity for civil rights cases in each district, as estimated through life-table analyses. (Life-table analyses are explained in Section 1-B.)

Table 3
Rule 11 activity in civil rights cases

	D. Ariz.	D. D.C.	N.D. Ga.	E.D. Mich.	W.D. Tex.
Number of motions/orders	33	47	73	56	86
Number of rulings on motions/orders	22	20	59	29	49
Number of motions/orders in which sanctions were imposed:					
in Nature of Suit Code 440 cases	4	3	13	11	10
in Nature of Suit Code 442 cases	2	2	6	1	5
Total imposed (percentage of rulings in civil rights cases)	6 (27%)	5 (25%)	19 (32%)	12 (41%)	15 (31%)
Estimated incidence of motions/orders within (___ months)	6.9 (39 mos.)	3.6 (38 mos.)	5.6 (39 mos.)	6.3 (22 mos.)	6.7 (39 mos.)

Note: Nature of Suit Code 440 cases are "other civil rights" cases and Nature of Suit Code 442 cases are employment discrimination cases.

In one case each in the Northern District of Georgia, the Eastern District of Michigan, and the Western District of Texas, sanctions were imposed twice against the same targeted party in response to separate motions. Thus, the number of cases summarized in the report is three fewer than the total number of sanctions imposed as shown in Table 3. The remaining analyses in this summary are based on the total number of cases, not the number of motions/orders.

Representation by counsel

A substantial number of the orders imposing sanctions in civil rights cases sanctioned pro se litigants. Table 4 compares the number and percentage of cases in which pro se litigants were the targets of sanctions activity in each of the five districts. In the Districts of Arizona, D.C., and Northern Georgia, about half of the recipients of sanctions were pro se litigants. In the Eastern District of Michigan, a little more than one third of the sanctions were against pro se litigants, and in the Western District of Texas about a fifth of the sanctions were against pro se litigants.

Table 4
Representation by counsel in civil rights cases in which Rule 11 sanctions were imposed

	D. Ariz.	D. D.C.	N.D. Ga.	E.D. Mich.	W.D. Tex.
Represented sanctions recipients (percentage represented)	3 (50%)	3 (60%)	8 (45%)	7 (64%)	11 (79%)
Pro se sanctions recipients (percentage pro se)	3 (50%)	2 (40%)	10 (55%)	4 (36%)	3 (21%)
Total	6	5	18	11	14

"Side" of the litigation

In all five districts, judges imposed sanctions more frequently on the plaintiff's side than on the defendant's side. In the District of Arizona, four of six cases involved sanctions imposed on the plaintiffs' side; in D.C., four of five cases; in Northern Georgia, sixteen of eighteen; in Eastern Michigan, ten of eleven; and in Western Texas, twelve of fifteen. One reason that plaintiffs are more frequently sanctioned in civil rights cases is that a sizeable number of pro se litigants were sanctioned and all but one of them were plaintiffs (the exception was in Western Texas).

Impact on represented plaintiffs

A central issue in the debate about Rule 11 centers on the extent to which it chills the creative advocacy of lawyers for plaintiffs in civil rights litigation. How frequently are sanctions imposed on represented plaintiffs? In Arizona, sanctions were imposed against represented plaintiffs in one of six civil rights cases (17%); in D.C., two of five (40%); in Northern Georgia, seven of eighteen (39%); in Eastern Michigan, six of eleven (55%); and in Western Texas, nine of fourteen (64%).

The summaries for each district and the case summaries, both presented in Sections 4A–4E below, present information about the stated reasons for sanctions and other factors that may have affected the imposition of sanctions. The conclusion of the researcher who read the files and compiled the summaries (Willging) is that there were few, if any, cases in which the argument that was the subject of sanctions could reasonably be construed as an argument for the good-faith extension or modification of the law. Readers are invited to review the summaries and draw their own conclusions. In large measure, the story of whether the sanc-

tions imposed in these cases should be seen as chilling creative advocacy lies there.

Attorney versus client

When a sanctions order targets a represented party's side of the litigation, the sanctions were distributed between the party and the lawyer as shown in Table 5. In only one case in one of the five jurisdictions was a represented party specified to be the sole focus of a sanctions order. On the other hand, attorneys were frequently singled out as the object of a sanctions order. In all but one jurisdiction (Arizona), the attorney was specified as the object in a substantial number of the orders.

Table 5
Allocation of Rule 11 sanctions among parties and attorneys when sanctions imposed on represented target in civil rights cases

	D. Ariz.	D. D.C.	N.D. Ga.	E.D. Mich.	W.D. Tex.
Plaintiff	—	—	—	1	—
Plaintiff's attorney	—	1	5	2	6
Plaintiff and attorney (including unspecified)	1	1	2	3	3
Subtotal—plaintiff	1	2	7	6	9
Defendant	0	0	0	0	0
Defendant's attorney	1	0	0	1	1
Defendant and attorney (including unspecified)	1	1	1	—	1
Subtotal—defendant	2	1	1	1	2
Total	3	3	8	7	11

Form of awards

Generally, judges ordered sanctions as monetary awards to a party. Table 6 shows the overall distribution. Judges imposed non-monetary awards against counsel in three cases:

- requiring that attorney complete twenty-four hours of continuing legal education in trial practice and procedure and four hours in legal ethics over a two-year period;.
- admonishing counsel for failure to present legal authority in support of a claim; and

- refraining from imposing sanctions, sua sponte, on the moving party for conduct that the court found to be as sanctionable as the targeted party's conduct.

In pro se cases, the courts issued non-monetary orders in five cases in these forms:

- prohibiting further filings on the same issues (two cases);
- striking all of the pleadings;
- dismissing the complaint and awarding fees for multiple failures to comply with discovery procedures; and
- warning plaintiff about Rule 11's requirements and ordering that any assistants certify that they had read Rule 11 and complied with it.

Table 6
Type of sanctions imposed

	D. Ariz.	D. D.C.	N.D. Ga.	E.D. Mich.	W.D. Tex.
Monetary	4	4	17	10	11
Non-monetary	1	1	0	1	0
Both	1	0	1	0	3
Total	6	5	18	11	14

Note: In two cases, the monetary sanction was in the form of a fine, payable to the court in the amounts of $100 and $200, respectively.

Amount of sanctions

Tables 7 and 8 list the amounts of sanctions imposed in counseled and pro se cases, respectively. The numbers are small and generalizations cannot be drawn from them, even in the courts studied. It does appear, however, that in these cases the courts tended to impose lower awards in Nature of Suit Code 442 cases than in Nature of Suit Code 440 cases. For example, no Rule 11 sanctions awards greater than $6,000 were imposed in Nature of Suit Code 442 cases in any district, whereas Nature of Suit Code 440 cases resulted in eight awards above $6,000 (two each in four districts). These data suggest a hypothesis for future research: They may represent a deliberate effort to avoid the over-deterrence of employment discrimination claims.

Table 7
Monetary sanctions in counseled civil rights cases

	D. Ariz.	D. D.C.	N.D. Ga.	E.D. Mich.	W.D. Tex.
Nature of Suit Code 440 cases					
Number of cases	2	0	4	6	6
Amount of sanction	$6,055	—	$496	$350	$100
	$7,219		$1,313	$545	$200
			$15,327	$718	$500
			$18,576	$1,192	$1,583
				$1,353	$6,619
				$3,912	$23,189
Nature of Suit Code 442 cases					
Number of cases	1	1	3	1	4
Amount of sanction	$2,500	$5,000	$300	$680	$71
			$821		$500
			$6,000		$750
					$2,175
Total cases	3	1	7	7	10

Table 8
Monetary sanctions in pro se civil rights cases

	D. Ariz.	D. D.C.	N.D. Ga.	E.D. Mich.	W.D. Tex.
Nature of Suit Code 440 cases					
Number of cases	1	2	7	2	2
Amount of sanction	$500	$500	$1,045	$27	$1,000
		$3,776	$1,615	$3,000	$1,500
			$3,665		
			$4,038		
			$4,405		
			$6,642		
			$7,098		
Nature of Suit Code 442 cases					
Number of cases	1	0	2	0	0
Amount of sanction	$13,035	—	$188	—	—
			$100		
Total cases	2	2	9	2	2

Comparing Tables 7 and 8, we also detect a tendency in three of the courts (Northern Georgia, Eastern Michigan, and Western Texas) to impose sanctions of under $1,000 more frequently in counseled cases than in pro se cases. This tendency runs contrary to our intuition that smaller amounts might be imposed on pro se litigants who often have a limited ability to pay the awards. Our impression from reading the files, however, is that the courts and counsel do not view collection as the issue: There is little or no formal effort to collect sanctions from pro se litigants.

Again, these small numbers merely suggest hypotheses that may warrant further research. Perhaps judges conclude that a larger amount is necessary to deter repetitious filings by pro se litigants and that a lesser amount, combined with an impact on professional reputation, will suffice to deter lawyers.

Section 1D
Summary of Review of Published District and Appellate Court Opinions

At the request of the Advisory Committee on Civil Rules, the Research Division of the Federal Judicial Center examined all federal and district court opinions involving Rule 11 that were published from 1984 through 1989. This portion of the study was designed to supplement the results from the field studies, which are summarized in Sections 1B and 1C. The purpose centered on measuring satellite litigation and identifying Rule 11 procedures. We also attempted, within the limits of the published opinion data, to identify any disproportionate impact of Rule 11.

These data are limited because they are derived solely from published opinions. We do not know how representative the opinions are of all Rule 11 activity, so we caution the reader not to generalize from these data to all Rule 11 activity.

How much satellite litigation is reflected in published opinions at the district and appellate levels?

From 1984 through 1989, 835 opinions addressing Rule 11 issues at the district court level appeared in published reporters. Rule 11 was addressed in 2.3% of all published district court opinions. At the appellate level, 346 published opinions reviewed Rule 11 issues during the same years.

District and appellate opinions followed similar trends during the period of the study. At the district court level, the number of published Rule 11 opinions increased during each of the first four years (1984–1987). The number of opinions appeared to remain relatively stable in 1987 and 1988 and showed a modest decline in 1989. At the appellate level, the number of published Rule 11 opinions grew from 1985 to 1988 and declined for the first time in 1989.

The amount of satellite litigation represented by published opinions appears to be quite modest. As we see below, however, the impact of satellite litigation, as evidenced in published opinions, was not equally distributed among district courts or judges.

How much variation in Rule 11 publications occurs at the district court, appellate court, and individual judge levels?

There was wide variation in the number of Rule 11 opinions published across the districts. The vast majority of districts (seventy-six) produced at least one published Rule 11 decision. Over half of the decisions (59%), however, were pub-

lished by just ten districts. The Southern District of New York (25%) and the Northern District of Illinois (13%) accounted for 38% of all the published Rule 11 opinions.

Circuit courts of appeal showed less disparity in the number of opinions across courts than did the district courts. Each of seven courts produced between four to seven percent of the published Rule 11 opinions. Only 1% of the opinions came from the Federal Circuit and 3% from the D.C. Circuit, while the Seventh Circuit generated 18% of the published Rule 11 opinions and the Ninth Circuit produced 19%.

There was wide variation in publication of Rule 11 district court opinions at the individual judge level. During 1984–1989, a period in which there were 575 authorized judgeships, 334 judges wrote Rule 11 opinions that were published. Fifty percent (166) of those judges wrote one published opinion. Another 23% wrote two published opinions. Ten judges wrote 20% of all published Rule 11 opinions. An average of 1.9 pages per opinion was devoted to Rule 11 issues.

What procedures were involved?

Most Rule 11 activity (90%) arose by motion of a party; the balance came from sua sponte orders. In slightly more than a third of the sua sponte orders, the opinion indicated that a show cause order had been issued.

Judges indicated in the published opinions that they conducted ninety-five hearings involving a total of ninety (10%) of the motions/orders. Evidence on the Rule 11 issue was presented in thirty-five hearings (representing 39% of all motions/orders that were heard and only 4% of all motions/orders).

Judges imposed sanctions in 379 orders, representing 43% of the total motions. Most of these orders (87%) awarded monetary fees to the opposing party. The median award for the period of the study was $3,735. During 1986 to 1989, nine awards exceeded $100,000. Fifty-four orders (14%) imposed non-monetary sanctions, which consisted primarily of reprimands and injunctions limiting future filings. The target of two-thirds of the injunctions were pro se litigants. Judges also issued informal warnings in thirty-seven opinions that did not impose sanctions.

Little post-trial activity was evident at the district court level. Seventy of the published district court decisions in our database were appealed and resolved in published opinions during the study period. The amount of the Rule 11 award by the district court did not appear to affect the likelihood of an appeal, but this observation requires additional data and testing.

Overall, we examined 346 published appellate opinions. Appellate courts affirmed the imposition of sanctions 31% of the time, reversed the imposition 20% of the time, affirmed the denial of sanctions 25% of the time, and reversed the denial of sanctions 6% of the time. In addition, 8% of the cases were remanded to adjust the amount or clarify the grounds for sanctions.

Has Rule 11 activity been disproportionately concentrated in specific types of cases or disproportionately focused on particular types of litigants?

The field study reports (Sections 3 and 4) provide the best available data to address this question. Published opinion data are less reliable because we do not know the criteria by which these cases were selected for publication or the proportion of all cases that they represent. Within these limits, published opinions show that motions and sua sponte orders

- targeted complaints 58% of the time, far more frequently than any other pleading or paper;
- targeted plaintiffs' side of the litigation three times more often than defendants' side (73% of the motions/orders targeted plaintiffs' side; 24% targeted defendants' side);
- were concentrated disproportionately in contracts cases, civil rights cases, an assortment of federal statutory actions, and, to some extent, in labor and property rights (copyright, patent, and trademark) cases.

These motions/orders resulted in the imposition of sanctions with the following characteristics:

- approximately 43% of the motions that targeted the complaint were granted;
- courts imposed sanctions on plaintiffs 46% of the times they were targeted and on defendants 35% of the times they were targeted; and
- courts imposed sanctions for most natures of suit at a rate that centered around 43% of the motions/orders, with two notable exceptions: In civil rights cases the rate was 56% and in labor cases the rate was 30%.

Appeals were concentrated in the same three natures of suit (contracts, civil rights, and miscellaneous federal statutes) as Rule 11 motions/orders at the district court level.

In summary, Rule 11 activity in published opinions represents a relatively steady and modest amount of litigation in the past six years. Concentration of this activity in relatively few districts, however, may produce significant amounts of satellite litigation for judges, litigants, and attorneys in those districts and circuits.

Published opinions do tend to show disparate levels of Rule 11 activity in several natures of suit. We do not know, however, whether these differences reflect differences in publication policies, filing rate, or underlying Rule 11 activity. One can best analyze the factors affecting the differential application of Rule 11 by looking at both published and unpublished decisions, as we have done in the field study at Sections 3A–3E and 4A–4E.

Section 2A
Analysis of Judges' Responses to a Questionnaire on Rule 11

At the request of the Advisory Committee on Civil Rules, a questionnaire was sent to all active and senior United States district judges in November 1990 by the Research Division of the Federal Judicial Center. The questionnaire was accompanied by a cover letter from Chief Judge Sam C. Pointer, Jr. (N.D. Ala.), chairman of the Advisory Committee.

Of the 751 judges to whom the questionnaire was sent, 583 (78%) responded. Nineteen responses contained only comments or an explanation as to why the judge could not complete the questionnaire. These responses are not included in the analysis. This report is based on the 564 judges who provided completed questionnaires.

The purpose of the questionnaire was to obtain a systematic report of the judges' experiences with amended Rule 11 and to obtain their overall assessment of the rule's effectiveness. We limited the scope of the survey to cases in which both sides are represented by counsel. This permitted us to focus on the primary issues in the national debate about Rule 11 and to keep the survey to a reasonable length. It should be kept in mind that, unlike the field study of Rule 11, reported in Section 3, the judges' reports of Rule 11 activity on their dockets are based on their estimates and not on reference to records or documents.

This report discusses the questionnaire responses in relation to the issues formulated by the Advisory Committee on Civil Rules in its Call for Comments, which was issued by the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States.[1]

Please note that the percentages given in the text and tables of this section differ slightly from the percentages presented in the full questionnaire (see Section 2B). Percentages given here do not include non-respondents, whereas percentages given in Section 2B do. Note, too, that throughout this section, "non-respondents" includes those who selected "can't say" as well as those who did not answer the question.

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1. Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, Call for Written Comments on Rule 11 of the Federal Rules of Civil Procedure and Related Rules (August 1990). The Call for Comments has been published at 59 U.S.L.W. 2117 and 131 F.R.D. 344.

The main purpose of this section is to describe the judges' responses to each of the questions. However, we also examined the relationships between a number of the questions, and some of those relationships are reported here.[2]

Has amended Rule 11 deterred the filing of groundless factual or legal claims?

The Advisory Committee asked whether amended Rule 11 has served the aims of "discouraging misuse of the Civil Rules to impose unwarranted expense, delay, or other burdens on opposing parties and the courts." In this survey of district judges, we addressed that question in two ways, first by asking whether the problem of groundless litigation is better or worse today than in 1983 and second by asking whether Rule 11 has deterred groundless litigation.

Is there a problem with groundless litigation and has this problem changed?

To provide a context for examining the question of change, we asked the judges whether there is currently a problem with groundless litigation (Survey Question 1), defining "groundless" as "papers that do not conform to the requirements of amended Rule 11." We then asked them to evaluate whether that problem has changed since the August 1983 effective date of the amendments (Survey Question 2) and to estimate the size of that problem (Survey Question 3).

The results indicate that judges do not currently find groundless litigation a major problem in counseled cases. Table 1 shows the results. Although approximately nine out of ten judges said there is some degree of groundless litigation, only 4% said the problem is large.

Table 1
Is there a problem with groundless litigation?

Size of Problem	Percentage of 546 Respondents Answering the Question
No problem	9.9
Very small or small problem	64.6
Moderate problem	21.6
Large or very large problem	3.8

2. In addition, we examined the responses to each question in relationship to several measures of judicial experience: (1) the number of years on the bench, measured both in month and years; (2) judges with one year on the bench compared with all others; (3) active judges compared with senior judges; and (4) judges appointed before August 1983 compared with those appointed after that date. We found little relationship between these measures of experience and the judges' responses to the questions, other than a disproportionately high number of "can't say" responses by judges who had been on the bench one year or less. The few notable relationships will be discussed in later sections.

To provide a measure of the size of the problem perceived by the judges, we asked them to estimate the number of groundless pleadings, motions, or other papers on their dockets during the past twelve months.[3] Table 2 shows the results.

Table 2
Judges' estimates of the number of cases in which one or more groundless papers were filed in the past twelve months

Number of Cases	Percentage of 505 Respondents Answering the Question
0	6.3
1–5	31.1
6–10	23.5
11–20	17.9
21–30	9.8
31–50	6.2
51–99	2.4
100 +	3.2

Most reported seeing only a small number of groundless papers. Cumulative percentages show that 61% of the judges estimated ten or fewer groundless papers; 79%, twenty or fewer; and 89%, thirty or fewer.

There is a clear relationship between the judges' assessment of whether there is a problem (Survey Question 1) and their estimate of the number of groundless papers on their dockets. Judges who say there is not a problem and those who say the problem is small report smaller numbers of groundless papers than judges who report a moderate or large problem do.[4]

To assess the impact of amended Rule 11 on the amount of groundless litigation, we asked the judges whether that amount has changed since August 1983.

3. Recognizing that it might be difficult for respondents to answer this question, we asked for only an estimate. Most of the judges (90%) complied, but it should be kept in mind that their answers are approximations. Note, too, that fifty-six judges reported a range, rather than a single number. We took the average of this range. For a full presentation of the judges' estimates, see the table at Question 3 in Section 2B.

4. Relationships between responses were examined through contingency tables and bivariate correlation analysis. Bivariate correlation analysis shows the strength and direction of the association between two variables.

Table 3 shows the results. Most of the judges said the problem has either gotten better (41%) or stayed the same (43%).[5]

Table 3
Has the problem changed since Rule 11 was amended in 1983?

Type of Change	Percentage of 455 Respondents Answering the Question
Problem has gotten worse or slightly worse	8.2
Problem has stayed the same	42.6
Problem has gotten slightly better or better	41.4
There has never been a problem	7.9

When we compared the judges' assessment of whether there is a problem (Survey Question 1) with their assessment of whether the problem has changed since August 1983 (Survey Question 2), we found that a great majority of judges (79%) think the problem is small or moderate and that it has stayed the same or improved. Of the small portion of judges who think the problem has worsened (thirty-six judges), five (14%) think the problem is large, while thirty (83%) think it is small or moderate. Of the judges who think the problem has improved (187 judges), 179 (96%) say it is small or moderate, while nine judges (5%) say it is large.

Has Rule 11 deterred the filing of groundless factual or legal assertions?

To assess the deterrent effect of Rule 11, we asked the judges the following question (Survey Question 4): "How effective do you think Rule 11 has been in deterring attorneys in your district from filing each of . . . seven types of groundless factual or legal assertions?"

Table 4 shows that at least 60% of the judges think Rule 11 has been slightly to moderately effective in deterring attorneys from filing all seven types of pleadings.[6] The judges believe the rule is more effective in deterring groundless complaints than in deterring groundless answers and motions: Whereas only 10% of

5. Note the fairly high number of non-respondents on this question: 19% of the judges who returned the questionnaire did not provide an assessment of the problem. The non-respondents were disproportionately judges who have been appointed since 1983 and particularly judges appointed in the last twelve months. This is not surprising, since the question asked for a comparison to pre-1983 conditions.

6. Note that the non-response rate for these items ranges from 13% to 18%. Groundless denials and affirmative defenses in the answer had the largest non-response rates (18% and 17%, respectively).

the judges found Rule 11 to be ineffective in deterring groundless factual allegations in the complaint and 15% found Rule 11 to be ineffective in deterring groundless legal claims in the complaint, 29% found Rule 11 to be ineffective in deterring groundless denials in the answer and 28% found the rule to be ineffective in deterring groundless affirmative defenses. In addition, around 23% found the rule to be ineffective in deterring summary judgment motions and motions to dismiss under Rule 12(b). Few judges found Rule 11 to be "very effective" in deterring any of the seven types of groundless pleadings. In only one instance—groundless factual allegations in the complaint—did more than 10% of the judges (12%) find the rule very effective.

Table 4
Judges' evaluations of the effectiveness of Rule 11 in deterring seven types of groundless pleadings

	Percentage Not Effective	Percentage Slightly Effective	Percentage Moderately Effective	Percentage Very Effective	Percentage No Need for Deterrence
Groundless factual allegations in complaint (N=480)	9.8	29.6	41.0	11.7	7.9
Groundless legal claims in complaint (*N*=492)	15.4	33.5	37.2	8.7	5.1
Groundless denials in answer (*N*=464)	28.7	36.0	22.0	6.5	6.9
Groundless affirmative defenses in answer (*N*=468)	27.6	37.0	23.1	6.8	5.6
Groundless summary judgment motion by defendant (*N*=481)	22.5	34.1	28.1	7.5	7.9
Groundless summary judgment motion by plaintiff (*N*=474)	22.6	30.2	28.3	8.4	10.5
Groundless motion to dismiss under Rule 12(b) (*N*=483)	23.8	36.2	23.8	6.6	9.5

Note: Different numbers of judges answered each of the seven subparts of Question 4.

The judges were invited to add comments to this question if they wished. Eighty judges did, offering comments on either a specific type of pleading or on Rule 11 in general. Following are several examples of comments on specific types of pleadings.

> A very substantial number of summary judgment and Rule 12 motions are "fee churning." In addition, a large number of these motions are designed to "educate" the judge. Rule 11 hasn't done much with these types.

> Rule 11 is not much used against defendants, although the threat has caused many defendants to admit liability. I believe the rule has had a substantial effect on pre-filing investigations by plaintiffs.

> A higher standard seems to apply to facts. Lawyers are not objecting enough to the "general denials."

We examined the relationships between the judges' evaluation of the rule's deterrent effect and their assessment of the extent to which groundless litigation is a problem (Survey Question 1). We found that for each of the seven types of groundless papers, the majority of judges say the rule has been slightly to moderately effective as a deterrent and that the problem is small or moderate (ranging from 52% of the judges for groundless summary judgment motions by plaintiff to 66% for groundless legal claims in the complaint). The judges who find the rule very effective in deterring groundless papers tend to think the problem of groundless litigation is small (keep in mind that this is a very small number of judges, ranging from fourteen judges for groundless denials in the answer to twenty-three judges for groundless factual allegations in the complaint). The judges who find the rule ineffective give a range of responses, some finding the problem small, some moderate, and a few large. Finally, nearly all of those who see no need for deterrence report that there is no problem with groundless litigation or that it is very small.

We also examined the relationship between the judges' evaluation of the deterrent effect of Rule 11 and their assessment of whether the problem with groundless litigation has changed (Survey Question 2). The majority of judges say the rule is slightly or moderately effective and that the problem has either stayed the same or improved (ranging from 51% for groundless summary judgment motion by plaintiff to 64% for groundless legal claims in the complaint). Of the few judges who say the rule is very effective, most say the problem of groundless litigation has improved. Most of those who say the rule is ineffective as well as those who say there is no need for deterrence say the problem has stayed the same. We can also look at this relationship from the perspective of the judges' evaluation of the size of the problem. When we do, we find that few judges say the problem with groundless litigation has worsened, but those who do are more likely to find Rule 11 not effective or slightly effective in deterring groundless litigation (keep in mind that only twenty to twenty-five judges fall in these categories).

Has Rule 11 had an adverse effect on the conduct of litigation?

Has Rule 11 led to costly satellite litigation?

The Advisory Committee asked, "Has the financial cost in satellite litigation resulting from the imposition of sanctions perhaps exceeded the benefits resulting from any increased tendency of lawyers to 'stop and think'?"

Questions about the costs of satellite litigation are generally concerned with costs to attorneys and parties, which are areas of inquiry outside the scope of this study. We have, however, two indirect measures of the costs of satellite litigation. First, we asked the judges how many of the requests for Rule 11 sanctions are themselves groundless (Survey Question 9). Table 5 shows the results. The majority of the judges (56%) said at least "a few" or "some" of these requests are groundless. Only 5% of the judges said none of these requests are groundless.

Table 5
How many requests for Rule 11 sanctions have been groundless?

Number of Requests	Percentage of 534 Respondents Answering the Question
None	5.1
A few or some	55.5
Half	8.8
Many or most	30.7

We examined the relationship between the judges' responses to this question and their evaluation of the deterrent effect of Rule 11 (Survey Question 4). The only clear relationship is that most of the fifty-six judges who find Rule 11 very effective in deterring groundless litigation report that only a few or some requests for sanctions are themselves groundless. By comparison, the 331 judges who find the rule slightly or moderately effective as a deterrent give a wider range of answers on the measure of groundless requests.[7]

A second way in which Rule 11 may create costly additional litigation is by creating a conflict of interest between client and counsel, either by disrupting the flow of litigation or by leading to retention of new counsel. We asked the judges

7. We found no relationship between the judges' estimates of the number of groundless requests for sanctions and either their assessment of the amount of groundless litigation (Survey Question 1) or their assessment of the extent to which that problem has changed since August 1983 (Survey Question 2).

to estimate how often a Rule 11 request by opposing counsel creates a conflict of interest between attorney and client (Survey Question 7).[8] Table 6 shows the results. Of the judges who responded to this question, nearly two thirds said the rule has had this effect in "a few" or "some" cases.

Table 6
In how many cases does Rule 11 create a conflict of interest between attorney and client?

Number of Cases	Percentage of 534 Respondents Answering the Question
None	32.2
A few or some	59.1
Half or more	8.7

We found no relationship between the judges' responses to this question and their responses to other questions, perhaps because of the high non-response rate for this question.

Has Rule 11 had a chilling effect on development of the law?

The Advisory Committee asked whether Rule 11 has had a "'chilling effect' on the assertion of meritorious claims or defenses generally." Survey Question 5 asked the judges whether "Rule 11 has in any way impeded development of the law." Table 7 shows the results. Ninety-five percent of the judges said Rule 11 has not adversely affected development of the law.

Table 7
Has Rule 11 impeded development of the law?

Number of Cases	Percentage of 503 Respondents Answering the Question
Yes	5.0
No	95.0

8. Over a third of the judges (35%) indicated they could not answer this question. Non-response was not related to years of experience and probably reflects the fact that judges are often not in a position to assess the relationship between counsel and party.

In examining the relationship between this question and others, we found that of the judges who say Rule 11 has impeded development of the law—and keep in mind that this is only twenty-five judges—more have been appointed before August 1983 than after that date. Likewise, of the judges who say Rule 11 has impeded development of the law, most say groundless litigation is not a problem or is only a small problem (Survey Question 1) and that there is no need for deterrence or that the rule is not effective or only slightly effective as a deterrent to groundless filings (Survey Question 4). Looked at from a different perspective, few of the judges who see the problem of groundless litigation as moderate or large and few of the judges who see Rule 11 as an effective deterrent say the rule has been an impediment to development of the law.

Judges who indicated that Rule 11 has impeded development of the law were asked to specify the "particular areas of law [that] have been affected." Of the 5% of the judges who said Rule 11 has impeded development of the law and who added a comment, most made a general statement that they believe Rule 11 has had this effect. Only a few specific areas of law were identified, and these were mentioned by only a few judges: 1983 civil rights cases, *Bivens*-type cases, and toxic torts. More typical were comments such as the following:

> For conscientious counsel, it has created a reluctance to pursue marginal or only plausible causes—or to challenge "established law."
>
> I believe Rule 11 has "chilled" the enthusiasm of many plaintiffs counsel from initiating novel litigation.
>
> It serves as a deterrent to access to the courts.

Does Rule 11 damage the professional relationships between attorneys?

The Advisory Committee asked whether there is "an incremental injury to the civility of litigation that results from lawyers impugning one another's motives and professionalism, and seeking to impose burdens directly on one another." We asked the judges whether a request for Rule 11 sanctions "exacerbates unnecessarily contentious behavior between opposing counsel" (Survey Question 8).[9] Table 8 shows the results. Of the judges who answered this question, 50% said a request for Rule 11 sanctions has this effect in more cases than not. Only 8% of the judges said a request for sanctions generally has the effect of curtailing unnecessarily contentious behavior.

9. About 15% of the judges did not answer. As in the question about attorney/client relationships, the non-responses were not related to experience and probably reflect the fact that the judges are not in a position to see the effect of Rule 11 on the relationship of counsel who appear before them.

Table 8
Does a Rule 11 request exacerbate unnecessarily contentious behavior between opposing counsel?

Response	Percentage of 483 Respondents Answering the Question
In more cases than not it does	50.3
In more cases than not it curtails such behavior	7.9
In some it does, in some it doesn't; the net effect is even	34.0
No effect on interactions between opposing counsel	7.9

We found no pattern in the judges' responses to this question and their assessment of whether groundless litigation is a problem (Survey Question 1). There does appear to be a relationship, however, between their responses to this question and their views on changes in the amount of groundless litigation (Survey Question 2). The majority of the judges say the rule has exacerbated contentious behavior; nonetheless, these judges are more likely than not to also say the problem of groundless litigation has improved or stayed the same. Of the small number of judges who say Rule 11 curtails contentious behavior, most say the problem of groundless litigation has improved. (Keep in mind that this is a very small number of judges: thirty-six say such behavior is curtailed; twenty-eight of these say the problem of groundless litigation has improved.) Nearly all of the judges who say the net effect on attorney behavior has been even—and this is a significantly larger group of judge—say the problem has improved or stayed the same. If we look at this question the other way around, we see that of the sixty judges who say there is no problem or that is has worsened, thirty-nine (65%) say Rule 11 exacerbates contentious behavior, whereas of the 347 judges who say the problem has improved or stayed the same, only 151 (46%) say Rule 11 exacerbates contentious behavior.

Does Rule 11 hamper settlement efforts?

We also asked about the effect of a request for sanctions on the likelihood of settlement (Survey Question 6).[10] Table 9 shows the results. Although most judges who responded said a Rule 11 request either has no impact on settlement or has no net effect, 20% said Rule 11 impedes settlement in more cases than not.

10. Note that here again many judges (24%) chose not to answer the question. This non-response, too, does not appear to be related to experience but probably reflects judges' lack of information about the settlement negotiations of parties.

Table 9
How does a request for Rule 11 sanctions affect settlement?

Response	Percentage of 429 Respondents Answering the Question
It impedes settlement in more cases than not	20.3
It encourages settlement in more cases than not	11.0
Impedes in some, encourages in others; net effect is even	31.7
No effect on settlement	37.1

When the judges' responses to this question are compared with their evaluation of the deterrent effect of Rule 11 (Survey Question 4), we find that most judges say the rule has an even net effect or no effect on settlement and that it is slightly or moderately effective in deterring groundless filings. What is striking in the comparison of the two responses is that almost no judges who say the rule impedes settlement say it is very effective in deterring groundless filings. Rather, most of the eighty or so judges who say Rule 11 impedes settlement say it is either not effective or only slightly effective as a deterrent.[11]

How do judges use Rule 11?

To obtain a measure of the number of sanctions imposed, we asked the judges to estimate the number of orders for Rule 11 sanctions they had imposed during the past twelve months (Survey Question 11A). Table 10 shows the results.

11. The number varies, depending on which type of groundless filing is being examined. Note, too, that for groundless factual and legal assertions in the complaint, most of the judges who say Rule 11 impedes settlement say the rule is slightly or moderately effective as a deterrent.

Table 10
Number of orders imposing Rule 11 sanctions during past twelve months and percentage of judges who issued that number of orders

Number of Orders	Percentage of 551 Respondents Answering the Question
0	26.9
1	11.6
2	15.3
3	14.5
4	7.6
5	8.5
6	5.6
7-9	3.1
10	3.8
11+	3.1

Twenty-seven percent of the judges said they had issued no orders for Rule 11 sanctions during that time period. Eighty-four percent of the judges issued five or fewer orders.[12] The median is a little less than two orders (that is, half the judges issued fewer than two orders and half the judges issued two or more orders).

Very few of these orders were issued sua sponte (Survey Question 11B). Sixty-nine percent of the judges said they had issued no sua sponte orders in the last twelve months (see Table 11). Sixteen percent estimated that they had issued one sua sponte order, and 6% estimated that they had issued two such orders. Few judges issued more than two sua sponte orders.

12. Please keep in mind that the numbers reported by the judges are estimates. For a full presentation of these estimates, see the table at Question 11A in Section 2B.

Table 11
Number of sua sponte orders imposing Rule 11 sanctions during past twelve months and percentage of judges who issued that number of orders

Number of Sua Sponte Orders	Percentage of 549 Respondents Answering the Question
0	69.2
1	16.2
2	6.0
3	3.6
4	2.3
5	1.5
6+	1.1

Both of these measures of sanctions imposed appear to be related to the judges' assessment of whether there is a problem with groundless litigation (Survey Question 1). Judges who see no problem or a slight problem report fewer orders for sanctions than do judges who see a greater problem. The number of sanctions imposed is not related, however, to the judges' assessments of whether that problem has changed since August 1983 (Survey Question 2).

Recognizing that some judges may use warnings rather than orders to control groundless litigation, we asked them in how many cases in the past twelve months they had "advised counsel that a particular filing might lead to imposition of sanctions under Rule 11" (Survey Question 10). Table 12 shows the results. Thirty-two percent of the judges said they had given such advice in no cases, whereas two thirds said they had given such advice in a few or some cases.

Table 12
In how many cases have you advised counsel that a particular filing might lead to Rule 11 sanctions?

Number of Cases	Percentage of 549 Respondents Answering the Question
In no cases	32.4
In a few cases	46.1
In some cases	21.1
In about half my cases	.2
In more than half	.2

The judges' responses to this question appear to be related to their assessments of whether there is a problem with groundless litigation (Survey Question 1). Judges who see no problem or a small problem appear to warn counsel in fewer cases than judges who see a greater problem. Similarly, judges who see fewer groundless papers on their dockets (Survey Question 2) appear to issue fewer warnings.

In the Call for Comments, the Advisory Committee addressed the issue of whether the size of monetary sanctions might over-deter lawyers and noted "the practice of some courts to favor the use of non-financial sanctions where those might be effective to deter misconduct, because they fall more evenly on lawyers of differing financial means." Therefore, we asked the judges whether they had "imposed non-monetary sanctions in counseled cases under Rule 11" (Survey Question 12). Seventy-six% said they had not. See Table 13.[13]

Table 13
Have you imposed non-monetary sanctions?

Response	Percentage of 551 Respondents Answering the Question
No	75.7
Yes	24.3

The 24% of the judges who said they had imposed non-monetary sanctions have used a great variety of such sanctions. Most frequently mentioned were dismissal of the case; striking of pleadings, claims, witnesses, or evidence; verbal or written reprimands; censure in a court order or opinion; warnings that sanctions might be imposed; and orders to attend continuing legal education courses. A few judges noted that violations had led to suspension from practice, either temporarily or indefinitely. There was no relationship between the judges' responses to this question and their answers to other questions.

We also asked the judges about the pattern over time of their use of Rule 11 (Survey Question 14). Table 14 shows the result. The majority of the respondents (58%) said they have imposed Rule 11 sanctions and have done so with about the same frequency over the years. Thirteen percent of the judges said they have never imposed Rule 11 sanctions. Judges who have been recently appointed fell disproportionately into this group.

13. The category of judges who have not imposed non-monetary sanctions includes those judges who have never imposed sanctions at all.

Table 14
Pattern of judges' sanctioning practices since August, 1983 or since their appointment date, if more recent than 1983 (N=546)

Pattern of Sanctioning Practice	Percentage of 546 Respondents Answering the Question
Impose more frequently now than before	18.5
Impose less frequently now than before	10.1
Have imposed with same frequency over the years	58.2
Have never imposed	13.2

We looked at the judges' responses to other questions to seek explanations for why they may have changed their frequency of sanctioning, but we found few clear patterns. We found that the small number of judges who are sanctioning less are more likely to think the problem of groundless litigation is small rather than moderate, large, or nonexistent (Survey Question 1). They are also more likely to see the rule as impeding settlement rather than having a positive or benign effect on settlement (Survey Question 6). They are more likely to have been appointed before August 1983 than after that date. The judges who are sanctioning more (about twice as many as are sanctioning less) appear to think the problem of groundless litigation is somewhat greater and that the effect on settlement is somewhat more benign (even net effect or no impact). Judges who have never imposed sanctions are much more likely to see the problem of groundless litigation as small than judges who have imposed sanctions are.

It may be more instructive to look at the judges' own explanations for their practice, which they gave in response to our request that they describe why their pattern had changed. Following are some of more frequently mentioned reasons for increased use of Rule 11 sanctions:

> The court of appeals has mandated or I would rarely impose sanctions.
>
> With growing experience on the bench, I generally am less accepting of groundless pleadings.
>
> Because of increased and greater violations.
>
> Since Rule 11 was amended, sanction orders are more likely to be affirmed on appeal.

Among the reasons given for decreased use were the following:

> The necessity for sanctions has decreased over the years, as attorneys have learned to comply with the rule in order to avoid sanctions.
>
> The grant of a Rule 11 motion is a time-consuming task. The diversion of such time is not worthwhile, except in more serious cases.

No support from the court of appeals.

How does the effectiveness of Rule 11 compare with the effectiveness of other methods for managing groundless litigation?

We asked the judges to evaluate the effectiveness of eight different rules and procedures available for managing groundless litigation (Survey Question 15).[14] Although the judges find Rule 11 more effective than fee shifting, they do not find it as effective as any of the other methods we listed in the question. See Table 15. In the judges' view, the most effective methods for managing groundless litigation are prompt rulings on motions to dismiss and prompt rulings on motions for summary judgment (51% said "very effective" for each). Also effective are Rule 16 conferences to narrow issues (38% said "very effective"). In contrast, most judges (55%) see Rule 11 as slightly to moderately effective in managing groundless litigation, and only 23% said the rule is very effective.

Table 15
Judges' evaluations of the effectiveness of eight methods for managing groundless litigation

	Percentage Not Effective	Percentage Slightly Effective	Percentage Moderately Effective	Percentage Very Effective
Informal admonitions (*N*=515)	4.5	24.9	39.8	30.9
Use of Rule 16 conferences to narrow issues (*N*=496)	5.8	18.8	35.7	39.7
Rule 11 sanctions (*N*=480)	7.3	33.3	36.7	22.7
Rules 26 & 37 sanctions (*N*=427)	3.7	24.6	49.6	22.0
28 U.S.C. § 1927 fee shifting (*N*=343)	17.2	38.8	26.2	17.8
Reverse fee shifting (e.g., under 42 U.S.C. §1988) (N=332)	27.1	35.8	25.0	12.0
Prompt rulings on motions to dismiss (*N*=492)	8.9	12.4	27.2	51.4
Prompt rulings on motions for summary judgment (*N*=493)	8.1	12.8	28.0	51.1

Note: Different numbers of judges answered each of the eight subparts of Question 15.

14 Note the high non-response rate for some of the items: 24% of the judges did not evaluate motions under Rules 26 and 37; 39% did not evaluate § 1927 fee shifting; and 41% did not evaluate § 1988 reverse fee shifting. The high non-response rates probably indicate that these methods are not commonly used to manage groundless litigation.

About twenty judges used the blank space we provided to describe other methods they use for managing such litigation. These methods include prompt rulings on all matters, discussions in chambers, early and firm trial dates, and firm deadlines for all stages of the litigation.

We examined the relationships between the judges' evaluations of the devices listed above and their responses to other questions. Further analyses will be necessary to untangle these relationships, especially those between the judges' evaluations of the rule's deterrent effect (Survey Question 4) and their evaluations of these case management techniques. Several relationships did, however, appear to stand out. Of the forty-five judges who say there is no problem with groundless litigation, two thirds say Rule 16 conferences are very effective. These judges also rate as very effective prompt rulings on motions for summary judgment and prompt rulings on motions to dismiss. By comparison, judges who say there is a problem with groundless litigation are more varied in their evaluations of the effectiveness of these case management devices.

What is the judges' overall assessment of Rule 11?

To obtain measures of the judges' overall evaluation of Rule 11 and its impact on their practices and the conduct of litigation in general, we asked the following three questions.

Have the benefits outweighed the expenditure of judge time?

We asked whether the "benefits of Rule 11 outweigh the required expenditure of judge time" needed for resolving Rule 11 issues (Survey Question 14). Table 16 shows the results.[15]

Table 16
Do the benefits of Rule 11 outweigh the expenditure of judge time?

Response	Percentage of 452 Respondents Answering the Question
Yes	71.9
No	28.1

15. Note that 20% of the judges indicated they could not make this assessment. The non-respondents were disproportionately judges who had been appointed in the last twelve months—i.e., those with the least experience on which to make this evaluation.

Table 16 shows clearly that the great majority of judges think Rule 11 is beneficial despite whatever costs it may incur in judicial time. In further examination of the responses to this question, we found a number of relationships. Of the judges who make the following statements, more say the benefits outweigh the expenditure of judge time than say that they do not:

- groundless litigation is a problem;
- the problem has stayed the same or improved;
- the rule is an effective deterrent to the filing of groundless papers;
- the rule encourages settlement or has an even net effect on settlement; and
- the rule curtails contentious relationships between counsel.

In contrast, of the judges who make the following statements, more say the benefits do not outweigh the expenditure of judge time than say that they do:

- groundless litigation is not a problem;
- the rule is not an effective deterrent or there is no need for a deterrent;
- the rule impedes development of the law;
- the rule impedes settlement or has no impact on settlement;
- the rule exacerbates contentious relationships between counsel;
- in many cases the request for Rule 11 sanctions is groundless;
- informal admonitions and prompt rulings on motions are very effective devices for managing groundless litigation; and
- the overall impact of Rule 11 has been negative

What has been the overall effect of Rule 11 on litigation in the federal courts?

We asked the judges to weigh "the positive and negative effects of Rule 11" and to evaluate the "overall effect of the rule on litigation in the federal courts" (Survey Question 16). Table 17 shows the results. Clearly, a great majority of the judges think Rule 11 has had a positive effect on litigation.[16]

Table 17
What has been the overall effect of Rule 11 on litigation in the federal courts?

Effect	Percentage of 472 Respondents Answering the Question
Rule 11 has had a positive effect	80.9
Rule 11 has had a negative effect	8.7
Rule 11 has had no effect	10.4

16. The non-response rate for this question was 15%. Judges appointed within the past twelve months were most likely to indicate that they could not answer this question.

Relationships between responses to this question and to other questions parallel the relationships highlighted in the previous section. That is, it appears that judges who find the overall effect to be positive are more likely than those who find it to be negative to say there is a problem, to say the problem has improved, to find the rule effective in deterring groundless filings, and so on. In contrast, it appears that judges who find the overall effect to be negative are more likely than judges who say it is positive to see no problem, to see the rule as not effective as a deterrent, to find that the rule impedes both development of the law and settlement efforts, to find that it exacerbates contentious attorney behavior, and so on.

What should be the future for Rule 11?

The Call for Comments contains many suggestions of issues that could lead to amendment of Rule 11. We asked the judges to choose one of three preferences for the future of Rule 11: retain the rule in its current form, return the rule to its pre-1983 form, or amend the rule "in some other way" (Survey Question 17). Table 18 shows the results. The judges who think there are problems with the rule—for example, that it impedes development of the law, requires more judge time than it is worth, and generates many groundless Rule 11 requests—are more likely to favor amendment.

Table 18
What should be the future for Rule 11?

Response	Percentage of 526 Respondents Answering the Question
Retain in its present form	80.4
Return to its pre-1983 language	7.0
Amend in some other way	12.5

The judges who would like to see Rule 11 amended in some other way than a return to the pre-1983 language offered a variety of possible amendments. The most frequently suggested amendment was to make the rule permissive rather than mandatory. Among the many other suggestions, the judges asked for consideration of the following amendments:

Clarify the standard of review

Change the standard of review to abuse of discretion

Place a flat cap or presumptive cap on the amount of monetary sanctions

Permit sanctioning of the firm, not just the attorney

Clarify the duty to withdraw pleading upon later knowledge

Require notice by opposing counsel

Provide that part or all of the sanction be paid to the court

Require a hearing

Clarify the role of local counsel

Require leave of court to file a Rule 11 motion

Require findings and conclusions in support of an order for sanctions

At the end of the questionnaire we provided space for the judges to add suggestions or comments about the rule. Here and throughout the questionnaire the judges provided many comments. The following were selected to represent the wide range of opinion about the rule.[17]

> Rule 11 is useful. Though it has been abused at times by lawyers and misused by some judges, to repeal or amend it significantly would send the wrong signal and would have a very detrimental effect.

> While I do not suggest that Rule 11 has no beneficial effect in discouraging frivolous litigation, I do feel that consistent, precedential decisions at the appeals court level will greatly assist trial courts in correctly applying Rule 11. Moreover, clear and consistent published decisions would provide guidance to attorneys practicing in federal court as to the standards they are expected to meet. This, combined with use of other less formal methods of discouraging frivolous claims and motions, such as the use of Rule 16 scheduling orders, will result in more effective and appropriate use of Rule 11 sanctions. In sum, Rule 11 has its place in the order of things but I personally have a reluctance to apply it with its full fury.

> I think the existence of Rule 11, not its use, has helped.

> Necessary but distasteful.

> If we as a profession simply followed our own canons of ethics, Rule 11 would be unnecessary. As we don't, trial judges must be encouraged to administer justice, which includes reminding lawyers of their professional obligations.

> We know groundless litigation when we see it, but the mandatory nature of sanctions coupled with the objective standard combine to impose a significant burden on the courts. I would estimate that Rule 11 rears its ugly head in approximately one-third of my cases. In short, I am convinced that the current version is not worth the effort.

> The problem with Rule 11 is that there is no uniform yardstick for its application. Individual judges with differing philosophies and ideologies reach contrary conclusions about the appropriateness of Rule 11 sanctions.

> Rule 11 sanctions destroy the professional relationship between lawyers. Our system does not and cannot function when this relationship is damaged. Rule 11 is guaran-

17. These quotes represent only the range of judicial opinion on Rule 11, not the weight of that opinion in one direction or another.

teed to impassion lawyers. We need all the mechanisms possible to make lawyers dispassionate. Furthermore, it is useless to have Rule 11 when it is never enforced at the appellate level.

Section 2B
Judges' Responses to a Questionnaire on Rule 11

This section contains the actual survey questions. The wording of the questions is as it appeared in the survey. Following each possible reply, we indicate the percentage or number of respondents who made that choice. At the end of the section, we include a copy of the actual survey form.

Purpose and Definitions

The purpose of this questionnaire is to obtain your evaluation of the effects of amended Fed. R. Civ. P. 11. All references in this questionnaire are to Rule 11 as amended in 1983.

For convenience, throughout this questionnaire we refer to papers that do not conform to the requirements of amended Rule 11 as groundless.

This questionnaire is about the effects of amended Rule 11 in cases in which both sides are represented by counsel. For convenience, these cases are referred to as counseled cases. Do not include in your evaluation of Rule 11 the effects it may or may not have had on pro se cases.

Some of the questions below refer to "the past twelve months." If you have been on the bench less than twelve months, please answer in terms of the number of months you have been on the bench.

1. Is there a problem with groundless litigation in counseled civil cases in your district today? Please circle one.

		Percentage of 564 respondents giving this answer
1	There is no problem.	9.6
2	There is a very small problem.	34.4
3	There is a small problem.	28.2
4	There is a moderate problem.	20.9
5	There is a large problem.	3.7
6	There is a very large problem.	0.0
7	I can't say.	1.6
[no answer]		1.6

2. Since August 1983, when amended Rule 11 took effect, has the problem with groundless litigation in your district gotten worse, gotten better, or stayed about the same? Please circle one.

		Percentage of 564 respondents giving this answer
1	There has never been a problem.	6.4
2	The problem has gotten worse.	2.5
3	The problem has gotten slightly worse.	4.1
4	The problem has stayed the same.	34.4
5	The problem has gotten slightly better.	18.4
6	The problem has gotten better.	14.9
7	I can't say.	18.3
[no answer]		1.1

3. We would like to get a measure of the amount of groundless litigation on your own civil docket today, whether or not you think that amount is a problem. We recognize the difficulty in estimating numbers and ask only that you give your best estimate.

   During the past 12 months, in approximately how many cases did counsel file one or more groundless pleadings, motions, or other papers?

Number of Groundless Pleadings, Motions, or Other Papers	Percentage of 564 Respondents	Number of Groundless Pleadings, Motions, or Other Papers	Percentage of 564 Respondents
0	5.7	11	.9
1	2.8	12	3.4
2	6.2	13	1.1
3	6.4	14	.2
4	3.4	15-19	3.4
5	9.0	20-24	8.0
6	4.6	25-29	4.6
7	1.3	30-49	4.9
8	1.4	50-99	6.1
9	.5	100+	2.9
10	13.1	No answer	10.5

4. How effective do you think Rule 11 has been in deterring attorneys in your district from filing each of the following seven types of groundless factual or legal assertions? For <u>each</u> type of assertion, please circle the <u>one</u> answer that best reflects your experience. [number of respondents = 564]

	Not effective	Slightly effective	Moderately effective	Very effective	There is no need for deterrence	I can't say	No answer
Groundless factual allegations in the complaint	8.3	25.2	34.9	9.9	6.7	10.6	4.3
Groundless legal claims in the complaint	13.5	29.3	32.4	7.6	4.4	8.3	4.5
Groundless denials in the answer	23.6	29.6	18.1	5.3	5.7	12.9	4.8
Groundless affirmative defenses in the answer	22.9	30.7 1	9.1	5.7	4.6	12.4	4.6
Groundless summary judgment motions by defendant	19.1	29.1	23.9	6.4	6.7	10.1	4.6
Groundless summary judgment motions by plaintiff	19.0	25.4	23.8	7.1	8.9	11.3	4.7
Groundless motions to dismiss under Rule 12(b)	20.4	31.0	20.4	5.7	8.2	9.9	4.4

If you wish to elaborate on your responses to this question, please use the space below.

[number of comments = 80]

5. Do you think Rule 11 has in any way impeded development of the law?

		Percentage of 564 respondents giving this answer
1	Yes.	4.4
2	No.	84.8
3	I can't say.	9.8
[no answer]		1.1

In what way has Rule 11 impeded development of the law? If possible, please specify particular areas of law you think have been affected.

[number of comments = 33]

6. From what you have observed in counseled cases in which a request for Rule 11 sanctions has been filed, what effect, if any, does this request have on the likelihood of settlement? Please circle one.

		Percentage of 564 respondents giving this answer
1	In more cases than not, the filing of a request for Rule 11 sanctions impedes settlement.	15.4
2	In more cases than not, the filing of a request for Rule 11 sanctions encourages settlement.	8.3
3	The filing of a request for Rule 11 sanctions impedes settlement in some cases and encourages it in other cases. The net effect is about even.	24.1
4	The filing of a request for Rule 11 sanctions has no impact on the likelihood of settlement.	28.2
5	I can't say.	21.6
[no answer]		2.3

7. Again, from what you have observed in counseled cases in which a request for Rule 11 sanctions has been filed, in how many cases does the filing of this request by opposing counsel create a conflict of interest between attorney and client? Please circle one.

		Percentage of 564 respondents giving this answer
1	In none of these cases.	21.1
2	In a few of these cases.	28.0
3	In some of these cases.	10.6
4	In about half of these cases.	.9
5	In many of these cases.	3.4
6	In most of these cases.	1.4
7	I can't say.	32.8
[no answer]		1.8

8. In your experience, what effect, if any, does the filing of a request for Rule 11 sanctions have on the interactions between opposing counsel? Please circle one.

		Percentage of 564 respondents giving this answer
1	In more cases than not, the filing of a request for Rule 11 sanctions exacerbates unnecessarily contentious behavior between opposing counsel.	43.1
2	In more cases than not, the filing of a request for Rule 11 sanctions curtails unnecessarily contentious behavior between opposing counsel.	6.7
3	The filing of a request for Rule 11 sanctions exacerbates unnecessarily contentious behavior between opposing counsel in some cases and curtails it in other cases. The net effect is about even.	29.1
4	The filing of a request for Rule 11 sanctions has no impact on the interactions between opposing counsel.	6.7
5	I can't say.	12.9
[no answer]		1.4

9. Please consider once more your experience with cases in which a request for Rule 11 sanctions has been filed. How many of these requests, if any, were groundless?

		Percentage of 564 respondents giving this answer
1	None of these requests.	4.8
2	A few of these requests.	24.3
3	Some of these requests.	28.2
4	Half of these requests.	8.3
5	Many of these requests.	17.0
6	Most of these requests.	12.1
7	I can't say.	4.8
[no answer]		.6

10. In the past 12 months, in how many cases, if any, have you advised counsel that a particular filing might lead to imposition of sanctions under Rule 11?

		Percentage of 564 respondents giving this answer
1	In no cases.	31.6
2	In a few cases.	44.9
3	In some cases.	20.6
4	In about half of my cases.	.2
5	In more than half of my cases.	.2
6	I can't say.	2.1
[no answer]		.6

11. Because it is important to have a measure of the amount of Rule 11 activity experienced by the courts, we ask that you once more make numerical estimates. Again, we understand the difficult nature of this task and ask only that you give your best estimate.

A. Approximately how many orders imposing Rule 11 sanctions did you issue in the past 12 months, if any? Please include in your estimate any orders you have imposed upon review of a magistrate's report and recommendations.

Number of Orders for Sanctions	Percentage of 564 Respondents	Number of Orders for Sanctions	Percentage of 564 Respondents
0	26.2	7	.6
1	11.3	8	2.1
2	14.9	9	.4
3	14.2	10	3.7
4	7.5	11-20	2.3
5	8.4	20+	.8
6	5.5	No answer	2.4

B. Of these orders, approximately how many, if any, did you issue sua sponte?

Number of Sua Sponte Orders	Percentage of 564 Respondents	Number of Sua Sponte Orders	Percentage of 564 Respondents
0	67.4	4	2.3
1	15.8	5	1.4
2	5.9	6-9	.7
3	3.5	10+	.4
		No answer	2.7

12. Have you imposed non-monetary sanctions in counseled cases under Rule 11? Please circle one.

	Percentage of 564 respondents giving this answer
1 No	73.9
2 Yes	23.8
[no answer]	2.4

Would you please describe the non-monetary sanctions?

[number of comments = 135]

13. Which of the following statements best describes the pattern of your Rule 11 sanctioning practice in counseled cases in the years since August 1983, when amended Rule 11 was adopted? If your appointment post-dates 1983, which of the following statements best describes the pattern of your Rule 11 sanctioning practice in the years since your appointment? Please circle one.

		Percentage of 564 respondents giving this answer
1	I have imposed Rule 11 sanctions and do so more frequently now than I used to.	17.9
2	I have imposed Rule 11 sanctions but do so less frequently now than I used to.	9.8
3	I have imposed Rule 11 sanctions with about the same frequency over the years.	56.4
4	I have never imposed Rule 11 sanctions.	12.8
[no answer]		3.2

If your practice has changed, would you please tell us why it has changed?

[number of comments = 141]

14. Please consider the amount of judicial time needed to resolve Rule 11 issues in counseled cases. Now consider the benefits that may derive from Rule 11. Based on your experience, do the benefits of Rule 11 outweigh the required expenditures of judge time?

		Percentage of 564 respondents giving this answer
1	No.	22.5
2	Yes.	57.6
3	I can't say.	19.1
[no answer]		.7

15. Federal statutes, the Federal Rules of Civil Procedure, and inherent judicial authority provide judges with a number of different methods by which they can manage groundless claims, defenses, or legal arguments. Listed below are several of these methods. Please indicate how effective you find each of these methods in managing groundless litigation on your docket. [number of respondents = 564]

	Not at all effective	Slightly effective	Moder-ately effective	Very effective	I can't say	No answer
Informal admonitions	4.1	22.7	36.3	28.2	4.8	3.9
Use of Rule 16 conferences to narrow issues	5.1	16.5	31.4	34.9	6.4	5.7
Rule 11 sanctions	6.2	28.4	31.2	19.3	10.3	4.7
Rules 26 & 37 sanctions	2.8	18.6	37.6	16.7	16.1	8.2
28 U.S.C. §1927 fee shifting	10.5	23.6	16.0	10.8	32.3	7.0
Reverse fee shifting (e.g., under 42 U.S.C. § 1988)	16.0	21.1	14.7	7.1	34.2	6.9
Prompt rulings on motions to dismiss	7.8	10.8	23.8	44.9	9.0	3.7
Prompt rulings on motions for summary judgment	7.1	11.2	24.5	44.7	8.9	3.7
Other: _____						

[number of comments = 60]

16. Weighing the positive and negative effects of Rule 11, what has been the overall effect of the rule on litigation in the federal courts?

		Percentage of 564 respondents giving this answer
1	Overall, amended Rule 11 has had a positive effect.	67.7
2	Overall, amended Rule 11 has had a negative effect.	7.3
3	Overall, amended Rule 11 has had no effect.	8.7
4	I can't say.	14.9
[no answer]		1.4

17. As you know, Rule 11 is being reconsidered by the Advisory Committee on Civil Rules. The committee has issued a call for written comments, which was sent to all judges and was published at 59 U.S.L.W. 2117 and 131 F.R.D. 344. The call describes some of the proposed amendments to Rule 11. Which one statement below best reflects your preference for the future of Rule 11?

		Percentage of 564 respondents giving this answer
1	Rule 11 should be retained in its present form.	75.0
2	Rule 11 should be amended to return to its pre-1983 language.	6.6
3	Rule 11 should be amended in some other way.	11.7
[no answer]		6.7

We welcome your suggestions for amendment.

[number of comments = 101]

18. Please indicate below the district in which you preside and the date of your appointment to the federal bench. If you preside in more than one district, please indicate the district in which you are assigned the greater number of cases.

District in which you preside: _____

Date of appointment to federal bench: _____
Mo./Yr.

Please use this page for any additional comments or suggestions you may have about issues raised in this questionnaire or about Rule 11 in general. Your contribution is very much appreciated and will be carefully considered by the Advisory Committee.

[number of comments = 107]

RULE 11

SURVEY OF UNITED STATES DISTRICT COURT JUDGES

NOVEMBER 1990

PURPOSE AND DEFINITIONS

The purpose of this questionnaire is to obtain your evaluation of the effects of amended Fed. R. Civ. P. 11. All references in this questionnaire are to Rule 11 as amended in 1983.

For convenience, throughout this questionnaire we refer to papers that do not conform to the requirements of amended Rule 11 as groundless.

This questionnaire is about the effects of amended Rule 11 in cases in which both sides are represented by counsel. For convenience, these cases are referred to as counseled cases. Do not include in your evaluation of Rule 11 the effects it may or may not have had on pro se cases.

Some of the questions below refer to "the past 12 months." If you have been on the bench less than 12 months, please answer in terms of the number of months you have been on the bench.

---

1. Is there a problem with groundless litigation in counseled civil cases in your district today? Please circle one.

   1 There is no problem.
   2 There is a very small problem.
   3 There is a small problem.
   4 There is a moderate problem.
   5 There is a large problem.
   6 There is a very large problem.
   7 I can't say.

2. Since August 1983, when amended Rule 11 took effect, has the problem with groundless litigation in your district gotten worse, gotten better, or stayed about the same? Please circle one.

   1 There has never been a problem.
   2 The problem has gotten worse.
   3 The problem has gotten slightly worse.
   4 The problem has stayed the same.
   5 The problem has gotten slightly better.
   6 The problem has gotten better.
   7 I can't say.

3. We would like to get a measure of the amount of groundless litigation on your own civil docket today, whether or not you think that amount is a problem. We recognize the difficulty in estimating numbers and ask only that you give your best estimate.

   During the past 12 months, in approximately how many cases did counsel file one or more groundless pleadings, motions, or other papers?

   Approximately _____ cases

---

4. How effective do you think Rule 11 has been in deterring attorneys in your district from filing each of the following seven types of groundless factual or legal assertions? For each type of assertion, please circle the one answer that best reflects your experience.

	Not effective	Slightly effective	Moderately effective	Very effective	There is no need for deterrence	I can't say
Groundless factual allegations in the complaint	1	2	3	4	5	6
Groundless legal claims in the complaint	1	2	3	4	5	6
Groundless denials in the answer	1	2	3	4	5	6
Groundless affirmative defenses in the answer	1	2	3	4	5	6
Groundless summary judgment motions by defendant	1	2	3	4	5	6
Groundless summary judgment motions by plaintiff	1	2	3	4	5	6
Groundless motions to dismiss under Rule 12(b)	1	2	3	4	5	6

If you wish to elaborate on your responses to this question, please use the space below.

5. Do you think Rule 11 has in any way impeded development of the law?

1 Yes.
2 No.
3 I can't say.

→ In what way has Rule 11 impeded development of the law? If possible, please specify particular areas of law you think have been affected.

6. From what you have observed in counseled cases in which a request for Rule 11 sanctions has been filed, what effect, if any, does this request have on the likelihood of settlement? Please circle one.

1 In more cases than not, the filing of a request for Rule 11 sanctions impedes settlement.

2 In more cases than not, the filing of a request for Rule 11 sanctions encourages settlement.

3 The filing of a request for Rule 11 sanctions impedes settlement in some cases and encourages it in other cases. The net effect is about even.

4 The filing of a request for Rule 11 sanctions has no impact on the likelihood of settlement.

5 I can't say.

7. Again, from what you have observed in counseled cases in which a request for Rule 11 sanctions has been filed, in how many cases does the filing of this request by opposing counsel create a conflict of interest between attorney and client? Please circle one.

1 In none of these cases.
2 In a few of these cases.
3 In some of these cases.
4 In about half of these cases.
5 In many of these cases.
6 In most of these cases.
7 I can't say.

8. In your experience, what effect, if any, does the filing of a request for Rule 11 sanctions have on the interactions between opposing counsel? Please circle one.

1 In more cases than not, the filing of a request for Rule 11 sanctions exacerbates unnecessarily contentious behavior between opposing counsel.

2 In more cases than not, the filing of a request for Rule 11 sanctions curtails unnecessarily contentious behavior between opposing counsel.

3 The filing of a request for Rule 11 sanctions exacerbates unnecessarily contentious behavior between opposing counsel in some cases and curtails it in other cases. The net effect is about even.

4 The filing of a request for Rule 11 sanctions has no impact on the interactions between opposing counsel.

5 I can't say.

9. Please consider once more your experience with cases in which a request for Rule 11 sanctions has been filed. How many of these requests, if any, were groundless?

1 None of these requests.
2 A few of these requests.
3 Some of these requests.
4 Half of these requests.
5 Many of these requests.
6 Most of these requests.
7 I can't say.

10. In the past 12 months, in how many cases, if any, have you advised counsel that a particular filing might lead to imposition of sanctions under Rule 11?

1 In no cases.
2 In a few cases.
3 In some cases.
4 In about half of my cases.
5 In more than half of my cases.
6 I can't say.

11. Because it is important to have a measure of the amount of Rule 11 activity experienced by the courts, we ask that you once more make numerical estimates. Again, we understand the difficult nature of this task and ask only that you give your best estimate.

A. Approximately how many orders imposing Rule 11 sanctions did you issue in the past 12 months, if any? Please include in your estimate any orders you have imposed upon review of a magistrate's report and recommendations.

Approximately _____ orders imposing Rule 11 sanctions

B. Of these orders, approximately how many, if any, did you issue *sua sponte*?

Approximately _____ *sua sponte* orders

12. Have you imposed non-monetary sanctions in counseled cases under Rule 11? Please circle one.

1 No
2 Yes

→ Would you please describe the non-monetary sanctions?

13. Which of the following statements best describes the pattern of your Rule 11 sanctioning practice in counseled cases in the years since August 1983, when amended Rule 11 was adopted? If your appointment post-dates 1983, which of the following statements best describes the pattern of your Rule 11 sanctioning practice in the years since your appointment? Please circle one.

1 I have imposed Rule 11 sanctions and do so more frequently now than I used to.
2 I have imposed Rule 11 sanctions but do so less frequently now than I used to.
3 I have imposed Rule 11 sanctions with about the same frequency over the years.
4 I have never imposed Rule 11 sanctions.

→ If your practice has changed, would you please tell us why it has changed?

14. Please consider the amount of judicial time needed to resolve Rule 11 issues in counseled cases. Now consider the benefits that may derive from Rule 11. Based on your experience, do the benefits of Rule 11 outweigh the required expenditures of judge time?

1 No.
2 Yes.
3 I can't say.

15. Federal statutes, the Federal Rules of Civil Procedure, and inherent judicial authority provide judges with a number of different methods by which they can manage groundless claims, defenses, or legal arguments. Listed below are several of these methods. Please indicate how effective you find each of these methods in managing groundless litigation on your docket.

	Not at all effective	Slightly effective	Moderately effective	Very effective	I can't say
Informal admonitions	1	2	3	4	5
Use of Rule 16 conferences to narrow issues	1	2	3	4	5
Rule 11 sanctions	1	2	3	4	5
Rules 26 & 37 sanctions	1	2	3	4	5
28 U.S.C. §1927 fee shifting	1	2	3	4	5
Reverse fee shifting (e.g., under 42 U.S.C. §1988)	1	2	3	4	5
Prompt rulings on motions to dismiss	1	2	3	4	5
Prompt rulings on motions for summary judgment	1	2	3	4	5
Other: _____	1	2	3	4	5

16. Weighing the positive and negative effects of Rule 11, what has been the overall effect of the rule on litigation in the federal courts?

1 Overall, amended Rule 11 has had a positive effect.
2 Overall, amended Rule 11 has had a negative effect.
3 Overall, amended Rule 11 has had no effect.
4 I can't say.

17. As you know, Rule 11 is being reconsidered by the Advisory Committee on Civil Rules. The Committee has issued a Call for Written Comments, which was sent to all judges and was published at 59 U.S.L.W. 2117 and 131 F.R.D. 344. The call describes some of the proposed amendments to Rule 11. Which one statement below best reflects your preference for the future of Rule 11?

1 Rule 11 should be retained in its present form.
2 Rule 11 should be amended to return to its pre-1983 language.
3 Rule 11 should be amended in some other way.

→ We welcome your suggestions for amendment.

18. Please indicate below the district in which you preside and the date of your appointment to the federal bench. If you preside in more than one district, please indicate the district in which you are assigned the greater number of cases.

District in which you preside: _____

Date of appointment to federal bench: _____
Mo./Yr.

Please use this page for any additional comments or suggestions you may have about issues raised in this questionnaire or about Rule 11 in general. Your contribution is very much appreciated and will be carefully considered by the Advisory Committee.

THANK YOU

Please return by November 23, 1990 in the enclosed envelope to:

Federal Judicial Center
Research Division
1520 H St., N.W.
Washington, D.C. 20005

FAX: (FTS or 202) 786-7017

If you have any questions, please call:

Beth Wiggins at (FTS or 202) 633-6344
Tom Willging at (FTS or 202) 633-6341
Donna Stienstra at (FTS or 202) 633-6341

RULE 11

SURVEY OF UNITED STATES DISTRICT COURT JUDGES

Follow-up Code	First Entry	Second Entry

Section 2C
Judges' Comments from a Questionnaire on Rule 11

This section contains the comments written by judges on the Rule 11 questionnaire. Not all questions asked for comments, but if a comment was written next to a question the comment was entered into the database. Occasionally judges added a word or two to the response categories to more accurately reflect their opinions, or they explained why they could not answer a question (usually because they were recently appointed or were senior judges with a limited caseload). Comments such as these are not included in this document. However, we have included the comments of the half-dozen judges who provided only comments and did not return the questionnaire. Because of these deletions and additions, the number of comments here is not the same as the number reported in the comment fields on the questionnaire form.

Square brackets ([ ]) indicate words we have inserted to make the meaning of a comment clear. Arrow brackets (< >) indicate words we have substituted for those that may have identified a respondent, and marks of ellipsis (. . .) indicate potentially identifying material we have removed altogether.

Question 1

Is there a problem with groundless litigation in counseled civil cases in your district today?

1 There is a moderate problem "in general" and a very large problem "as to numbers of claims and theories."

2 There is a small problem with groundless complaints/answers and a moderate problem with groundless motions.

3 Have very infrequently imposed (or been requested to impose) Rule 11 sanctions.

4 There is no problem as far as I am concerned.

5 There are more motions, and papers have expanded.

6 I think the higher filing fee helps discourage groundless litigation as much as anything.

7 The law has become so complex, or screwed up, that even an average lawyer can supply some grounds for his pleading of a complaint.

8 Any problem involving more than two cases is a serious problem.

Question 2

Since August 1983, when amended Rule 11 took effect, has the problem with groundless litigation in your district gotten worse, gotten better, or stayed about the same?

1 I think it could have gotten much worse but for Rule 11.

2 It's gotten slightly worse because of the civil use of RICO.

3 There has never been a problem in the cases I personally handle.

4 There are more pro se problems.

5 My impression is that the 1983 version of the rule did have some salutary effect in inhibiting the minor occurrences of meritless lawsuit.

6 The problem hasn't changed, mostly because of pro se litigants.

Question 3

During the past 12 months, in approximately how many cases did counsel file one or more groundless pleadings, motions, or other papers?

1 It's 10 to 15% higher if you include discovery-related motions.

2 It's hard to say.

3 Impossible to estimate.

4 I don't have an estimate. It is not uncommon to have one or more groundless counts in a multi-count complaint or a groundless prayer for relief—e.g., punitive damages against a municipality in a § 1983 action, but those soon wash out.

5 Unknown.

6 Very few.

7 Four obvious, ten arguably.

8 Cannot say.

9 There are some cases in which counsel file an inordinate number of groundless papers, particularly discovery requests and objections; but I do not find the number of cases with groundless filings to be numerous.

10 I can't estimate.

11 Does the question include pleadings with a mixture of groundless and valid claims and defenses? If so, 100 cases. If not, five cases.

12 Can't answer.

13 A number of such cases have been filed, but our judges know how to deal with them.

14 This is an estimate only.

15 I can't say with any accuracy.

16 I have not seen any that I can categorize as groundless, based on the information I have.

17 Twenty-five. This is exclusive of such practices as the boilerplate inclusion of "failure to state a claim" as an affirmative defense to (obviously) legally sufficient complaints.

18 I can't answer.

19 Two cases in three and one half months.

20 I can't approximate accurately but there have been several.

21 I cannot give a meaningful number. There are relatively few groundless pleadings relative to the number of groundless motions.

Comments to Question 3

22 I cannot quantify the numbers, but with the aid of Rule 11 this problem is clearly manageable.

23 I don't know what you mean by "groundless." Many complaints were dismissed and many motions denied. But none were found to justify sanctions under Rule 11.

24 As a general statement the lawyers file motions or other papers in civil cases that are groundless.

25 Judge wrote 0.5% after his response that there were twenty groundless papers filed in the past twelve months.

26 I can't answer this.

27 Counsel rarely file a completely groundless pleading. However, in as many as one half of the cases counsel will include groundless claims and defenses in their pleadings. The most effective solution is prompt rulings on motions to dismiss to knock out the groundless legal theories and defenses. Well-supported summary judgment motions are also very useful to dismiss claims which the plaintiff has not been able to factually support after discovery.

28 Impossible to calculate with any accuracy.

Question 4

How effective do you think Rule 11 has been in deterring attorneys in your district from filing each of the following seven types of groundless factual or legal assertions? For each type of assertion, please circle the one answer that best reflects your experience. [a] factual allegations in the complaint; [b] legal claims in the complaint; [c] denials in the answer; [d] affirmative defenses in the answer; [e] summary judgment motions by defendant; [f] summary judgment motions by plaintiff; [g] motions to dismiss under Rule 12(b).

1 Re: (e), (f), (g): I require pre-motion conferences, which have substantially reduced the need for Rule 11 sanctions.

2 Plaintiffs rarely threaten defendants with Rule 11 sanctions.

3 If an attorney was deterred from filing a factual or legal assertion, how would I know it?

4 Since this is seldom a problem, I can't estimate what wasn't filed.

5 I think lawyers are "married" to the conventional form allegations in the complaint and answer and that they don't start taking Rule 11 seriously until they file something more tailored to their case like Rule 12 or S.J. Pleadings.

6 In the overwhelming majority of cases the lawyers who file groundless pleadings aren't sufficiently informed that the pleadings are groundless or that Rule 11 is designed to reach them.

7 I have not observed groundless litigation in my court. I have not applied Rule 11. Whether Rule 11 deters lawyers or whether they are just good lawyers, I don't know.

8 The circuit court makes impossible a proper application of Rule 11.

9 This rule is effective and it would be a grave mistake to tinker with it.

10 There is still a lot of leeway between Fed. R. Civ. P. 11 (a good rule) and the judicial interpretations of the same. These are not helping district judges in implementing R.11.

11 Most counsel in bringing motions to dismiss pursuant to Rule 12(b) go outside the pleadings. I don't believe the motions are groundless but premature. This problem can be corrected without Rule 11 sanctions by converting the 12(b) (6) motion to a motion for summary judgment pursuant to Rule 56.

12 Defendants seem to think Rule 11 applies only to plaintiffs; counsel for defendants throw in every affirmative defense without reason, so it's hard to tell what's at issue.

13 The groundless motions for summary judgment made by both plaintiffs and defendants are usually made returnable a few days before the date

Comments to Question 4

scheduled for jury selection. When made on behalf of the defendant is usually for the purpose of delay. When made by the plaintiff it appears to be a last minute thought of the possibility of relief without a trial.

14 (1) A higher standard seems to apply to facts. (2) Lawyers are not objecting enough to the "general denials."

15 The rule is very effective in deterring groundless lawsuits. Most complaints and answers include groundless material, but that is a far less problem.

16 We do not know how many groundless claims or defenses have not been filed. I suspect there are many.

17 My responses are impressionistic—federal judge since <a few years ago>.

18 Counsel do not generally consider motions or answers subject to Rule 11.

19 I cannot accurately answer for specific areas, but I do know lawyers are increasingly aware of Rule 11, and it is affecting all pleadings filed.

20 Rule 12(b) motions are where abuse is the greatest.

21 With respect to legal issues, a moderately skillful lawyer can transmute the actually groundless into the apparently universally grounded.

22 Motions for summary judgment and under Rule 12(b) are almost invariably filed. They are voluminous and they obviously took much time to prepare, which is probably the principal reason, usually, for their filing. In <this> circuit, they almost always fail.

23 A high percentage of cases have some groundless claims and defenses—pleaded on "spec." It has not occurred to most lawyers that Rule 11 applies to this situation. However, I can usually control without use of sanctions.

24 We have no real problem in this area. Our judges get involved very early in all litigation, and I think that is more effective than sanctions.

25 I've seen some factually groundless third-party complaints.

26 Defense attorneys put in all the denials and defenses which are on their word processors, but it doesn't cause a problem.

27 Personally, I have not faced in my cases completely legally groundless allegations or motions.

28 Rule 11 generally deters plaintiffs from filing groundless pleadings, and for that reason is effective. It should be noted, however, that it is only rarely used against defendants.

29 Groundless and mindless are somewhat different—most often the offensive pleading or paper is really mindless.

30 I believe the lawyers here do their best to perform honorably and professionally.

Comments to Question 4

31 Most problems occur with filing of complaints, particularly those removed from state court. Since I control motions calendar by use of pretrial procedures, there is less problem with motions. The answer above may be more attributable to that practice than Rule 11.

32 Most attorneys have an awareness of Rule 11.

33 This circuit *frowns* on the imposition of sanctions except in "exceptional cases."

34 A *very* substantial number of summary judgment and Rule 12 motions are "fee churning." In addition, a large number of these motions are designed to "educate" the judge. Rule 11 hasn't done much with these types.

35 The lawyer is much more careful about his work in the federal system because of Rule 11.

36 My experience as judge is limited—but I have twenty-two years of litigation experience. Groundless allegations or legal positions are and have been rare in this jurisdiction.

37 I suspect Rule 11 changes have had very little impact on the practice, but that is purely a very, very subjective judgment.

38 I think the existence of Rule 11, not its use, has helped.

39 Discovery motions are a problem, too.

40 (1) Defendants will assert groundless denials and affirmative defenses simply to avoid waiver. They usually do not affect the course of litigation very much. (2) Far too many motions for summary judgment by both sides.

41 The good attorney doesn't do it. The others (not many) don't understand the difference.

42 Prior to 1983, every answer had groundless, boilerplate affirmative defenses. While many still do, the number is significantly lower.

43 Plaintiff's S. J. motions are very rare, but when they are filed, there is usually a good reason.

44 While Rule 11 may not prevent groundless pleadings from being filed, it appears to significantly reduce their number and also lead to the abandonment of such claims when court or adversary focus on them.

45 Boilerplate defenses in tort cases are always pled.

46 Rule 11 is not much used against defendants, although the threat has caused many defendants to admit liability. I believe the rule has had a substantial effect on pre-filing investigations by plaintiffs—they now screen cases before filing.

47 I have found that most Rule 11 problems, especially allegations by opposing counsel, arise through motions or discovery.

Comments to Question 4

48 I think the rule is necessary.

49 I believe there is somewhat of a problem in presenting exaggerated factual assertions.

50 Virtually impossible to answer because hard to know what is not filed because of Rule 11.

51 I have no doubt that overall the effect of Rule 11 in districts where it is enforced is to make many if not most lawyers stop and think before filing a paper.

52 <New judge>, but my guess based on 30 years as a trial lawyer is that Fed. R. Civ. P. 11 as amended does act as an effective deterrent.

53 I cannot answer the above. All I know is that Rule 11 is a tool I frequently use to try to prevent groundless activities.

54 As to [groundless motions to dismiss under Rule 12(b)], Rule 11 is slightly effective because I warn parties.

55 (1) Excessive amounts claimed. (2) Fail to state a claim, counterclaim, negligence, statute of limitations. (3) Answer denial—no investigation. (4) State practice maintained in diversity cases—not even familiar with Rule 11.

56 I have no data to answer these questions. Much of the difficulty in litigation is the growing uncertainty about the law resulting from the fact that there are too many appellate judges.

57 I do not know of very many instances where Rule 11 is used by judges in this area —perhaps it should be used more often or perhaps there are not many instances justifying it, in the way of practice in this farm and ranch [community] and comparatively small population.

58 The problem on my docket is primarily with groundless civil rights complaints. Much of this problem results from ignorance of civil rights law.

59 No problem in our district.

60 The strong difference in opinions as to what amounts to serious problems is demonstrated by the number of cases reversed for plain error. There is always a possibility that the trial judge's opinion of what is frivolous could be wrong. There is also the potential that the trial lawyer may be sued for malpractice for failure to present certain issues which may be considered frivolous. I, therefore, think Rule 11 has been most helpful to the courts but that great caution should be exercised in actually enforcing substantial sanctions.

61 There have been few requests for Rule 11 sanctions in counselled cases in this division of <this district>. Those filed have related primarily to the allegations and legal claims in a complaint. It appears, however, that denials and affirmative defenses in answers, and Rule 12 motions to

dismiss, are made generously, and so it would appear that Rule 11 is not much of a deterrent in those areas. The parties do not seek Rule 11 sanctions in those areas, and the court has not considered it a sufficient problem to require the sua sponte imposition of sanctions.

62 On the last three, other procedures, including enforcement of a local rule on such motions, are more significant than Rule 11 sanctions.

63 To be frank, I have not had time to pursue these matters. I depend upon opposing counsel to point out these matters; and thus far, there have been a minuscule number of them.

64 The affirmative defense problem arises in Rule 11 itself.

65 (A) Those attorneys who file such groundless motions are not usually regular practitioners in this court; therefore, even if Rule 11 sanctions are imposed, there is little deterrent effect vis-a-vis those attorneys. (B) In this district, it seems that Rule 11 sanctions are infrequently imposed, in large measure because the circuit reverses them with regularity; therefore, Rule 11 has not been effective.

66 Do not look at answer normally, unless it is called to my attention by plaintiff.

67 To file a summary judgment motion, permission of the presiding judge must be obtained.

68 As to summary judgment motions (on both sides), a more accurate answer would probably be between "moderately effective" and "very effective."

69 [Groundless summary judgment motions by plaintiff] are rare anyway.

70 Our local rule covers [groundless motions to dismiss under Rule 12(b)].

Question 5

Do you think Rule 11 has in any way impeded development of the law?

[If yes] In what way has Rule 11 impeded development of the law? If possible, please specify particular areas of law you think have been affected? (Note that some judges who answered "no" also added comments.)

1 It has a chilling effect in connection with the filing of marginal liability cases generally.

2 It has had a somewhat chilling effect on innovative theories, such as in 1983 civil rights cases and in Bivens-type cases.

3 [No.] Rule 11 is good. Let it work. Let the judges manage cases.

4 Parties are afraid to stretch the law to new limits in fear of Rule 11.

5 The appellate courts have undermined the effectiveness of Rule 11, even in light of the recent Cooter case. Appellate courts refuse to back up trial judges.

6 It scares lawyers who may want to raise new thinking or new ideas.

7 By definition, "development" of the law includes the recognition of new legal theories (of liability). Inserting an unprecedented claim invites a Rule 11 motion.

8 It has spawned entirely too much satellite litigation.

9 I suspect it has made lawyers unwilling to risk pushing for changes in legal doctrine, but I am not in a position to prove this.

10 [No.] Rule 11 does not impede the law profession. It makes improvements.

11 In civil rights actions, where pre-filing inquiries of defendants may be futile and novel legal theories may suggest themselves, Rule 11 has to some extent impeded development of the law.

12 Counter-productive and it creates additional litigation, which often is more time-consuming than the underlying case.

13 [It has impeded] important civil rights developments.

14 For conscientious counsel, it has created a reluctance to pursue marginal or only plausible causes—or to challenge "established" law.

15 I believe that Rule 11 has "chilled" the enthusiasm of many plaintiff's counsel from initiating novel litigation out of fear of sanctions.

16 Intuitively, I think some of the far-out but not totally irrational civil rights litigation which we used to get has been driven out and into a more hospitable but far slower state court system. I cannot prove this.

17 [No.] I view the fact that a groundless pleader can be made to suffer for his dereliction or vindictiveness to be a positive [outcome] of Rule 11-type sanctions.

18 [No], because I am very sparing in its application.

19 Particularly in the area of civil rights litigation. Such litigation is already unpopular both within and without the legal profession. Rule 11 has been used by those who dislike such litigation to discourage lawyers from bringing such litigation.

20 It may curtail originality of legal theories—probably in civil rights and toxic torts.

21 Rule 11 inhibits genuine advancement of legal doctrine. The focus is upon Rule 11 rather than resolution of the merits of the underlying case. The only "development" of the law now seems to be the law of Rule 11.

22 It serves as a deterrent to access to the courts.

23 Chills some attorneys into declining cases—discrimination claims (most frequently litigated Rule 11 cases).

24 Rule 11 has had a chilling affect on the advancement of constitutional claims already rejected by the Supreme Court. As the Constitution is a living document, there ought be no sanction for the advancement of such claims.

25 It is a patchwork repair on a set of rules that are 52 years old and in need of total revision.

26 [No.] Counsel can always preface pleadings that a new approach or theory is being advanced.

27 Dealing with sanctions issues consumes more judicial time than the benefit derived. In the vast majority of cases a request for sanctions is made but in only a small percentage are sanctions warranted.

28 [No.] Basically factual allegations are now more carefully asserted.

29 Under our constitutional scheme of government, the legislative branch has the prerogative to change and develop the law. All too often, I think, the judicial branch invades that province, calling their acts the "development" of the law. To that extent, Rule 11 impedes the "development of the law."

30 It has a chilling effect and may cause a person to refrain from filling a meritorious case.

31 [No.] I don't really believe it has.

Question 6

From what you have observed in counseled cases in which a request for Rule 11 sanctions has been filed, what effect, if any, does this request have on the likelihood of settlement?

1 I can't say, but doubt it has much effect on settlements.

2 Often, it simply reflects antagonism between counsel, which impedes any settlement regardless of sanctions.

3 In some cases Rule 11 sanctions impede settlement. It does not encourage settlement. The number of cases affected is not significant.

4 The filing of a request for Rule 11 sanctions impedes settlement in some cases. I have not seen an encouragement of settlement emit from such a request.

5 In most cases I have seen, the request for Rule 11 sanctions is made too fast (quick draw) and too prematurely.

6 The filing of the request for sanctions brings about the dismissal of the case or the withdrawal of the offending motion.

7 None of the above. It affects a very few cases.

8 [I can't say what effect it has], except in cases where sanctions are likely and the judge suggests settlement is a way out.

Question 7

Again, from what you have observed in counseled cases in which a request for Rule 11 sanctions has been filed, in how many cases does the filing of this request by opposing counsel create a conflict of interest between attorney and client?

1 Long ago, before Rule 11, I had to disqualify counsel because of conflict of interest.

2 I don't really know—my guess is almost none.

3 Very, very rare that a request for sanctions is made.

4 This is not a real problem.

5 My impression is the client rarely knows.

Question 8

In your experience, what effect, if any, does the filing of a request for Rule 11 sanctions have on the interactions between opposing counsel? Please circle one.

1 I think the climate of the interactions between counsel is set before a Rule 11 motion and may very well determine whether one is to be filed.

2 I can't say, but it frequently elevates emotions.

3 The Dondi case from Dallas tells us that alleged ethical violations should be sent to the bar association. About half of the Rule 11 requests involve alleged ethical violations.

4 I know it has an effect on what counsel does and is a source of some irritation, but I can't say how much!

5 I can't say, but I suppose it causes some contentions, but I don't put up with lawyers continually squabbling.

6 Filing seems to have little or no impact. Granting sanctions sharply curtails unnecessarily contentious behavior.

7 More frequently I find that Rule 11 is the effect of already contentious relationships between counsel, rather than the cause of such relationships and behavior. That explains a good deal of the correlation between the two things.

8 The behavior is usually there anyway.

9 In some cases it exacerbates contentious behavior. The number of cases is not significant.

10 In my experience, more often than not most lawyers are embarrassed if Rule 11 sanctions are requested by the opposing side. They attempt an explanation and then with haste seek settlement discussions.

11 You indicate Rule 11 sanctions involve contentious situations. This is not usually so. Most requests are based on inadequate investigation and research, not on an intentional attempt to commit fraud, blackmail, etc.

12 They are adversaries to start with.

13 It causes counter-filings.

Question 9

Please consider once more your experience with cases in which a request for Rule 11 sanctions has been filed. How many of these requests, if any, were groundless?

1 None of these requests were groundless from someone's standpoint.

2 This misses the question. Although they may not be groundless, they're usually also not worth the time, effort, & legal fees.

3 The most common use of frivolous pleadings in my experience is by defense attorneys, who perhaps feel pressured by time and file stock motions, such as a motion to dismiss. I also think they often file summary judgment motions in order to get the judge better acquainted at an early stage with the merits of defendant's case.

Question 10

In the past twelve months, in how many cases, if any, have you advised counsel that a particular filing might lead to imposition of sanctions under Rule 11?

1 In one case.

2 I believe five.

3 A few times, mention of Rule 11 has caused counsel to *withdraw* a filing; but I never threaten in advance.

4 I have cautioned pro se litigants.

5 About six cases.

6 I think the giving of the warning—the ability to wield the sword of Damocles—is one of the most potent and useful aspects of the rule. It's sort of like [a national park]: It's there, and you know it's there, and even though you don't use it very much, that you are aware of its presence has a salutary effect on the player's state of mind.

7 One case.

8 This type of caution—avoiding the potential of sanctions—is fairly frequent.

9 I've tried to do it politely and humorously to bring counsel back to reality—so far it's worked.

Question 11

Approximately how many orders imposing Rule 11 sanctions did you issue in the past twelve months? Please include in your estimate any orders you have imposed upon review of a magistrate's report and recommendations.

1 I usually hold hearings on Rule 11 motions, show displeasure with any infractions, tell them I'm not going to rule until the case is over but "you" are in trouble. They usually shape up and it's never brought up again.

2 I keep no record. Most sanctions are imposed under Rule 37.

3 [None] However, I have warned counsel on Rule 11 sanctions with salutary effect.

4 I invited two Rule 11 motions. In one case, the invited party (the gov't) decided not to pursue the matter; the adverse party was a labor union. In the other case, I eventually decided to deny sanctions, as the subscribing attorney was acting on instructions of a superior.

5 Didn't keep records.

6 In one case, in which I was ready to impose sanctions, the scheduling of a hearing that was in the nature of an order to show cause was the catalyst for settlement of the entire lawsuit.

7 [One] and the attorneys claimed denial of due process, so I've set them aside and issued a show cause order, which will be heard <later>. There has been less Rule 11 activity in the past 12 months than before.

8 I can't answer.

9 [Three] But lots of threats!! The Rule 11 possible sanction is the real weapon.

10 Few if any because of the wholesome warning effect of Rule 11.

11 We have threatened in four to five cases but have not had to issue any actual orders.

12 Very few (I cannot give you a number.)

13 I threaten sanctions. The amount actually imposed is minimal.

14 I always hold an evidentiary hearing.

15 Two order to show cause motions pending.

16 More often than not, I have used the threat of sanctions to quell discovery disputes and problems.

Question 12

Have you imposed non-monetary sanctions in counseled cases under Rule 11? [yes or no] [If yes] Would you please describe the non-monetary sanction?

1 Dismissal without prejudice. Refusal to accept certain papers.

2 Resetting the case to the end of the docket.

3 Changing place of taking depositions from [one state to another]; requiring counsel and parties to conduct discovery in courthouse; etc.

4 Limit proof.

5 Admonitions; strike pleading/motion.

6 One case—$5,000 fine (it was less than attorneys' fees) for frivolous action.

7 Striking groundless pleadings.

8 I've required counsel to pay the costs of bringing the motion, including travel expense and opposing attorney's fees.

9 Reprimand.

10 Suggested that attorney refrain from filling cases in court because of failure to comply with scheduling orders.

11 Requirement of written apology by offending party. Censure in written opinion.

12 Dismissed action for failure to follow court order.

13 Dismissal of case.

14 Dismissal.

15 Suspended license to practice in Federal Court.

16 Struck a cause of action from plaintiff's pleading. Refused and struck pleading for punitive damages.

17 I almost exclusively impose non-monetary sanctions, including requirements of continuing legal education and letters of apology.

18 (1) Written censure in published opinions. (2) Elimination of pleadings. (3) Outright denial of motions or requests. (4) Recommendation for disbarment.

19 Exclusion of testimony.

20 Where counsel for both sides have engaged in conduct violative of Rule 11, I have so noted without imposing monetary sanctions.

21 Additional CLE courses were seriously considered by me relative to counsel's handling of a particular matter.

22 I can't be case specific. Suppression of a pleading or a witness would be the typical non-monetary sanction.

23 Denying certain defenses and the use of certain testimony.

24 Striking claims, dismissal.

25 Write a letter to client, enclosing sanction letter. Attend CLE course.

26 Require a brief in every affirmative defense. Result: Withdrawal of frivolous defenses by amended answer.

27 Preclusion orders relating to legal or factual issues.

28 Dismissal of plaintiff's complaint. Striking pleadings. Reprimand. Limiting discovery.

29 I dismissed a plaintiff's case.

30 I order P's counsel to order a copy of the transcript of the hearing and to give it to his client to read before the next hearing on the case.

31 (1) Verbal reprimand. (2) Written reprimand. (3) Penmanship exercise (copy Rule 11 100 times). (4) Attend CLE.

32 (a) Revoked attorney's admission pro hac vice, to the extent of requiring another lawyer (not necessarily another firm) to take over responsibility for the litigation. (b) Warnings that further violations would result in sanctions.

33 A country lawyer following the practice in district court did not know of Rule 11.

34 Report reprimand to supervising attorney and have that person certify it was done.

35 Reprimand.

36 Although I have not yet done it, I intend to impose a sanction of a number of hours of pro bono work by a lawyer.

37 A reprimand.

38 Specific orders to take procedural steps, usually clarify responses, by a specific date.

39 Criticism of counsel in open court and noted in minutes as sanction.

40 Suspension from the bar of <this district>.

41 By correspondence, have requested parties to move either to strike an answer or for summary judgment.

42 Reprimand.

43 Reprimand.

44 Preclusion of evidence, advising client of sanctions, dismissal of action.

Comments to Question 12

45 Notice of reprimand published in paper.

46 Striking pleadings.

47 Warning that another occurrence would result in sanctions. Denial of right to appear pro hoc vice.

48 I have threatened!

49 Written reprimand.

50 Preclusion orders (e.g., in discovery for refusal to make discovery).

51 Required counsel to apologize to defendant and reprimanded counsel in another case.

52 (1) Read rule on professional conduct. (2) Read Rule 11. (3) Lecture in court re: improper conduct. (4) Reprimand.

53 Attend course in legal ethics.

54 The denial of tendered evidence.

55 Reprimand, private or published. Obliging the offender to file a substituted pleading that complies with the rule (a good sanction in my opinion).

56 Reprimand.

57 Required completion of law school course in civil rights.

58 Turned the lawyer in to the Disciplinary Board. Recently affirmed by <this> circuit.

59 Dismissal of complaint by an attorney against a former complaint, filed in violation of attorney–client relationship.

60 Have used reprimands.

61 Reprimand and warning.

62 Dismissal of claims.

63 Dismissal.

64 Attend CLE.

65 Dismissal.

66 Simple statement in opinion that counsel has engaged in sanctionable conduct.

67 Long before Rule 11, I dismissed a case and was affirmed because of plaintiff's attorney's continual failure to answer discovery.

68 Required sanctioned attorney to attend a CLE course on Rule 11.

69 Admonition or caution. "Bawling out."

70 As a sanction, I have awarded "all or nothing" relief in discovery disputes. Each side files their position. If one seems more unreasonable, I adopt the other without modifications as the position of the court.

71 A verbal admonishment in open court to a relatively "new" lawyer.

72 Refusal to accept more amendments to pleadings.

73 I ordered one attorney to take ten hours of continuing legal education, specifically in legal ethics.

74 Reprimand.

75 Attendance at federal practice or substantive law continuing education program; peer counseling.

76 Monetary and striking pleadings. Notice to other people. Dismissal.

77 Admonition to counsel.

78 Prohibited proof on a certain issue where party had not disclosed relevant information during discovery.

79 Written reprimand.

80 Admonition.

81 A strongly worded snub, filed and publicly disseminated.

82 Reprimand.

83 Admonition in a written order.

84 I pointed out counsel's conduct in opinion. Publicity [unreadable word].

85 Admonition.

86 Ranging from a conventional warning to dismissal with prejudice. I prefer non-monetary sanctions.

87 Attend legal ethics seminar.

88 Verbal admonition.

89 Barred from practice in *my* court—as opposed to practice before my colleagues—for 6 months.

90 Required a tardy and impudent attorney to attend a bar course on trial practice. Required an attorney who deliberately ignored a notice to appear to attend a bar course on legal ethnics.

91 Thirty days' suspension from practice in federal court.

92 Dismissal.

93 Inability to offer evidence on a particular issue in case.

94 Criticized counsel.

95 A party has been precluded from filing further repetitive litigation.

Comments to Question 12

96 Attendance at CLE courses covering the areas of law that necessitated the imposition of sanctions.

97 Denied motions.

98 Dismissal of the complaint.

99 Dismissal of claims.

100 Reprimand, verbal as well as written.

101 Required an attorney to write a letter of apology to a public official he had sued personally.

102 Required CLE course in area of law. Counsel was incompetent.

103 Dismissal in an extreme case, in conjunction with Rule 37(d).

104 Reprimands.

105 I have entered one order precluding further discovery. I have stricken pleadings several times.

106 Striking claims and defenses. Defaulting parties.

107 (1) Required counsel to re-write & re-file briefs without charge to client. (2) Ordered an expert witness stricken. (3) Ordered certain exhibits stricken.

108 I have stricken pleadings and entered judgment.

109 [No] But I plan to use non-monetary sanctions in the future. In the past I have given warning alone in minor violation cases.

110 Reprimand.

111 Dismissal of complaints *with* and *without* prejudice because of excessive ad damnum clauses.

112 Strike pleadings; dismissed with prejudice.

113 Court order admonition.

114 I required plaintiff's counsel & plaintiffs to notify all similar claimants of my opinion & granting of summary judgment to defendants.

115 Dismissal.

116 Preclusion of issues at trial.

117 Dismissal of <case> for lack of sufficient pre-filing investigation of the medical [basis] to support a cause of action . . .

118 Banned from appearing in the court until monetary sanctions paid.

119 Suggested letter of apology from one lawyer to another.

120 Re-file in proper form immediately. Strike defenses at early scheduling conference. Demand particularity in factual form.

121 Require co-counsel.

122 Contempt citation against party and counsel for refusal to answer interrogatories.

123 Reprimand.

124 Dismissal or judgment.

125 Verbal chastisement.

126 Reprimand to counsel with threat of imposition of sanctions if conduct persists.

127 . . . reprimand.

128 Order to show cause why action should not be dismissed--the *extra work* sanction

129 Dismissal. Briefing claims or defenses. Imposing continuances.

Question 13

Which of the following statements best describes the pattern of your Rule 11 sanctioning practice in counseled cases in the years since August 1983, when amended Rule 11 was adopted? If your appointment post-dates 1983, which of the following statements best describes the pattern of your Rule 11 sanctioning practice in the years since your appointment?

If your practice has changed, would you please tell us why it has changed?

Reasons given by those who said they impose sanctions more frequently now than before

1 Burden of proof and judges' discretion toward issuing such sanctions has changed.

2 Sanctions are asked for more often now than before.

3 I have re-examined its use and earlier I was very reluctant to do so. Also, our circuit court, while not encouraging its application, seem to be sending the district court judge a message that its use is often overlooked.

4 The objective standard has convinced me to reevaluate Rule 11 starting about 1984.

5 Court of appeals has mandated, or I would rarely impose sanctions.

6 We are in a "paper chase." Counsel, probably to build billable hours, are filing numerous pleadings, including many more pages than previously filed, and unduly burdening the court. Page limits in court rules are being ignored.

7 I believe the rules indicate a greater desire on the part of the Supreme Court to force counsel to litigate in a responsible and professional manner.

8 Rule 11 now mandatory, and different criteria for application, i.e., "good faith" not enough.

9 The rule really should be used.

10 Larger lawyer population, more groundless pleadings—greater need for Rule 11.

11 I feel that post-1983 Rule 11 mandates sanctions.

12 Because of amendment it is now called Rule 11 sanctions—it used to be that the judge chewed out the lawyer.

13 I never used Rule 11 until the amendments. I use it as little as possible now, but it says "shall."

14 Changed because of Rule 11.

15 More requests.

16 Lawyers have had ample notice of the rule change.

17 Because of the language of Rule 11.

18 I never imposed any before 1983 and now very rarely.

19 More knowledgeable about and comfortable with Rule 11.

20 With growing experience on the bench, I generally am less accepting of groundless filings.

21 Up with increased caseload.

22 More motions for sanctions under amended rule.

23 As our metropolitan area grows and the practice before the court takes on a national and international character, contentious behavior between and among counsel becomes more exacerbated. Rule 11 offers some assistance in controlling it.

24 More abuses.

25 Because the rule changed.

26 As I gained experience on the bench since 1986, I have become more inclined to impose sanctions.

27 New judge—developing self-confidence.

28 Rule 11 interpretation has made it possible to issue sanctions orders where no actual bad faith is shown. Furthermore, the hearing required to determine bad faith is not worth the results on a cost-benefit analysis.

29 I grant sanctions to stop frivolous motions and cases.

30 Because of increased and greater violations.

31 The word "shall."

32 Because of the clarity of the rule as modified and as interpreted by <this> court of appeals.

33 Never received motions before 1983.

34 The rule states "shall"—not "may."

35 The imprimatur of the rule has given judges more confidence in imposing Rule 11 sanctions.

36 The rule and the general ambience encourage imposition.

37 Because of the provisions of Rule 11, as amended.

38 In <this> Circuit district judges are encouraged to look closely at each situation. Sometimes closer scrutiny can reveal sloppy or ingenuous practice.

39 I believe that the amended Rule 11 has made the responsibility of counsel much more clear.

40 Gradually increasing use to conform to perceived practice of colleagues.

Comments to Question 13

41 I don't believe I imposed sanctions more than two or three times before 1983. Although I still try to avoid sanctions, I do impose them in egregious circumstances. The change in my practice is as a result of the change in Rule 11's wording, i.e., "the court . . . shall impose. . . ."

42 Decisions of <this> circuit, which seem to me to mandate the imposition of sanctions.

43 The change in the rule is the reason for the change in frequency.

44 Because of the 1983 changes making the imposition mandatory—("The court *shall* impose . . ."). I take this command seriously.

45 The rule as modified gave atty's notice of what they could expect—language is clear.

46 Because the rule made imposition mandatory.

47 I have been reversed by the court of appeals for not imposing sanctions on occasion. My evaluation of Rule 11 did not meet with theirs . . . .

48 More motions under Rule 11 have been filed. Also since 1983 I have been more attentive to violations of the rule.

49 The mandatory nature of the rule.

50 More need.

51 I take literally the mandatory language of the rule.

52 Bar recognition of the rule.

53 It has become necessary to get the attention of the lawyers and the parties.

54 Since Rule 11 was amended, sanction orders are more likely to be affirmed on appeal. Also Rule 11 is much stronger and gives the court more authority to enforce its orders.

55 More motions by counsel requesting imposition of sanctions.

56 Because of the policy change reflected in the amended rule.

57 No reason after these years for violations to take place.

58 The motions have been better prepared & the grounds more tenable.

59 Clear legal authorization.

60 I am more aware of the need and the availability of these sanctions than I was formerly.

61 There is more specific authority for imposition of sanctions. Now delays caused by parties that could have been avoided are sanctioned and often objections withdrawn. Sanctions can specifically be imposed on parties who insist on groundless positions.

62 I was appointed after 1983 but clearly I would have imposed Rule 11 sanctions more frequently under the new Rule because of the difficult standards and the requirement that sanctions be imposed if a violation is found.

Comments to Question 13

63 Because Rule 11 gave the trial judge more management clout. I do not impose Rule 11 sanctions frequently but wield it frequently to remind counsel of our enhanced management responsibility, and this helps to develop the type of adversarial discipline to impose efficiency in case management.

Reasons given by those who said they impose sanctions less frequently now than before

1 The necessity for sanctions has decreased over the years, as attorneys have learned to comply with the rule in order to avoid sanctions. There is no doubt that the amended rule has caused revolutionary improvement in lawyer responsibility.

2 The benefits of Rule 11 do not outweigh the required expenditure of judge time.

3 Appears to be less need for it.

4 The more I see of Rule 11 motions the less I like them. We have cases where counsel are filing motions for sanctions against opposing counsel who first sought sanctions!

5 The grant of a Rule 11 motion is a time-consuming task; sometimes a separate mini-trial. The diversion of such time is not worthwhile, except in the more serious cases.

6 (1) It is less necessary because counsel understand their obligations under Rule 11 better. Also the amount imposed is usually less than requested. In our circuit, the amount is sufficient to deter the counsel sanctioned but may not be compensatory. (2) Court of appeals cases make the procedure burdensome and time-consuming.

7 I believe Rule 11 has caused attorneys to be more careful and, after an initial enchantment with Rule 11 motions, attorneys are also more reflective before they invoke Rule 11. It has been a learning experience both ways.

8 The rule is counter-productive because it is viewed by the bar as a disciplinary proceeding, which gives rise to collateral litigation.

9 I have become a senior judge with a smaller calendar and more control over cases I take.

10 No support from court of appeals.

11 I did so once or twice several years ago. I decided it was best to defer sanction issues until the end of the case. I have not had any sanction requests re-instated.

Comments to Question 13

12 The practice of attorneys has improved.

13 Rule has improved the pleadings.

14 Lawyers know I will impose sanctions so they are more cautious now in what they are willing to do.

15 Rule 11 has exercised a curative effect on attorney's behavior.

16 When I was appointed in 1985, Rule 11 was virtually dormant here. When I began to be active in invoking it, other judges began to be also. The result has been a general deterrent effect on filing groundless papers. I believe Rule 11 has been an effective deterrent.

17 Lawyers seem to have gotten the message and practice defensively better than they used to. They also discuss it more among themselves.

18 Concern that court of appeals will reverse and, thus, cause embarrassment.

19 The occasion arises less frequently than in the past.

20 Because the appellate court seems to disapprove of Rule 11 sanctions.

21 I came to understand the difficulty of handling the discretion I had and also concluded the effort generally wasn't worth the "candle."

22 Don't think it has helped materially.

23 Because of appellate court ruling.

24 The rule has its effects and my caseload is reduced.

25 Better compliance with Rule 11. Less reason to impose sanctions.

26 I believe the rule has had a beneficial influence on lawyer behavior.

27 Because lawyers realize the court feels safer in being affirmed by appellate court.

28 As a rule, I don't use Rule 11 sanctions any more.

29 Lawyers are now more careful in federal court pleadings than they were before Rule 11 was amended. In that regard Rule 11 has been successful!

30 It takes a lot of time. I'm not sure it's time well spent.

31 As counsel have become aware of the Rule 11 requirements, they have become more careful and professional in their filings in order to comply with the rule. At present, groundless pleadings have ceased be a major problem because of counsel's understanding of the rule.

32 Fewer abuses.

33 Attorneys should be more aware of this possibility and thus more careful.

34 The imposition of Rule 11 sanctions has deterred the filing of frivolous cases and therefore decreased the need to impose Rule 11.

35 The existence of Rule 11 has had a positive preventive effect. In my opinion, it has improved the conduct of the lawyers and reduced the need to impose sanctions as often as in the past.

36 Counsel have learned to be aware of the Rule 11 requirements, and modified their practice accordingly. This was the end Rule 11 desired.

37 The threat of Rule 11 is in and of itself a great preventer of abuse.

38 There seems to be less need now, which I attribute to the therapeutic and educational value of the rule.

39 <This> circuit court of appeals reverses Rule 11 sanctions. In my opinion <this> court of appeals has abrogated Rule 11. We don't have it anymore.

Comments of those who said they have imposed sanctions with about the same frequency over the years

1 Have only done it once in three years on the bench.

2 Infrequently.

3 Seldom.

4 Not real often.

5 Infrequently.

6 Rarely.

7 I use Rule 11 sanctions very seldom—in a small district the lawyers know the court's views on most matters which might trigger sanctions.

8 I have rarely imposed Rule 11 sanctions in the absence of a need to do so and there has been no change in the pattern. I attribute this fact to the deterrent quality of the present form of Rule 11 and the disinclination in [this district] to grossly abuse the privilege of bringing totally meritless lawsuits.

Comments of those who said they have never imposed sanctions

1 Except in rare instances.

2 Except once.

3 I have imposed Rule 11 sanctions only four or five times since Rule 11 was promulgated.

4 I have only imposed them very infrequently.

5 Except when required by court of appeals.

6 Infrequently.

7 I rarely impose Rule 11 sanctions but I am beginning to think I should do so more often. Bar is getting less and less responsible; more and more cut-throat.

Comments to Question 13

8 Almost never.

9 I have rarely imposed Rule 11 sanctions.

10 Rule 11 sanctions might issue, the lawyers either settled the case or dismissed it without prejudice.

11 I have only imposed a Rule 11 sanction in one case that I can remember.

12 Almost never.

13 I rarely impose sanctions, but I have threatened to do so on occasion with helpful result.

14 I have been on the Federal Bench for <about three years> & I have only imposed Rule 11 sanctions once.

15 Seldom.

16 I have not found it necessary to use Rule 11 sanctions. Case management, under Rule 16, effective settlement techniques, dismissals, and summary judgment have been effective.

17 Except in affirming sanctions imposed by the magistrate in considering and acting upon discovery motions.

18 But would do so in what I considered appropriate cases.

Question 14

Please consider the amount of judicial time needed to resolve Rule 11 issues in counseled cases. Now consider the benefits that may derive from Rule 11. Based on your experience, do the benefits of Rule 11 outweigh the required expenditures of judge time? [yes or no]

1 [Yes] If that's all there is. More stringent solutions might be better—costs, fees, etc., for all struck claims.

2 [Yes] I believe lawyers are aware of their responsibilities more now than in the past.

3 Yes, but not by much.

4 Definitely.

5 [Yes] Deterrence value, I think.

6 It's desirable to have as a weapon in the arsenal but should be used with restraint.

7 [Yes] But the benefits are slight. They outweigh costs only because I spend little time on Rule 11 matters.

8 [Yes] Only because Rule 11 motions are becoming routine.

9 [Yes] If we receive support from the circuit.

10 Close, but, yes.

11 Easily.

12 [Yes] If I actually have to use them.

13 Yes, just being in the rules.

14 Close.

15 [Yes] But barely.

16 I think so, but that's a tough question.

17 Definitely.

18 I believe so but am not absolutely certain.

19 Judge should not turn a Rule 11 proceeding into a full-blown trial except in rare instances. Most Rule 11 complaints are resolved without a problem.

20 [Yes] If you don't take the rule too seriously.

21 Greatly.

22 [Yes] The amount of time necessary to resolve Rule 11 motions is often extraordinary. The chief benefit of Rule 11 lies in its deterrence—thus, the issue never ripens into an actual controversy for the court to decide.

23 No!

Question 15

Federal statutes the Federal Rules of Civil Procedure, and inherent judicial authority provide judges with a number of different methods by which they can manage groundless claims, defenses, or legal arguments. Listed below are several of these methods. Please indicate how effective you find each of these methods in managing groundless litigation on your docket. [(a) informal admonitions; (b) use of Rule 16 conferences to narrow issues; (c) Rule 11 sanctions; (d) Rules 26 and 37 sanctions; (e) 28 U.S.C. § 1927 fee shifting; (f) reverse fee shifting (e.g., under 42 U.S.C. § 1988); (g) prompt rulings on motions to dismiss; (h) prompt rulings on motions for summary judgment; (i) other]

1 Other: ADR.

2 Admonishing counsel in chambers is very effective.

3 Other: T/C calls.

4 Other: Good calendar management.

5 Other: Prompt resolution of (and rulings on) discovery issues by judge himself.

6 It's hard to answer this in a way that conveys useful information. E.g., with responsible, attentive counsel, informal admonitions work well; with impossible or inattentive counsel, admonitions often don't work, and sanctions are a useful weapon to have in the judge's arsenal (pardon the analogy).

7 Other: Prompt ruling by judge (not magistrate) on discovery disputes.

8 Other: Local rule requires attorneys to meet prior to filing of discovery motions.

9 Other: Chambers discussions.

10 Other: Reputation of judge for requiring attorneys to follow the rules and be reasonable.

11 Early, firm trial dates take care of almost all problems. If the lawyers are busy preparing for trial, they don't have time for nonsense. Plus, much "groundless" activity results from lawyers who cannot get a trial date trying to find some other way to move their cases forward.

12 Other: Enforcing scheduling orders as to discovery cut-off and trial dates.

13 [Prompt rulings on motions to dismiss and motions for summary judgment], providing the judge has the leisure to get to them promptly. I estimate I have 75-100 of them pending right now, while managing a full trial calendar.

14 Other: Prompt rulings on all motions.

Comments to Question 15

15 I do not understand question 15. Most of the methods listed do not take place until litigation is over, so they have no effect on that case, and impact on any litigation not yet filed is completely speculative.

16 Our <chambers>—judge, courtroom, docket and law clerks, and court reporter—holds seminars <periodically> to explain to the bar exactly what practices <we require>. This is very effective in establishing a high level of professionalism.

17 Other: Sua sponte dismissal.

18 Other: Current docket.

19 One sanction I would like to explore is to require counsel not to bill his own client for groundless motions.

20 Other: Setting date for trial.

21 Other: Trial advocacy training programs.

22 Other: An ability to use effective settlement techniques.

23 Other: Allow counsel to determine whether a sanction ought to be imposed—with court backing.

24 Other: Case management planning tailored to specific case and ADR.

25 Other: In serious cases, inform client or bring client in if counsel misled.

26 Other: The small group of attorneys who are the worst offenders of Rule 11 consider monetary sanctions of any type only a "cost of doing business" and thus there is often little deterrence value in monetary sanctions. The most effective control a court has is to liberally allow motions to dismiss and for summary judgment.

27 I do not feel that there is enough groundless litigation in this district to even merit Rule 11.

28 Depends on whether the admonition is sharply focused.

29 [Rules 26 and 37 sanctions] are very effective if used.

30 [§ 1927 fee shifting] Hard to use, because of the invidiousness of the conduct that has to be found to have occurred.

31 [Reverse fee shifting] I haven't had occasion to use this, but it should be retained.

32 [Prompt rulings on motions to dismiss] Our Circuit's willingness to allow numerous attempts at re-pleading make 12(b)(6) motions ineffective, in fact unduly prolong litigation.

33 [Prompt rulings on summary judgment motions] Our backlog is so big that promptness is very hard to achieve.

34 Other: Rule 16. Sanctions for failing too abide by pretrial scheduling orders.

Comments to Question 15

35 Other: Written opinions on difficult issues.

36 Other: Local rules.

37 Other: Close management of all cases.

38 Other: Early settlement efforts, if sensitive and realistic.

39 Other: Follow-up conference—final pretrials, motion conferences.

40 Other: Theat of imposing Rule 11 sanctions.

41 Other: Adverse comments in written opinions.

42 The threat makes the rule worthwhile.

43 [Reverse fee shifting] Never allowed to stand on appeal.

44 Other: Good docket management.

45 Other: Controlling discovery.

46 Other: Pre-trial.

47 Other: Use of local rules and modest sanctions thereunder.

48 Other: Threats to impose Rule 11 sanctions if behavior is not improved.

49 Other: Prompt rulings on all discovery motions.

50 Aggressive case management. Insistence on telephone conference call before filing motions, except 12(b)(6). Letting lawyers know the ground rules.

51 Other: firm trial date.

52 Other: Sua sponte dismissals or OSC's (order to show cause) re dismissals.

53 Other: Judgment granted in liability/dismissal with prejudice.

54 Other: Requiring adherence to management and scheduling orders at commencement of the case. District judge monitoring of discovery during pretrial stage.

55 Other: Local rules.

Question 16

Weighing the positive and negative effects of Rule 11, what has been the overall effect of the rule on litigation in the federal courts?

Comments of those who said the overall effect has been positive

1 This is an assumption.

2 Somewhat positive.

3 In our circuit, where it's little used compared to others.

4 Slightly positive.

5 In my court. I cannot say overall.

6 I can't say for sure, but I believe because it exists, it has some effect.

7 Slight.

8 My impression —which is essentially anecdotal, making no claim whatever to empiricism —is that amended Rule 11 has tended to make lawyers a little more aware and cautious in framing their pleadings.

9 If properly used as a tool of the trial judge.

10 Slight.

11 Slight.

12 Slight.

13 Slight.

14 Primarily in terrorem.

15 Some small positive effect.

16 Slight.

17 The state of some circuits' law hampers the imposition of meaningful Rule 11 sanctions, and knowledgeable counsel know this.

18 Minimal.

19 Some positive effect.

20 Little.

Comments of those who said the overall effect has been negative

1 Undue consumption of time, and use as a threat or club.

Comments of those who said Rule 11 has had no effect

1 Except add to the cost of litigation.

2 Little effect.

3 I believe this is true in most small districts.

Question 17

As you know, Rule 11 is being reconsidered by the Advisory Committee on Civil Rules. The Committee has issued a Call for Written Comments, which was sent to all judges and was published at 59 U.S.L.W. 2117 and 131 F.R.D. 344. The call describes some of the proposed amendments to Rule 11. Which one statement below best reflects your preference for the future of Rule 11?

We welcome your suggestions for amendment.

1 Perhaps clear language regarding dire consequences of the overuse or misuse of Rule 11 could be attempted by way of amendment.

2 Rule 11 should be discretionary with the trial court—not mandatory.

3 Clarification is needed relative to the responsibility of local counsel. "Should" should be amended by "may."

4 Should apply to conduct as well as signing; imposition should be permissive.

5 Make it permissive rather than mandatory.

6 There should be an automatic cost and fee provision for struck claims and defenses.

7 The imposition of Rule 11 sanctions should be discretionary not mandatory and "shall" in last sentence should be changed to "may."

8 I would recommend it be amended by its abolishment. We have other necessary tools to do the job, as infrequently as it is used.

9 Although I have not used Rule 11 and have had no reason to use it, I think it acts as a deterrent to slipshod or unethical practice and should be retained. I find the Bar in <this district> quite professional and I think my colleagues have not had much need to apply the rule. Whether they (the Bar) have been deterred, I don't know.

10 Eliminate "reasonable counsel fees" as a sanction.

11 Don't further tinker with the rule.

12 [Retain] present form plus additional teeth (discretion) for judges to effectively manage and implement same.

13 More discretion in the trial court judge. Less authority in the appellate court to second-guess the trial court.

14 Should be used sparingly and only in the most egregious cases. Lawyers should be discouraged from filing motions for sanctions as a means of fee shifting. A rule that explicitly provides for fee shifting would probably be of more benefit than a reconstituted Rule 11. Much needless litigation is filed which is not frivolous (Rule 11) but with fee shifting would be resolved outside of the court.

15 Rule 11 sanctions cause far more trouble than any possible benefit. They create permanent antagonisms among the lawyers as well as between the bench and bar. Judges that I know that use them are generally judges who had no trial experience and generally are antagonistic to the trial bar. I do all my "sanctioning" in private, in chambers—and it works very well.

16 I personally do not like Rule 11.

17 Make it applicable to counsel who is responsible for filing of groundless papers, not just one who signs.

18 Rule 11 should be further strengthened.

19 Some mechanism should be incorporated in the rule to prevent its routine use; perhaps, some threshold mechanism —preliminary showing and an OSC or even requiring a separate filing fee for such a routine.

20 It should be rewritten, but I haven't yet decided exactly how. I believe that in its present form the rule accomplishes little except to cause wasteful satellite litigation and make law practice more contentious.

21 Rule 11 imposes a duty on lawyers who undertake certain obligations by signing his or her name to pleadings; the sanction should be on the lawyer, not the client, which would avoid conflict of interest of the lawyer and client and the difficulty of allocating respective responsibility fairly. Rule 11 should apply to motions as well as pleadings. Further thought must be given to the firm or individual lawyer responsibility in view of the reality of large firm practice.

22 The most beneficial change would be toward automatic fee shifting to the prevailing party. This would be an effective deterrent against improper attorney conduct and would provide an incentive for attorneys to represent persons having substantial claims but who frequently cannot now obtain representation or can do so only at exceedingly high percentage contingent fee levels.

23 Clarify duty to withdraw pleading upon later knowledge. Clarify continuing duty.

24 (1) The grammar should be improved (It is actually impossible for a paper to be "signed in violation of this Rule." The reference should be to certification (reflected by the signature) which is untrue or inaccurate. (2) Instead of making sanctions mandatory, the rule should create a strong presumption for imposing sanctions, leaving some leeway for the interests of justice. (3) There should be a flat "cap," or at least a presumptive cap, on amount of monetary sanctions. (4) The rule should express a preference for non-monetary sanctions in aid of deterrence. (5) The standard should be bad faith/harassment.

25 It's a good rule! Improves ethics in the profession!

26 Change "shall" to "may."

Comments to Question 17

27 Rule 11 is counterproductive. Logically it should make sense, but experience indicates that lawyers who are subject to sanctions under Rule 11 equate such sanctions with disciplinary proceedings and then fight them bitterly—i.e., hire new counsel, etc. The English rule which requires the losing party to pay all attorneys' fees would be better. Rule 11 has resulted in collateral litigation that is superfluous and wasteful of the court's time!

28 I dislike the mandatory nature of Rule 11; i.e., if there is a violation, sanctions "shall be" imposed; yet, in a wishful bid for uniformity, I end up voting to retain Rule 11 as is.

29 Substitute "may" for "shall."

30 (1) Classification is needed of the grounds and procedure for determining whether to sanction the lawyer or the client, and of the role of *pro se* litigants, who are the most abusive of all litigants. (2) Amend the rule to permit sanctioning a firm, not just an attorney. See, e.g., United Services Funds v. Ward, 121 F.R.D. 673 (1988). Ward is now bad law but a fair result. If the partner knows the case is groundless but doesn't sign the pleadings, and the associate signed but does not know and cannot, in the firm's management structure, find out, then the firm should be sanctioned.

31 "Shall impose" should be amended to read "may impose" in last sentence.

32 Abbreviate discovery; discourage filing motions without having conducted necessary discovery.

33 District courts are reluctant to impose Rule 11 sanctions, especially since <this> Circuit has a notorious reputation of hostility to such sanctions. New legislation should make it more difficult for the appellate court to reverse our decisions. Standard of review should be clearly defined and limited.

34 Broadened to include conduct above mere signing of documents.

35 Possibly, a hearing should be an explicit requirement.

36 Eliminate the "well grounded in law" provision. In my opinion Rule 11 ought to be applied only in the instance where a pleading is not "well grounded in fact." In the instances where the pleading is "not well grounded in law," deficiencies are usually quite apparent and little if any judicial or lawyer time is needed to dispose of the leading. This is not the case concerning factual inaccuracies. (The "empty head.") The time spent setting fees and costs usually is greater in the latter than the time spent disposing of the problem. Not so with law inaccuracies.

37 Attorneys take imposition of Rule 11 sanctions personally, because it means they've engaged in misconduct. It would be easier to achieve the deterrent effect Rule 11 is meant to achieve if we could impose them more freely, without needing to find misconduct (i.e., move a little closer to the English system).

38 [Retain] But only if the appellate court will uphold the discretion in the district courts to impose stiff sanctions.

39 It should be strengthened even further with limited circuit review!

40 [Retain] Please.

41 Perhaps there should be something said to the effect that before one files a routine motion for Rule 11 sanctions, one ought to double check to ensure that it is not frivolous. There are lawyers who are too quick to seek sanctions, at the drop of a hat. That the rule cuts both ways should not be forgotten.

42 Require that notice by opposing counsel be given of alleged "groundless" pleading, etc. in a filed paper.

43 (1) Half the sanction should be paid to the court. (2) There should be a statutory ceiling ($10,000) and sanctions should not become a means of fee shifting. (3) Sanctions should be imposed only on the lawyer and could be indemnified or shifted to client in accordance with the usual rules governing when an agent must be indemnified by the principal—preferably not to be resolved in the action in which sanctions are imposed. (4) No sanction should be imposed in a case which has been ended by discontinuance under Rule 41 or where a final judgment has been entered which does not reserve jurisdiction. (5) Sanctions should be imposed on the law firm, not the individual attorney. (6) Sanctions do not involve any moral obloquy and are not equivalent of contempt, so no long-winded adjudication is required.

44 The fewer changes in rules the better.

45 In my circuit, I believe that the case law standards established by the court of appeals necessary to justify the imposition of Rule 11 sanctions are unduly restrictive and thus mitigate against their imposition. In addition, this subject has been discussed on at least two occasions as a part of the educational program of our circuit conference and mid-winter workshop. The comments of some circuit judges at these meetings makes clear to me that these standards will most likely remain in their present form. . . . This viewpoint discourages district judges from using Rule 11 sanctions as a means of controlling groundless or questionable litigation.

46 Make mandatory language —"shall"—permissive—"may."

47 Not certain which course would be best.

48 I would recommend that Rule 11 be amended to require that a hearing be held in open court prior to the imposition of any sanctions. When an attorney is sanctioned under Rule 11, he is being accused and convicted of filing pleadings to harass or to cause unnecessary delay. This, of course, strikes at the heart of his professional duty as officer of the court. Before an attorney's reputation is tarnished in such a way, it is only fair that he be entitled to a full hearing. I do not believe that other amendments are necessary. Although Rule 11 sanctions are presently directed mainly

Comments to Question 17

against plaintiff's counsel in tort cases, this is part of the inevitable "shake-down" period that occurs following amendment to any of the federal rules. Eventually, I am sure, Rule 11 will be applied equally to the improper signing of an answer by a defendant. Rule 11 certainly does introduce hostilities into the case that were not present previously. But these hostilities appear to subside once the Rule 11 motion is resolved. I would therefore urge judges to quickly resolve pending Rule 11 motions, but I would not urge amendment of the rule to provide time limits for that resolution.

49 Any amendment should be aimed at discouraging the amount of time spent on rulings requesting sanctions and rulings on requests for sanctions for requesting sanctions.

50 The present form requires too much time for imposition and allows too great a latitude. The punishment imposed by having monetary sanctions is too great. A system of fines with "guideline" limits should be experimented with, perhaps.

51 to me, is a rule provoked by the needs of large, urban, & anonymous districts. We have very little need for it and I consider it more trouble than it's worth. It creates one more decision point in the progress of a case to resolution.

52 The rule should spell out that the reasonableness of the pre-filing inquiry (whether factual or legal) will be the focus. Also, I've had several cases where the problem stems from continued pursuit/opposition of a claim or defense when the discovery has removed all factual basis for it. The "filing" is the motion/memo in opposition, but the rule really does not make it clear that such action is precluded.

53 Judges are too timid about imposing sometimes against lawyers and parties; and lawyers are too reluctant to ask for sanctions. I believe Rule 11 should be amended to make it stronger and to take away some of the discretion judges now exercise.

54 Amendments should include standards and standards of review or some policy statement to encourage courts of appeal to affirm absent an actual abuse of discretion. Some appellate judges are so hostile to sanctions that they subvert the rule.

55 At the very least, Rule 11 should be precatory, not mandatory. Its present form creates potential subsuits in every civil case filed. Rule 11, as now worded, has done more to undermine civility and professionalism than quotas of billable hours. Judicial resources are precious and limited. They should not be wasted fostering intra-"professional" squabbles.

56 [Retain] But close question.

57 The rule needs clarification giving a standard for its use—appellate review does not, at least up to now, give any standards.

Comments to Question 17

58 I share the expressed concern that Rule 11 may hit plaintiffs harder than defendants, and that civil rights and other pro bono lawyers may be particularly vulnerable. I'm not sure that there is any easy way to protect against this by a textual change. I wonder, however, whether—assuming the advisory committee concludes that there is a problem, or at least a potential problem here—a carefully crafted advisory committee caveat might not have some useful restraining influence. (I would not oppose lengthening the time for answer, so as to put a greater burden on defendants to make detailed inquiry before responding to a complaint. I think it would be helpful to amend the rule by providing some procedural guidance so that an opportunity for some sort of hearing, if requested, would be the norm.

59 I would favor making sanctions a discretionary matter, permitting such motions only with the approval, or upon invitation, of the court. We know groundless litigation when we see it, but the mandatory nature of sanctions coupled with the objective standard combine to impose a significant and unnecessary burden on the courts. I would estimate that Rule 11 rears its ugly head in approximately one-third of my cases. In short, I am convinced that the current version is not worth the effort.

60 I have used Rule 11 very sparingly—only two or three times. But I have threatened its use occasionally and get the desired results without actually having to impose sanctions.

61 I would prefer the word "shall" be changed to "may" and the court's ruling be reviewed by an abuse of discretion standard.

62 better off never adopted.

63 Provide for a "summary sanction" of a modest $ amount (i.e., $200), which can be imposed on client or on attorney or on both (divided) without a great deal of "due process" or evidentiary presentation. This should perhaps have a less onerous label than "sanctions."

64 Make the language not mandatory.

65 Rule 11 should say "may" instead of "should."

66 (1) It should expressly permit the imposition of sanctions summarily, reversible only for a clear abuse of discretion. (2) It should be limited to lawyers, placing the onus on counsel to police their clients. (3) It should expressly limit enforcement mechanisms to entry of judgment alone, on a separate "miscellaneous" docket.

67 Delete the last sentence.

68 Sanctions should not be linked only to a signed writing.

69 Greater emphasis should be made on the "good faith argument for the extension, modification, or reversal of existing law" exception. This should be brought to the attention of the court at the earliest possible

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time, perhaps in the complaint, answer, or the initial pleadings making that assertion.

70 My experience is limited, but I believe I have seen cases filed with no real thought given to whether the plaintiff had a real lawsuit. I believe the rules should be amended to require plaintiffs to have a claim and to state that claim in the complaint. The purpose of the complaint should be to state a claim, not to initiate discovery to find whether a claim exists.

71 The rule should be amended to allow the imposition of discretionary sanctions by the district judge or magistrate. It is salutary to have the power to use when necessary. However, only the judge at the scene who knows his lawyers, his workload, and has the opportunity to assess credibility first-hand really has the capacity to make judgements of expedition of litigation or punishment for impediment. Rule 11 has become more and more a tactical weapon, mostly from defendant's lawyers, to accumulate more billable hours for fees, or to harass opposing counsel for whatever reason, i.e., to delay or to ascertain information which ordinary discovery procedures would provide. I am spending more time passing on the sanctions battles, to the detriment of dispensing decisions and hopefully justice in the principal case.

72 Offhand I can't think of what amendments would be helpful; however, I'm dissatisfied with the status quo.

73 Rule 11 presents a threat to the attorneys and has a sobering influence on "wild" pleadings which resourceful counsel may envision.

74 It should be retained. I would have to see the proposed amendment before I could comment on amending Rule 11. I have no amendment to propose.

75 The concerns which have promoted a call for amendment, including the mandatory language, are exaggerated in my experience and don't merit watering the rule down. If a clear violation is found, sanctions are warranted and are more likely to be imposed under the present rule. Abuse of the system is much more likely if there is discretion in awarding sanctions. Now the discretion exists in the determination of the suits and thus the existence of grounds for applying Rule 11.

76 Amend the rule to make clear that no findings and rulings need be made where sanctions are denied and, where granted, need be made only where the ground is not clear from the context.

77 It simply does no good to tinker in the face of an obvious need for fundamental reform. Until we abandon the concepts of notice pleading and open discovery and write entirely new rules, I think projects such as this are jejune.

78 Trial judge should have more direction. Standard should be raised to bad faith or gross negligence.

79 The state of some circuits' law hampers the imposition of meaningful Rule 11 sanctions. While a district judge should not impose sanctions

arbitrarily, the cumbersome factoring tests are virtually impossible to apply. Again, I would like to explore whether or not a court, as a sanction, could deny counsel the right to bill their own client for frivolous motion.

80 We (both the bar and the judiciary) have learned what standards apply under Rule 11 now, after about 7-1/2 years of its existence. I don't favor granting sanctions, but I believe Rule 11 as it exists and expends judicial resources should be given another 2-1/2 years, so we can assess it with a decade of hindsight.

81 For the present, I believe the rule should be retained as is. It is true that there have been some complaints about its application, and at times it seems that some of the amounts ordered for sanctions appear on the surface to be quite severe. But rather than try to address some arguable abuses with a number of amendments to the rule, I think that the better course to follow would be to wait several years so that the bar and the courts can get used to it and more cases can work their way through the judicial process. Remember that the rule in its present form has only been in effect since 1983. To my mind, this is a short period of time, and I doubt whether we have enough information to really make an intelligent determination as to what form the new rule should take. Many of the points of contention about the rule have not as yet come under judicial scrutiny. There have been decisions which have been criticized, and reconsideration or review by other courts may bring about changes in the case law if that is the course to follow. In other words, I think that we should wait several years and get more information about how the rule is working before we suggest to the legislature what changes should be made. My own belief is that the rule should be used in moderation. It is often said that the purpose of the rule is to make lawyers "stop and think." As I have already pointed out, from an outside observer, it appears that some of the sanctions imposed are used to punish and not to teach. But rather than try to attempt to change the rule now, I think that some of the serious abuses may be handled by using judges' workshops to provide for intense conversations among the judges as to how the rule should be applied. This will make for a better understanding of its purpose and for a more evenhanded application.

82 Rule 11 is useful. Though it has been abused at times by lawyers, and misused by some judges, to repeal or amend it significantly would send the wrong signal and would have a very detrimental effect. I suggest (1) revise to make sanctions discretionary, not mandatory; (2) require leave of court to file a R. 11 motion; (3) perhaps prohibit any discovery without leave of court or Rule 11 motions; (4) require findings and conclusions to support courts Rule 11 order.

83 The problem with Rule 11 is that there is no uniform yardstick for its application. Individual judges with differing philosophies and ideologies reach contrary conclusions about the appropriateness of Rule 11 sanctions. What I find particularly troubling is that Rule 11 sanctions

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seem to be currently applied much more frequently and much more harshly in civil rights and race discrimination cases than in any other area. That issue ought to be addressed.

84 Even though I do not use Rule 11, it may be helpful for those judges who do not use or favor the techniques listed in question 15.

85 De-emphasis on monetary sanctions and formal discovery and evidentiary proceedings, which evolve into a trial within a trial. Emphasis on vesting judges with powers to deal with problems summarily. In this sense, I believe we ought to use Rule 11 more as a management tool rather than an offensive strategic device for counsel. Judges should be vested with more sua sponte management clout allowing for dismissal without prejudice in instances of Rule 11 misbehavior.

86 (1) The Supreme Court's decision in Pavelic & Leflore v. Marvel, 110 S. Ct. 456 (1989), should be "overruled" by rule change to allow sanctions against (a) law firm, (b) drafting attorney who does not sign, (c) party, if responsible but not actually signing. (2) Prisoners who file repeated section 1983 prison conditions cases should be subject to effective sanctions. Many on my docket come from the same people in state maximum security prisons.

87 Much could be done to include commentary that specified what really counts as investigation of the underlying claims and clients' duty to inform counsel.

88 I have not used Rule 11, but it is there if I need to turn to it.

89 Your questions 1-4 miss a vital area, especially question 4. Discovery is the vital area, and Rule 11 should not be, but is, used on discovery pleadings. That is where we get the waste of time and the hostility.

90 I would not be upset if the rule were eliminated.

91 Sanctions under Rule 11 should only be imposed for somewhat flagrant conduct. There are other means a court can use. Again, I am speaking of a small district in which the lawyers know the judges and the judges know the lawyers.

92 Rule 11 sanctions tend to destroy the professional relationship between lawyers. Our system does not and cannot function well when this relationship is damaged. Rule 11 is guaranteed to impassion lawyers. We need all mechanisms possible to make lawyers dispassionate. Furthermore, it is useless to have Rule 11 when it is never enforced at the appellate level. I've almost given up considering it even though its language is mandatory because I feel I will be reversed when I use it.

93 In its present form, Rule 11 could be a useful tool if the circuit courts (or at least my circuit court!) affirmed the imposition of sanctions with any regularity.

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Please use this page for any additional comments or suggestions you may have about issues raised in this questionnaire or about Rule 11 in general. Your contribution is very much appreciated and will be carefully considered by the Advisory Committee.

1 A prospective survey with a judge accurately assessing these issues for a quarter or six months would be much more accurate and valuable. The present form invites much backward guessing and then presents statistics which contain a false sense of reliability.

2 I have had insufficient experience to fully evaluate Rule 11 and its effectiveness. My short-term feeling is that its availability is very helpful.

3 The amended rule has set a new standard of professional responsibility, and the bar, in general, is conforming to that higher standard. Granted, some ill-considered sanctions have been imposed, and the rule has not always been wisely applied. But in this it is not different from any other rule. No one proposes that Rule 12 be abolished because complaints are, with some frequency, improvidently dismissed. Neither should Rule 11 be amended simply because its implementation has been spotty. In my experience, the rule has pretty well made its point: abuses are down, so sanctions are down—a fraction of what they were right after the amendment in 1983 and 1984. I detect no decrease in worthwhile litigation—claims and defenses that are reasonably grounded in fact and law—but a drastic reduction in groundless, time-wasting activity that was a serious problem when I came on the bench in 1976. The change is entirely due to the 1983 amendments to Rule 11.

4 Although I have not, either sua sponte or at the request of counsel, imposed Rule 11 sanctions on an attorney in the past twelve months, I would like to take this opportunity to express some of my concerns about the current use of Rule 11. There are several issues which contribute to my reluctance to readily impose Rule 11 sanctions. Perhaps one of my foremost concerns is the lack of consistent Rule 11 decisions in this and other judicial circuits. Many of <this> Circuit's opinions regarding the imposition of sanctions are not published, and while circulated among trial judges, have no precedential value. Without published decisions at the appellate level, the standards by which to impose sanctions remain fungible, and accordingly, I feel that trial courts continue to hesitate to use Rule 11. In addition, there is a built-in reluctance of attorneys to move for Rule 11 sanctions. In my experience, attorneys are hesitant to aggravate the court with satellite issues which are sure to change the complexion of the case. Inevitably, the threat of Rule 11 sanctions makes the lawyers parties in the case. Once sanctions are threatened or imposed, they have an additional personal and financial stake in the outcome of the case. Moreover, the suggestion by one attorney that

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another has engaged in improper conduct creates friction between them which may interfere with realistic settlement discussions. I have experienced some success in my using other methods of curtailing frivolous claims or controlling errant attorney behavior. These include the use of informal reprimands and warnings, as well Rule 16 scheduling conferences and pretrial motions to narrow issues and dispose of meritless claims. While I do not suggest that Rule 11 has no beneficial effect in discouraging frivolous litigation, I do feel that consistent, precedential decisions at the appeals court level will greatly assist trial courts in correctly applying Rule 11. Moreover, clear and consistent published decisions would provide guidance to attorneys practicing in federal court as to the standards which they are expected to meet. This, combined with use of other less formal methods of discouraging frivolous claims and motions, such as the use of Rule 16 scheduling orders, will result in more effective and appropriate use of Rule 11 sanctions. In sum, Rule 11 has a place in the overall scheme of things but I personally have a reluctance to apply it with its full fury.

5 The objective of Rule 11 is meaningful to the extent that it is aimed at deterring groundless litigation by counsel who know that the pleadings they file are groundless. My experience would suggest that in the overwhelming majority of cases the groundless pleading was filed by counsel who just wasn't competent enough to *know* better. In these cases Rule 11, to the extent that it is mandatory, punishes incompetence, a problem which should be addressed elsewhere.

6 The views I have expressed here are in agreement with the local bar association which polled the lawyers of this <area>. The bar association <passed a resolution> expressing its desire that Rule 11 be abolished. It can be a useful tool if applied properly and judiciously, but for too many (lawyers and judge) it is a people weapon that is utilized with little restraint or concern for side consequences. I think it drives a wedge among lawyers that are usually "civil" but resort to the same Rule 11 tactics to protect their client or to seek a tactical advantage.

7 Rule 11 appears to me an appropriate reaction to the lax professional standards which have developed as a result of the liberal pleading rules and preference for dispositions of cases on the merits. The legal profession is in trouble; it is capable of inflicting substantial damages on adversarial clients by improper conduct of litigation. Rule 11 is one means of addressing the problem.

8 There are several lawyers who pull the Rule 11 trigger more often than others, and some who prefer to handle the issues on the merits and not become involved in procedural sparring.

9 I think Rule 11 increases the lack of civility amongst lawyers. It's lost here in <this district>.

10 The central problem in this whole thing is the question: "What is groundless?" There are some cases in which you would have to make a

lengthy record by use of experts (e.g., law professors) in order to make serious sanctions stick. Often we are just so busy that the game isn't worth the candle.

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11 Frivolous papers and litigation is as much the result of factors outside the Committee's control (maybe more so) than a matter of practice and procedure. E.g., a great percentage of frivolous claims are those made under RICO, often because counsel misunderstand the substantive law. Frivolous conduct may also be the result of economic factors. My own feeling is that contingent fee attorneys and solo or small-firm practitioners may not have the economic resources to meet some judges' view of what is required for non-frivolousness. I favor most an amendment that a lawyer who brings a Rule 11 motion and loses it is automatically liable for costs and attorney's fees incurred in the motion. Also, Couter & Gell should be repealed.

12 I think the fact it exists has done a lot to clean up the practice of law. I have rarely used it, but I have found the *threat* of using it has been helpful in grabbing hold of a derailed case. You have only asked about "counseled" cases, but I have a few professional pro se's on whom I have also used the threat of sanctions to gain control. Rule 11 is not a cure-all, but it is a useful tool in an appropriate case. There are a few cases where one party simply refuses to follow the law and other methods of gaining control simply do not work.

13 The efforts of lawyers and judge should be devoted to disposing of litigation on the merits. We should all avoid non-dispositive labor if possible. There is a regrettable tendency to treat procedural matters and management techniques as of paramount importance. In the Rule 11 context, much more total effort is being devoted to identifying and sanctioning errors by lawyers than the errors themselves cause. A truly frivolous lawsuit, defense, or motion imposes very slight burdens on the judicial system or the litigants, if the judge does his/her job promptly. The only justification for fee shifting should be bad faith or harassment. And fee shifting is substantive, beyond the rule-making province, and should be left to Congress.

14 Let's keep Rule 11 as is!

15 My only concern is some judges can abuse Rule 11 in its present form. That's why I prefer the pre-1983 version. But, on balance, we need Rule 11.

16 Although I have used Rule 11 sanctions to a limited intent, in my opinion it is advisable to have it in the rules because it does have a very salutary effect on frivolous filings. I think it makes the attorneys actually look into the factual situation before filing lawsuits.

17 Attorneys should be cautioned that a motion seeking Rule 11 sanctions should *never* be filed unless attorney can, in good faith, assert that this is an appropriate Rule 11 case. It should not, as it sometimes is, just be added to a response to a motion.

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18 In <this> district, we are blessed with a very stable and quite homogeneous bar. The lawyers who appear before me are generally quite competent, and fully aware of the provisions of the Federal Rules of Civil and Criminal procedure. We . . . operate squarely on the Federal Rules of Procedure. This has worked quite well. . . . In my <time> on the bench, I have imposed sanctions under Rule 11 on one occasion. This arose when the local attorney, under strict instructions from lead counsel in <another district>, filed an answer to a complaint relating to breach of contract, which answer contained . . . . Because of that stable nature and high degree of qualification of our trial bar, I simply don't have much information to contribute in this questionnaire. I'll be happy to amplify these answers in any way you may feel appropriate.

19 I think Rule 11 sanctions should (in most cases) be imposed by the court sua sponte. Lawyers use Rule 11 for leverage or to intimidate opposing counsel and opposing parties. If Rule 11 is appropriate, the judge will recognize it and should act without input from the other lawyer.

20 We are so small that personal relationships in the bar usually lead to an informal resolution rather than the sanction process. The bar has yet to understand the "good faith" admission requirements of pleadings.

21 In my district, lawyers rarely seek Rule 11 sanctions. When they do, there is usually good reason for sanctions.

22 [Rule 11 is] a waste of time.

23 The hue and cry about Rule 11 sanctions is greatly overblown. Since its enactment, the rule has had a positive effect. Also during the last <. . .> years my observation has been that the aberrational imposition of sanctions have been substantially diminished and are no longer something to consider in the efficacy of the rule. The courts of appeal have a great deal of blame to shoulder in the almost total lack of confidence in the trial judge's ability to recognize the need for sanctions in particular cases.

24 The benefit of Rule 11 is it is there and can be used if necessary. E.g., when I grant leave to amend a pleading, I condition the order upon Rule 11 compliance—to bring this constraint sharply to the practitioner's attention. Also, it is easy to hypothesize cases in which Rule 11 should be applied.

25 Most lawyers conform their practice to the minimum requirements of the rules. Please don't change Rule 11 or we will return to the days of yore when things really were worse.

26 I suggest that it is becoming increasingly difficult to understand the impact of Rule 11 in a vacuum. A study of the concerns addressed by Rule 11 must include a more comprehensive analysis of the panoply of amendments to the Federal Rules of Civil Procedure during the past decade, including those to Rules 7(b)(3), 16, 26, 33(c), 34(b), 37, 72, 73, 74

and 75, which in combination have had a significant impact on the way in which the bar and the courts handle civil cases.

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27 Rule 11 in its present form serves this court as a potential club. Without it the court's admonitions to counsel will be less effective. For those who do not violate ethical requirements of practice the rule is unnecessary and may serve as somewhat of an insult, but unfortunately there appear to be a growing number of lawyers who consider the practice of law more a business than a profession. As to the latter, the club seems to be sufficient even though not used.

28 In considering the views of the judiciary re: the utility of Rule 11, I think the committee should take into account that it can be useful to have sanctions such as Rule 11 available, even if a judge imposes the sanction very seldom. In my experience as a judge, Rule 11 deters wasteful conduct by some attorneys who are otherwise undeterable; even if the judge encounters only two such attorneys a year, Rule 11 is useful and needed. In my experience as a private practitioner, Rule 11 was very effective in forcing us to be more careful then we were pre-1983 in framing claims and defenses. I think Rule 11 has a deterrent effect that has been under-recognized in the criticism I've seen of Rule 11 litigation.

29 We are way over-organized. We have too many committees working on too many projects. No sooner is a statute enacted or a rule changed than someone wants to reconsider. It takes lots of time for a new substantive law or procedural device to be tested in the crucible of experience. Judges should devote their time to processing, trying, and deciding cases. Most of the support staffs should be disbanded.

30 Necessary but distasteful. Unfortunately its need is, I fear, increasing. The level of professionalism at the bar is in decline, I'm afraid. Thus, [it's a] necessity to keep the rule intact. Too bad!!

31 I have found the rule most useful as a threat and have not, therefore, had to impose sanctions very frequently.

32 The presence of Rule 11 is effective in that the fact that a court is authorized to impose sanctions leads lawyers to be more careful and restrictive in their practice and the procedures they follow. The presence of Rule 11 almost alleviates the need for its use.

33 I don't see any effect of Rule 11 in squelching lawyerly ingenuity or in discouraging civil rights cases. Most of my Rule 11 business has been in commercial or tort cases. My sanctions have run about 60/40 between plaintiffs and defendants. In my view, which is of course affected a lot by our Rule 11 practices, the rule is far more effective as to the "well-grounded in fact" prong than the "warranted by . . . law" prong.

34 Although Rule 11 has added to my docket and can be burdensome it is a very valuable tool.

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35 A strong Rule 68—offer of judgment—with true fee shifting would solve much of the problem with groundless litigation. The proposal of a few years ago should be reworked and tried again.

36 Although I generally feel that Rule 11 encourages more satellite litigation than is useful or good for the system as a whole, its deterrent effect, though not great, probably counsels its retention in its present form, so long as the circuit courts (as is true in <this> circuit) continue to show appropriate deference to the district judges' exercise of discretion.

37 Rule 11 has had much more talk than action. Most of my colleagues and I actually use it rarely. It can be the standby club (not even necessary to mention) used in egregious cases, which are rare. The requirement that a pleaded claim or defense have a factual basis goes contrary to long-accepted pleading practice, which has been to plead every conceivable claim or defense and then see if discovery will turn up support for any of them. It has not yet occurred to most counsel that this practice violates Rule 11 (there is typically no known factual basis for many of the fringe claims or defenses) until the first status conference, when the judge starts asking the basis of the twelfth claim or the fifteenth affirmative defense. A gentle suggestion that those claims and defenses be withdrawn until a factual basis exists usually suffices without swinging the club. Thus, Rule 11 has a substantial "stand-by" benefit without having to be used often. Sooner or later the message will sink in to the bar.

38 Rule 11 would be effective if it were applied consistently and with regularity. Lawyers in small or medium districts who constantly appear against each other are reluctant to employ Rule 11. Some insurance companies, however, request their counsel to seek sanctions. All in all, the threat of significant sanctions under Rule 11 is helpful in controlling groundless pleadings and, in time, I believe will be more effective.

39 (1) All we need is a cheap and easy means to give a traffic ticket to those who mess up the traffic in the court. Concepts of fee shifting or of punishing conduct constituting an ethical lapse should be eliminated from Rule 11 and dealt with elsewhere. (2) The idea that the district court "shall" impose sanctions, found in the rule, is not a viable idea, but it beguiles litigants. A district judge is never compelled to do anything which is inconsistent with his or her perception of what is just and proper, although some circuit judges or their law clerks may think otherwise. In practice Rule 11 is still discretionary and should so state.

40 The rule is needed both as a prophylactic measure and also as a teaching device to instruct attorneys who otherwise would file inappropriate documents for an improper purpose.

41 As a general matter, requests for Rule 11 sanctions as to anything about which the judge has independent personal knowledge, i.e., pleadings, briefs, etc., are counterproductive and a waste of time. They are valuable, however, in controlling discovery abuse. Sua sponte sanctions and the threat thereof are very valuable in controlling "fishing pleadings,"

which would keep a party in court in order to "fish," and "delay pleadings," which deny the undeniable in order to buy time. They are also very valuable in equalizing or transferring the cost of intentional time waste or unpreparedness when it would be inappropriate to penalize the client or its case. **Comments to Page 8**

42 I have had only two or three Rule 11 motions filed in my cases and have initiated more sua sponte. I have a 500-case individual civil docket and I find traditional methods for dealing with Rule 11-related problems to be generally effective. I find admonitions useful. Based upon discussions at the Bar and my own references to Rule 11 in conferences, . . ., etc., I believe it remains an effective passive deterrent which is immeasurable and positive. Incidentally, I refer to Rule 11 in most orders which allow a party to plead over after I grant a motion to discuss without prejudice.

43 an excellent tool to manage the case load. Attorneys should know that violation of the rules brings judicial sanctions. Litigation is expensive—in the minds of many far too expensive.

44 I think it is a good rule and our state judges wish they had it.

45 Many of these questions—particularly those asking what the effect has been of this or that rule or procedure—cannot possibly be answered by anyone not privy to discussions among lawyers, and between lawyers and clients. Absent that, one can only surmise based on intuition about the rule, intuition being influenced substantially by predilection. Also, any amendment to Rule 11 must take into account not only what the current version says, but how the change from the current version to the amended version will be perceived.

46 Frankly, I don't know why all the interest in Rule 11. Apparently, from my knowledge of this district, it is not a problem. Regardless of the other sanctions available, I would leave Rule 11 alone.

47 I believe that the existence of Rule 11 is important. Whenever I preside at the admission of new attorneys, I encourage them to familiarize themselves with the Federal Rules and more particularly with Rule 11. I then summarize the rule and emphasize to them its importance. An area that I have experienced problems in is the signing of complaints or other pleadings by local counsel who do not have primary responsibility for the case. The complaint is prepared by out-of-state counsel and forwarded to local counsel for signing and filing. Oftentimes, these complaints are not reviewed or receive cursory review by an associate.

48 I was an early enthusiast for imposing Rule 11 sanctions. I eventually concluded imposition was too much trouble. I began to have difficulty with the time it took and the breadth of my discretion. The patently frivolous filing came more from ignorance than deliberate indifference. I concluded I could better move cases by ignoring or postponing consideration. In a rare case, usually involving a repeat offender, it might be appropriate. As I read the appellate decisions reversing sanction

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orders, it appears some judges can't handle the discretion given them. In many cases of affirmance I wince at the magnitude of the amount. The fact of the study suggests many judges think the use of sanctions is getting out of hand.

49 I am in the <. . .> district and deal mainly with . . . big firms, which believe in the billable hours treatment of all cases. Any rule that threatens the billable hour or sanctions the lawyer or client personally helps me in my role, even though I have only used sanctions at the rate of one every two years. The threat or possibility of using it gives power to the court. The financial gains made by some individuals in the use of the law has taken away the power of the court. Many lawyers are interested in winning or making money and respect for the court does not exist in some cases.

50 Because of my age . . . I have for the past several years limited my work to administrative . . . matters so that my experience with the application of amended Rule 11 has been limited and is out of date. My opinion, for what it is worth, is that the mere existence of the amended rule requires lawyers to more seriously investigate and research their cases and that its proper application discourages the filing of frivolous actions.

51 Good luck.

52 I am somewhat discouraged from using Rule 11 sanctions: (1) I question that the time devoted to sanction litigation is productive or very effective in the long run. (2) Where much time is spent and meaningful penalties are assessed, chances are the district judge will be overruled or second-guessed on appeal. Thus, a disincentive exists to employ Rule 11 in all but extreme situations. (3) Sanction motions should be used sparingly and only where clearly deserved.

53 Leave Rule 11 alone until 1993. If Rule 11 is to be amended, there should be added a duty to correct prior pleadings within twenty-one days of the time it should have become clear that the prior pleading was not well grounded, but even this should not occur until we have a full decade of experience with the existing rule.

54 I am generally wary of rules which transfer the emphasis from the disposition of the merits of cases to satellite controversies. Fortunately, Rule 11 has not created the unwarranted bickering and ill will among lawyers in this district that it has elsewhere.

55 My experience indicates that Rule 11 is a useful deterrent to groundless claims and defenses. It is necessary for the court to be vested with this authority.

56 Rule 11 is simply an instruction to the trial judge to do his/her job. It gives structure to the bench/bar relationship in trial procedural matters. Its terms and the particular words used in the rule are not important. Rather the idea that the trial judge is responsible to exact from the bar the bar's best, honest effort is and must be stated. If we as a profession simply

followed our own canons of ethics, Rule 11 would be unnecessary. As we don't, trial judges must be encouraged to administer justice, which includes reminding lawyers of their professional obligations.

57 Central to the problems that Rule 11 seeks to address are issues relating to the tension between an advocate's duty and the duties of an officer of the court. Until and unless the systems of legal education, the bar associations, and the courts work out an agreed understanding of counsel's obligations, fiddling with the rules will have no effect.

58 I believe that Rule 11 has had a desirable effect on the lawyers practicing in federal court. I find that the defense bar is less conscious of the provisions of the rule, however. For example, I see a mindless pleading of affirmative defenses in almost every case without a thought to the Rule 11 consequences. Unfortunately, Rule 11 has come to be viewed as primarily a rein on the plaintiff's bar. I have some concern that Rule 11, like the available discovery devices, is all too often seen as simply another tool to burden the plaintiffs—who in many cases do not have the resources to joust with an aggressive defense bar. On the other hand, the rule has served to hold down the number of frivolous cases filed by the bar. However, Rule 11 is of no value as I see it, with the increasing number of harassing-like cases that I see being filed by the pro se litigants. I believe the rule would be as effective if the district court would be given more discretion when to invoke the rule and providing the standard for appellate review would be "abuse of discretion." Note: please pardon my typing —as are many things, this is a labor of love on my time on a weekend.

59 My experience indicates that the rule has had a positive effect overall and should remain unchanged. It serves as a deterrent to the so-called "Rambo lawyer"; it has reduced patently irresponsible claims and in a very small percentage of cases has caused the early withdrawal of frivolous claims and defenses. I have found it unnecessary to impose heavy monetary sanctions on attorneys beyond reasonable attorneys fees to the adversary, except in three or four cases, and even then the sanctions were not [unreadable word].

60 The only problem I have with Rule 11 is the detail required by the court of appeals in orders granting sanctions. More detail is required to explain the nature of the sanctions imposed than almost any other type of order.

61 [With reference to questions 1 and 3] The problem is mainly in so-called prisoners cases. Appointed counsel attempt to make "something out of nothing" in order to avoid being sued themselves by the prisoners. Counsel attempt to balance the equities, i.e., incur possible Rule 11 sanctions, or be sued by their client.

62 Rule 11 scares attorneys from signing up on pro bono panels. This is not really necessary, but that's easy for me to say. Many pro se litigants have need for an attorney to screen the case for them and advise them of the operation of the law on facts. Many pro se litigants will not take no for an

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answer from attorneys. Many pro se litigants have no respect for the system (some even rightfully so). Rule 11 looms as a nasty possibility for a pro bono lawyer. Judges can discourage the filing of sanctions at the discovery conference. It is helpful sometimes when a file starts to multiply to give it some personal attention. The court still sets the tone. Patience and thoroughness can still avert a Rule 11 problem.

63 I am "allergic" to questionnaires but approve attached report of. . . . I cannot remember ever actually using Rule 11, though I talk about it sometimes in terrorem. When a party invokes it I defer disposition of the case. The bar of our court practices "ability" pretty much. The rule should be kept for use if ever needed.

64 Rule 11 is on a par with violent physical punishment for unruly children; it should be relied on and invoked only under extreme conditions . . . .

65 I think your study is a good idea and look forward to learning whether the national experience and views on Rule 11 approximate my own.

66 Perhaps Rule 11 could be amended to spell out in a more definitive manner when it is appropriate to sanction a represented party.

67 [Regarding questions 10 and 15] As we all know, discovery disputes are among the most difficult things with which we must deal. As long as we have language in Rule 26 about reasonably calculated to lead, we will have trouble. But that doesn't mean I can think of better language—or a better way. Rule 11 has the same kind of trouble—what is a reasonable inquiry to see <if> something is well grounded in fact? Obviously, no two cases, no two pleadings, and no two law firms are the same. And the well-grounded fact inquiry that seems reasonable may, with the wisdom of a Monday—morning quarterback, turn out to have been lacking. All of which suggests to me that the threat of sanctions and an admonition may be as effective a way to proceed as the actual imposition of sanctions. I don't like to impose sanctions on lawyers. Most of them work hard—at least the ones who appear in this court do—they act responsibly—and sanctions are not only an affront to their pocketbooks, but may follow them in future job opportunities and have a devastating effect. Sanctions work after the fact. I think the telephone conference call and the threat of sanctions is a fairer way to obtain compliance with Rule 11.

68 I strongly favor retention of the rule in its present form. Recently—within the past few years—I have noticed a marked decline in the filing of Rule 11 sanction motions, and I have not had to sanction anyone within the past year or two. Both in conference and in open court, counsel generally indicate a familiarity with the rule and their obligation not to pursue meritless claims, defenses, and contentions. They have used the rule to explain to reluctant clients why they must abandon contentions which they cannot support. A weakening of the rule would encourage assertion of baseless claims, defenses, or contentions for tactical or dilatory reasons, or in the hope that something would later "turn up" to support them. Please do not tamper with this valuable Rule.

69 The most egregious aspect of Rule 11 violations concern attempts to convert common law & state issues into federal cases masquerading as: 1) RICO cases (out of routine commercial disputes); 2) civil rights violations (state zoning & environmental actions being challenged); 3) employment discrimination (employer-employee disputes converted into discrimination claims.) **Comments to Page 8**

70 This is a most important effort. I wish you well and would be happy to expand on any of these answers.

71 As indicated above, Rule 11 has decreased the filing of frivolous claims and motions and therefore is used less frequently than before because it has lessened the filing of pleadings justifying the imposition of Rule 11. I am for keeping it at least as strong as it presently is. Any amendments should go in the direction of fee-shifting or other stronger sanctions.

72 The threat of sanctions under Rule 11 provides the greatest positive effect. The wrong message would be sent by removal of that threat.

73 There is no doubt that Rule 11 has deterred some frivolous litigation. Can some studies be done on how much meritorious litigation is also deterred? Certainly this would be difficult.

74 Keep it as it is!

75 Because it (pre-1983 rule) was permissive, too, too many judges, whom I know would not impose sanctions, [unreadable phrase] demanded a "hurtful" decision. Some, even in egregious cases, would not sanction. Some judges <on this circuit> still hold back from affirming any imposition of sanctions unless the condemned act of counsel was deliberately taken. It appears to me that the period of litigation over the 1983 amendment has peaked and the Cooter and Gell v. Hartmarx will be followed by a steady diminution in appeals from district courts. I would not change the present rule.

76 My belief is that the primary benefit of Rule 11 is largely unseen by the judge. The word is out that Rule 11 will be used if necessary. Many counsel are more careful about investigating before signing pleadings. Therefore, the judge sees less junk than the judge would without amended Rule 11.

77 I recognize the difficulty of this kind of a questionnaire but question the value of the "kimono approach" (covers everything but touches nothing).

78 I favor Rule 11 as amended. It is effective.

79 Adverse—because counsel spend much time and effort in pestering (or trying to pester) their opponents.

80 The courts' principal resistance to imposing Rule 11 sanctions is the subset litigation produced.

81 I would be interested in statistical data from the Third Circuit and others that suggests that Rule 11 sanctions are imposed more on plaintiffs counsel in civil rights cases than upon defense counsel. I would also be

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interested in any study related to Rule 11 sanctions imposed on sole practitioners as opposed to law firms.

82 Judges should retake their place in the system & recapture the courtroom. Rule 11 is a valuable tool to help us do so.

83 As I stated previously, I believe Rule 11 serves a useful purpose. However, I believe we ought to urge judges to use it as an effective management device. It has really turned into a device seemingly monopolized by defense counsel seeking to gain strategic advantage over plaintiffs and to divert them from the main action and weakening them by diluting their staff and monetary resources. Plaintiffs don't use it very often against defendants. As written, it gives a judge all one needs if only effectively utilized by the judge. Some judges are reluctant to take Rule 11 initiatives for fear of reversal. Let's give the judge more authority and be more specific as to the use of that authority.

84 The problem with Rule 11 motions in most cases is that there is usually equal guilt in these "paper wars." If I award fees they just will offset each other. I wish I could *fine* both sides, the money to go to pay the lawyers that get appointed in civil cases or for other purposes.

85 About 25% of the litigation in all courts is pro se. Appointed counsel fear they will be sued if they fail to speak out for plaintiff's often warped version of what happened. The word processor puts requests for sanctions at the foot of too many pleadings. [I] encourage a rule requiring separate pleading.

86 I am concerned that Rule 11 has become another weapon to be used in the war of attrition that characterizes much of our litigation. It often diverts attention from the principal dispute and waste resources. What the system needs can't be provided by rules changes—i.e. better lawyers and judges.

87 The division of the district in which I sit has a heavy load of criminal cases. They make up 50% or more of the cases on the docket. As to civil cases, many are tried by lawyers of the < > Bar with whom I am slightly, or more, acquainted. Actually, there have been relatively few cases in which I have felt that a lawyer had acted in a way calling for Rule 11 sanctions, and I have not imposed sanctions very often. I do feel, however, that Rule 11 is worthwhile and that it exerts a desirable effect in my area just by being there. I would hope that the rule is not repealed nor substantially softened.

88 After inception of Rule 11 in 1983, I had an opportunity to address the members of the <local> bar association. At that time, I discussed the rule, advising members of the local bar that I regarded it as a powerful tool for the judiciary and would not hesitate to use it. Those present apparently heeded my words, as I have had little problem with groundless pleadings over the years. I can recall only <a few> cases in recent years where Rule 11 sanctions were imposed. . . .

89 I strongly support Rule 11 in its present form.

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90 It seems to me that some judges on both sides of the trial and appellate level abuse the rule. I just do not like Rule 11 sanctions—particularly when the litigant is proceeding pro se.

91 I believe Rule 11 sanctions should be imposed only in clear-cut situations. I believe I have seen more circumstances in which the result was unfair rather than fair.

92 I believe that if Rule 11 has a place in the law, it should be used sparingly because of the system we use—the adversary system.

Section 3A
Study of Rule 11 in the District of Arizona

The U.S. District Court for the District of Arizona has offices in Phoenix (population 923,750, ranked tenth in size of U.S. cities as of July 1, 1988) and Tucson (population 385,000, ranked thirty-fifth).[1] The court is composed of eight district court judges and three senior judges.[2] During statistical year 1989, the district had 3,008 total civil filings, and terminated 2,757 civil cases.[3] In statistical year 1990, 2,863 civil cases were filed.[4] The major categories of cases were Prisoner Petitions (33%), Contracts (17%), Other (10%), Recovery of Overpayment and Enforcement of Judgments (10%), and Torts (9%).[5]

Results from the field study of Rule 11 activity in the district are presented below. We first describe the amount of satellite litigation associated with the rule. Next, we present information germane to whether Rule 11 activity has been disproportionately concentrated in specific types of cases or on particular types of litigants. Then, we examine judicial variations in sanctioning practices. In addition, information about the process accorded to those targeted by a motion for Rule 11 sanctions is interspersed throughout the discussion of the other three issues.

All cases filed between January 1, 1987, and August 9, 1990, were included in the study; the total number of cases filed in the district during that period was 10,776. Any Rule 11 activity that occurred in these cases before August 9, 1990 was identified. Many of the cases and some of the Rule 11 motions were pending when we examined the court files. All available information about pending cases and motions is incorporated in the analyses below.

How much satellite litigation has Rule 11 activity produced?

Incidence of Rule 11 activity

Sanctions activity in the district consisted of 257 motions or sua sponte orders (hereinafter, motions/orders) filed in 182 cases. The origin of the 257 motions/orders is shown in Table 1. Most of the activity arose by motion rather than by court order. Unless specifically included, the thirteen sanctions-related mo-

1. The World Almanac and Book of Facts (1991).
2. Administrative Office of the U.S. Courts, United States Court Directory at 66–67 (Spring 1990).
3. Annual Report of the Director of the Administrative Office of the U.S. Courts, Table C1 (1989).
4. Administrative Office of the U.S. Courts, Federal Court Management Statistics at 126 (1990).
5. *Id.*

tions for reconsideration of judges' orders and three appeals from or objections to magistrate judges' orders or recommendations are excluded from subsequent analyses.

Table 1
Origin of sanctions activity

Origin	Number of Motions/Orders
Motion	223
Sua sponte order	18
Subtotal	241
Motion for reconsideration of judge's order	13
Appeal from/objection to magistrate judge's order/recommendation	3
Total	257

To determine the incidence of Rule 11 activity as a proportion of the case load of the court, a life-table analysis was conducted.[6] Such an analysis is necessary to account for the pending cases in the sample. Each pending case represents a (necessarily) incomplete observation of the opportunity for Rule 11 activity. A life-table analysis takes into account the size of a court's caseload, the age of each case when the electronic search was conducted, the number of cases involving a Rule 11 motion or sua sponte order, and the age of a case when the first Rule 11 motion/order was filed. This analysis estimated that in 2.2% of all cases at least one Rule 11 motion or sua sponte sanctions order would be filed within thirty-nine months from the date the case was filed. (On page 13, we present incidence figures for the different natures of suit.)

Demands on judges and attorneys

Pre-ruling activities. Sixty-nine percent of the motions/orders led to the filing of opposition pleadings or papers. The records showed a substitution of counsel for a targeted party in eight cases.[7]

6. The life-table analyses were based on a slightly different set of cases because of limitations in data availability.

7. We tried to exclude all substitutions that were clearly unrelated to Rule 11, but information in the court's files about substitution was often sketchy, so it is possible a few such substitutions were included.

Judges conducted eighty-three hearings, involving a total of ninety-six (40%) of the motions/orders.[8] Ninety-one motions (95%) were addressed in conjunction with at least one other issue in the litigation and five motions (5%) were the subject of hearings devoted exclusively to sanctions issues. Only one of the Rule 11 hearings was evidentiary. In sixty of the ninety-six motions heard (63%), the underlying issue related to claims essential to the continued prosecution or defense of the action (compared with 56% of the motions for which no hearing was held).[9]

Judges initiated the sanctions process by sua sponte order eighteen times (7% of the motions/orders). In eight of those instances (44%), the record indicated that the court used a show cause order to provide notice and an opportunity to be heard. In the ten instances when notice and an opportunity to be heard were not given, the target was a pro se prisoner. Overall, twelve of the eighteen orders targeted a party who was not represented by counsel. Papers were filed in opposition to seven of the orders. Hearings were held in two of the instances; neither of these hearings was evidentiary.

Activities associated with rulings. Figure 1 depicts the outcome of the 241 motions/orders and the nature of any sanctions imposed. At the time of data collection, judges had ruled on 168 (70%) of the motions/orders. Sixty-six motions (27%) had not been ruled on, although the underlying issue had been resolved or the case had terminated. The court had explicitly postponed ruling on eleven of these sixty-six motions. Another seven motions (3%) were pending; the court had explicitly postponed ruling on three of these motions.

Many of the rulings were accompanied by a memorandum opinion. Judges wrote ninety-five opinions to resolve 110 motions/orders. Most of the opinions (76%) combined a ruling on Rule 11 with a ruling on at least one other issue.[10] The number of pages devoted to the Rule 11 issue averaged 1.2 (standard deviation = 1.1).[11] A total of 109 pages were written on Rule 11 issues.

As seen in Figure 1, judges imposed Rule 11 sanctions in forty-four orders, representing 26% of the motions for which rulings were available. Eighty percent of the orders imposing sanctions awarded monetary fees to an opposing party. These awards ranged from $150 to $33,904, with a mean of $5,618 (standard de-

8. Information about hearings was missing for three of the pending motions. The percentage was calculated after dropping these motions from the denominator.

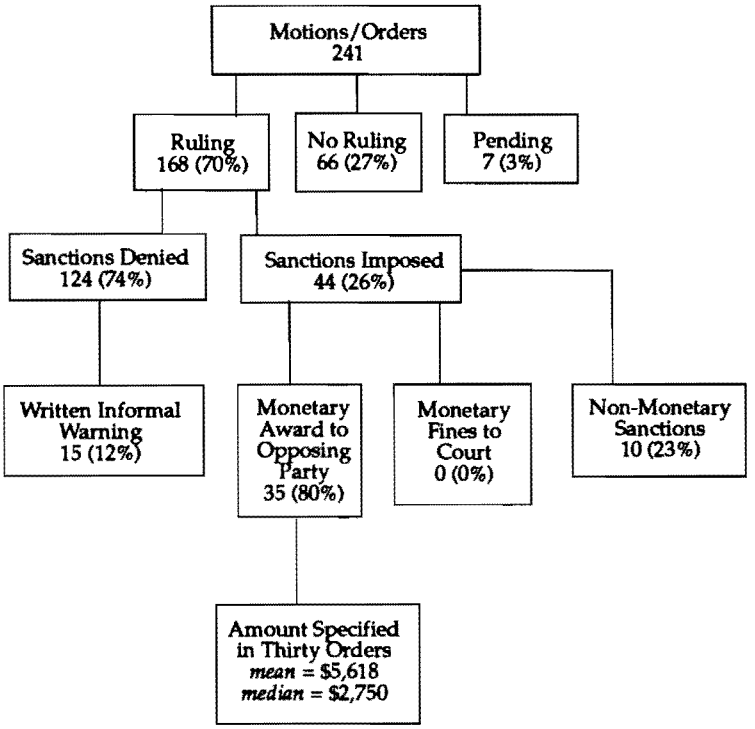
9. To determine whether the Rule 11 activity related to peripheral issues in the litigation, we reviewed the issue forming the basis of the Rule 11 motion/order. For 59% of the motions/orders, we judged the underlying issue to be essential to the prosecution or defense of the litigation.

10. Information about the nature and length of three opinions was unavailable. These motions were excluded in the calculation of this percentage and the subsequent summary statistics. Note that the total number of pages written is therefore an underestimate.

11. The standard deviation is a measure of the variability or the dispersion of individual values around the mean.

viation = $7,513) and a median of $2,750.[12] The amount of one monetary award was not specified until it was reconsidered; the judge then set the amount at $16,323. Pursuant to another motion for reconsideration, a sanction of $6,054.50 was set aside. Including these changes, the mean and median become $5,960 (standard deviation = $7,764) and $2,750, respectively. No orders imposed fines payable to the court. Ten orders (23%) imposed non-monetary sanctions. Eight of the non-monetary sanctions required a pro se plaintiff to supply additional certification of compliance with Rule 11. For a list of the monetary awards see Appendix A. For a more complete description of the non-monetary sanctions see Appendix B.

Figure 1
Outcome of motions/orders in the District of Arizona



Note: All percentages are percentages of the next higher category.

12. The median is the preferred measure of central tendency because the mean is inflated by a few extraordinarily large awards.

Post-ruling activities. Sixteen rulings were the subject of a motion for reconsideration or an objection to a magistrate judge's action. Opposition papers were filed in response to eight (50%) of the motions/objections. No hearings were held.[13] Judges wrote eight opinions to resolve eight motions/objections; five of the opinions combined a ruling on Rule 11 with another issue. Across all opinions, eleven pages were devoted to Rule 11 issues.

The thirteen motions for reconsideration of judges' orders were disposed of as shown in Table 2.

Table 2
Judge orders: reconsiderations

Outcome	Number
Affirmed imposition of sanctions	8
Reversed imposition of sanctions	1
Affirmed denial of sanctions	3
Reversed denial of sanctions	0
Modified type or amount of sanctions	1

The three objections to or appeals from magistrate judges' recommendations or orders were disposed of as shown in Table 3.[14]

Table 3
Magistrate judge recommendations and orders: objections and appeals

Outcome	Number
Affirmed imposition of sanctions	0
Reversed imposition of sanctions	0
Affirmed denial of sanctions	2
Reversed denial of sanctions	0
Modified type or amount of sanctions	0
Pending	1

13. Information was missing for one case.

14. These figures include only situations in which a party appealed or objected to a magistrate judge's order or report or in which a judge sua sponte decided to alter a magistrate judge's finding. If a motion for reconsideration or an appeal/objection was not ruled on and the case was not pending, the original sanctions decision was considered affirmed.

Sixteen rulings in fifteen cases were appealed.[15] The outcomes of the appeals are shown in Table 4. Note that over half of the appeals were still pending at the time of data collection. All of the appellate rulings that had been issued were unanimous.

Table 4
Appellate court decisions

Outcome	Number
Affirmed imposition of sanctions	2
Reversed imposition of sanctions	0
Affirmed denial of sanctions	1
Reversed denial of sanction	0
Appeal dismissed	3
Pending	10

Has Rule 11 activity been disproportionately concentrated in specific types of cases or disproportionately focused on particular types of litigants?

In this section, we provide information about the type of activity targeted by the Rule 11 motions/orders. We first present information about the pleadings or papers that were the primary targets of Rule 11 motions/orders. Next, we present information about the targeted person, examining in particular whether plaintiffs are subject to motions for sanctions more frequently than defendants. Finally, we present information about the natures of suit engendering Rule 11 activity, focusing on whether the level of sanctioning activity in civil rights cases is relatively higher than in other types of cases.

Targeted pleadings and papers

The pleading or paper that was the primary target of the Rule 11 motions/orders is shown in Table 5. The table presents information separately for three types of motions: (1) motions in prisoner cases; (2) motions in non-prisoner cases in which the target was pro se; and (3) motions in non-prisoner cases in which the targeted side was represented by counsel.

15. Some of the Rule 11 rulings were in pending cases; these rulings may be appealed after the cases terminate.

Table 5
Targeted pleading or paper

Targeted Pleading	All Motions/ Orders	Represented Targets	Pro Se Targets	Motions in Prisoner Cases
Complaint	96 (40%)	62 (38%)	21 (75%)	13 (26%)
Answer	9 (4%)	5 (3%)	0	4 (8%)
Motion to dismiss (Rule 12(b)(6))	7 (3%)	7 (4%)	0	0
Motion to dismiss (Rule 12(b)(1))	2 (1%)	2 (1%)	0	0
Other motion to dismiss	2 (1%)	2 (1%)	0	0
Motion for summary judgment	12 (5%)	11 (7%)	0	1 (2%)
Rule 11 motion	8 (3%)	6 (4%)	1 (4%)	1 (2%)
Discovery	22 (9%)	18 (11%)	1 (4%)	3 (6%)
Counterclaim or third-party claim	0	0	0	0
Removal–remand issue	3 (1%)	3 (2%)	0	0
Motion for reconsideration	7 (3%)	6 (4%)	0	1 (2%)
Motion to disqualify	0	0	0	0
Default motion	2 (1%)	2 (1%)	0	0
Opposition to dispositive motion	5 (2%)	3 (2%)	2 (7%)	0
Other	66 (27%)	36 (22%)	3 (11%)	27 (54%)
Total	241 (100%)	163 (100%)	28 (100%)	50 (100%)

Note: The first column of numbers includes all motions/orders. The second column includes motions in which the targeted side was represented by counsel, excluding prisoner cases. The third column includes motions in which the target was pro se, excluding prisoner cases; it may include some motions in which the target was an attorney appearing pro se. The last column includes all motions brought in prisoner cases, including those in which the target was a represented party or an attorney. The "other" category includes one motion for which the targeted pleading or paper was unknown. The percentages are of column totals.

The complaint was by far the most frequently targeted pleading or paper, being the target of 40% of the Rule 11 motions/orders. More specifically, it was the target of 38% of the Rule 11 motions against represented targets, 75% of the motions against pro se targets, and 26% of the motions in prisoner cases. In contrast, answers were targeted relatively rarely, by only 4% of the motions. Similarly, motions to dismiss and summary judgment motions were each targeted by only 5% of the Rule 11 motions.

The outcome of the motions/orders in relation to the pleading or paper targeted is shown in Table 6. The complaint was the paper/pleading most frequently targeted by the orders imposing sanctions (77% of the orders). Given the high number of motions targeting complaints, it is to be expected that a relatively high number of the orders imposing sanctions would relate to complaints. How-

ever, it appears that more orders imposed sanctions for complaints than would be expected even given the difference in motion activity. Only 40% of motions targeted complaints whereas 77% of the orders imposing sanctions targeted the complaint. The percentage of rulings imposing sanctions pursuant to motions that targeted the complaint (49%, thirty-four of seventy rulings) was higher than the percentage of rulings imposing sanctions pursuant to motions that targeted all other pleadings or papers (10%, ten of ninety-eight rulings) [numbers derived from Table 6].[16]

16. We used the z-statistic to make this comparison. The z-statistic reflects the number of standard errors by which two percentages differ. We considered a z-statistic of at least 1.65 to reflect a difference between two percentages and a z-statistic between 1 and 1.65 to reflect a slight difference. A difference of at least 1.65 is significant at the traditional significance level of $p \leq .05$ (one-tailed); differences between 1.00 and 1.65 only approach traditional significance ($p \leq .16$, one-tailed). We took this approach in describing the results so that one could better see the relative positions of the percentages.

Table 6
Disposition by targeted paper

Targeted Pleading	All Motions/ Orders	Pending	No Ruling	Ruling Issued	Sanctions Imposed
Complaint	96 (40%)	2 (29%)	24 (36%)	70 (42%)	34 (77%)
Answer	9 (4%)	0	5 (8%)	4 (2%)	0
Motion to dismiss (Rule 12(b)(6))	7 (3%)	0	5 (8%)	2 (1%)	1 (2%)
Motion to dismiss (Rule 12(b)(1))	2 (1%)	0	0	2 (1%)	0
Other motion to dismiss	2 (1%)	0	1 (2%)	1 (1%)	0
Motion for summary judgment	12 (5%)	0	3 (5%)	9 (5%)	1 (2%)
Rule 11 motion	8 (3%)	0	1 (2%)	7 (4%)	1 (2%)
Discovery	22 (9%)	0	8 (12%)	14 (8%)	1 (2%)
Counterclaim or third-party claim	0	0	0	0	0
Removal–remand issue	3 (1%)	0	1 (2%)	2 (1%)	1 (2%)
Motion for reconsideration	7 (3%)	1 (14%)	2 (3%)	4 (2%)	1 (2%)
Motion to disqualify	0	0	0	0	0
Default motion	2 (1%)	0	1 (2%)	1 (1%)	0
Opposition to dispositive motion	5 (2%)	0	3 (5%)	2 (1%)	0
Other	66 (27%)	4 (57%)	12 (18%)	50 (30%)	4 (9%)
Total	241 (100%)	7 (100%)	66 (100%)	168 (100%)	44 (100%)

Note: The "other" category includes one motion for which the targeted pleading or paper was unknown. The percentages are of column totals.

Targeted side of the litigation

The side of litigation targeted by the Rule 11 motions/orders is shown in Table 7. Overall, 56% of the motions targeted the plaintiff, 40% targeted the defendant, and 4% targeted another party/non-party (e.g., non-party deponent, non-party attorney, and trustee). One of the motions classified as "other" targeted the defendant in its role as a third-party plaintiff. The plaintiff was targeted more frequently than the defendant in motions against represented targets (54% were aimed at plaintiffs and 41% at defendants) and by motions against pro se targets (86% were aimed at plaintiffs and 4% at defendants), whereas the defendant was

more frequently targeted by motions brought in prisoner cases (44% were aimed at plaintiffs and 56% at defendants).

Table 7
Targeted person

Targeted Person	All Motions/ Orders	Represented Targets	Pro Se Targets	Motions in Prisoner Cases
Plaintiff	48 (20%)	3 (2%)	24 (86%)	21 (42%)
Plaintiff's attorney	14 (6%)	14 (9%)	—	0
Plaintiff and attorney	42 (17%)	42 (26%)	—	0
Plaintiff (unspecified)	30 (12%)	29 (18%)	—	1 (2%)
Subtotal-plaintiff	134 (56%)	88 (54%)	24 (86%)	22 (44%)
Defendant	2 (1%)	1 (1%)	1 (4%)	0
Defendant's attorney	35 (15%)	14 (9%)	—	21 (42%)
Defendant and attorney	21 (9%)	20 (12%)	—	1 (2%)
Defendant (unspecified)	39 (16%)	33 (20%)	—	6 (12%)
Subtotal-defendant	97 (40%)	67 (41%)	1 (4%)	28 (56%)
Other (e.g., third-party and cross-claims)	10 (4%)	7 (4%)	3 (11%)	0
Total	241 (100%)	163 (100%)	28 (100%)	50 (100%)

Note: The percentages are of column subtotals and totals.

The side of litigation targeted by the orders imposing sanctions is shown in Table 8. Overall, 80% of the orders imposing sanctions targeted the plaintiff, 7% targeted the defendant, and 14% targeted another party/non-party. Given that more of the motions targeted the plaintiff, it is to be expected that more of the orders would impose sanctions against the plaintiff. However, the difference in the number of motions filed against the plaintiff and defendant does not appear to fully account for the disparity in sanctions imposed. Only 56% of the motions targeted the plaintiff whereas 80% of the orders imposing sanctions did so. The percentage of rulings imposing sanctions pursuant to motions that targeted the plaintiff (35%, thirty-five of 101 rulings) was higher than the percentage of rulings imposing sanctions pursuant to motions that targeted the defendant (5%, three of fifty-seven rulings) [see Table 8].[17]

17. See footnote 16 *supra*.

Table 8
Disposition by targeted person

Targeted Person	All Motions/ Orders	Pending	No Ruling	Rulings Issued	Sanctions Imposed
Plaintiff	48 (20%)	1 (14%)	9 (14%)	38 (23%)	19 (43%)
Plaintiff's attorney	14 (6%)	0	3 (5%)	11 (7%)	3 (7%)
Plaintiff and attorney	42 (17%)	0	14 (21%)	28 (17%)	11 (25%)
Plaintiff (unspecified)	30 (13%)	1 (14%)	5 (8%)	24 (14%)	2 (5%)
Subtotal-plaintiff	134 (56%)	2 (29%)	31 (47%)	101 (60%)	35 (80%)
Defendant	2 (1%)	0	1 (2%)	1 (1%)	0
Defendant's attorney	35 (15%)	4 (57%)	7 (11%)	24 (14%)	0
Defendant and attorney	21 (9%)	1 (14%)	9 (14%)	11 (7%)	1 (2%)
Defendant (unspecified)	39 (16%)	0	18 (27%)	21 (13%)	2 (5%)
Subtotal-defendant	97 (40%)	5 (71%)	35 (53%)	57 (34%)	3 (7%)
Other (e.g., third-party and cross-claims)	10 (4%)	0	0	10 (6%)	6 (14%)
Total	241 (100%)	7 (100%)	66 (100%)	168 (100%)	44 (100%)

Note: The percentages are of column subtotals and totals.

Nature of suit

We do not assume that Rule 11 sanctions should be imposed equally across the various types of litigation. However, nature-of-suit classifications provide convenient comparisons, and they have to an extent shaped the debate about disproportionate impact.

Motions activity. For the analyses involving nature of suit, we combined similar nature-of-suit categories into twelve groups following the format used on the civil cover sheet (JS 44). Table 9 shows the number of filings during the study period for each of these nature of suit groups. Table 10 shows the number of cases in each nature of suit group that involved Rule 11 activity. The number of motions in each nature of suit group is also shown because some cases involve more than one motion. Table 11 shows, for each of twelve nature-of-suit groups, the incidence of Rule 11 activity as estimated by a life-table analysis. The life-table analyses take into account the number of cases of each nature of suit, the age of those cases when the electronic search was conducted, the number of those

cases involving a Rule 11 motion or sua sponte order, and the age of a case when the first Rule 11 motion/order was filed. The estimates reflect the percentage of cases that are expected to involve Rule 11 activity within thirty-nine months of filing. The incidence of Rule 11 activity in contracts cases was estimated twice, the second time excluding cases classified as recovery of overpayment and enforcement of judgment, the Medicare Act, recovery of defaulted student loans, and recovery of overpayment of veterans benefits. The second estimate is the one used below in making comparisons between natures of suit.

Table 9
Filings by nature of suit, January 1, 1987, through August 9, 1990

Nature of Suit	Number of Filings	Nature of Suit	Number of Filings
Contract	3,250	Labor	395
Real property	254	Property rights	218
Torts	996	Bankruptcy	280
Civil rights	550	Social Security	248
Prisoner petitions	3,621	Federal tax	136
Forfeiture/penalty	234	Other statutes	594
		Total	10,776

Table 10
Nature of suit

Nature of Suit	Cases	Motions/ Orders	Represented Targets	Pro Se Targets
Contract	38 (21%)	50 (21%)	49 (31%)	1 (4%)
Real property	4 (2%)	8 (3%)	6 (4%)	2 (7%)
Torts	17 (9%)	24 (10%)	20 (13%)	4 (15%)
Civil rights	28 (16%)	33 (14%)	23 (14%)	10 (37%)
Prisoner petitions	39 (22%)	50 (21%)	–	–
Forfeiture/penalty	0	0	0	0
Labor	13 (7%)	17 (7%)	17 (11%)	0
Property rights	8 (4%)	10 (4%)	10 (6%)	0
Bankruptcy	1 (1%)	1 (1%)	1 (1%)	0
Social Security	1 (1%)	1 (1%)	1 (1%)	0
Federal tax	3 (2%)	3 (1%)	1 (1%)	2 (7%)
Other statutes	27 (15%)	40 (17%)	32 (20%)	8 (30%)
Total	179 (100%)	237 (100%)	160 (100%)	27 (100%)

Note: Three cases, involving a total of four motions, were from the court's miscellaneous docket. These cases were not assigned a nature-of-suit code from the civil cover sheet and therefore are excluded from the above figures. The percentages are of column totals.

Table 11
Incidence by nature of suit

Nature of Suit	Estimated Incidence Within Thirty-nine Months of Filing
Contract	
All contract cases	1.6
Excluding recovery of overpayment, etc.	3.4
Real property	1.7
Torts	2.3
Civil rights	6.9
Prisoner petitions	1.3
Forfeiture/penalty	0.0
Labor	3.9
Property rights	3.5
Bankruptcy	0.4
Social Security	0.5
Federal tax	2.7
Other statutes	5.7
All cases	2.2

Most of the motions/orders were concentrated in contract (21%), torts (10%), civil rights (14%), prisoner petitions (21%), and other statutes (17%). As estimated by the life-table analyses, the incidence of Rule 11 activity is higher for other statutes (5.7) and civil rights (6.9) than for the other natures of suit in which the motions/orders were concentrated [contract (3.4), torts (2.3), and prisoner petitions (1.3)].

Given the relatively higher incidence of Rule 11 activity in civil rights cases and in light of the criticism that Rule 11 is used to "chill" effective advocacy by civil rights plaintiffs, and in particular civil rights plaintiffs' attorneys, we address the following questions:

(1) Are *plaintiffs* disproportionately targeted by Rule 11 motions in civil rights cases, relative to other types of cases?
(2) Are *represented parties* disproportionately targeted by Rule 11 motions in civil rights cases, relative to other types of cases?
(3) Are *represented plaintiffs* disproportionately targeted by Rule 11 motions in civil rights cases, relative to other types of cases?

These comparisons are made between civil rights, contract, torts, and other statutes because the other natures of suit contain too few motions for compari-

son.[18] Prisoner petitions are also excluded. We then address the issue of whether Rule 11 sanctions are disproportionately imposed in certain types of cases.

Are *plaintiffs* disproportionately targeted by Rule 11 motions in civil rights cases, relative to other types of cases? In civil rights cases, the percentage of Rule 11 motions targeting plaintiffs (as opposed to defendants or other parties) was comparable to that in the other major types of cases. Approximately 58% of the Rule 11 motions filed in civil rights cases targeted the plaintiff. A similar percentage of the Rule 11 motions filed in contract (60%), torts (58%), and other statutes (58%) targeted the plaintiff.

Are *represented parties* disproportionately targeted by Rule 11 motions in civil rights cases, relative to other types of cases? In civil rights cases, the percentage of motions targeting represented parties[19] (as opposed to pro se parties) was lower or slightly lower than in the other major categories of cases. Approximately 70% of the Rule 11 motions filed in civil rights cases targeted a represented party. A higher percentage of motions targeted represented parties in contract (98%) and a slightly higher percentage targeted represented parties in torts (83%) and other statutes (80%).[20]

Are *represented plaintiffs* disproportionately targeted in civil rights cases, relative to other types of cases? To address this question, we first examined only those motions filed against a represented party. In civil rights cases, the percentage of such motions targeting the plaintiff was comparable to or slightly lower than that in the other major types of cases. Approximately 39% of such motions in civil rights cases targeted the plaintiff. Slightly higher percentages of such motions in contract (59%) and torts (55%) and a similar percentage in other statutes (50%) targeted the plaintiff.

Another way to address the question is to consider all motions (i.e., those targeting both represented parties and pro se parties). In civil rights cases, only 27% of all motions targeted a represented plaintiff. A higher percentage of the motions in contract (58%) and a slightly higher percentage in torts (46%) and other statutes (40%) targeted a represented plaintiff. To summarize, the incidence of Rule 11 activity is higher in civil rights than in the other major types of cases. However, a lower or slightly lower percentage of motions in civil rights cases targeted represented plaintiffs, compared to the other major types of cases.

Orders imposing sanctions. The outcomes of the motions/orders by nature of suit are shown in Table 12. The last column of the table shows the percentage of orders imposing sanctions that fall into each nature of suit. As was the case with

18. The z-statistic was used to make these comparisons. See note 16 *supra*.

19. The category of "motions targeting represented parties" includes motions that target a party who is represented by counsel and motions that target the party's counsel.

20. These differences may reflect differences in the number of pro se versus represented parties across natures of suit rather than differences in the underlying Rule 11 activity. Our data are insufficient to address this possibility.

the motions/orders, the orders imposing sanctions were concentrated in contract (19%), torts (24%), civil rights (24%), prisoner petitions (24%), and other statutes (14%). Table 13 shows for each nature of suit the percentage of orders imposing sanctions against represented parties.

Table 12
Disposition by nature of suit

Nature of Suit	All Motions/ Orders	Pending	No Ruling	Rulings Issued	Sanctions Imposed
Contract	50 (21%)	1 (14%)	18 (27%)	31 (19%)	8 (19%)
Real property	8 (3%)	0	1 (2%)	7 (4%)	2 (5%)
Torts	24 (10%)	0	6 (9%)	18 (11%)	10 (24%)
Civil rights	33 (14%)	1 (14%)	10 (15%)	22 (13%)	6 (14%)
Prisoner petitions	50 (21%)	2 (29%)	9 (14%)	39 (24%)	10 (24%)
Forfeiture/penalty	0	0	0	0	0
Labor	17 (7%)	1 (14%)	4 (6%)	12 (7%)	0
Property rights	10 (4%)	0	3 (5%)	7 (4%)	0
Bankruptcy	1 (1%)	1 (14%)	0	0	0
Social Security	1 (1%)	0	0	1 (1%)	0
Federal tax	3 (1%)	0	1 (2%)	2 (1%)	0
Other statutes	40 (17%)	1 (14%)	14 (21%)	25 (15%)	6 (14%)
Total	237 (100%)	7 (100%)	66 (100%)	164 (100%)	42 (100%)

Note: Three cases, involving a total of four motions, were from the court's miscellaneous docket. These cases were not assigned a nature of suit code from the civil cover sheet and therefore are excluded from the above figures. The percentages are of column totals.

Table 13
Disposition by nature of suit, represented targets only

Nature of Suit	Motions/ Orders	Pending	No Ruling	Rulings Issued	Sanctions Imposed
Contract	49 (30%)	1 (25%)	18 (35%)	30 (29%)	8 (35%)
Real property	6 (4%)	0	1 (2%)	5 (5%)	1 (4%)
Torts	20 (12%)	0	6 (12%)	14 (13%)	7 (30%)
Civil rights	23 (14%)	0	8 (16%)	15 (14%)	3 (13%)
Prisoner petitions	—	—	—	—	—
Forfeiture/penalty	0	0	0	0	0
Labor	17 (10%)	1 (25%)	4 (8%)	12 (11%)	0
Property rights	10 (6%)	0	3 (6%)	7 (7%)	0
Bankruptcy	1 (1%)	1 (25%)	0	0	0
Social Security	1 (1%)	0	0	1 (1%)	0
Federal tax	1 (1%)	0	1 (2%)	0	0
Other statutes	32 (20%)	1 (25%)	10 (20%)	21 (20%)	4 (17%)
Total	160 (100%)	4 (100%)	51 (100%)	105 (100%)	23 (100%)

Note: Three cases, involving a total of four motions, were from the court's miscellaneous docket. These cases were not assigned a nature of suit code from the civil cover sheet and therefore are excluded from the above figures. The percentages are of column totals.

Considering only the natures of suit in which most of the motions were concentrated (contract, torts, civil rights, and other statutes), most of the orders imposing sanctions targeted the plaintiff. Five of the eight orders imposing sanctions in contract (63%), eight of ten orders in torts (80%), four of six orders orders in civil rights (67%), and all six orders in other statutes (100%) targeted the plaintiff. If we consider only those orders imposing sanctions against represented parties, five of the eight orders in contract (63%), six of the seven orders in torts (86%), one of the three motions in civil rights (33%), and all four of the motions in other statutes (100%) targeted the plaintiff.

Perhaps the way to determine whether courts disproportionately impose Rule 11 sanctions in civil rights cases would be to examine, across natures of suit, the number of orders imposing sanctions in relation to the number of motions filed. Because some of the motions in our study were pending, we instead examined the number of orders imposing sanctions in relation to the number of orders issued.[21] For the natures of suit in which most of the motions were concentrated (contract, torts, civil rights, and other statutes), the percentage of rulings imposing sanctions (i.e., the imposition rate) ranged from 24% to 56%. The percentage

21. These comparison were made with the z-statistic. See note 16 *supra*.

of orders imposing sanctions was comparable for contract (26%, eight of thirty-one rulings), civil rights (27%, six of twenty-two rulings), and other statutes (24%, six of twenty-five rulings), and was relatively higher in torts (56%, ten of eighteen rulings). If we consider only rulings for motions that targeted a represented party, a similar pattern is seen. To summarize, it appears that courts are no more likely to grant Rule 11 motions filed in civil rights cases than motions filed in the other major types of cases.

For an in-depth analysis of the civil rights cases in which sanctions were imposed, see Section 4A.

Are there variations between judges in their application of Rule 11?

We now present information about the treatment of motions and sua sponte orders by each judge (see Table 14). We have grouped as "other judges" senior judges, visiting judges, and newly appointed judges because their experience would likely be different from the experience of judges who were on active status for the entire period of the study. For purposes of this analysis, we excluded motions/orders handled by magistrate judges, as well as motions for reconsideration of judge's orders and appeals from/objections to magistrate judge's orders/recommendations.

Table 14
Judicial variations in sanctioning practices

Judges	Motions/ Orders	Pending	No Ruling	Rulings Issued	Sanctions Imposed
Judge 1	21 (10%)	0	7 (33%)	14 (67%)	8 (57%)
Judge 2	25 (11%)	0	5 (20%)	20 (80%)	8 (40%)
Judge 3	29 (13%)	0	14 (48%)	15 (52%)	4 (27%)
Judge 4	29 (13%)	4 (14%)	6 (21%)	19 (66%)	2 (11%)
Judge 5	8 (4%)	0	4 (50%)	4 (50%)	1 (25%)
Judge 6	32 (14%)	2 (6%)	8 (25%)	22 (69%)	6 (27%)
Judge 7	22 (10%)	1 (5%)	6 (27%)	15 (68%)	4 (27%)
Judge 8	14 (6%)	0	3 (21%)	11 (79%)	0
Other judges	42 (19%)	0	12 (29%)	30 (71%)	7 (23%)
Total	222 (100%)	7 (3%)	65 (29%)	150 (68%)	40 (27%)

Note: The first column of figures shows the number and percentage of motions/orders before each judge or group of judges. The second, third, and fourth columns show the outcome of the motions/orders before each judge or group of judges; the percentages are of the number of motions/orders before each judge. The fifth column shows, for each judge, the number of orders in which sanctions were imposed; the percentages are of the number of rulings issued by each judge.

The first column of figures in Table 14 shows the number and percentage of motions/orders before each judge or group of judges. For example, twenty-one (10%) of the motions were before Judge 1. The second, third, and fourth columns show the outcome of the motions/orders before each judge or group of judges; the percentages are of the number of motions/orders before each judge. For example, Judge 1 had ruled on fourteen (67%) motions, had not ruled on seven (33%), and had no motions pending. We later refer to all non-pending motions collectively as resolved motions. The fifth column shows, for each judge, the number of orders imposing sanctions; the percentages are of the number of motions/orders ruled on by each judge. For example, eight (57%) of Judge 1's rulings imposed sanctions.

We conducted several statistical analyses to examine the sanctioning practices of the judges who were on active status during the entire study period.[22] These analyses showed that there was significant variation in the number of motions before each judge (column 1). Indeed, the number of motions ranged from eight motions before Judge 5 to thirty-two motions before Judge 6. The percentage of motions that were pending (column 2) versus resolved (columns 3 and 4 combined) did not significantly differ between judges. Furthermore, considering only resolved motions, the percentage of motions not ruled on (column 3) versus ruled on (column 4) did not significantly differ between judges. Considering only motions that were ruled on, however, the percentage of rulings imposing sanctions (column 5) significantly varied between judges. None of Judge 8's rulings imposed sanctions and only 11% of Judge 4's rulings did so, whereas 57% of Judge 1's rulings imposed sanctions. Four of the judges (3, 5, 6, 7) centered around the 25% imposition rate.

Variations between judges in their sanctioning practices may reflect more than just their differing receptivity to Rule 11. For example, variation in the number of motions before each judge may exist because the bar accurately or inaccurately perceives differences between the judges in their receptivity to Rule 11 motions, and acts accordingly. Judges also may differ in the amount of sanctions activity they delegate to the magistrate judges working with them. Furthermore, some judges may diminish the incentive to file a Rule 11 motion by early and active case management. For example, if a judge dismisses a groundless complaint at the Rule 16 conference, the cost of pursuing a Rule 11 motion may exceed any potential recovery. In summary, variations between judges exist, although the source of the variation is likely to be multi-faceted. Our data do not address the causes of the variation between judges.

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22. The category of "other judges" was excluded from these analyses. A statistical package designed to analyze sparse contingency tables was used to conduct the analyses. A relationship was considered significant when the probability associated with the corresponding Fisher's Exact statistic was less than .05. The Fisher's Exact test examines whether there is a significant relationship between two categorical variables.

Appendix A
Sanctions Awards to Opposing Party and Court

Amount of sanctions to opposing party

$150.00	$2,016.00	$4,412.50
$250.00	$2,212.42	$4,436.50
$500.00	$2,325.24	$6,054.50
$550.00	$2,500.00	$7,215.85
$769.50	$2,500.00	$8,569.55
$800.00	$3,000.00	$11,500.00
$1,059.25	$3,156.40	$13,035.00
$1,120.50	$3,820.50	$18,597.71
$1,964.00	$4,100.03	$21,873.16
$1,975.00	$4,170.13	$33,904.21

The amount of one monetary award was not specified until it was reconsidered; the judge then set the amount at $16,323. Pursuant to another motion for reconsideration, a sanction of $6054.50 was set aside.

Amount of sanctions to the court

None.

Appendix B
Non-Monetary Sanctions

The orders that imposed non-monetary sanctions are described below. Note that Orders 1–8 are very similar in substance. Orders 1–6 were issued by one judge and Orders 7–10 were issued by one other judge. The nature of suit is shown for each order.

Order 1 (prisoner petition)
Pro se plaintiff ordered to show compliance with Rule 11 in all subsequent papers submitted to the court by including (1) a statement that he has read Rule 11 and that the paper was submitted in compliance therewith, and (2) a statement that he is appearing pro se and has not received assistance from any other person or has received assistance from named non-attorneys. The non-attorney assistants must sign submitted papers attesting compliance with Rule 11. The clerk shall not file any papers that do not comply with the above requirements. Sanction upheld on reconsideration.

Order 2 (prisoner petition)
Pro se plaintiff ordered to show compliance with Rule 11 in all subsequent papers submitted to the court by including (1) a statement that he has read Rule 11 and that the paper was submitted in compliance therewith, and (2) a statement that he is appearing pro se and has not received assistance from any other person or has received assistance from named non-attorneys. The non-attorney assistants must sign submitted papers attesting compliance with Rule 11. The clerk shall not file any papers that do not comply with the above requirements.

Order 3 (prisoner petition)
Pro se plaintiff ordered to show compliance with Rule 11 in all subsequent papers submitted to the court by including (1) a statement that he has read Rule 11 and that the paper was submitted in compliance therewith, and (2) a statement that he is appearing pro se and has not received assistance from any other person or has received assistance from named non-attorneys. The non-attorney assistants must sign submitted papers attesting compliance with Rule 11. The clerk shall not file any papers that do not comply with the above requirements.

Order 4 (prisoner petition)
Pro se plaintiff warned about Rule 11 violations. Plaintiff also ordered to show compliance with Rule 11 in all subsequent papers submitted to the court by including (1) a statement that he has read Rule 11 and that the paper was submitted in compliance therewith, and (2) a statement that he is appearing pro se and

has not received assistance from any other person or has received assistance from named non-attorneys. The non-attorney assistants must sign submitted papers attesting compliance with Rule 11. The clerk shall not file any papers that do not comply with the above requirements.

Order 5 (prisoner petition)
Pro se plaintiff ordered to show compliance with Rule 11 in all subsequent papers submitted to the court by including (1) a statement that he has read Rule 11 and that the paper was submitted in compliance therewith, and (2) a statement that he is appearing pro se and has not received assistance from any other person or has received assistance from named non-attorneys. The non-attorney assistants must sign submitted papers attesting compliance with Rule 11. The clerk shall not file any papers that do not comply with the above requirements. Sanction upheld on reconsideration.

Order 6 (prisoner petition)
Pro se plaintiff ordered to show compliance with Rule 11 in all subsequent papers submitted to the court by including (1) a statement that he has read Rule 11 and that the paper was submitted in compliance therewith, and (2) a statement that he is appearing pro se and has not received assistance from any other person or has received assistance from named non-attorneys. The non-attorney assistants must sign submitted papers attesting compliance with Rule 11. The clerk shall not file any papers that do not comply with the above requirements.

Order 7 (other civil rights case filed by prisoner)
Pro se plaintiff ordered to show compliance with Rule 11 in all subsequent papers submitted to the court by including (1) a statement that he has read Rule 11 and that the paper was submitted in compliance therewith, and (2) a statement that he is appearing pro se and has not received assistance from any other person or has received assistance from named non-attorneys. The non-attorney assistants must sign submitted papers attesting compliance with Rule 11. The clerk shall not file any papers that do not comply with the above requirements.

Order 8 (Freedom of Information Act case filed by prisoner)
Pro se plaintiff ordered to show compliance with Rule 11 in all subsequent papers submitted to the court by including (1) a statement that he has read Rule 11 and that the paper was submitted in compliance therewith, and (2) a statement that he is appearing pro se and has not received assistance from any other person or has received assistance from named non-attorneys. The clerk shall not file any papers that do not comply with the above requirements. (It was unclear whether or not non-attorneys were to sign submitted papers attesting compliance with

Rule 11.) On reconsideration, requirement that non-attorney assistants be named was dropped.

Order 9 (prisoner petition)
Pro se plaintiff warned (1) that monetary sanctions of $100 may be imposed if defendants show that plaintiff has adequate funds, and (2) that harsher sanctions may be imposed (e.g., the case dismissed outright) if plaintiff continues sanctionable behavior.

Order 10 (prisoner petition)
Court ordered that all future papers submitted by pro se plaintiff be marked "Do not file until shown to judge."

Section 3B
Study of Rule 11 in the District of the District of Columbia

The District Court for the District of Columbia is composed of fourteen district judges and eight senior district judges.[1] During statistical year 1989, the district had 3,964 total civil filings, and terminated 3,675 civil cases.[2] In statistical year 1990, 3,281 civil cases were filed.[3] The major categories were Torts (23%), Other (17%), Prisoner Petitions (15%), Civil Rights (14%) and Contracts (13%).[4]

Results from the field study of Rule 11 activity in the district are presented below. We first describe the amount of satellite litigation associated with the rule. Next, we present information germane to whether Rule 11 activity has been disproportionately concentrated in specific types of cases or on particular types of litigants. Finally, we examine judicial variations in sanctioning practices. In addition, information about the process accorded to those targeted by a motion for Rule 11 sanctions is interspersed throughout the discussion of the other three issues.

All cases filed between January 1, 1987, and April 4, 1990, were included in the study; the total number of cases filed in the district during that period was 11,695. Any Rule 11 activity that occurred in these cases before April 4, 1990, was identified. Many of the cases and some of the motions were pending when we examined the court files. All available information about pending cases and motions is incorporated in the analyses below.

How much satellite litigation has Rule 11 activity produced?

Incidence of Rule 11 activity

Sanctions activity in the district consisted of 227 motions or sua sponte orders (hereinafter, motions/orders) filed in 175 cases. The origin of the 227 motions/orders is shown in Table 1. Unless specifically included, sanctions-related motions for reconsideration of judges' orders and appeals from or objections to

1. Administrative Office of the United States Courts, United States Court Directory at 102-104 (Spring 1990).
2. Annual Report of the Director of the Administrative Office of the United States Courts, Table C1 (1989).
3. Administrative Office of the United States Courts, Federal Court Management Statistics at 33 (1990).
4. *Id.*

magistrate judges' orders or recommendations are excluded from subsequent analyses.

Table 1
Origins of sanctions activity

Origin	Number of Motions/Orders
Motion	219
Sua sponte order	7
Subtotal	226
Motion for reconsideration of judge's order	1
Appeal/objection to magistrate judge's order/recommendation	0
Total	227

To estimate the incidence of Rule 11 activity as a proportion of the caseload of the court, a life-table analysis was conducted.[5] Such an analysis is necessary to account for the pending cases in the sample. Each pending case represents a (necessarily) incomplete observation of the opportunity for Rule 11 activity. A life-table analysis takes into account the size of a court's caseload, the age of each case when the electronic search was conducted, the number of cases involving a Rule 11 motion or sua sponte order, and the age of a case when the first Rule 11 motion/order was filed. This analysis estimated that in 2% of all cases at least one Rule 11 motion or sua sponte sanctions order would be filed within 38 months from the date the case was filed. (On page 12, we present incidence figures for different natures of suit.)

Demands on judges and attorneys

Pre-ruling activities. Seventy-four percent of the motions/orders led to the filing of opposition pleadings or papers.[6] The records showed five substitutions of counsel for a targeted party.[7]

5. The life-table analyses were based on a slightly different set of cases because of limitations in data availability.

6. Information about responsive pleadings was missing for four of the pending motions. The above percentage was calculated after dropping these motions from the denominator. This assumes that the pending motions for which information was missing have the same characteristics as the other motions.

7. Information about substitution of counsel was missing for two motions in which a party was the target. We tried to exclude all substitutions that were clearly unrelated to Rule 11, but information in the court's files about substitution was often sketchy, so it is possible that a few such substitutions are included.

Judges conducted fifteen hearings (involving a total of seventeen (10%) of the motions/orders).[8] Fourteen motions (82%) were addressed in conjunction with at least one other issue in the litigation and three motions (18%) were the subject of hearings devoted exclusively to sanctions issues. One hearing (addressing two motions) was evidentiary. In ten (59%) of the seventeen motions heard, the underlying issue related to claims essential to the continued prosecution or defense of the action.[9]

Judges initiated the sanctions process by sua sponte orders seven times (3% of the motions/orders). In six (86%) of those instances, the record indicated that the court used a show cause order to provide notice and an opportunity to be heard. Papers were filed in opposition to six (86%) of the orders. A hearing was held in one of the instances; none of the targets of the sua sponte orders was an unrepresented party.

Activities associated with rulings. Figure 1 depicts the outcome of the 226 motions/orders and the nature of any sanctions imposed. At the time of data collection, judges had ruled on 109 (48%) of the motions/orders. Eighty-two motions (36%) had not been ruled on although the underlying issue had been resolved or the case had terminated. The court had explicitly postponed ruling on twelve of these motions. Another thirty-five motions (16%) were pending, although the court had not explicitly postponed ruling on any of them.

Many of the rulings were accompanied by a memorandum opinion. Judges wrote fifty-six opinions to resolve sixty-three motions/orders. Many of the opinions (66%) combined a ruling on Rule 11 with a ruling on at least one other issue. The number of pages devoted to the Rule 11 issue averaged 2.5 (standard deviation = 3.8).[10] A total of 137 pages were written on Rule 11 issues.

As seen in Figure 1, judges imposed Rule 11 sanctions in twenty-two orders, representing 20% of the motions for which rulings were available. Eighty-percent of the orders imposing sanctions awarded monetary fees to an opposing party. These awards ranged from $500 to $50,000, with a mean of $6,197 (standard deviation = $12,326) and a median of $3,776.[11] None of the orders imposed fines payable to the court. Five orders (23%) imposed non-monetary sanctions. Non-monetary (or at least, non-quantifiable) sanctions ranged from formal warnings and discovery enforcement orders to testimony preclusion and dismissal of a

8. Information about combined hearings was missing for 35 of the pending motions and seventeen other motions. Information about separate hearings was missing for thirty-five pending motions. The percentages were calculated after dropping these motions from the denominator.

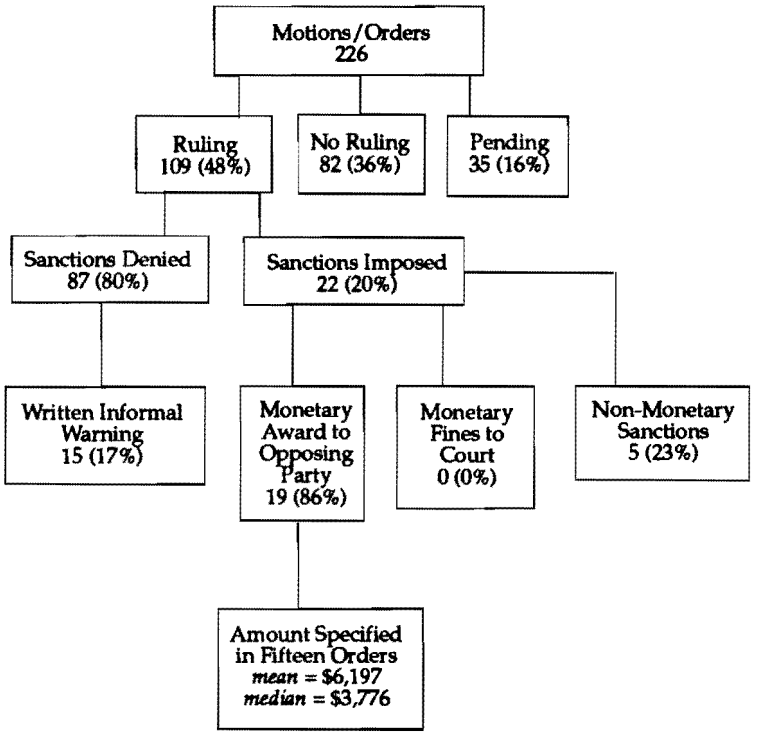
9. To determine whether the Rule 11 activity related to peripheral issues in the litigation, we reviewed the issue forming the basis of the Rule 11 motion/order. For 58% of the motions/orders, we judged the underlying issue to be essential to the prosecution or defense of the litigation.

10. The standard deviation is a measure of the variability or the dispersion of individual values around the mean.

11. The median is the preferred measure of central tendency because the mean is inflated by one extraordinarily large award.

complaint. In one instance, the appropriate sanction for violation of Rule 11 was deemed to be an offset of the defendant's statutory liability for the plaintiff's attorney's fees. For a list of the monetary awards see Appendix A. For a more complete description of the non-monetary sanctions see Appendix B.

Figure 1
Outcome of motions/orders in the District of the District of Columbia



Note: All percentages are percentages of the next higher category.

Post-ruling activities. One motion for reconsideration was filed; that motion was opposed and was pending at the time of data collection.

Sixteen of the rulings were appealed.[12] (Note that this report does not include a Table 2 or 3, which presented information about post-ruling activity in the other four districts. So as to be able to cross-refer to tables from one district report to another, we have not renumbered this report's tables.) The outcomes of the

12. Some of the Rule 11 orders were in pending cases; these rulings may be appealed after the cases terminate.

appeals are shown in Table 4. Note that about a third of the appeals were still pending at the time of data collection. The one reversal was based on the merits of the sanctions decision. All rulings issued were unanimous.

Table 4
Appellate court decisions

Outcome	Number
Affirmed imposition of sanctions	0
Reversed imposition of sanctions	1
Affirmed denial of sanctions	2
Reversed denial of sanctions	0
Appeal dismissed	5
Other	2
Pending	6

Has Rule 11 activity been disproportionately concentrated in specific types of cases or disproportionately focused on particular types of litigants?

In this section, we provide information about the type of activity targeted by the Rule 11 motions/orders. We first present information about the pleadings or papers that were the primary targets of Rule 11 motions/orders. Next, we present information about the targeted person, examining in particular whether plaintiffs are subject to motions for sanctions more frequently than defendants. Finally, we present information about the natures of suit engendering Rule 11 activity, focusing on whether the level of sanctioning activity in civil rights cases is relatively higher than in other types of cases.

Targeted pleadings and papers

The pleading or paper that was the primary target of the Rule 11 motions/orders is shown in Table 5. The table presents information separately for three types of motions: (1) motions in prisoner cases; (2) motions in non-prisoner cases in which the target was pro se; and (3) motions in non-prisoner cases in which the targeted side was represented by counsel.

Table 5
Targeted pleadings or paper

Targeted Pleading	All Motions/ Orders	Represented Targets	Pro Se Targets	Motions in Prisoner Cases
Complaint	88 (39%)	72 (37%)	16 (67%)	0
Answer	8 (4%)	7 (4%)	0	1 (17%)
Motion to dismiss (Rule 12(b)(6))	10 (4%)	9 (5%)	0	1 (17%)
Motion to dismiss (Rule 12(b)(1))	3 (1%)	2 (1%)	1 (4%)	0
Other motion to dismiss	4 (2%)	4 (2%)	0	0
Motion for summary judgment	7 (3%)	6 (3%)	0	1 (17%)
Rule 11 motion	17 (8%)	15 (8%)	2 (8%)	0
Discovery	22 (10%)	22 (11%)	0	0
Counterclaim or third party claim	10 (4%)	9 (5%)	1 (4%)	0
Removal-remand issue	3 (1%)	3 (2%)	0	0
Motion for reconsideration	10 (4%)	8 (4%)	1 (4%)	1 (17%)
Motion to disqualify	1 (1%)	1 (1%)	0	0
Default motion	1 (1%)	1 (1%)	0	0
Opposition to dispositive motion	5 (2%)	3 (2%)	2 (8%)	0
Other	37 (16%)	34 (17%)	1 (4%)	2 (33%)
Total	226 (100%)	196 (100%)	24 (100%)	6 (100%)

Note: The first column of numbers includes all motions/orders. The second column includes motions in which the targeted side was represented by counsel, excluding prisoner cases. The third column includes motions in which the target was pro se, excluding prisoner cases; it may include some motions in which the target was an attorney appearing pro se. The last column includes all motions brought in prisoner cases, including those in which the target was a represented party or an attorney. The percentages are of column totals.

The complaint was by far the most frequently targeted pleading or paper, being the target of 39% of the Rule 11 motions/orders. More specifically, it was the target of 37% of the Rule 11 motions against represented targets and 67% of the motions against pro se targets. None of the six motions in prisoner cases, however, targeted the complaint. In contrast, answers were targeted relatively rarely, by only 4% of the motions. Similarly, motions to dismiss and summary judgment motions were targeted by 7% and 3% of the Rule 11 motions, respectively.

The outcome of the motions/orders in relation to the pleading or paper targeted is shown in Table 6. The complaint was the paper/pleading most frequently targeted by the orders imposing sanctions (50% of the orders). Given the high number of motions targeting complaints, it is to be expected that a relatively high number of the orders imposing sanctions would relate to complaints. However, it appears that more orders imposed sanctions for

complaints than would be expected even given the difference in motion activity, although the reliability of this conclusion is limited by the significant number (thirty-five) of pending motions. Only 39% of the motions targeted the complaint, whereas 50% of the orders did so. The percentage of rulings imposing sanctions pursuant to motions that targeted the complaint (25%, eleven of forty-four rulings) was slightly higher than the percentage of rulings imposing sanctions pursuant to motions that targeted all other pleadings or papers (17%, eleven of sixty-five rulings) [numbers are derived from Table 6]. [13]

13. We used the z-statistic to make this comparison. The z-statistic reflects the number of standard errors by which two percentages differ. We considered a z-statistic of at least 1.65 to reflect a difference between two percentages and a z-statistic between 1 and 1.65 to reflect a slight difference. A difference of at least 1.65 is significant at the traditional significance level of $p \leq .05$ (one-tailed); differences between 1.00 and 1.65 only approach traditional significance ($p \leq .16$, one-tailed). We took this approach in describing the results so that one could better see the relative positions of the percentages.

Table 6
Disposition by targeted paper

Targeted Pleading	All Motions/ Orders	Pending	No Ruling	Ruling Issued	Sanctions Imposed
Complaint	88 (39%)	15 (43%)	29 (35%)	44 (40%)	11 (50%)
Answer	8 (4%)	0	2 (2%)	6 (6%)	0
Motion to dismiss (Rule 12(b)(6))	10 (4%)	2 (6%)	5 (6%)	3 (3%)	0
Motion to dismiss (Rule 12(b)(1))	3 (1%)	1 (3%)	0	2 (2%)	0
Other motion to dismiss	4 (2%)	1 (3%)	2 (2%)	1 (1%)	1 (5%)
Motion for summary judgment	7 (3%)	3 (9%)	2 (2%)	2 (2%)	0
Rule 11 motion	17 (8%)	2 (6%)	10 (12%)	5 (5%)	0
Discovery	22 (10%)	2 (6%)	9 (11%)	11 (10%)	6 (27%)
Counterclaim or third-party claim	10 (4%)	1 (3%)	4 (5%)	5 (5%)	0
Removal-remand issue	3 (1%)	0	1 (1%)	2 (2%)	1 (5%)
Motion for reconsideration	10 (4%)	1 (3%)	1 (1%)	8 (7%)	0
Motion to disqualify	1 (1%)	0	0	1 (1%)	0
Default motion	1 (1%)	0	1 (1%)	0	0
Opposition to dispositive motion	5 (2%)	1 (3%)	3 (4%)	1 (1%)	0
Other	37 (16%)	6 (17%)	13 (16%)	18 (17%)	3 (14%)
Total	226 (100%)	35 (100%)	82 (100%)	109 (100%)	22 (100%)

Note: The percentages are of column totals.

Targeted side of the litigation

The side of litigation targeted by the Rule 11 motions/orders is shown in Table 7. Overall, 59% of the motions targeted the plaintiff, 39% targeted the defendant, and 3% targeted another party (e.g., third and fourth parties). Three of the motions classified as "other" targeted defendants as a third-party plaintiffs. The plaintiff was targeted more frequently than the defendant in motions against represented targets (58% were aimed at plaintiffs and 40% at defendants) and in motions against pro se targets (83% were aimed at plaintiffs and 13% at defendants). All of the motions in prisoner cases were directed at defendants.

Table 7
Targeted person

Targeted Person	All Motions/ Orders	Represented Targets	Pro Se Targets	Motions in Prisoner Cases
Plaintiff	24(11%)	4(2%)	20(83%)	0
Plaintiff's attorney	16(7%)	16(8%)	–	0
Plaintiff and attorney	48(21%)	48(25%)	–	0
Plaintiff (unspecified)	45(20%)	45(23%)	–	0
Subtotal-plaintiff	133(59%)	113(58%)	20(83%)	0
Defendant	5(2%)	3(2%)	2(8%)	0
Defendant's attorney	13(6%)	12(6%)	–	1(17%)
Defendants and attorney	33(15%)	31(16%)	–	2(33%)
Defendants (unspecified)	36(16%)	32(16%)	1(4%)	3(50%)
Subtotal-defendant	87(39%)	78(40%)	3(13%)	6(100%)
Other (e.g., third-party and cross claims)	6(3%)	5(3%)	1(4%)	0
Total	226(100%)	196(100%)	24(100%)	6(100%)

Note: The percentages are of column subtotals and totals.

The side of litigation targeted by the orders imposing sanctions is shown in Table 8. Overall, 77% of the orders imposing sanctions targeted the plaintiff, 23% targeted the defendant, and none targeted another party. Given that more of the motions targeted the plaintiff, it is to be expected that more of the orders imposing sanctions would target the plaintiff. However, the difference in the number of motions filed against the plaintiff and defendant does not appear to fully account for the disparity in sanctions imposed, although the reliability of this conclusion is limited by the significant number (thirty-five) of pending motions. Only 59% of the motions targeted the plaintiff whereas 77% of the orders imposing sanctions did so. The percentage of rulings imposing sanctions pursuant to motions that targeted the plaintiff (27%; seventeen of sixty-three rulings imposed sanctions) was higher than that for defendants (12%; five of forty-three rulings imposed sanctions) [see Table 8]. [14]

14. See note 13 *supra*.

Table 8
Disposition by targeted person

Targeted Person	All Motions/ Orders	Pending	No Ruling	Rulings Issued	Sanctions Imposed
Plaintiff	24 (11%)	5 (14%)	9 (11%)	10 (9%)	3 (14%)
Plaintiff's attorney	16 (7%)	3 (9%)	8 (10%)	5 (5%)	1 (5%)
Plaintiff and attorney	48 (21%)	5 (14%)	21 (26%)	22 (20%)	8 (36%)
Plaintiff (unspecified)	45 (20%)	7 (20%)	12 (15%)	26 (24%)	5 (23%)
Subtotal-plaintiff	133 (59%)	20 (57%)	50 (61%)	63 (58%)	17 (77%)
Defendant	5 (2%)	0	2 (2%)	3 (3%)	0
Defendant's attorney	13 (6%)	0	5 (6%)	8 (7%)	0
Defendant and attorney	33 (15%)	5 (14%)	15 (18%)	13 (12%)	2 (9%)
Defendant (unspecified)	36 (16%)	9 (26%)	8 (10%)	19 (17%)	3 (14%)
Subtotal-defendant	87 (38%)	14 (40%)	30 (37%)	43 (39%)	5 (23%)
Other (e.g., third-party and cross claims)	6 (3%)	1 (3%)	2 (2%)	3 (3%)	0
Total	226 (100%)	35 (100%)	82 (100%)	109 (100%)	22 (100%)

Note: The percentages are of column subtotals and totals.

Nature of suit

We do not assume that Rule 11 sanctions should be imposed equally across the various types of litigation. However, nature-of-suit classifications provide convenient comparisons, and they have to an extent shaped the debate about disproportionate impact.

Motions activity. For the analyses involving nature of suit, we combined similar natures of suit into twelve groups following the format used on the civil cover sheet (JS 44). Table 9 shows the number of filings during the study period for each of these nature-of-suit groups. Table 10 shows the number of cases in each nature-of-suit group that involved Rule 11 activity. The number of motions in each nature-of-suit group is also shown because some cases involve more than one motion. Table 11 shows, for each of twelve nature-of-suit groups, the incidence of Rule 11 activity as estimated by a life-table analysis. The life-table analyses take into account the number of cases of each nature of suit, the age of those cases when the electronic search was conducted, the number of those cases involving a Rule 11 motion or sua sponte order, and the age of a case when the first Rule 11 motion/order was filed. The estimates reflect the percentage of cases that are expected to involve Rule 11 activity within thirty-eight months of filing.

The incidence of Rule 11 activity in contracts cases was estimated twice, the second time excluding cases classified as recovery of overpayment and enforcement of judgment, the Medicare Act, recovery of defaulted student loans, and recovery of overpayment of veterans benefits. The second estimate is the one used below in making comparisons between natures of suit.

Table 9
Filings by nature of suit, January 1, 1987, through April 4, 1990

Nature of Suit	Number of Filings	Nature of Suit	Number of Filings
Contract	2,126	Property rights	219
Real property	138	Bankruptcy	81
Torts	2,848	Social Security	433
Civil rights	1,311	Federal tax	100
Prisoner petitions	1,527	Other statutes	1,842
Forfeiture/penalty	59	Local question	3
Labor	1,008	Total	11,695

Table 10
Nature of suit

Nature of Suit	Cases	Motions/ Orders	Represented Targets	Pro Se Targets
Contract	49 (28%)	64 (28%)	57 (29%)	7 (29%)
Real property	8 (5%)	10 (4%)	5 (3%)	5 (21%)
Torts	35 (20%)	43 (19%)	43 (22%)	0
Civil rights	35 (20%)	47 (21%)	38 (19%)	9 (38%)
Prisoner petitions	5 (3%)	6 (3%)	0	0
Forfeiture/penalty	0	0	0	0
Labor	12 (7%)	14 (6%)	13 (7%)	1 (4%)
Property rights	6 (3%)	9 (4%)	9 (5%)	0
Bankruptcy	0	0	0	0
Social Security	0	0	0	0
Federal tax	1 (1%)	1 (1%)	0	1 (4%)
Other statutes	23 (13%)	31 (14%)	30 (15%)	1 (4%)
Total	174 (100%)	225 (100%)	195 (100%)	24 (100%)

Note: The subject of one case, involving one Rule 11 motion, was a local question. This motion is excluded from the above figures. The percentages are of column totals.

Table 11
Incidence by nature of suit

Nature of Suit	Estimated Incidence Within Thirty-eight Months of Filing
Contract	
All contract cases	2.9
Excluding recovery of overpayment, etc.	3.5
Real property	6.3
Torts	1.9
Civil rights	3.6
Prisoner petitions	0.4
Forfeiture/penalty	0.0
Labor	1.5
Property rights	2.9
Bankruptcy	0.0
Social Security	0.0
Federal tax	1.0
Other statutes	1.5
All cases	2.0

Most of the motions/orders were concentrated in contract (28%), torts (19%), civil rights (21%), and other statutes (14%). As estimated by the life-table analyses, the incidence of Rule 11 activity for civil rights (3.6) is comparable to that for contract (3.5), but is higher than that for the other natures of suit in which the motions/orders were concentrated [torts (1.9), and other statutes (1.5)].

Given the relatively higher incidence of Rule 11 activity in civil rights cases and in light of the criticism that Rule 11 is used to "chill" effective advocacy by civil rights plaintiffs, and in particular civil rights plaintiffs' attorneys, we address the following questions: (1) Are *plaintiffs* disproportionately targeted by Rule 11 motions in civil rights cases, relative to other types of cases? (2) Are *represented parties* disproportionately targeted by Rule 11 motions in civil rights cases, relative to other types of cases? (3) Are *represented plaintiffs* disproportionately targeted by Rule 11 motions in civil rights cases, relative to other types of cases? These comparisons are made between civil rights, contract, torts, and other statutes because the other nature-of-suit groups contain too few motions for comparison.[15] We then address the issue of whether Rule 11 sanctions are disproportionately imposed in certain types of cases.

Are *plaintiffs* disproportionately targeted by Rule 11 motions in civil rights cases, relative to other types of cases? In civil rights cases, the percentage of Rule

15. The z-statistic was used to make these comparisons. See note 13 *supra*.

11 motions targeting plaintiffs (as opposed to defendants or other parties) was comparable to or lower than that in the other major types of cases. In civil rights cases, approximately 53% of the Rule 11 motions targeted the plaintiff. A similar percentage of the motions in other statutes (48%) and contract (61%) targeted the plaintiff. A higher percentage of motions in torts (70%) targeted the plaintiff.

Are *represented parties* disproportionately targeted by Rule 11 motions in civil rights cases, relative to other types of cases? In civil rights cases, the percentage of motions targeting represented parties[16] (as opposed to pro se parties) was lower or slightly lower than that in the other major types of cases. In civil rights cases, approximately 81% of motions targeted a represented party. Higher percentages of motions in torts (100%), and other statutes (97%) and a slightly higher percentage in contract (89%) targeted a represented party.[17]

Are *represented plaintiffs* disproportionately targeted in civil rights cases, relative to other types of cases? To address this question, we first examined only those motions filed against a represented party. In civil rights cases, the percentage of such motions targeting the plaintiff was comparable to or lower than that in the other major types of cases. In civil rights cases, approximately 42% of such motions targeted the plaintiff. A similar percentage targeted the plaintiff in other statutes (47%). Higher percentages of such motions in contract (60%) and torts (70%) targeted the plaintiff.

Another way to address the question is to consider all motions (i.e., those targeting both represented parties and pro se parties). In civil rights cases, only 34% of all motions targeted a represented plaintiff. Higher percentages of the motions in contract (53%) and torts (70%) and a similar percentage in other statutes (45%) targeted a represented plaintiff.

To summarize, the incidence of Rule 11 activity in civil rights cases is comparable to or higher than that in the other major types of cases. However, a lower or similar percentage of motions in civil rights cases targeted represented plaintiffs, compared to the other major types of cases.

Orders imposing sanctions. The outcomes of the motions/orders by nature of suit are shown in Table 12. The last column of the table shows the number of orders imposing sanctions that fall into each nature-of-suit group. Sanctions were imposed in only four natures of suit: contract (14% of orders imposing sanctions), torts (55%), civil rights (23%), and labor (9%). Table 13 shows for each nature of suit the number of orders imposing sanctions against represented parties.

16. The category of "motions targeting represented parties" includes motions that target a party who is represented by counsel and motions that target the party's counsel.

17. These differences may reflect differences in the number of *pro se* versus represented parties across natures of suit rather than differences in the underlying Rule 11 activity. Our data are insufficient to address this possibility.

Table 12
Disposition by nature of suit

Nature of Suit	All Motions/ Orders	Pending	No Ruling	Rulings Issued	Sanctions Imposed
Contract	64 (28%)	8 (23%)	25 (31%)	31 (29%)	3 (14%)
Real property	10 (4%)	1 (3%)	2 (2%)	7 (6%)	0
Torts	43 (19%)	4 (11%)	11 (13%)	28 (26%)	12 (55%)
Civil rights	47 (21%)	12 (34%)	15 (18%)	20 (19%)	5 (23%)
Prisoner petitions	6 (3%)	3 (9%)	2 (2%)	1 (1%)	0
Forfeiture/penalty	0	0	0	0	0
Labor	14 (6%)	3 (9%)	5 (6%)	6 (6%)	2 (9%)
Property rights	9 (4%)	2 (6%)	4 (5%)	3 (3%)	0
Bankruptcy	0	0	0	0	0
Social Security	0	0	0	0	0
Federal tax	1 (1%)	0	1 (1%)	0	0
Other statutes	31 (14%)	2 (6%)	17 (21%)	12 (11%)	0
Total	225 (100%)	35 (100%)	82 (100%)	108 (100%)	22 (100%)

Note: The subject of one case, involving one Rule 11 motion, was a local question. This motion is excluded from the above figures. The percentages are of column totals.

Table 13
Disposition by nature of suit, represented targets only

Nature of Suit	Motions/ Orders	Pending	No Ruling	Rulings Issued	Sanctions Imposed
Contract	57 (29%)	8 (30%)	21 (30%)	28 (29%)	3 (15%)
Real property	5 (3%)	1 (4%)	0	4 (4%)	0
Torts	43 (22%)	4 (15%)	11 (16%)	28 (29%)	12 (60%)
Civil rights	38 (19%)	7 (26%)	14 (20%)	17 (18%)	3 (15%)
Prisoner petitions	—	—	—	—	—
Forfeiture/-Penalty	0	0	0	0	0
Labor	13 (7%)	3 (11%)	5 (7%)	5 (5%)	2 (10%)
Property rights	9 (5%)	2 (7%)	4 (6%)	3 (3%)	0
Bankruptcy	0	0	0	0	0
Social Security	0	0	0	0	0
Federal tax	0	0	0	0	0
Other statutes	30 (15%)	2 (7%)	16 (23%)	12 (12%)	0
Total	**195 (100%)**	**27 (100%)**	**71 (100%)**	**97 (100%)**	**20 (100%)**

Note: The subject of one case, involving one motion, was a local question. This motion is excluded from the above figures. The percentages are of column totals.

The plaintiff was targeted by two of three orders imposing sanctions in contract, nine of twelve orders in torts, four of five orders in civil rights, and both orders in labor. A similar pattern was found when only orders imposing sanctions against represented parties were considered.

Perhaps the best way to determine whether courts disproportionately impose Rule 11 sanctions in civil rights cases would be to examine, across natures of suit, the number of orders imposing sanctions in relation to the number of motions filed. Because some of the motions in our study were pending, we instead examined the number of orders imposing sanctions in relation to the number of orders issued.[18] For the natures of suit in which most of the motions were concentrated (contract, torts, civil rights, other statutes), the percentage of rulings imposing sanctions (i.e., the imposition rate) ranged from 0% to 43%. In civil rights cases, 25% of the rulings (five of twenty rulings) imposed sanctions. Slightly fewer or fewer of the rulings in contract (10%, three of thirty-one rulings) and other statutes (0%, zero of twelve rulings) imposed sanctions and slightly more of the rulings in torts (43%, twelve of twenty-eight rulings) imposed sanctions. If we consider only rulings for motions that targeted represented parties, the percentages of rulings that impose sanctions remain about the same

18. These comparisons were made with the z-statistic. See note 13 *supra*.

for the four major types of cases, although it is somewhat lower for civil rights [civil rights (18%, three of seventeen rulings), contract (11%, three of twenty-eight rulings), other statutes (0%, zero of twelve rulings) and torts (43%, twelve of twenty-eight rulings). To summarize, compared to other major types of cases, the imposition rate in civil rights cases is in the middle range, although the reliability of this conclusion may be limited by the significant number (thirty-five) of pending motions.

For an in-depth analysis of the civil rights cases in which sanctions were imposed, see section 4B.

Are there variations between judges in their application of Rule 11?

We now present information about the treatment of motions and sua sponte orders by each judge (see Table 14). We have grouped as "other judges" senior judges, visiting judges, and newly appointed judges because their experience would likely be different from the experience of judges who were on active status for the entire period of the study. For purposes of this analysis, we excluded motions/orders handled by magistrate judges, as well as motions for reconsideration of judge's orders and appeals from/objections to magistrate judge's orders/recommendations.

The first column of figures in Table 14 shows the number and percentage of motions/orders before each judge or group of judges. For example, seventeen (8%) of the motions were before Judge 1. The second, third, and fourth columns show the outcome of the motions/orders before each judge or group of judges; the percentages are of the number of motions/orders before each judge. For example, Judge 1 had ruled on six (35%) motions, had not ruled on eleven (65%), and had no motions pending. We later refer to all non-pending motions collectively as resolved motions. The fifth column shows, for each judge, the number of orders imposing sanctions; the percentages are of the number of motions/orders ruled on by each judge. For example, three (50%) of Judge 1's rulings imposed sanctions.

Table 14
Judicial variations in sanctioning practices

Judges	Motions/ Orders	Pending	No Ruling	Rulings Issued	Sanctions Imposed
Judge 1	17 (8%)	0	11 (65%)	6 (35%)	3 (50%)
Judge 2	16 (7%)	3 (19%)	6 (38%)	7 (44%)	2 (29%)
Judge 3	22 (10%)	3 (14%)	7 (32%)	12 (55%)	1 (8%)
Judge 4	7 (3%)	0	2 (29%)	5 (71%)	1 (20%)
Judge 5	25 (11%)	1 (4%)	11 (44%)	13 (52%)	2 (15%)
Judge 6	12 (5%)	3 (25%)	5 (42%)	4 (33%)	1 (25%)
Judge 7	21 (9%)	5 (24%)	5 (24%)	11 (52%)	1 (9%)
Judge 8	10 (4%)	3 (30%)	2 (20%)	5 (50%)	0
Judge 9	10 (4%)	0	5 (50%)	5 (50%)	0
Judge 10	16 (7%)	4 (25%)	2 (13%)	10 (63%)	3 (30%)
Judge 11	11 (5%)	0	3 (27%)	8 (73%)	1 (13%)
Judge 12	18 (8%)	5 (28%)	8 (44%)	5 (28%)	1 (6%)
Judge 13	14 (6%)	7 (50%)	4 (29%)	3 (21%)	1 (33%)
Judge 14	0	0	0	0	0
Other judges	27 (12%)	1 (4%)	11 (41%)	15 (56%)	5 (33%)
Total	226 (100%)	35 (15%)	82 (36%)	109 (48%)	22 (20%)

Note: The first column of figures shows the number and percentage of motions/orders before each judge or group of judges. The second, third, and fourth columns show the outcome of the motions/orders before each judge or group of judges; the percentages are of the number of motions/orders before each judge. The fifth column shows, for each judge, the number of orders in which sanctions were imposed; the percentages are of the number of rulings issued by each judge.

We conducted several statistical analyses to examine the sanctioning practices of the judges who were on active status during the entire study period.[19] These analyses showed that there was significant variation in the number of motions before each judge (column 1). Indeed, the number of motions ranged from zero motions before Judge 14 and only seven before Judge 4 to twenty-five motions before Judge 5. In addition, the percentage of motions that were pending (column 2) versus resolved (columns 3 and 4 combined) significantly differed between judges. None of the motions before Judges 1, 4, 9, and 11 were pending whereas 50% of Judge 13's motions were pending. Considering only resolved motions,

19. The category of "other judges" was excluded from these analyses. A statistical package designed to analyze sparse contingency tables was used to conduct the analyses. A relationship was considered significant when the probability associated with the corresponding Fisher's Exact statistic was less than .05. The Fisher's Exact test examines whether there is a significant relationship between two categorical variables.

however, the percentage of motions not ruled on (column 3) versus ruled on (column 4) did not significantly differ between judges. Furthermore, considering only motions that were ruled on, the percentage of rulings imposing sanctions (column 5) did not significantly differ between judges.

Variations between judges in their sanctioning practices may reflect more than just their differing receptivity to Rule 11. For example, variation in the number of motions before each judge may exist because the bar accurately or inaccurately perceives differences between the judges in their receptivity to Rule 11 motions, and acts accordingly. Judges also may differ in the amount of sanctions activity they delegate to the magistrate judges working with them. Furthermore, some judges may diminish the incentive to file a Rule 11 motion by early and active case management. For example, if a judge dismisses a groundless complaint at the Rule 16 conference, the cost of pursuing a Rule 11 motion may exceed any potential recovery. In summary, variations between judges exist, although the source of the variation is likely to be multi-faceted. Our data do not address the causes of the variation between judges.

Appendix A
Sanctions Awards to Opposing Party and Court

Amount of sanctions to opposing party

$500.00	$1,000.00	$5,000.00
$500.00	$2,500.00	$5,000.00
$600.00	$3,775.00	$5,595.00
$744.50	$4,606.88	$7,179.50
$950.00	$5,000.00	$50,000.00

Amount of sanctions to opposing party

None

Appendix B
Non-Monetary Sanctions

The orders that imposed non-monetary sanctions are described below. Orders 2 and 5 were issued by one judge and Orders 1, 3, and 4 were issued by three other judges. The nature of suit is shown for each.

Order 1 (personal injury - assault, libel, and slander)
Defendant's attorney ordered to produce documents and make client available for deposition. Also ordered to pay $600 to opposing party.

Order 2 (personal injury—product liability)
Court precluded testimony from plaintiff on issue of lost future income. Also ordered plaintiff and attorney to pay $5,595 to opposing party.

Order 3 (Civil rights—employment)
Court warned plaintiff's attorney (and the other party to the litigation) to conduct litigation in a "fair and efficient manner." Also declined to impose sua sponte sanctions against the other party, although sanctions were warranted.

Order 4 (labor—ERISA)
As a sanction against the plaintiff (unspecified), the court offset defendant's statutory liability for the plaintiff's attorney's fees.

Order 5 (personal injury—motor vehicle)
Court dismissed complaint of represented plaintiff.

Section 3C
Study of Rule 11 in the Northern District of Georgia

The Northern District of Georgia has its main office in Atlanta (population 420,000, ranked thirty-first in size of U.S. cities as of July 1, 1988).[1] The court is composed of eleven district judges and one senior district judge.[2] During statistical year statistical year 1989, the district had 3,542 total civil filings, and terminated 3,416 civil cases.[3] In statistical year 1990, 3,432 civil cases were filed.[4] The major categories were Torts (18%), Contracts (18%), Prisoner Petitions (17%), and Civil Rights (13%).[5]

Results from the field study of Rule 11 activity in the district are presented below. We first describe the amount of satellite litigation associated with the rule. Next, we present information germane to whether Rule 11 activity has been disproportionately concentrated in specific types of cases or on particular types of litigants. Then, we examine judicial variations in sanctioning practices. In addition, information about the process accorded to those targeted by a motion for Rule 11 sanctions is interspersed throughout the discussion of the other three issues.

All cases filed between January 1, 1987, and May 18, 1990, were included in the study; the total number of cases filed in the district during that period was 11,809. Any Rule 11 activity that occurred in these cases before May 18, 1990, was identified. Many of the cases and some of the Rule 11 motions were pending when we examined the court files. All available information about pending cases and motions is incorporated in the analyses below.

How much satellite litigation has Rule 11 activity produced?

Incidence of Rule 11 activity

Sanctions activity in the district consisted of 233 motions or sua sponte orders (hereinafter, motions/orders) filed in 166 cases. The origin of the 233 mo-

1. The World Almanac and Book of Facts (1991).
2. Administrative Office of the United States Courts, United States Court Directory at 116–17 (Spring 1990).
3. Annual Report of the Director of the Administrative Office of the United States Courts, Table C1 (1989).
4. Administrative Office of the United States Courts, Federal Court Management Statistics at 163 (1990).
5. *Id.*

tions/orders is shown in Table 1. Unless specifically included, sanctions-related motions for reconsideration of judges' orders and appeals from or objections to magistrate judges' orders or recommendations are excluded from subsequent analyses.

Table 1
Origin of sanctions activity

Origin	Number of Motions/Orders
Motion	200
Sua sponte order	13
Subtotal	213
Motion for reconsideration of judge's order	18
Appeal from/objection to magistrate judge's order/recommendation	2
Total	233

To determine the incidence of Rule 11 activity as a proportion of the caseload of the court, a life-table analysis was conducted.[6] Such an analysis is necessary to account for the pending cases in the sample. Each pending case represents a (necessarily) incomplete observation of the opportunity for Rule 11 activity. A life-table analysis takes into account the size of a court's caseload, the age of each case when the electronic search was conducted, the number of cases involving a Rule 11 motion or sua sponte order, and the age of a case when the first Rule 11 motion/order was filed. This analysis estimated that in 2% of all cases at least one Rule 11 motion or sua sponte sanctions order would be filed within 39 months from the date the case was filed. (On page 14, we present incidence figures for the different natures of suit.)

Demands on judges and attorneys

Pre-ruling activities. Sixty-eight percent of the motions/orders led to the filing of opposition pleadings or papers.[7] The records showed a substitution of counsel for a targeted party in nine cases.[8]

6. The life-table analyses were based on a slightly different set of cases because of limitations in data availability.

7. Information about responsive pleadings was missing for three of the pending motions. The above percentage was calculated after dropping these motions from the denominator. This adjustment assumes that the pending motions for which information was missing have the same characteristics as the other motions.

8. We tried to exclude all substitutions that were clearly unrelated to Rule 11, but information in the court's files about substitution was often sketchy, so it is possible a few such substitutions were

Judges conducted twenty-four hearings (involving a total of twenty-seven (13%) of the motions/orders).[9] Fifteen motions were addressed in conjunction with at least one other issue in the litigation and eleven motions were the subject of hearings devoted exclusively to sanctions issues. One motion was heard at both types of hearings. Only two of the Rule 11 hearings were evidentiary. For seventeen (63%) of the twenty-seven motions heard, the underlying issue related to claims essential to the continued prosecution or defense of the action (compared with 71% of the motions for which no hearing was held).[10]

Judges initiated the sanctions process by sua sponte orders thirteen times (6% of the motions/orders). In nine (69%) of those instances, the record indicated that the court used a show cause order to provide notice and an opportunity to be heard. In the four instances when notice and opportunity to be heard were not given, the targeted party was appearing pro se. Papers were filed in opposition to only one of the thirteen orders. Hearings were held on three orders; none of the hearings was evidentiary. The target of eleven of the thirteen orders was a party who was not represented by counsel.

Activities associated with rulings. Figure 1 depicts the outcome of the 213 motions/orders and the nature of any sanctions imposed. At the time of data collection, judges had ruled on 167 (79%) of the motions/orders. Thirty-three motions (15%) had not been ruled on although the underlying issue had been resolved or the case had terminated. The court had explicitly postponed ruling on five of these motions. Another twelve motions (6%) were pending; the court had explicitly postponed ruling on five of these motions.[11]

Many of the rulings were accompanied by a memorandum opinion. Judges wrote 126 opinions to resolve 142 motions/orders. Most (80%) of the opinions combined a ruling on Rule 11 with a ruling on at least one other issue. The number of pages devoted to the Rule 11 issue averaged 2.1 (standard deviation = 2.8).[12] A total of 260 pages were written on Rule 11 issues.

As seen in Figure 1, judges imposed Rule 11 sanctions in forty-two orders, representing 25% of the motions for which rulings were available. Ninety percent of the orders imposing sanctions awarded monetary fees to an opposing party. These awards ranged from $100 to $50,000, with a mean of $4,731 (standard de-

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included. Information about substitution of counsel was missing for three motions in which a party was the target.

9. Information about hearings was missing for nine of the pending motions. The percentage was calculated after dropping these motions from the denominator.

10. To determine whether the Rule 11 activity related to peripheral issues in the litigation, we reviewed the issue forming the basis of the Rule 11 motion/order. For 70% of the motions/orders, we judged the underlying issue to be essential to the prosecution or defense of the litigation.

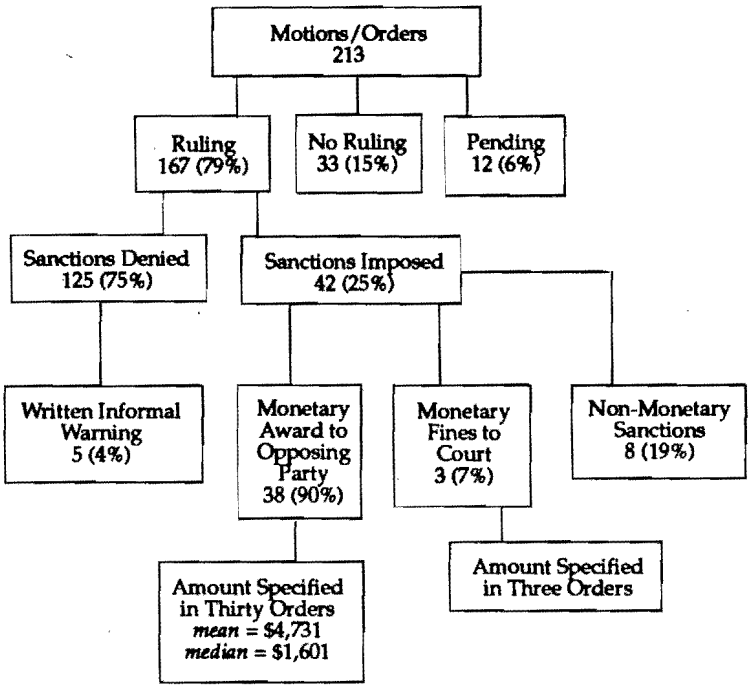
11. Disposition information is missing for one motion; it is excluded from the calculation of the above percentages where appropriate.

12. The standard deviation is a measure of the variability or the dispersion of individual values around the mean.

viation = $9,241) and a median of $1,601.[13] An additional monetary award in the amount of $2,354 was imposed pursuant to a motion for reconsideration. In addition, the amounts of two monetary awards were not specified until they were reconsidered; the judges set the amounts at $18,575.88 and $1,249.00. With these changes the mean and median are $4,973 (standard deviation = $9158) and $1,695, respectively. Three orders (7%) imposed fines payable to the court; the amounts were $100, $250, and $5,000. Eight orders (19%) imposed non-monetary sanctions. These sanctions generally took the form of specific warnings not to file additional papers in relation to the same transaction. In one case, the court conducted disciplinary proceedings, suspended the attorney from practice in the United States district court, and referred the matter to the state supreme court, which also suspended the attorney from the practice of law. In another case, the court struck from the complaint paragraphs pertaining to damages. For a list of the monetary awards, see Appendix A. For a more complete description of the non-monetary sanctions see Appendix B.

13. The median is the preferred measure of central tendency because the mean is inflated by one or two extraordinarily large awards.

Figure 1
Outcome of motions/orders in the Northern District of Georgia



Note: All percentages are percentages of the next higher category. Disposition information is missing for one motion; it is excluded from the calculation of percentages in this chart where appropriate.

Post-ruling activities. Twenty rulings were the subject of a motion for reconsideration or an objection to a magistrate judge's action. Opposition papers were filed in response to thirteen of the motions/objections. Two hearings (one of which was evidentiary) were held. Judges wrote nine opinions to resolve ten motions/objections; six of the opinions combined a ruling on Rule 11 with another issue. Fifteen pages of the written opinions were devoted to Rule 11 issues.

The 18 motions for reconsideration of judges' orders were disposed of as shown in Table 2.

Table 2
Judge orders: reconsiderations

Outcome	Number
Affirmed imposition of sanctions	13
Reversed imposition of sanctions	0
Affirmed denial of sanctions	2
Reversed denial of sanctions	1
Modified type or amount of sanctions	2

The two objections to or appeals from magistrate judges' recommendations or orders were disposed of as shown in Table 3[14]

Table 3
Magistrate judge recommendations and orders: objections and appeals

Outcome	Number
Affirmed imposition of sanctions	1
Reversed imposition of sanctions	0
Affirmed denial of sanctions	0
Reversed denial of sanctions	0
Modified type or amount of sanctions	1

Twenty-three of the rulings were appealed.[15] The outcomes of the appeals are shown in Table 4. Note that almost half of the appeals were still pending at the time of data collection. One of the decisions affirming the imposition of sanctions also remanded the case to district court to determine the amount of Rule 38 sanctions. Both of the reversals were on Rule 11 procedural grounds. All of the appellate rulings that had been issued were unanimous.

14. These figures include only situations in which a party objected to or appealed a magistrate judge's report or order or in which a judge sua sponte decided to alter a magistrate judge's finding. If a motion for reconsideration or an appeal/objection was not ruled on and the case was not pending, the original sanctions decision was considered affirmed.

15. Some of the Rule 11 rulings were in pending cases; these rulings may be appealed after the cases terminate.

Table 4
Appellate court decisions

Outcome	Number
Affirmed imposition of sanctions	3
Reversed imposition of sanctions	2
Affirmed denial of sanctions	1
Reversed denial of sanctions	0
Appeal dismissed	6
Other	1
Pending	10

Has Rule 11 activity been disproportionately concentrated in specific types of cases or disproportionately focused on particular types of litigants?

In this section, we provide information about the type of activity targeted by the Rule 11 motions/orders. We first present information about the pleadings or papers that were the primary targets of Rule 11 motions/orders. Next, we present information about the targeted person, examining in particular whether plaintiffs are subject to motions for sanctions more frequently than defendants. Finally, we present information about the natures of suits engendering Rule 11 activity, focusing on whether the level of sanctioning activity in civil rights cases is relatively higher than in other types of cases.

Targeted pleadings and papers

The pleading or paper that was the primary target of the Rule 11 motions/orders is shown in Table 5. The table presents information separately for the three types of motions: (1) motions in prisoner cases; (2) motions in non-prisoner cases in which the target was pro se; and (3) motions in non-prisoner cases in which the targeted side was represented by counsel. Note that we were unable to determine whether the targets of two motions were represented or pro se.

Table 5
Targeted pleading or paper

Targeted Pleading	All Motions/ Orders	Represented Targets	Pro Se Targets	Motions in Prisoner Cases
Complaint	79 (37%)	59 (34%)	13 (46%)	6 (55%)
Answer	8 (4%)	8 (5%)	0	0
Motion to dismiss (Rule 12(b)(6))	8 (4%)	7 (4%)	1 (4%)	0
Motion to dismiss (Rule 12(b)(1))	2 (1%)	2 (1%)	0	0
Other motion to dismiss	5 (2%)	5 (3%)	0	0
Motion for summary judgment	2 (1%)	1 (1%)	0	1 (9%)
Rule 11 motion	9 (4%)	6 (4%)	1 (4%)	2 (18%)
Discovery	15 (7%)	13 (7%)	1 (4%)	1 (9%)
Counterclaim or third-party claim	13 (6%)	12 (7%)	1 (4%)	0
Removal-remand issue	3 (1%)	3 (2%)	0	0
Motion for reconsideration	12 (6%)	8 (5%)	4 (14%)	0
Motion to disqualify	5 (2%)	4 (2%)	1 (4%)	0
Default motion	5 (2%)	4 (2%)	1 (4%)	0
Opposition to dispositive motion	11 (5%)	11 (6%)	0	0
Other	36 (17%)	29 (17%)	5 (18%)	1 (9%)
Total	213 (100%)	172 (100%)	28 (100%)	11 (100%)

Note: The first column of numbers includes all motions/orders. The second column includes motions in which the targeted side was represented by counsel, excluding prisoner cases. The third column includes motions in which the target was pro se, excluding prisoner cases; it may include some motions in which the target was an attorney appearing pro se. The last column includes all motions brought in prisoner cases, including those in which the target was a represented party or an attorney. We were unable to determine whether the targets of two motions were represented or pro se. The percentages are of column totals.

The complaint was by far the most frequently targeted pleading or paper, being the target of 37% of the Rule 11 motions/orders. More specifically, it was the target of 34% of the Rule 11 motions against represented targets, 46% of the motions against pro se targets, and 55% of the motions in prisoner cases. In contrast, answers were targeted relatively rarely, by only 4% of the motions. Similarly, motions to dismiss and summary judgment motions were targeted by only 7% and 1% of the Rule 11 motions, respectively.

The outcome of the motions/orders in relation to the pleading or paper targeted is shown in Table 6. The complaint was the paper/pleading most frequently targeted by the orders imposing sanctions (57% of the orders). It is to be expected that a relatively high number of the orders imposing sanctions would relate to complaints, given the high number of motions targeting complaints.

However, it appears that more orders imposed sanctions for complaints than would be expected even given the difference in motion activity. Only 37% of motions targeted complaints whereas 57% of the orders imposing sanctions targeted the complaint. The percentage of rulings imposing sanctions pursuant to motions that targeted the complaint (40%, twenty-four of sixty rulings) was higher than the percentage of rulings imposing sanctions pursuant to motions that targeted all other pleadings or papers (17%, eighteen of 107 rulings) [numbers derived from Table 6].[16]

16. We used the z-statistic to make this comparison. The z-statistic reflects the number of standard errors by which two percentages differ. We considered a z-statistic of at least 1.65 to reflect a difference between two percentages and a z-statistic between 1 and 1.65 to reflect a slight difference. A difference of at least 1.65 is significant at the traditional significance level of $p \leq .05$ (one-tailed); differences between 1.00 and 1.65 only approach traditional significance ($p \leq .16$, one-tailed). We took this approach in describing the results so that one could better see the relative positions of the percentages.

Table 6
Disposition by targeted paper

Targeted Pleading	All Motions/ Orders	Pending	No Ruling	Ruling Issued	Sanctions Imposed
Complaint	79 (37%)	4 (33%)	15 (46%)	60 (36%)	24 (57%)
Answer	8 (4%)	0	5 (15%)	3 (2%)	0
Motion to dismiss (Rule 12(b)(6))	8 (4%)	0	0	8 (5%)	1 (2%)
Motion to dismiss (Rule 12(b)(1))	2 (1%)	1 (8%)	0	1 (1%)	0
Other motion to dismiss	5 (2%)	0	0	5 (3%)	1 (2%)
Motion for summary judgment	2 (1%)	0	0	2 (1%)	0
Rule 11 motion	9 (4%)	1 (8%)	1 (3%)	7 (4%)	0
Discovery	15 (7%)	3 (25%)	1 (3%)	11 (6%)	2 (5%)
Counterclaim or third-party claim	13 (6%)	0	4 (12%)	9 (5%)	1 (2%)
Removal-remand issue	3 (1%)	0	0	3 (2%)	2 (5%)
Motion for reconsideration	12 (6%)	0	1 (3%)	11 (7%)	4 (10%)
Motion to disqualify	5 (2%)	0	0	5 (3%)	0
Default motion	5 (2%)	0	0	5 (3%)	3 (7%)
Opposition to dispositive motion	11 (5%)	2 (17%)	1 (3%)	8 (5%)	0
Other	36 (17%)	1 (8%)	5 (15%)	29 (17%)	4 (10%)
Total	213 (100%)	12 (100%)	33 (100%)	167 (100%)	42 (100%)

Note: Disposition information was missing for one motion that targeted an other pleading or paper. The percentages are of column totals.

Targeted side of the litigation

The side of litigation targeted by the Rule 11 motions/orders is shown in Table 7. Overall, 59% of the motions targeted the plaintiff, 35% targeted the defendant, and 7% targeted another party/non-party (e.g., third-party, intervenor, cross-claimant). One of the motions classified as "other" targeted the defendant in its role as a third-party plaintiff and another one targeted the defendant as a cross-claimant. The plaintiff was targeted more frequently than the defendant in motions against represented targets (55% were aimed at plaintiffs and 41% at defendants) and by motions against pro se targets (79% were aimed at plaintiffs and

4% at defendants) and by motions brought in prisoner cases (73% were aimed at plaintiffs and 27% at defendants).

Table 7
Targeted person

Targeted Person	All Motions/ Orders	Represented Targets	Pro Se Targets	Motions in Prisoner Cases
Plaintiff	37(17%)	7(4%)	22(79%)	8(73%)
Plaintiff's attorney	10(5%)	10(6%)	0	0
Plaintiff and attorney	46(22%)	46(27%)	0	0
Plaintiff (unspecified)	32(15%)	31(18%)	0	0
Subtotal-plaintiff	125(59%)	94(55%)	22(79%)	8(73%)
Defendant	8(4%)	7(4%)	1(4%)	0
Defendant's attorney	11(5%)	10(6%)	0	1(9%)
Defendant and attorney	34(16%)	32(19%)	0	2(18%)
Defendant (unspecified)	21(10%)	21(12%)	0	0
Subtotal-defendant	74(35%)	70(41%)	1(4%)	3(27%)
Other (e.g., third-party and cross-claims)	14(7%)	8(5%)	5(18%)	0
Total	213(100%)	172(100%)	28(100%)	11(100%)

Note: We were unable to determine whether the targets of two motions were represented or pro se. The percentages are of column subtotals and totals.

The side of litigation targeted by the orders imposing sanctions is shown in Table 8. Overall, 81% of the orders imposing sanctions targeted the plaintiff, 9% targeted the defendant, and 9% targeted another party/non-party. Given that more of the motions targeted the plaintiff, it is to be expected that more of the orders imposing sanctions would target the plaintiff. However, the difference in the number of motions filed against the plaintiff and defendant does not appear to fully account for the disparity in sanctions imposed. Only 59% of the motions targeted the plaintiff whereas 81% of the orders imposing sanctions did so. The percentage of rulings imposing sanctions pursuant to motions that targeted the plaintiff (34%, thirty-four of ninety-nine rulings) was higher than the percentage of rulings imposing sanctions pursuant to motions that targeted the defendant (7%, four of fifty-seven rulings) [see Table 8].[17]

17. See note 16 *supra*.

Table 8
Disposition by targeted person

Targeted Person	All Motions/ Orders	Pending	No Ruling	Rulings Issued	Sanctions Imposed
Plaintiff	37(17%)	1(8%)	1(3%)	35(21%)	14(33%)
Plaintiff's attorney	10(5%)	1(8%)	1(3%)	8(5%)	3(7%)
Plaintiff and attorney	46(22%)	2(17%)	7(21%)	37(22%)	11(26%)
Plaintiff (unspecified)	32(15%)	3(25%)	10(30%)	19(11%)	6(14%)
Subtotal-plaintiff	125(59%)	7(59%)	19(58%)	99(59%)	34(81%)
Defendant	8(4%)	0	2(6%)	6(4%)	0
Defendant's attorney	11(5%)	2(17%)	0	9(5%)	1(2%)
Defendant and attorney	34(16%)	1(8%)	5(15%)	28(17%)	1(2%)
Defendant (unspecified)	21(10%)	2(17%)	5(15%)	14(8%)	2(5%)
Subtotal-defendant	74(35%)	5(42%)	12(37%)	57(34%)	4(9%)
Other (e.g., third-party and cross claims)	14(7%)	0	2(6%)	11(7%)	4(9%)
Total	213(100%)	12(100%)	33(100%)	167(100%)	42(100%)

Note: Disposition information was missing for one motion that targeted a person other than the plaintiff or defendant. Percentages are of column subtotals and totals.

Nature of suit

We do not assume that Rule 11 sanctions should be imposed equally across the various types of litigation. However, nature-of-suit classifications provide convenient comparisons, and they have to an extent shaped the debate about disproportionate impact.

Motions activity. For the analyses involving nature of suit, we combined similar natures of suit into twelve groups following the format used on the civil cover sheet (JS 44). Table 9 shows the number of filings during the study period for each of these nature-of-suit groups. Table 10 shows the number of cases in each nature-of-suit group that involved Rule 11 activity. The number of motions in each nature-of-suit group is also shown because some cases involve more than one motion. Table 11 shows, for each of twelve nature-of-suit groups, the incidence of Rule 11 activity as estimated by a life-table analysis. The life-table analyses take into account the number of cases of each nature of suit, the age of those cases when the electronic search was conducted, the number of those cases in-

volving a Rule 11 motion or sua sponte order, and the age of a case when the first Rule 11 motion/order was filed. The estimates reflect the percentage of cases that are expected to involve Rule 11 activity within thirty-nine months of filing. The incidence of Rule 11 activity in contracts cases was estimated twice, the second time excluding cases classified as recovery of overpayment and enforcement of judgment, the Medicare Act, recovery of defaulted student loans, and recovery of overpayment of veterans benefits. The second estimate is the one used below in making comparisons between natures of suit.

Table 9
Filings by nature of suit, January 1, 1987, through May 18, 1990

Nature of Suit	Number of Filings	Nature of Suit	Number of Filings
Contract	3,054	Labor	361
Real property	180	Property rights	413
Torts	2,136	Bankruptcy	310
Civil rights	1,421	Social Security	566
Prisoner petitions	2,195	Federal tax	117
Forfeiture/penalty	402	Other statutes	654
		Total	11,809

Table 10
Nature of suit

Nature of Suit	Cases	Motions/ Orders	Represented Targets	Pro Se Targets
Contract	43 (26%)	56 (26%)	54 (31%)	0
Real Property	1 (1%)	1 (1%)	1 (1%)	0
Torts	26 (16%)	31 (15%)	30 (17%)	1 (4%)
Civil rights	54 (33%)	73 (34%)	53 (31%)	20 (71%)
Prisoner petitions	7 (4%)	11 (5%)	-	-
Forfeiture/penalty	1 (1%)	1 (1%)	0	1 (4%)
Labor	11 (7%)	13 (6%)	10 (6%)	3 (11%)
Property rights	5 (3%)	5 (2%)	5 (3%)	0
Bankruptcy	2 (1%)	2 (1%)	1 (6%)	1 (4%)
Social Security	1 (1%)	1 (1%)	1 (6%)	0
Federal tax	3 (2%)	4 (2%)	2 (1%)	2 (7%)
Other statutes	12 (7%)	15 (7%)	15 (8%)	0
Total	166 (100%)	213 (100%)	172 (100%)	28 (100%)

Note: We were unable to determine whether the targets of two motions in contract were represented or pro se. Percentages are of column subtotals and totals.

Table 11
Incidence by nature of suit

Nature of Suit	Estimated Incidence Within Thirty-nine Months of Filing
Contract	
All contract cases	2.1
Excluding recovery of overpayment, etc.	2.6
Real property	0.7
Torts	2.0
Civil rights	5.6
Prisoner petitions	0.4
Forfeiture/penalty	0.3
Labor	3.9
Property rights	1.4
Bankruptcy	0.7
Social Security	0.2
Federal tax	2.6
Other statutes	2.3
Total	2.0

Most of the motions/orders were concentrated in contract (26%), torts (15%), and civil rights (34%). As estimated by the life-table analyses, the incidence of Rule 11 activity is higher for civil rights (5.6) than for the other natures of suit in which the motions/orders were concentrated [contract (2.6), torts (2.0)].

Given the relatively higher incidence of Rule 11 activity in civil rights cases and in light of the criticism that Rule 11 is used to "chill" effective advocacy by civil rights plaintiffs, and in particular civil rights plaintiffs' attorneys, we address the following questions:

(1) Are *plaintiffs* disproportionately targeted by Rule 11 motions in civil rights cases, relative to other types of cases?
(2) Are *represented parties* disproportionately targeted by Rule 11 motions in civil rights cases, relative to other types of cases?
(3) Are *represented plaintiffs* disproportionately targeted by Rule 11 motions in civil rights cases, relative to other types of cases?

These comparisons are made between civil rights, contract, and torts because the other nature-of-suit groups contain too few motions for comparison.[18] We then address the issue of whether Rule 11 sanctions are disproportionately *imposed* in certain types of cases.

18. The z-statistic was used to make these comparisons. See note 16 *supra*.

Are *plaintiffs* disproportionately targeted by Rule 11 motions in civil rights cases, relative to other types of cases? In civil rights cases, the percentage of Rule 11 motions targeting plaintiffs (as opposed to defendants or other parties) was comparable to that in the other major types of cases. Approximately 62% of the Rule 11 motions filed in civil rights cases targeted the plaintiff. The percentage of motions targeting the plaintiff was similar in contract (54%) and torts (55%).

Are *represented parties* disproportionately targeted by Rule 11 motions in civil rights cases, relative to other types of cases? In civil rights cases, the percentage of motions targeting represented parties[19] (as opposed to *pro se* parties) was lower than in the other major categories of cases. Approximately 73% of the Rule 11 motions filed in civil rights cases targeted a represented party. Higher percentages of motions targeted represented parties in contract (100%) and torts (97%).[20]

Are *represented plaintiffs* disproportionately targeted in civil rights cases, relative to other types of cases? To address this question, we first examined only those motions filed against a represented party. In civil rights cases, the percentage of such motions targeting the plaintiff was comparable to that in the other major types of cases. Approximately 57% of such motions in civil rights cases targeted the plaintiff. Similar percentages of such motions in contract (54%) and torts (53%) targeted the plaintiff.

Another way to address the question is to consider all motions (i.e., those targeting both represented parties and pro se parties). In civil rights cases, 41% of all motions targeted a represented plaintiff. A slightly higher percentage of the motions in contract (54%) and torts (52%) targeted a represented plaintiff. To summarize, the incidence of Rule 11 activity is higher in civil rights than in the other major types of cases. However, a slightly lower percentage of motions in civil rights cases targeted represented plaintiffs, compared to the other major types of cases.

Orders imposing sanctions. The outcomes of the motions/orders by nature of suit are shown in Table 12. The last column of the table shows for each nature of suit the number of orders imposing sanctions. The orders imposing sanctions are concentrated in contract (14%), torts (14%), civil rights (45%) and others statutes (10%). Table 13 shows for each nature of suit the number of orders imposing sanctions against represented parties. The orders imposing sanctions are again concentrated in contract (23%), torts (23%), civil rights (31%) and other statutes (15%).

19. The category of "motions targeting represented parties" includes motions that target a party who is represented by counsel and motions that target a party's counsel.

20. These differences may reflect differences in the number of pro se versus represented parties across natures of suit rather than differences in underlying Rule 11 activity. Our data are insufficient to address this possibility.

Table 12
Disposition by nature of suit

Nature of Suit	All Motions/ Orders	Pending	No Ruling	Rulings Issued	Sanctions Imposed
Contract	56 (26%)	5 (42%)	18 (55%)	32 (19%)	6 (14%)
Real property	1 (1%)	0	0	1 (1%)	0
Torts	31 (15%)	0	2 (6%)	29 (17%)	6 (14%)
Civil rights	73 (34%)	6 (50%)	8 (24%)	59 (35%)	19 (45%)
Prisoner petitions	11 (5%)	0	0	11 (7%)	2 (5%)
Forfeiture/penalty	1 (1%)	0	0	1 (1%)	1 (2%)
Labor	13 (6%)	0	3 (9%)	10 (6%)	1 (2%)
Property rights	5 (2%)	0	0	5 (3%)	1 (2%)
Bankruptcy	2 (1%)	0	0	2 (1%)	0
Social Security	1 (1%)	0	0	1 (1%)	0
Federal tax	4 (2%)	0	1 (3%)	3 (2%)	2 (5%)
Other statutes	15 (7%)	1 (8%)	1 (3%)	13 (8%)	4 (10%)
Total	213 (100%)	12 (100%)	33 (100%)	167 (100%)	42 (100%)

Note: Disposition information was missing for one motion filed in a contract case. Percentages are of column totals.

Table 13
Disposition by nature of suit, represented targets only

Nature of Suit	Motions/ Orders	Pending	No Ruling	Rulings Issued	Sanctions Imposed
Contract	54 (31%)	4 (40%)	18 (58%)	32 (24%)	6 (23%)
Real property	1 (1%)	0	0	1 (1%)	0
Torts	30 (17%)	0	2 (7%)	28 (21%)	6 (23%)
Civil rights	53 (31%)	5 (50%)	7 (23%)	41 (31%)	8 (31%)
Prisoner petitions	–	–	–	–	–
Forfeiture/penalty	0	0	0	0	0
Labor	10 (6%)	0	3 (10%)	7 (5%)	0
Property rights	5 (3%)	0	0	5 (4%)	1 (4%)
Bankruptcy	1 (6%)	0	0	1 (1%)	0
Social Security	1 (6%)	0	0	1 (1%)	0
Federal tax	2 (1%)	0	0	2 (2%)	1 (4%)
Other statutes	15 (8%)	1 (10%)	1 (3%)	13 (10%)	4 (15%)
Total	172 (100%)	10 (100%)	31 (100%)	131 (100%)	26 (100%)

Note: We were unable to determine whether the targets of two motions were represented or pro se. Percentages are of column totals.

Considering only the natures of suit in which most of the motions were concentrated (contract, torts, and civil rights), the six orders imposing sanctions in contract (100%), four of the six orders in torts (67%), and fifteen of the nineteen orders (79%) in civil rights targeted the plaintiff. If we consider only those orders imposing sanctions against represented parties, the percentage of orders targeting the plaintiff in civil rights cases remains about the same (six of eight orders or 75% for represented parties; 79% overall;).

Perhaps the best way to determine whether courts disproportionately impose Rule 11 sanctions in civil rights cases would be to examine, across nature-of-suit categories, the number of orders imposing sanctions in relation to the number of motions filed. Because some of the motions in our study were pending, we instead examined the number of orders imposing sanctions in relation to the number of orders issued.[21] For the natures of suit in which most of the motions were concentrated (contract, torts, civil rights), the percentage of orders imposing sanctions (i.e., the imposition rate) was slightly higher for civil rights (32%, nineteen of fifty-nine rulings) than for contracts (19%, six of thirty-two rulings) and torts (21%, six of twenty-nine rulings). If we consider only rulings on motions

21. These comparisons were made with the z-statistic. See note 16 *supra*.

that targeted a represented party, the imposition rates for contracts (19%), torts (21%), and civil rights (20%) are comparable.

To summarize, it appears that overall courts are slightly more likely to grant Rule 11 motions in civil rights cases than in contract or torts cases. However, considering only the rulings targeting represented parties, the imposition rate in civil rights cases is comparable to that in contract and torts.

For an in-depth analysis of the civil rights cases in which sanctions were imposed, see Section 4C.

Are there variations between judges in their application of Rule 11?

We now present information about the treatment of motions and sua sponte orders by each judge (see Table 14). We have grouped as "other judges" senior judges, visiting judges, and newly appointed judges because their experience would likely be different from the experience of judges who were on active status for the entire period of the study. For purposes of this analysis, we excluded motions/orders handled by magistrate judges, as well as motions for reconsideration of judge's orders and appeals from/objections to magistrate judge's orders/recommendations.

Table 14
Judicial variations in sanctioning practices

Judges	Motions/ Orders	Pending	No Ruling	Rulings Issued	Sanctions Imposed
Judge 1	17 (9%)	1 (6%)	2 (12%)	14 (82%)	10 (71%)
Judge 2	6 (3%)	0	0	6 (100%)	0
Judge 3	5 (3%)	0	2 (40%)	3 (60%)	0
Judge 4	19 (10%)	1 (5%)	5 (26%)	13 (68%)	1 (8%)
Judge 5	15 (8%)	0	4 (27%)	11 (73%)	4 (36%)
Judge 6	24 (12%)	1 (4%)	5 (21%)	18 (75%)	4 (22%)
Judge 7	22 (11%)	0	3 (14%)	19 (86%)	4 (21%)
Judge 8	14 (7%)	0	3 (21%)	11 (79%)	2 (18%)
Judge 9	25 (13%)	4 (16%)	3 (12%)	18 (72%)	1 (6%)
Judge 10	11 (6%)	0	1 (10%)	9 (90%)	3 (33%)
Other judges	41 (21%)	3 (7%)	5 (12%)	33 (81%)	7 (21%)
Total	199 (100%)	10 (5%)	33 (17%)	155 (78%)	36 (23%)

Note: Disposition information was missing for one of Judge 10's motions. The first column of figures shows the number and percentage of motions/orders before each judge or group of judges. The second, third, and fourth columns show the outcome of the motions/orders before each judge or group of judges; the percentages are of the number of motions/orders before each judge. The fifth column shows, for each judge, the number of orders in which sanctions were imposed; the percentages are of the number of rulings issued by each judge.

The first column of figures in Table 14 shows the number and percentage of motions/orders before each judge or group of judges. For example, seventeen (9%) of the motions were before Judge 1. The second, third, and fourth columns show the outcome of the motions/orders before each judge or group of judges; the percentages are of the number of motions/orders before each judge. For example, Judge 1 had ruled on fourteen (82%) motions, had not ruled on two (12%), and had one motion pending. We later refer to all non-pending motions collectively as resolved motions. The fifth column shows, for each judge, the number of orders imposing sanctions; the percentages are of the number of motions/orders ruled on by each judge. For example, ten (71%) of Judge 1's rulings imposed sanctions.

We conducted several statistical analyses to examine the sanctioning practices of the judges who were on active status during the entire study period.[22] These

22. The category of "other judges" was excluded from these analyses. A statistical package designed to analyze sparse contingency tables was used to conduct the analyses. A relationship was considered significant when the probability associated with the corresponding Fisher's Exact statistic was less than .05. The Fisher's Exact test examines whether there is a significant relationship between two categorical variables.

analyses showed that there was significant variation in the number of motions before each judge (column 1). Indeed, the number of motions ranged from five motions before Judge 3 to twenty-five motions before Judge 9. The percentage of motions that were pending (column 2) versus resolved (columns 3 and 4 combined) did not significantly differ between judges. Furthermore, considering only resolved motions, the percentage of motions not ruled on (column 3) versus ruled on (column 4) did not significantly differ between judges. Considering only motions that were ruled on, however, the percentage of rulings imposing sanctions (column 5) significantly varied between judges. None of the rulings of Judges 2 and 3, and very few of Judge 4's (8%) and Judge 9's (6%) rulings imposed sanctions, whereas 71% of Judge 1's rulings did so.

Variations between judges in their sanctioning practices may reflect more than their differing receptivity to Rule 11. For example, variation in the number of motions before each judge may exist because the bar accurately or inaccurately perceives differences between the judges in their receptivity to Rule 11 motions, and acts accordingly. Judges also may differ in the amount of sanctions activity they delegate to the magistrate judges working with them. Furthermore, some judges may diminish the incentive to file a Rule 11 motion by early and active case management . For example, if a judge dismisses a groundless complaint at the Rule 16 conference, the cost of pursuing a Rule 11 motion may exceed any potential recovery. In summary, variations between judges exist, although the source of the variation is likely to be multi-faceted. Our data do not address the causes of the variation among judges.

Appendix A
Sanctions Awards to Opposing Party and Court

Amount of sanctions to opposing party

$100.00	$1,041.00	$4,405.45
$187.50	$1,044.80	$6,000.00
$300.00	$1,200.00	$6,000.00
$400.00	$1,312.50	$6,550.33
$496.30	$1,506.18	$6,642.40
$500.00	$1,695.00	$6,886.85
$500.00	$1,808.00	$7,097.50
$500.00	$2,010.00	$9,339.53
$574.00	$3,655.43	$15,327.05
$821.00	$4,038.48	$50,000.00

An additional monetary award in the amount of $2,354.00 was imposed pursuant to a motion for reconsideration. In addition, the amounts of two monetary awards were not specified until they were reconsidered; the judges set the amounts at $18,575.88 and $1,249.00.

Amount of sanctions to the court

$100.00
$250.00
$5,000.00

Appendix B
Non-Monetary Sanctions

The orders imposing non-monetary sanctions are described below. Three judges entered two orders each and three judges entered one order each. A magistrate judge entered the remaining order. The nature of suit is shown in brackets after each order.

Order 1 (other civil rights)
Plaintiff (unspecified) sanctioned by striking from complaint paragraphs pertaining to damages. Also ordered to pay $300 to opposing party.

Order 2 (federal tax suit)
Defendants' attorneys admonished not to repeat error of failing to cite recent relevant Supreme Court authority opposing their position. Sanction upheld on reconsideration.

Order 3 (other civil rights)
Plaintiff's former attorney ordered to pay $496.30 to opposing party and suspended indefinitely from the practice of law. Disciplinary proceedings were held in addition to the Rule 11 proceedings. Sanction upheld on reconsideration.

Order 4 (other civil rights)
Pro se plaintiff prohibited from filing any additional papers in closed case and defendant relieved of any obligation to respond to any future filings by plaintiff. Plaintiff also ordered to pay attorney's fees to opposing party in an amount to be determined.

Order 5 (forfeiture/penalty—other)
On motion for reconsideration, $500 sanction against unrepresented claimant in forfeiture case upheld. Court added stipulation that clerk not accept any pleadings from claimant until sanction was paid.

Order 6 (other civil rights)
Pro se plaintiff enjoined from filing, in the United States District Court for the District of Georgia, any case against defendants that arises out of the transaction or occurrence which was the subject of the captioned case. Also ordered to pay opposing party $4,405.45.

Order 7 (federal tax suit)
Pro se plaintiff warned that further tax filings would result in an immediate fine. Also ordered to pay opposing party $1,506.18.

Order 8 (other civil rights)
Pro se plaintiff enjoined from further filings related to period of employment with defendant. Also ordered to pay defendant $1,044.80.

Order 9 (labor—Fair Labors Standard Act)
Pro se plaintiff enjoined from further filings against present parties for actions arising from employment. Also ordered to pay opposing party $6,886.85. Non-monetary sanction upheld on reconsideration; monetary sanction reduced to $2,354.00.

Section 3D
Study of Rule 11 in the Eastern District of Michigan

The U.S. District Court for the District of Michigan has its main office in Detroit (population 1,035,920, ranked seventh in size of U.S. cities as of July 1, 1988).[1] The court is composed of fourteen district judges and five senior district judges.[2] During statistical year statistical year 1989, the district had 5,914 total civil filings, and terminated 6,091 civil cases.[3] In statistical year 1990, 4,824 civil cases were filed.[4] The major categories were Prisoner Petitions (18%), Contracts (16%), Labor (14%), Torts (14%) and Civil Rights (10%).[5]

Results from the field study of Rule 11 activity in the district are presented below. We first describe the amount of satellite litigation associated with the rule. Next, we present information germane to whether Rule 11 activity has been disproportionately concentrated in specific types of cases or on particular types of litigants. Then, we examine judicial variations in sanctioning practices. In addition, information about the process accorded to those targeted by a motion for Rule 11 sanctions is interspersed throughout the discussion of the other three issues.

All cases filed between June 15, 1988, and August 1, 1990, were included in the study; the total number of cases filed in the district during that period was 10,946. Any Rule 11 activity that occurred in these cases before August 1, 1990, was identified. Many of the cases and some of the Rule 11 motions were pending when we examined the court files. All available information about pending cases and motions is incorporated in the analyses below.

1. The World Almanac and Book of Facts (1991).
2. Administrative Office of the United States Courts, United States Court Directory at 180-181 (Spring 1990).
3. Annual Report of the Director of the Administrative Office of the United States Courts, Table C1 (1989).
4. Administrative Office of the United States Courts, Federal Court Management Statistics at 91 (1990).
5. *Id.*

How much satellite litigation has Rule 11 activity produced?

Incidence of Rule 11 activity

Sanctions activity in the district consisted of 268 motions or sua sponte orders (hereinafter, motions/orders) filed in 204 cases. The origin of the 268 motions/orders is shown in Table 1. Unless specifically included, sanctions-related motions for reconsideration of judges' orders and appeals from or objections to magistrate judges' orders or recommendations are excluded from subsequent analyses.

Table 1
Origin of sanctions activity

Origin	Number of Motions/Orders
Motion	247
Sua sponte order	6
Subtotal	253
Motion for reconsideration of judge's order	10
Appeal from/objection to magistrate judge's order/recommendation	5
Total	268

To determine the incidence of Rule 11 activity as a proportion of the caseload of the court, a life-table analysis was conducted.[6] Such an analysis is necessary to account for the pending cases in the sample. Each pending case represents a (necessarily) incomplete observation of the opportunity for Rule 11 activity. A life-table analysis takes into account the size of a court's caseload, the age of each case when the electronic search was conducted, the number of cases involving a Rule 11 motion or sua sponte order, and the age of a case when the first Rule 11 motion/order was filed. This analysis estimated that in 2.4% of all cases at least one Rule 11 motion or sua sponte sanctions order would be filed within twenty-two months from the date the case was filed. (On page 14, we present incidence figures for different natures of suit.)

6. The life-table analyses were based on a slightly different set of cases because of limitations in data availability.

Demands on judges and attorneys

Pre-ruling activities. Seventy-two percent of the motions/orders led to the filing of opposition pleadings or papers.[7] The records showed a substitution of counsel for a targeted party in seven cases.[8]

Judges conducted ninety-six hearings (involving a total of 110 (48%) of the motions/orders).[9] Eighty-five (77%) motions were addressed in conjunction with at least one other issue in the litigation and twenty-four (22%) motions were the subject of hearings devoted exclusively to sanctions issues. One motion (1%) was heard at both types of hearings. Two hearings (for three motions) were evidentiary. In eighty-six (80%) of the 110 motions heard, the underlying issue related to claims essential to the continued prosecution or defense of the action (compared with 71% of the motions for which no hearing was held).[10]

Judges initiated the sanctions process by sua sponte orders six times (2% of the motions/orders). In two (33%) of those instances, the record indicated that the court used a show cause order to provide notice and an opportunity to be heard. Papers were filed in opposition to two of the orders. A hearing was held in one instance; it was not evidentiary. None of the targets was an unrepresented party.

Activities associated with rulings. Figure 1 depicts the outcome of the 253 motions/orders and the nature of any sanctions imposed. At the time of data collection, judges had ruled on 134 (53%) of the motions/orders. Eighty motions (32%) had not been ruled on although the underlying issue had been resolved or the case had terminated. The court had explicitly postponed ruling on eight of these motions. Another thirty-nine motions (15%) were pending; the court had explicitly postponed ruling on nine of these motions.

Many of the rulings were accompanied by a memorandum opinion. Judges wrote seventy-five opinions to resolve eighty-six motions/orders. Many (69%) of the opinions combined a ruling on Rule 11 with a ruling on at least one other

7. Information about responsive pleadings was missing for nine of the pending motions. The above percentage was calculated by dropping these motions from the denominator. This assumes that the pending motions for which information was missing have the same characteristics as the other motions.

8. We tried to exclude all substitutions that were clearly unrelated to Rule 11, but information in the court's files about substitution was often sketchy, so it is possible a few such substitutions were included. Information about substitution of counsel was missing for eight motions in which a party was the target.

9. Information about hearings was missing for 25 of the pending motions. The percentage was calculated after dropping these motions from the denominator.

10. To determine whether the Rule 11 activity related to peripheral issues in the litigation, we reviewed the issue forming the basis of the Rule 11 motion/order. For 75% of the motions/orders, we judged the underlying issue to be essential to the prosecution or defense of the litigation. This information was missing for three of the motions receiving hearing. These motions were excluded from calculation of percentages.

issue.[11] The number of pages devoted to the Rule 11 issue averaged 1.7 (standard deviation = 1.9). [12]A total of 120 pages were written on Rule 11 issues.

As seen in Figure 1 (see appendix attached to this report), judges imposed Rule 11 sanctions in forty-one orders, representing 31% of the motions for which rulings were available.[13] Ninety-three percent of the orders imposing sanctions awarded monetary fees to an opposing party. These awards ranged from $27 to $26,335, with a mean of $2,091 (standard deviation = $4,673) and a median of $1,000.[14] The amount of one monetary award was not specified until it was reconsidered; the judge then set the amount at $11,530.20. In addition, a $250.00 award was set aside and a $1,353.20 award was reduced to $500.00 on reconsideration. Another award for which the amount was never specified was also set aside on reconsideration. Including these changes, the mean is $2330 (standard deviation =$4741) and the median is $1,051. Five orders imposed fines payable to the court. Four of these orders imposed a single fine ($5,000) on one target. The amount of the other fine was $100. Five orders imposed non-monetary sanctions. These sanctions prohibited targets either from filing any pleading in the District Court for the Eastern District of Michigan without leave of court or from filing pleadings in relation to a particular transaction. For a list of the monetary awards, see Appendix A. For a more complete description of the non-monetary sanctions see Appendix B.

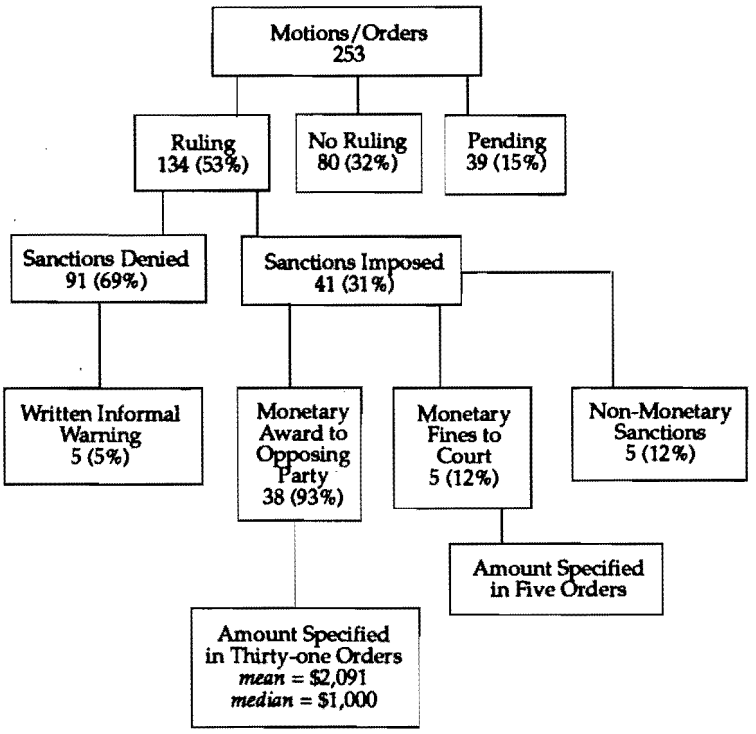
11. The nature and length of three memorandum opinions was unknown. These opinions were excluded from the computation of the above percentage and subsequent summary statistics. Note that the total number of pages written is therefore an underestimate.

12. The standard deviation is a measure of the variability or the dispersion of individual values around the mean.

13. The outcome of two of the motions that were ruled on is unknown.

14. The median is the preferred measure of central tendency because the mean is inflated by one extraordinarily large award.

Figure 1
Outcome of motions/orders in the Eastern District of Michigan



Note: All percentages are percentages of the next higher category. Disposition information is missing for two of the motions that were ruled on. Percentages for sanctions denied/imposed were calculated excluding those cases.

Post-ruling activities. Fifteen rulings were the subject of a motion for reconsideration or an objection to a magistrate judge's action. Opposition papers were filed in response to nine of the motions/objections. Two hearings (neither of which was evidentiary) were held. Judges wrote seven opinions to resolve seven motions/objections; five of the opinions combined a ruling on Rule 11 with another issue. Thirteen and a half pages of the written opinions were devoted to Rule 11 issues.

The ten motions for reconsideration of judges' orders were disposed of as shown in Table 2.

Table 2
Judge orders: reconsiderations

Outcome	Number
Affirmed imposition of sanctions	4
Reversed imposition of sanctions	1
Affirmed denial of sanctions	4
Reversed denial of sanctions	0
Modified type or amount of sanctions	1

The five objections to or appeals from magistrate judges' recommendations or orders were disposed of as shown in Table 3.[15]

Table 3
Magistrate judge recommendations and orders: objections and appeals

Outcome	Number of Magistrate Judges Number
Affirmed imposition of sanctions	0
Reversed imposition of sanctions	1
Affirmed denial of sanctions	3
Reversed denial of sanctions	0
Modified type or amount of sanctions	1

Twenty of the rulings were appealed.[16] The outcomes of the appeals are shown in Table 4. Note that over half of the appeals were still pending at the time of data collection. All of the appellate rulings issued were unanimous. The one reversal was based on the merits of the sanctions order.

15. These figures include only situations in which a party objected to or appealed a magistrate judge's report or order or in which a judge sua sponte decided to alter a magistrate judge's finding. If a motion for reconsideration or an appeal/objection was not ruled on and the case was not pending, the original sanctions decision was considered affirmed.

16. Some of the Rule 11 rulings were in pending cases; these rulings may be appealed after the cases terminate.

Table 4
Appellate court decisions

Outcome	Number
Affirmed imposition of sanctions	1
Reversed imposition of sanctions	1
Affirmed denial of sanctions	3
Reversed denial of sanctions	0
Appeal dismissed	4
Other	0
Pending	11

Has Rule 11 activity been disproportionately concentrated in specific types of cases or disproportionately focused on particular types of litigants?

In this section, we provide information about the type of activity targeted by the Rule 11 motions/orders. We first present information about the pleadings or papers that were the primary targets of Rule 11 motions/orders. Next, we present information about the targeted person, examining in particular whether plaintiffs are subject to motions for sanctions more frequently than defendants. Finally, we present information about the natures of suit engendering Rule 11 activity, focusing on whether the level of sanctioning activity in civil rights cases is relatively higher than in other types of cases.

Targeted pleadings and papers

The pleading or paper that was the primary target of the Rule 11 motions/orders is shown in Table 5. The table presents information separately for three types of motions: (1) motions in prisoner cases; (2) motions in non-prisoner cases in which the target was pro se; and (3) motions in non-prisoner cases in which the targeted side was represented by counsel.

Table 5
Targeted pleading or paper

Targeted Pleading	All Motions/ Orders	Represented Targets	Pro Se Targets	Motions in Prisoner Cases
Complaint	137 (54%)	104 (50%)	27 (82%)	6 (55%)
Answer	13 (5%)	13 (6%)	0	0
Motion to dismiss (Rule 12(b)(6))	3 (1%)	2 (1%)	0	1 (9%)
Motion to dismiss (Rule 12(b)(1))	0	0	0	0
Other motion to dismiss	4 (2%)	4 (2%)	0	0
Motion for summary judgment	9 (4%)	8 (4%)	0	1 (9%)
Rule 11 motion	11 (4%)	9 (4%)	2 (6%)	0
Discovery	17 (7%)	15 (7%)	1 (3%)	1 (9%)
Counterclaim or third-party claim	8 (3%)	8 (4%)	0	0
Removal-remand issue	12 (5%)	11 (5%)	1 (3%)	0
Motion for reconsideration	7 (3%)	7 (3%)	0	0
Motion to disqualify	3 (1%)	3 (1%)	0	0
Default motion	2 (1%)	2 (1%)	0	0
Opposition to dispositive motion	3 (1%)	2 (1%)	0	1 (9%)
Other	24 (9%)	21 (10%)	2 (6%)	1 (9%)
Total	253 (100%)	209 (100%)	33 (100%)	11 (100%)

Note: The first column of numbers includes all motion/orders. The second column includes motions in which the targeted side was represented by counsel, excluding prisoner cases. The third column includes motions in which the target was pro se, excluding prisoner cases; it may include some motions in which the target was an attorney appearing pro se. The last column includes all motions brought in prisoner cases, including those in which the target was a represented party or an attorney. The percentages are of column totals.

The complaint was by far the most frequently targeted pleading or paper, being the target of 54% of the Rule 11 motions/orders. More specifically, it was the target of 50% of the Rule 11 motions against represented targets, 82% of the motions against pro se targets, and 55% of the motions in prisoner cases. In contrast, answers were targeted relatively rarely, by only 5% of the motions. Similarly, motions to dismiss and summary judgment motions were targeted by 3% and 4% of the Rule 11 motions, respectively.

The outcome of the motions/orders in relation to the pleading or paper targeted is shown in Table 6. The complaint was the paper/pleading most frequently targeted by the orders imposing sanctions (56% of the orders). The number of such orders that targeted complaints is no higher than would be expected given the high number of motions that targeted complaints, although the reliability of this conclusion is limited by the significant number (thirty-nine)

of pending motions. The percentage of rulings imposing sanctions pursuant to motions that targeted the complaint (32%; twenty-three of seventy-two rulings) was comparable to the percentage of rulings imposing sanctions pursuant to motions that targeted all other pleadings or papers (30%; eighteen of sixty rulings) [numbers derived from Table 6].[17]

17. We used the z-statistic to make this comparison. The z-statistic reflects the number of standard errors by which two percentages differ. We considered a z-statistic of at least 1.65 to reflect a difference between two percentages and a z-statistic between 1 and 1.65 to reflect a slight difference. A difference of at least 1.65 is significant at the traditional significance level of $p \leq .05$ (one-tailed); differences between 1.00 and 1.65 only approach traditional significance ($p \leq .16$, one-tailed). We took this approach in describing the results so that one could better see the relative positions of the percentages.

Table 6
Disposition by targeted paper

Targeted Pleading	All Motions/ Orders	Pending	No Ruling	Ruling Issued	Sanctions Imposed
Complaint	137 (54%)	24 (62%)	41 (51%)	72 (54%)	23 (56%)
Answer	13 (5%)	2 (5%)	4 (5%)	7 (5%)	1 (2%)
Motion to dismiss (Rule 12(b)(6))	3 (1%)	0	1 (1%)	2 (2%)	0
Motion to dismiss (Rule 12(b)(1))	0	0	0	0	0
Other motion to dismiss	4 (2%)	0	1 (1%)	3 (2%)	2 (5%)
Motion for summary judgment	9 (4%)	1 (3%)	3 (4%)	5 (4%)	1 (2%)
Rule 11 motion	11 (4%)	2 (5%)	5 (6%)	4 (3%)	0
Discovery	17 (7%)	2 (5%)	6 (8%)	9 (7%)	2 (5%)
Counterclaim or third-party claim	8 (3%)	1 (3%)	4 (5%)	3 (2%)	0
Removal-remand issue	12 (5%)	3 (8%)	3 (4%)	6 (4%)	3 (7%)
Motion for reconsideration	7 (3%)	0	3 (4%)	4 (3%)	2 (5%)
Motion to disqualify	3 (1%)	0	2 (3%)	1 (1%)	1 (2%)
Default motion	2 (1%)	0	1 (1%)	1 (1%)	0
Opposition to dispositive motion	3 (1%)	0	1 (1%)	2 (2%)	0
Other	24 (9%)	4 (10%)	5 (6%)	15 (11%)	6 (15%)
Total	253 (100%)	39 (100%)	80 (100%)	134 (100%)	41 (100%)

Note: Disposition information was missing for one ruled-upon motion that targeted an answer and one ruled upon motion that targeted discovery activity. The percentages are of column totals.

Targeted side of the litigation

The side of litigation targeted by the Rule 11 motions/orders is shown in Table 7. Overall, 72% of the motions targeted the plaintiff, 25% targeted the defendant, and 3% targeted another party/nonparty (e.g., nonparty deponent, nonparty attorney, and trustee). One of the motions classified as "other" targeted the defendant in its role as a third party plaintiff. The plaintiff was targeted more frequently than the defendant in motions against represented targets (68% were aimed at plaintiffs and 29% at defendants), by motions against pro se targets (94% were aimed at plaintiffs and 3% at defendants), and by motions brought in prisoner cases (73% were aimed at plaintiffs and 27% at defendants).

Table 7
Targeted person

Targeted Person	All Motions/ Orders	Represented Targets	Pro Se Targets	Motions in Prisoner Cases
Plaintiff	41 (16%)	3 (1%)	31 (94%)	7 (64%)
Plaintiff's attorney	14 (6%)	13 (6%)	–	1 (9%)
Plaintiff and attorney	56 (22%)	56 (27%)	–	0
Plaintiff (unspecified)	71 (28%)	71 (34%)	–	0
Subtotal-plaintiff	182 (72%)	143 (68%)	31 (94%)	8 (73%)
Defendant	4 (2%)	3 (1%)	1 (3%)	0
Defendant's attorney	9 (4%)	7 (3%)	–	2 (18%)
Defendant and attorney	12 (5%)	12 (6%)	–	0
Defendant (unspecified)	39 (15%)	38 (18%)	–	1 (9%)
Subtotal-defendant	64 (25%)	60 (29%)	1 (3%)	3 (27%)
Other (e.g., third-party and cross-claims)	7 (3%)	6 (3%)	1 (3%)	0
Total	253 (100%)	209 (100%)	33 (100%)	11 (100%)

Note: The percentages are of column subtotals and totals.

The side of litigation targeted by the orders imposing sanctions is shown in Table 8. Overall, 80% of such orders imposing sanctions targeted the plaintiff, 20% targeted the defendant, and none targeted another party/nonparty. Given that more of the motions targeted the plaintiff, it is to be expected that more of the orders imposing sanctions would target the plaintiff. However, the difference in the number of motions filed against the plaintiff and defendant does not appear to fully account for the disparity in sanctions imposed, although the reliability of this conclusion is limited by the significant number (thirty-nine) of pending motions. Only 72% of the motions targeted the plaintiff whereas 80% of the orders imposing sanctions did so. The percentage of rulings imposing sanctions pursuant to motions that targeted the plaintiff (35%; thirty-three of ninety-three rulings imposed sanctions) was slightly higher than that for defendants (22%; eight of thirty-six rulings imposed sanctions) [see Table 8].[18]

18. See note 17 *supra*.

Table 8
Disposition by targeted person

Targeted Person	All Motions/ Orders	Pending	No Ruling	Rulings Issued	Sanctions Imposed
Plaintiff	41 (16%)	11 (28%)	15 (19%)	15 (11%)	10 (24%)
Plaintiff's attorney	14 (6%)	2 (5%)	3 (4%)	9 (7%)	4 (10%)
Plaintiff and attorney	56 (22%)	8 (21%)	18 (23%)	30 (22%)	8 (20%)
Plaintiff (unspecified)	71 (28%)	9 (23%)	22 (28%)	40 (30%)	11 (27%)
Subtotal-plaintiff	182 (72%)	30 (77%)	58 (73%)	94 (70%)	33 (80%)
Defendant	4 (2%)	1 (3%)	1 (1%)	2 (2%)	1 (2%)
Defendant's attorney	9 (4%)	0	2 (3%)	7 (5%)	0
Defendant and attorney	12 (5%)	2 (5%)	3 (4%)	7 (5%)	0
Defendant (unspecified)	39 (15%)	6 (15%)	12 (15%)	21 (16%)	7 (17%)
Subtotal-defendant	64 (25%)	9 (23%)	18 (23%)	37 (28%)	8 (20%)
Other (e.g., third-party and cross-claims)	7 (3%)	0	4 (5%)	3 (2%)	0
Total	253 (100%)	39 (100%)	80 (100%)	134 (100%)	41 (100%)

Note: Disposition information was missing for one ruled upon motion that targeted a plaintiff's attorney and for one ruled upon motion that targeted a defendant and their attorney. The percentages are of column subtotals and totals.

Nature of suit

We do not assume that Rule 11 sanctions should be imposed equally across the various types of litigation. However, nature-of-suit classifications provide convenient comparisons, and they have to an extent shaped the debate about disproportionate impact.

Motions activity. For the analyses involving nature of suit, we combined similar natures of suit into twelve groups following the format used on the civil cover sheet (JS 44). Table 9 shows the number of filings during the study period for each of these nature-of-suit groups. Table 10 shows the number of cases in each nature-of-suit group that involved Rule 11 activity. The number of motions in each nature-of-suit group is also shown because some cases involve more than one motion. Table 11 shows, for each of twelve nature-of-suit groups, the incidence of Rule 11 activity as estimated by a life-table analysis. The life-table analyses take into account the number of cases of each nature of suit, the age of

those cases when the electronic search was conducted, the number of those cases involving a Rule 11 motion or sua sponte order, and the age of a case when the first Rule 11 motion/order was filed. The estimates reflect the percentage of cases that are expected to involve Rule 11 activity within twenty-two months of filing. The incidence of Rule 11 activity in contracts cases was estimated twice, the second time excluding cases classified as recovery of overpayment and enforcement of judgment, the Medicare Act, recovery of defaulted student loans, and recovery of overpayment of veterans benefits. The second estimate is the one used below in making comparisons between natures of suit.

Table 9
Filings by nature of suit, June 15, 1988, through August 1, 1990

Nature of Suit	Number of Filings	Nature of Suit	Number of Filings
Contract	2,967	Labor	1,255
Real property	100	Property rights	289
Torts	1,499	Bankruptcy	195
Civil rights	1,021	Social Security	786
Prisoner petitions	1,836	Federal tax	126
Forfeiture/penalty	266	Other statutes	606
		Total	10,946

Table 10
Nature of suit

Nature of Suit	Cases	Motions/ Orders	Represented Targets	Pro Se Targets
Contract	42 (21%)	53 (21%)	52 (25%)	1 (3%)
Real property	3 (2%)	3 (1%)	3 (1%)	0
Torts	19 (9%)	23 (9%)	20 (10%)	3 (9%)
Civil rights	44 (22%)	56 (22%)	38 (18%)	18 (55%)
Prisoner petitions	11 (5%)	11 (4%)	-	-
Forfeiture/penalty	3 (2%)	3 (1%)	3 (1%)	0
Labor	44 (22%)	51 (20%)	50 (24%)	1 (3%)
Property rights	7 (3%)	10 (4%)	8 (4%)	2 (6%)
Bankruptcy	2 (1%)	2 (1%)	2 (1%)	0
Social Security	0	0	0	0
Federal tax	1 (1%)	5 (2%)	0	5 (15%)
Other statutes	28 (14%)	36 (14%)	33 (16%)	3 (9%)
Total	204 (100%)	253 (100%)	209 (100%)	33 (100%)

Note: The percentages are of column totals.

Table 11
Incidence by nature of suit

Nature of Suit	Estimated Incidence Within Twenty-two Months of Filing
Contract	
All contract cases	1.5
Excluding recovery of overpayment, etc.	2.4
Real property	2.4
Torts	1.4
Civil rights	6.3
Prisoner petitions	1.8
Forfeiture/penalty	0.4
Labor	4.5
Property rights	3.5
Bankruptcy	4.7
Social Security	0.0
Federal tax	0.9
Other statutes	5.4
Total	2.4

Most of the motions/orders were concentrated in contract (21%), torts (9%), civil rights (22%), labor (20%), and other statutes (14%). As estimated by the life-table analyses, incidence of Rule 11 activity is higher for labor (4.5), other statutes (5.4) and civil rights (6.3) than for the other natures of suit in which the motions/orders were concentrated [contract (2.4) and torts (1.4)].

Given the relatively higher incidence of Rule 11 activity in civil rights cases and in light of the criticism that Rule 11 is used to "chill" effective advocacy by civil rights plaintiffs, and in particular civil rights plaintiffs' attorneys, we address the following questions:

(1) Are *plaintiffs* disproportionately targeted by Rule 11 motions in civil rights cases, relative to other types of cases?
(2) Are *represented parties* disproportionately targeted by Rule 11 motions in civil rights cases, relative to other types of cases?
(3) Are *represented plaintiffs* disproportionately targeted by Rule 11 motions in civil rights cases, relative to other types of cases?

These comparisons are made between civil rights, contract, torts, labor, and other statutes because the other nature-of-suit groups contain too few motions for comparison.[19] We then address the issue of whether Rule 11 sanctions are disproportionately imposed in certain types of cases.

Are *plaintiffs* disproportionately targeted by Rule 11 motions in civil rights cases, relative to other types of cases? In civil rights cases, the percentage of Rule 11 motions targeting plaintiffs (as opposed to defendants or other parties) was in the middle range compared to the other major types of cases. In civil rights cases, approximately 73% of the Rule 11 motions targeted the plaintiff. The percentages in the other major types of cases were 55% (contract), 65% (torts), 78% (labor), and 83% (other statutes).

Are *represented parties* disproportionately targeted by Rule 11 motions in civil rights cases, relative to other types of cases? In civil rights cases, the percentage of motions targeting represented parties[20] (as opposed to pro se parties) was lower than that in the other major types of cases. Approximately 68% of motions in civil rights cases targeted a represented party. Higher percentages of motions in contract (98%), torts (87%), labor (98%), and other statutes (92%) targeted a represented party.[21]

Are *represented plaintiffs* disproportionately targeted in civil rights cases, relative to other types of cases? To address this question, we first examined only those motions filed against a represented party. In civil rights cases, the percentage of such motions targeting the plaintiff was in the low range compared

19. The z-statistic was used to make these comparisons. See note 17 *supra*.

20. The category of "motions targeting represented parties" includes motions that target a party who is represented by counsel and motions that target the party's counsel.

21. These differences may reflect differences in the number of *pro se* versus represented parties across natures of suit rather than differences in the underlying Rule 11 activity. Our data are insufficient to address this possibility.

to the other major types of cases. In civil rights cases, approximately 61% of such motions targeted the plaintiff. A similar percentage of such motions in contract (54%) and in torts (60%) targeted the plaintiff. Higher percentages of such motions in labor (78%) and other statutes (88%) targeted the plaintiff.

Another way to address the question is to consider all motions (i.e., those targeting both represented parties and pro se parties). In civil rights cases, only 41% of all motions targeted a represented plaintiff. Higher percentages of the motions in labor (76%) and other statutes (81%) targeted a represented plaintiff and a slightly higher percentage in contract (53%) and a similar percentage in torts (52%) targeted a represented plaintiff.

To summarize, the incidence of Rule 11 activity in civil rights cases is higher than that in contract and torts. However, a slightly lower or comparable percentage of motions in civil rights cases targeted represented plaintiffs, compared to contract and torts.

Orders imposing sanctions. The outcomes of the motions/orders by nature of suit are shown in Table 12. The last column of the table shows the number of orders imposing sanctions that fall into each nature-of-suit group. The orders that imposed sanctions were concentrated in contract (24%), civil rights (29%), and to a lesser extent, labor (12%) and other statutes (12%). Table 13 shows for each nature of suit, the number of orders imposing sanctions against represented parties.

Table 12
Disposition by nature of suit

Nature of Suit	All Motions/ Orders	Pending	No Ruling	Rulings Issued	Sanctions Imposed
Contract	53 (21%)	9 (23%)	17 (21%)	27 (20%)	10 (24%)
Real property	3 (1%)	1 (3%)	0	2 (2%)	1 (2%)
Torts	23 (9%)	6 (15%)	7 (9%)	10 (8%)	2 (5%)
Civil rights	56 (22%)	7 (18%)	20 (25%)	29 (22%)	12 (29%)
Prisoner petitions	11 (4%)	4 (10%)	1 (1%)	6 (5%)	0
Forfeiture/penalty	3 (1%)	0	0	3 (2%)	0
Labor	51 (20%)	7 (18%)	15 (19%)	29 (22%)	5 (12%)
Property rights	10 (4%)	1 (3%)	2 (3%)	7 (5%)	1 (2%)
Bankruptcy	2 (1%)	0	1 (1%)	1 (1%)	1 (2%)
Social Security	0	0	0	0	0
Federal tax	5 (2%)	0	1 (1%)	4 (3%)	4 (10%)
Other statutes	36 (14%)	4 (10%)	16 (20%)	16 (12%)	5 (12%)
Total	253 (100%)	39 (100%)	80 (100%)	134 (100%)	41 (100%)

Note: Disposition information was missing for one motion that was ruled on in a torts case and one motion that was ruled on in a prisoner petition. The percentages are of column totals.

Table 13
Disposition by nature of suit, represented targets only

Nature of Suit	Motions/ Orders	Pending	No Ruling	Rulings Issued	Sanctions Imposed
Contract	52 (25%)	8 (29%)	17 (26%)	27 (23%)	10 (30%)
Real property	3 (1%)	1 (4%)	0	2 (2%)	1 (3%)
Torts	20 (10%)	5 (18%)	5 (8%)	10 (9%)	2 (6%)
Civil rights	38 (18%)	3 (11%)	12 (19%)	23 (20%)	8 (24%)
Prisoner petitions	–	–	–	–	–
Forfeiture/penalty	3 (1%)	0	0	3 (3%)	0
Labor	50 (24%)	7 (25%)	14 (22%)	29 (25%)	5 (15%)
Property rights	8 (4%)	0	2 (3%)	6 (5%)	1 (3%)
Bankruptcy	2 (1%)	0	1 (2%)	1 (1%)	1 (3%)
Social Security	0	0	0	0	0
Federal tax	0	0	0	0	0
Other statutes	33 (16%)	4 (14%)	14 (22%)	15 (13%)	5 (15%)
Total	209 (100%)	28 (100%)	65 (100%)	116 (100%)	33 (100%)

Note: Disposition information was missing for one motion that was ruled on in a torts case. The percentages are of column totals.

Considering only the natures of suit in which most of the motions were concentrated (contract, torts, civil rights, labor, other statutes), six of the ten orders imposing sanctions in contract (60%), both orders in torts, eleven of twelve orders in civil rights (92%), four of the five orders in labor (80%), and three of the five orders in other statutes (60%) targeted the plaintiff. A similar pattern was found when only orders imposing sanctions against represented parties were considered.

Perhaps the best way to determine whether courts disproportionately impose Rule 11 sanctions in civil rights cases would be to examine, across natures of suit, the number of orders imposing sanctions in relation to the number of motions filed. Because some of the motions in our study were pending, we instead examined the number of orders imposing sanctions in relation to the number of orders issued.[22] For the natures of suit in which most of the motions were concentrated (contract, torts, civil rights, labor, and other statutes), the percentage of orders imposing sanctions ranged from 17% to 41%. Comparing only contract, civil rights and labor, the imposition rate was comparable for civil rights (41%, twelve of twenty-nine rulings) and contract (37%, ten of twenty-seven rulings) and lower for labor (17%, five of twenty-nine rulings). Too few

22. These comparisons were made with the z-statistic. See note 17 *supra*.

orders were issued in torts and other statutes to make comparisons with them meaningful. If we consider only rulings for motions that targeted represented parties, the imposition rate for labor is only slightly lower than for civil rights.

To summarize, the court is no more likely to grant Rule 11 motions in civil rights cases than in contract cases. The court is, however, more or slightly more likely to grant Rule 11 motions in civil rights cases than in labor cases. The reliability of these conclusions, however, may be limited by the significant number (thirty-five) of pending motions.

For an in-depth analysis of the civil rights cases in which sanctions were imposed, see section 4D.

Are there variations between judges in their application of Rule 11?

We now present information about the treatment of motions and sua sponte orders by each judge (see Table 14). We have grouped as "other judges" senior judges, visiting judges, and newly appointed judges because their experience would likely be different from the experience of judges who were on active status for the entire period of the study. For purposes of this analysis, we excluded motions/orders handled by magistrate judges, as well as motions for reconsideration of judge's orders and appeals from/objections to magistrate judge's orders/recommendations.

Table 14
Judicial variations in sanctioning practices

Judges	Motions/ Orders	Pending	No Ruling	Rulings Issued	Sanctions Imposed
Judge 1	16 (8%)	0	4 (25%)	12 (75%)	5 (42%)
Judge 2	16 (8%)	3 (19%)	4 (25%)	9 (56%)	7 (88%)
Judge 3	8 (4%)	1 (13%)	3 (38%)	4 (50%)	0
Judge 4	5 (2%)	1 (20%)	1 (20%)	3 (60%)	0
Judge 5	28 (13%)	4 (14%)	13 (46%)	11 (39%)	4 (36%)
Judge 6	11 (5%)	2 (18%)	2 (18%)	7 (64%)	0
Judge 7	13 (6%)	2 (15%)	2 (15%)	9 (69%)	1 (11%)
Judge 8	14 (7%)	1 (7%)	4 (29%)	9 (64%)	7 (78%)
Judge 9	19 (9%)	5 (26%)	6 (32%)	8 (42%)	0
Judge 10	19 (9%)	5 (26%)	8 (42%)	6 (32%)	1 (17%)
Judge 11	21 (10%)	1 (5%)	9 (43%)	11 (52%)	2 (18%)
Judge 12	5 (2%)	0	4 (80%)	1 (20%)	0
Other Judges	37 (17%)	8 (22%)	13 (35%)	16 (43%)	8 (50%)
Total	212 (100%)	33 (16%)	73 (34%)	106 (50%)	35 (33%)

Note: Disposition information was missing for one of the motions ruled on by Judge 2; the percentage in column 5 was calculated after excluding this ruling from the denominator.

The first column of figures in Table 14 shows the number and percentage of motions/orders before each judge or group of judges. For example, 16 (8%) of the motions were before Judge 1. The second, third, and fourth columns show the outcome of the motions/orders before each judge or group of judges; the percentages are of the number of motions/orders before each judge. For example, Judge 1 had ruled on twelve (75%) motions, had not ruled on four (25%), and had no motions pending. We later refer to all non-pending motions collectively as resolved motions. The fifth column shows, for each judge, the number of orders imposing sanctions; the percentages are of the number of motions/orders ruled on by each judge. For example, five (42%) of Judge 1's rulings imposed sanctions.

We conducted several statistical analyses to examine the sanctioning practices of the judges who were on active status during the entire study period.[23] These analyses showed that there was significant variation in the number of motions

23. The category of "other judges" was excluded from these analyses. A statistical package designed to analyze sparse contingency tables was used to conduct the analyses. A relationship was considered significant when the probability associated with the corresponding Fisher's Exact statistic was less than .05. The Fisher's Exact test examines whether there is a significant relationship between two categorical variables.

before each judge (column 1). Indeed, the number of motions ranged from 5 motions before Judge 4 and before Judge 12 to 28 motions before Judge 5. The percentage of motions that were pending (column 2) versus resolved (columns 3 and 4 combined) did not significantly differ between judges. Furthermore, considering only resolved motions, the percentage of motions not ruled on (column 3) versus ruled on (column 4) did not significantly differ between judges. Considering only motions that were ruled on, however, the percentage of rulings imposing sanctions (column 5) significantly varied between judges. None of the rulings of five judges (3,4,6,9,12) imposed sanctions whereas 78% and 88% of the rulings by Judge 8 and by Judge 2, respectively, did.

Variations between judges in their sanctioning practices may reflect more than their differing receptivity to Rule 11. For example, variation in the number of motions before each judge may exist because the bar accurately or inaccurately perceives differences between the judges in their receptivity to Rule 11 motions, and acts accordingly. Judges also may differ in the amount of sanctions activity they delegate to the magistrate judges working with them. Furthermore, some judges may diminish the incentive to file a Rule 11 motion by early and active case management. For example, if a judge dismisses a groundless complaint at the Rule 16 conference, the cost of pursuing a Rule 11 motion may exceed any potential recovery. In summary, variations between judges exist, although the source of the variation is likely to be multi-faceted. Our data do not address the causes of the variation between judges.

Appendix A
Sanctions Awards to Opposing Party and Court

Amount of sanctions to opposing party

$27.10	$545.00	$1,500.00
$75.00	$590.00	$2,000.00
$75.00	$718.25	$2,250.00
$100.00	$1,000.00	$2.750.00
$125.00	$1,000.00	$3,285.00
$150.00	$1,101.20	$3,285.00
$250.00	$1,192.50	$3,912.33
$250.00	$1,202.50	$4,197.50
$350.00	$1,353.20	$4,500.00
$500.00	$1,500.00	$25,335.00
$500.00	$1,500.00	

The amount of one monetary award was not specified until it was reconsidered; the judge then set the amount at $11,530.20. In addition, a $250.00 award was set aside and a $1353.20 award was reduced to $500.00 on reconsideration. Another award for which the amount was never specified was also set aside on reconsideration.

Amount of sanctions to the court

$100.00
$5000.00*
$5000.00*
$5000.00*
$5000.00*

*These four orders appeared in a single case and targeted the same person. They awarded monetary fees to opposing parties in various amounts, but imposed a single fine of $5,000.00 to the court.

Appendix B
Non-Monetary Sanctions

The orders that imposed non-monetary sanctions are described below. All five orders were issued by one judge. Orders 2-5 appeared in a single case and targeted the same person. They awarded monetary fees to opposing parties in various amounts, but imposed a single fine of $5,000.00 to the court. The nature of suit is shown in brackets after the description of each order.

Order 1 (other civil rights)
Pro se plaintiff prohibited from filing further actions contesting the validity of his divorce.

Order 2 (federal tax suit)
Pro se plaintiff barred from filing any pleading or lawsuit in the U.S. District Court for the Eastern District of Michigan without first obtaining leave of court and an order permitting him to do so. Also ordered to pay monetary fees to opposing party and fine to court (see above).

Order 3 (federal tax suit)
Pro se plaintiff barred from filing any pleading or lawsuit in the U.S. District Court for the Eastern District of Michigan without first obtaining leave of court and an order permitting him to do so. Also ordered to pay monetary fees to opposing party and fine to court (see above).

Order 4 (federal tax suit)
Pro se plaintiff barred from filing any pleading or lawsuit in the U.S. District Court for the Eastern District of Michigan without first obtaining leave of court and an order permitting him to do so. Also ordered to pay monetary fees to opposing party and fine to court (see above).

Order 5 (federal tax suit)
Pro se plaintiff barred from filing any pleading or lawsuit in the U.S. District Court for the Eastern District of Michigan without first obtaining leave of court and an order permitting him to do so. Also ordered to pay monetary fees to opposing party and fine to court (see above).

Section 3E
Study of Rule 11 in the Western District of Texas

The Western District of Texas has major offices in San Antonio (population 941,150, ranked ninth in size of U.S. cities as of July 1, 1988), El Paso (population 510,970, ranked twenty-third in size), and Austin (population 464,690, ranked twenty-seventh).[1] The court is composed of seven district judges and one senior district judge. [2] During statistical year statistical year 1989, the district had 3,280 total civil filings, and terminated 3,044 civil cases.[3] In statistical year 1990, 3,004 civil cases were filed.[4] The major categories were: Contracts (24%), Prisoner Petitions (18%), Torts (11%), Other (11%), and Civil Rights (10%).[5]

Results from the field study of Rule 11 activity in the district are presented below. We first describe the amount of satellite litigation associated with the rule. Next, we present information germane to whether Rule 11 activity has been disproportionately concentrated in specific types of cases or on particular types of litigants. Finally, we examine judicial variations in sanctioning practices. In addition, information about the process accorded to those targeted with Rule 11 motions is interspersed throughout the discussion of the other three issues.

All cases filed between January 1, 1987, and May 15, 1990, were included in the study; the total number of cases filed in the district during that period was 10,102. Any Rule 11 activity that occurred in these cases before May 15, 1990, was identified. Many of the cases and some of the Rule 11 motions were pending when we examined the court files. All available information about pending cases and motions is incorporated in the analyses below. The analyses also include three instances in which Rule 11 activity that occurred before May 15, 1990 was followed by additional Rule 11 motions that occurred before we finished collecting the data.

1. The World Almanac and Book of Facts (1991).
2. Administrative Office of the United States Courts, United States Court Directory at 307 (Spring 1990).
3. Annual Report of the Director of the Administrative Office of the United States Courts, Table C1 (1989).
4. Administrative Office of the United States Courts, Federal Court Management Statistics at 85 (1990).
5. *Id.*

How much satellite litigation has Rule 11 activity produced?

Incidence of Rule 11 activity

Sanctions activity in the district consisted of 351 motions or sua sponte orders (hereinafter, motions/orders) filed in 253 cases. The origin of the 351 motions/orders is shown in Table 1. Unless specifically included, sanctions-related motions for reconsideration of judges' orders and appeals from or objections to magistrate judges' orders or recommendations are excluded from subsequent analyses.

Table 1
Origin of sanctions activity

Origin	Number of Motions/Orders
Motion	308
Sua sponte order	23
Subtotal	331
Motion for reconsideration of judge's order	13
Appeal/objection to magistrate judge's order/recommendation	7
Total	351

To determine the incidence of Rule 11 activity as a proportion of the caseload of the court, a life-table analysis was conducted.[6] Such an analysis is necessary to account for the pending cases in the sample. Each pending case represents a (necessarily) incomplete observation of the opportunity for Rule 11 activity. A life-table analysis takes into account the size of a court's caseload, the age of each case when the electronic search was conducted, the number of cases involving a Rule 11 motion or sua sponte order, and the age of a case when the first Rule 11 motion/order was filed. This analysis estimated that in 3.1% of all cases at least one Rule 11 motion or sua sponte sanctions order would be filed within 39 months from the date the case was filed. (On page 14, we present incidence figures for different natures of suit.)

6. The life-table analyses were based on a slightly different set of cases because of limitations in data availability.

Demands on judges and attorneys

Pre-ruling activities. Sixty-five percent of the motions/orders led to the filing of opposition pleadings or papers.[7] The records showed thirteen substitutions of counsel for a targeted party.[8]

Judges conducted thirty-two hearings (involving a total of thirty-five (12%) of the motions/orders).[9] Twenty-three of the motions (66%) were addressed in conjunction with at least one other issue in the litigation and twelve motions (34%) were the subject of hearings devoted exclusively to sanctions issues. Twelve of the Rule 11 hearings were evidentiary. For twenty-two (63%) of the thirty-five motions heard, the underlying issue related to claims essential to the continued prosecution or defense of the action (compared with 65% of the motions for which no hearing was held).[10]

Judges initiated the sanctions process by sua sponte orders twenty-three times (7% of the motions/orders). In eight (35%) of those instances, the record indicated that the court used a show cause order to provide notice and an opportunity to be heard. In six of the fifteen instances in which a show cause order was not issued, the target was a prisoner. Papers were filed in opposition to eleven (48%) of the 23 orders. Hearings were held in six instances; five of the hearings were evidentiary.[11] The target of seven orders was a party who was not represented by counsel.

Activities associated with rulings. Figure 1 depicts the outcome of the 331 motions/orders and the nature of any sanctions imposed. At the time of data collection, judges had ruled on 191 (58%) of the motions/orders. Eighty-one motions (24%) had not been ruled on although the underlying issue had been resolved or the case had terminated; the court had explicitly postponed ruling on five of these motions. Another fifty-nine motions (18%) were pending; the court had explicitly postponed ruling on four of these motions.

Many of the rulings were accompanied by a memorandum opinion. Judges wrote 104 opinions to resolve 122 motions/orders. Most of the opinions (73%) combined a ruling on Rule 11 with a ruling on at least one other issue. The num-

7. Information about responsive pleadings was missing for fourteen of the pending motions. The above percentage was calculated after dropping these motions from the denominator. This assumes that the pending motions for which information was missing have the same characteristics as the other motions.

8. Information about substitution of counsel was missing for fourteen motions in which the target was a party. We tried to include all substitutions that were clearly unrelated to Rule 11, but information in the court's files about substitution was often sketchy, so it is possible that a few such substitutions were included.

9. Information about hearings was missing for thirty-eight of the pending motions. The percentage was calculated after dropping these motions from the denominator.

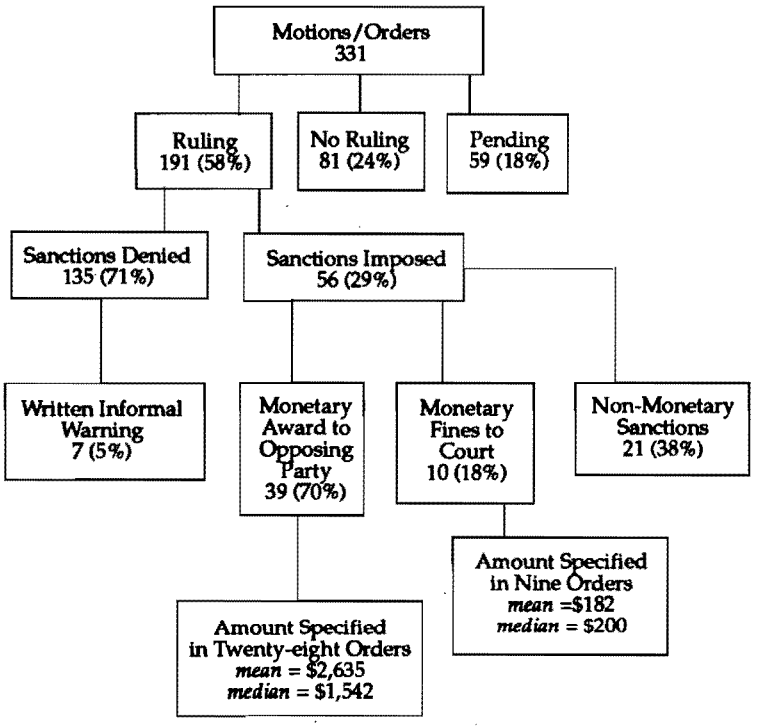
10. To determine whether the Rule 11 activity related to peripheral issues in the litigation, we reviewed the issue forming the basis of the Rule 11 motion/order. For 65% of the motions/orders, we judged the underlying issue to be essential to the prosecution or defense of the litigation.

11. Information about hearings was missing for one of the sua sponte motions pending at the time of data collection.

ber of pages devoted to the Rule 11 issue averaged 1.9 (standard deviation = 2.3).[12] A total of 201 pages were written on Rule 11 issues.

As seen in Figure 1, judges imposed Rule 11 sanctions in fifty-six orders, representing 29% of the motions for which rulings were available. Seventy percent of the orders imposing sanctions awarded monetary fees to an opposing party. These awards ranged from $10 to $19,552, with a mean of $2,635 (standard deviation = $3,791) and a median of $1,542.[13]

Figure 1
Outcome of motions/orders in the Western District of Texas



Note: All percentages are percentages of the next higher category.

12. The standard deviation is a measure of the variability or the dispersion of individual values around the mean.

13. The median is the preferred measure of central tendency because the mean is inflated by one extraordinarily large award.

The amount of one award was specified as $300 only after reconsideration and another award of $500 was set aside after reconsideration. With these changes the mean and median become $2,628 (standard deviation = $3,795) and $1,542. Fines payable to the court were imposed in ten orders; the fines ranged from $10 to $350, with a mean of $182 (standard deviation = $121) and a median of $200. One fine of $30 was reduced to $10 after reconsideration. Twenty-one orders imposed non-monetary sanctions. These sanctions included such things as injunctions or warnings not to file additional papers, continuing legal education requirements, reprimands, striking of pleadings or documents, and dismissals. For a list of the monetary awards see in Appendix A. For a more complete description of the non-monetary sanctions see Appendix B.

Post-ruling activities. Twenty rulings were subject to a motion for reconsideration or an objection to or appeal from a magistrate judge's action. One other ruling was reconsidered on remand from the Court of Appeals. Opposition papers were filed in response to eight of the motions/objections. One hearing was held. Judges wrote five opinions to resolve five motions/objections; three of the opinions combined a ruling on Rule 11 with another issue. Across all written opinions, five pages were devoted to Rule 11 issues.

The thirteen reconsideration of judges' orders were disposed of as shown in Table 2.[14]

Table 2
Judge orders: reconsiderations

Outcome	Number
Affirmed imposition of sanctions	8
Reversed imposition of sanctions	0
Affirmed denial of sanctions	3
Reversed denial of sanctions	0
Affirmed in part/reversed in part	1
Modified type or amount of sanctions	0
Pending	1

The seven reviews of magistrate judges' recommendations or orders were disposed of as shown in Table 3.[15]

14. One motion requested reconsideration of two orders.

15. These figures include only situations in which a party objected to or appealed a magistrate judge's order or report, or in which a judge sua sponte decided to alter a magistrate's finding. If a motion for reconsideration or an objection/appeal was not ruled on and the case was not pending, the original sanctions decision was considered affirmed.

Table 3
Magistrate judge recommendations and orders: objections and appeals

Outcome	Number
Affirmed imposition of sanctions	4
Reversed imposition of sanctions	0
Affirmed denial of sanctions	1
Reversed denial of sanctions	0
Affirmed in part/reversed in part	0
Modified type or amount of sanctions	2

Ten of the rulings were appealed.[16] The outcomes of the appeals are shown in Table 4. Note that two of the appeals were still pending at the time of data collection. The appellate rulings issued were all unanimous.

Table 4
Appellate court decisions

Outcome	Number
Affirmed imposition of sanctions	2
Reversed imposition of sanctions	0
Affirmed denial of sanctions	3
Reversed denial of sanctions	0
Appeal dismissed	2
Other	1
Pending	2

Has Rule 11 activity been disproportionately concentrated in specific types of cases or disproportionately focused on particular types of litigants?

In this section, we provide information about the type of activity targeted by the Rule 11 motions/orders. We first present information about the pleadings or papers that were the primary targets of Rule 11 motions/orders. Next, we

16. Some of the Rule 11 rulings were in pending cases; these rulings may be appealed after the cases terminate.

present information about the targeted person, examining in particular whether plaintiffs are subject to motions for sanctions more frequently than defendants. Finally, we present information about the natures of suit engendering Rule 11 activity, focusing on whether the level of sanctioning activity in civil rights cases is relatively higher than in other types of cases.

Targeted pleadings and papers

The pleading or paper that was the primary target of the Rule 11 motions/orders is shown in Table 5. The table presents information separately for three types of motions: (1) motions in prisoner cases; (2) motions in non-prisoner cases in which the target was pro se; and (3) motions in non-prisoner cases in which the targeted side was represented by counsel.

Table 5
Targeted pleading or paper

Targeted Pleading	All Motions/ Orders	Represented Targets	Pro Se Targets	Motions in Prisoner Cases
Complaint	112 (34%)	88 (32%)	13 (68%)	11 (29%)
Answer	14 (4%)	10 (4%)	1 (5%)	3 (8%)
Motion to dismiss (Rule 12(b)(6))	14 (4%)	7 (3%)	0	7 (18%)
Motion to dismiss (Rule 12(b)(1))	4 (1%)	4 (2%)	0	0
Other motion to dismiss	12 (4%)	9 (3%)	0	3 (8%)
Motion for summary judgment	9 (3%)	5 (2%)	0	4 (11%)
Rule 11 motion	17 (5%)	16 (6%)	1 (5%)	0
Discovery	38 (11%)	38 (14%)	0	0
Counterclaim or third-party claim	7 (2%)	7 (2%)	0	0
Removal-remand issue	34 (10%)	33 (12%)	1 (5%)	0
Motion for reconsideration	5 (2%)	4 (2%)	1 (5%)	0
Motion to disqualify	3 (1%)	3 (1%)	0	0
Default motion	0	0	0	0
Opposition to dispositive motion	9 (3%)	9 (3%)	0	0
Other	56 (16%)	40 (15%)	2 (11%)	10 (26%)
Total	331 (100%)	273 (100%)	19 (100%)	38 (100%)

Note: The first column of numbers includes all motions/orders. The second column includes motions in which the targeted side was represented by counsel, excluding prisoner cases. The third column includes motions in which the target was pro se, excluding prisoner cases; it may include some motions in which the target was an attorney appearing pro se. The last column includes all motions brought in prisoner cases, including those in which the target was a represented party or an attorney. We were unable to determine whether the target of one motion was represented or pro se. The other category includes two motions for which the targeted pleading or paper was unknown. The percentages are of column totals.

The complaint was by far the most frequently targeted pleading or paper, being the target of 34% of the Rule 11 motions/orders. More specifically, it was the target of 32% of the Rule 11 motions against represented targets, 68% of the motions against pro se targets, and 29% of the motions in prisoner cases. In contrast, answers were targeted relatively rarely, by only 4% of the motions. Similarly, motions to dismiss and summary judgment motions were targeted by only 9% and 3% of the Rule 11 motions, respectively.

The outcome of the motions/orders in relation to the pleading or paper targeted is shown in Table 6. The complaint was the paper/pleading most frequently targeted by the orders imposing sanctions (45% of the orders). Given the high number of motions targeting complaints, it is to be expected that a

relatively high number of the orders imposing sanctions would relate to complaints. However, it appears that more orders imposed sanctions for complaints than would be expected even given the difference in motion activity, although the reliability of this conclusion is limited by the significant number (fifty-nine) of pending motions. Only 34% of motions targeted complaints whereas 45% of the orders imposing sanctions targeted the complaint. The percentage of rulings imposing sanctions pursuant to motions that targeted the complaint (39%, twenty-five of sixty-four rulings) was higher than the percentage of rulings imposing sanctions pursuant to motions that targeted all other pleadings or papers (24%, thirty-one of 127 rulings) [numbers derived from Table 6].[17]

17. We used the z-statistic to make this comparison. The z-statistic reflects the number of standard errors by which two percentages differ. We considered a z-statistic of at least 1.65 to reflect a difference between two percentages and a z-statistic between 1 and 1.65 to reflect a slight difference. A difference of at least 1.65 is significant at the traditional significance level of $p \leq .05$ (one-tailed); differences between 1.00 and 1.65 only approach traditional significance ($p \leq .16$, one-tailed). We took this approach in describing the results so that one could better see the relative positions of the percentages.

Table 6
Disposition by targeted paper

Targeted Pleading	All Motions/ Orders	Pending	No Ruling	Ruling Issued	Sanctions Imposed
Complaint	112 (34%)	27 (46%)	21 (26%)	64 (34%)	25 (45%)
Answer	14 (4%)	2 (3%)	6 (7%)	6 (3%)	0
Motion to dismiss (Rule 12(b)(6))	14 (4%)	4 (7%)	5 (6%)	5 (3%)	0
Motion to dismiss (Rule 12(b)(1))	4 (1%)	1 (2%)	2 (3%)	1 (1%)	0
Other motion to dismiss	12 (4%)	3 (5%)	2 (3%)	7 (4%)	0
Motion for summary judgment	9 (3%)	2 (3%)	2 (3%)	5 (3%)	1 (2%)
Rule 11 motion	17 (5%)	4 (7%)	10 (12%)	3 (2%)	0
Discovery	38 (11%)	5 (8%)	8 (10%)	25 (13%)	5 (9%)
Counterclaim or third-party claim	7 (2%)	0	3 (4%)	4 (2%)	1 (2%)
Removal-remand issue	34 (10%)	4 (7%)	3 (4%)	27 (14%)	12 (21%)
Motion for reconsideration	5 (2%)	0	1 (1%)	4 (2%)	2 (4%)
Motion to disqualify	3 (1%)	0	1 (1%)	2 (1%)	1 (2%)
Default motion	0	0	0	0	0
Opposition to dispositive motion	9 (3%)	0	6 (7%)	3 (2%)	0
Other	53 (16%)	7 (12%)	11 (14%)	35 (18%)	9 (16%)
Total	331 (100%)	59 (100%)	81 (100%)	191 (100%)	56 (100%)

Note: The "other" category includes two motions for which the targeted pleading or paper was unknown. The percentages are of column totals.

Targeted side of the litigation

The side of litigation targeted by the Rule 11 motions/orders is shown in Table 7. Overall, 52% of the motions targeted the plaintiff, 44% targeted the defendant, and 4% targeted another party (e.g., intervenor or third party). Six of the motions classified as "other" targeted the defendant in its role as a third-party plaintiff. The plaintiff was targeted more frequently than the defendant in motions against represented targets (53% were aimed at plaintiffs and 43% at defendants) and much more frequently by motions against pro se targets (89.5% were aimed at plaintiffs and 10.5% at defendants), whereas the defendant was more frequently

targeted by motions brought in prisoner cases (32% were aimed at plaintiffs and 68% at defendants).

Table 7
Targeted Person

Targeted Person	All Motions/ Orders	Represented Targets	Pro Se Targets	Motions in Prisoner Cases
Plaintiff	42 (13%)	16 (6%)	17 (90%)	9 (24%)
Plaintiff's attorney	22 (7%)	20 (7%)	–	2 (5%)
Plaintiff and attorney	65 (20%)	64 (23%)	–	1 (3%)
Plaintiff (unspecified)	44 (13%)	44 (16%)	–	0
Subtotal–plaintiff	173 (52%)	144 (53%)	17 (90%)	12 (32%)
Defendant	10 (3%)	8 (3%)	2 (11%)	0
Defendant's attorney	42 (13%)	23 (8%)	–	19 (50%)
Defendant and attorney	44 (13%)	37 (14%)	–	7 (18%)
Defendant (unspecified)	49 (15%)	49 (18%)	–	0
Subtotal–defendant	145 (44%)	117 (43%)	2 (11%)	26 (68%)
Other (e.g., third-party and cross-claims)	13 (4%)	12 (4%)	0	0
Total	331 (100%)	273 (100%)	19 (100%)	38 (100%)

Note: We were unable to determine whether the target of one motion was represented or pro se. The percentages are of column subtotals and totals.

The side of litigation targeted by the orders imposing sanctions is shown in Table 8. Overall, 61% of the orders imposing sanctions targeted the plaintiff, 38% targeted the defendant, and 2% targeted another party. Given that more of the motions targeted the plaintiff, it is to be expected that more of the orders imposing sanctions would target the plaintiff. However, the difference in the number of motions filed against the plaintiff and defendant does not appear to fully account for the disparity in sanctions imposed, although the reliability of this conclusion is limited by the significant number (fifty-one) of pending motions. Only 52% of the motions targeted the plaintiff whereas 61% of the orders imposing sanctions did so. The percentage of rulings imposing sanctions pursuant to motions that targeted the plaintiff (36%, thirty-four of ninety-four rulings) was higher than the percentage of rulings imposing sanctions pursuant

to motions that targeted the defendant (23%, twenty-one of ninety-three rulings) [see Table 8].[18]

Table 8
Disposition by targeted person

Targeted Person	All Motions/ Orders	Pending	No Ruling	Rulings Issued	Sanctions Imposed
Plaintiff	42(13%)	8(14%)	8(10%)	26(14%)	16(29%)
Plaintiff's attorney	22(7%)	4(7%)	4(5%)	14(7%)	6(11%)
Plaintiff and attorney	65(20%)	21(36%)	13(16%)	31(16%)	8(14%)
Plaintiff (unspecified)	44(13%)	4(7%)	17(21%)	23(12%)	4(7%)
Subtotal-plaintiff	173(52%)	37(63%)	42(52%)	94(49%)	34(61%)
Defendant	10(3%)	3(5%)	1(1%)	6(3%)	4(7%)
Defendant's attorney	42(13%)	7(12%)	9(11%)	26(14%)	6(11%)
Defendant and attorney	44(13%)	2(3%)	13(16%)	29(15%)	3(5%)
Defendant (unspecified)	49(15%)	5(8%)	12(15%)	32(17%)	8(14%)
Subtotal-defendant	145(44%)	17(29%)	35(43%)	93(49%)	21(38%)
Other (e.g., third-party and cross-claims)	13(4%)	5(8%)	4(5%)	4(2%)	1(2%)
Total	331(100%)	59(100%)	81(100%)	191(100%)	56(100%)

Note: The percentages are of column subtotals and totals.

Nature of suit

We do not assume that Rule 11 sanctions should be imposed equally across the various types of litigation. However, nature of suit classifications provide convenient comparisons and they have, to an extent, shaped the debate about disproportionate impact.

Motions activity. For the analyses involving nature of suit, we combined similar natures of suit into twelve groups following the format used on the civil cover sheet (JS 44). Table 9 shows the number of filings during the study period for each of these nature-of-suit groups. Table 10 shows the number of cases in each

18. See note 17 *supra*.

nature-of-suit group that involved Rule 11 activity. The number of motions in each nature-of-suit group is also shown because some cases involve more than one motion. Table 11 shows, for each of twelve nature-of-suit groups, the incidence of Rule 11 activity as estimated by a life-table analysis. The life-table analyses take into account the number of cases of each nature of suit, the age of those cases when the electronic search was conducted, the number of those cases involving a Rule 11 motion or sua sponte order, and the age of a case when the first Rule 11 motion/order was filed. The estimates reflect the percentage of cases that are expected to involve Rule 11 activity within thirty-nine months of filing. The incidence of Rule 11 activity in contracts cases was estimated twice, the second time excluding cases classified as recovery of overpayment and enforcement of judgment, the Medicare Act, recovery of defaulted student loans, and recovery of overpayment of veterans benefits. The second estimate is the one used below in making comparisons between natures of suit.

Table 9
Filings by nature of suit, January 1, 1987, through May 15, 1990

Nature of Suit	Number of Filings	Nature of Suit	Number of Filings
Contract	3,464	Labor	371
Real Property	217	Property rights	188
Torts	1,225	Bankruptcy	316
Civil rights	1,094	Social Security	242
Prisoner petitions	1,660	Federal tax	158
Forfeiture/penalty	262	Other statutes	905
		Total	10,102

Table 10
Nature of suit

Nature of Suit	Cases	Motions/ Orders	Represented Targets	Pro Se Targets
Contract	60 (24%)	75 (23%)	73 (27%)	2 (11%)
Real property	4 (2%)	4 (1%)	3 (1%)	1 (5%)
Torts	32 (13%)	40 (12%)	40 (15%)	0
Civil rights	62 (25%)	86 (26%)	75 (28%)	11 (58%)
Prisoner petitions	30 (12%)	38 (12%)	–	–
Forfeiture/penalty	1 (1%)	1 (1%)	1 (1%)	0
Labor	15 (6%)	18 (5%)	18 (7%)	0
Property rights	9 (4%)	12 (4%)	12 (4%)	0
Bankruptcy	2 (1%)	3 (1%)	3 (1%)	0
Social Security	1 (1%)	1 (1%)	1 (1%)	0
Federal tax	4 (2%)	4 (1%)	2 (1%)	2 (11%)
Other statutes	33 (13%)	49 (15%)	45 (17%)	3 (16%)
Total	253 (100%)	331 (100%)	273 (100%)	19 (100%)

Note: We were unable to determine whether the target of one motion in other statutes was represented or pro se. The percentages are of column totals.

Table 11
Incidence by nature of suit

Nature of Suit	Estimated Incidence Within Thirty-nine Months of Filing
Contract	
All contract cases	2.1
Excluding recovery of overpayment, etc.	3.4
Real property	1.9
Torts	3.5
Civil rights	6.7
Prisoner petitions	2.1
Forfeiture/penalty	0.5
Labor	5.5
Property rights	5.6
Bankruptcy	0.7
Social Security	0.4
Federal tax	3.9
Other statutes	4.7
All cases	3.1

Most of the motions/orders were concentrated in contract (23%), torts (12%), civil rights (26%), prisoner petitions (12%), and other statutes (15%). As estimated by the life-table analyses, the incidence of Rule 11 activity is higher for civil rights (6.7) than for the other natures of suit in which the motions/orders were concentrated [contract (3.4), torts (3.5), prisoner petitions (2.1), and other statutes (4.7)].

Given the relatively higher incidence of Rule 11 activity in civil rights cases and in light of the criticism that Rule 11 is used to "chill" effective advocacy by civil rights plaintiffs, and in particular civil rights plaintiffs' attorneys, we address the following questions:

(1) Are *plaintiffs* disproportionately targeted by Rule 11 motions in civil rights cases, relative to other types of cases?
(2) Are *represented parties* disproportionately targeted by Rule 11 motions in civil rights cases, relative to other types of cases?
(3) Are *represented plaintiffs* disproportionately targeted by Rule 11 motions in civil rights cases, relative to other types of cases?

These comparisons are made between civil rights, contract, torts, and other statutes because the other natures of suit contain too few motions for comparison.[19] Prisoner petitions are also excluded. We then address the issue of whether Rule 11 sanctions are disproportionately imposed in certain types of cases.

Are *plaintiffs* disproportionately targeted by Rule 11 motions in civil rights cases, relative to other types of cases? In civil rights cases, the percentage of Rule 11 motions targeting plaintiffs (as opposed to defendants or other parties) was higher than that in the other major types of cases. Approximately 72% of the Rule 11 motions filed in civil rights cases targeted the plaintiff. Lower percentages of the motions in contract (45%), torts (45%), and other statutes (43%) targeted the plaintiff.

Are *represented parties* disproportionately targeted by Rule 11 motions in civil rights cases, relative to other types of cases? In civil rights cases, the percentage of motions targeting represented parties[20] (as opposed to pro se parties) was lower or slightly lower than in the other major categories of cases. In civil rights cases, approximately 87% of the Rule 11 motions targeted a represented party. Higher percentages of motions in contract (97%) and torts (100%) and a slightly higher percentage of motions in other statutes (94%) targeted represented parties.[21]

19. The z-statistic was used to make these comparisons. See note 17 *supra*.

20. The category of "motions targeting represented parties" includes motions that target a party who is represented by counsel and motions that target the party's counsel.

21. These differences may reflect differences in the number of pro se versus represented parties across natures of suit rather than differences in underlying Rule 11 activity. Our data are insufficient to address this possibility.

Are *represented plaintiffs* disproportionately targeted in civil rights cases, relative to other types of cases? To address this question, we first examined only those motions filed against a represented party. In civil rights cases, the percentage of such motions targeting the plaintiff was higher than in the other major types of cases. In civil rights cases, approximately 69% of such motions targeted the plaintiff. Lower percentages of such motions in contract (45%), torts (45%), and other statutes (40%) targeted the plaintiff.

Another way to address the question is to consider all motions (i.e., those targeting both represented parties and pro se parties). In civil rights cases, the percentage of all motions targeting represented plaintiffs was higher or slightly higher than in the other major types of cases. In civil rights cases, approximately 60% of all motions targeted represented plaintiffs. Lower percentages of motions in contract (44%) and other statutes (38%) and a slightly lower percentage in torts (45%) targeted represented plaintiffs.

To summarize, the incidence of Rule 11 activity is higher in civil rights than in the other major types of cases. In addition, a higher or slightly higher percentage of the motions in civil rights cases targeted represented plaintiffs, compared to the other major types of cases.

Orders imposing sanctions. The outcomes of the motions/orders by nature of suit are shown in Table 12. The last column of the table shows the percentage of orders imposing sanctions that fall into each nature of suit group. The orders that imposed sanctions were concentrated in contract (21%), torts (11%), civil rights (27%), prisoner petitions (16%), and other statutes (16%), as were the motions. Table 13 shows the number of orders imposing sanctions that targeted represented parties. These orders were concentrated in contract (28%), torts (14%), civil rights (30%), and other statutes (19%).

Table 12
Disposition by nature of suit

Nature of Suit	All Motions/ Orders	Pending	No Ruling	Rulings Issued	Sanctions Imposed
Contract	75 (23%)	16 (27%)	20 (25%)	39 (20%)	12 (21%)
Real property	4 (1%)	1 (2%)	0	3 (2%)	1 (2%)
Torts	40 (12%)	3 (5%)	11 (14%)	26 (14%)	6 (11%)
Civil rights	86 (26%)	21 (36%)	16 (20%)	49 (26%)	15 (27%)
Prisoner petitions	38 (12%)	4 (7%)	8 (10%)	26 (14%)	9 (16%)
Forfeiture/penalty	1 (1%)	0	1 (1%)	0	0
Labor	18 (5%)	3 (5%)	8 (10%)	7 (4%)	2 (4%)
Property rights	12 (4%)	1 (2%)	4 (5%)	7 (4%)	0
Bankruptcy	3 (1%)	0	0	3 (2%)	0
Social Security	1 (1%)	0	0	1 (1%)	1 (2%)
Federal tax	4 (1%)	1 (2%)	1 (1%)	2 (1%)	1 (2%)
Other statutes	49 (15%)	9 (15%)	12 (15%)	28 (15%)	9 (16%)
Total	331 (100%)	59 (100%)	81 (100%)	191 (100%)	56 (100%)

Note: The percentages are of column totals.

Table 13
Disposition by nature of suit, represented targets only

Nature of Suit	Motions/ Orders	Pending	No Ruling	Rulings Issued	Sanctions Imposed
Contract	73 (27%)	15 (31%)	20 (29%)	38 (25%)	12 (28%)
Real property	3 (1%)	1 (2%)	0	2 (1%)	1 (2%)
Torts	40 (15%)	3 (6%)	11 (16%)	26 (17%)	6 (14%)
Civil rights	75 (28%)	19 (40%)	13 (19%)	43 (28%)	13 (30%)
Prisoner petitions	—	—	—	—	—
Forfeiture/penalty	1 (1%)	0	1 (1%)	0	0
Labor	18 (7%)	3 (6%)	8 (11%)	7 (5%)	2 (5%)
Property rights	12 (4%)	1 (2%)	4 (6%)	7 (5%)	0
Bankruptcy	3 (1%)	0	0	3 (2%)	0
Social Security	1 (1%)	0	0	1 (1%)	1 (2%)
Federal tax	2 (1%)	0	1 (1%)	1 (1%)	0
Other statutes	45 (17%)	6 (13%)	12 (17%)	27 (17%)	8 (19%)
Total	273 (100%)	48 (100%)	70 (100%)	155 (100%)	43 (100%)

Note: We were unable to determine whether the target of one motion in other statutes was represented or pro se. The percentages are of column totals.

Considering the natures of suit in which most of the motions were concentrated (contract, torts, civil rights, other statutes, but excluding prisoner petitions), five of the twelve orders (42%) imposing sanctions in contract , one of six orders (17%) in torts, four of nine orders (44%) in other statutes, and twelve of fifteen (80%) orders in civil rights targeted the plaintiff. A similar pattern was found when only orders imposing sanctions against represented parties were considered.

Perhaps the best way to determine whether courts disproportionately impose Rule 11 sanctions in civil rights cases would be to examine, across natures of suit, the number of orders imposing sanctions in relation to the number of motions filed. Because some of the motions in our study were pending, we instead examined the number of orders imposing sanctions in relation to the number of orders issued.[22] For the natures of suit in which most of the motions were concentrated (contract, torts, civil rights, other statutes, but excluding prisoner petitions), the percentages of orders imposing sanctions were fairly comparable across natures of suit. The imposition rates were 31% (twelve of thirty-nine rulings) for contracts, 31% (fifteen of forty-nine rulings) for civil rights, 32% (nine of 28 rulings) for other statutes, and a bit lower at 23% (six of twenty-six rulings) for torts. If we consider only rulings for motions that targeted represented parties, a similar pattern is found. To summarize, the court is no more likely to grant Rule 11 motions in civil rights cases than in the other major categories of cases, although the reliability of this conclusion may be limited by the significant number (fifty-nine) of pending motions.

For an in-depth analysis of the civil rights cases in which sanctions were imposed, see Section 4E.

Are there variations between judges in their application of Rule 11?

We now present information about the treatment of motions and sua sponte orders by each judge (see Table 14). We have grouped as "other judges" senior judges, visiting judges, and newly appointed judges because their experience would likely be different from the experience of judges who were on active status for the entire period of the study. For purposes of this analysis, we excluded motions/orders handled by magistrate judges, as well as motions for reconsideration of judge's orders and appeals from/objections to magistrate judge's orders/recommendations.

22. The comparisons were made with the z-statistic. See note 17 *supra*.

Table 14
Judicial variations in sanctioning practices

Judges	Motions/ Orders	Pending	No Ruling	Rulings Issued	Sanctions Imposed
Judge 1	34 (13%)	4 (12%)	6 (18%)	24 (71%)	9 (38%)
Judge 2	53 (20%)	7 (13%)	14 (26%)	32 (60%)	7 (22%)
Judge 3	47 (17%)	19 (40%)	11 (23%)	17 (36%)	8 (47%)
Judge 4	48 (18%)	13 (27%)	16 (33%)	19 (40%)	6 (32%)
Judge 5	14 (5%)	4 (29%)	5 (36%)	5 (36%)	0
Judge 6	33 (12%)	1 (3%)	14 (42%)	18 (55%)	4 (22%)
Other Judges	40 (15%)	6 (15%)	12 (30%)	22 (55%)	4 (18%)
Total	269 (100%)	54 (20%)	78 (29%)	137 (51%)	38 (28%)

Note: The other category includes one motion for which the assigned judge is unknown. The first column of figures shows the number and percentage of motions before each judge or group of judges. The second, third, and fourth columns show the outcome of the motions/orders before each judge or group of judges; the percentages are of the number of motions/orders before each judge. The fifth column shows, for each judge, the number of orders in which sanctions were imposed; the percentages are of the number of rulings issued by each judge.

The first column of figures in Table 14 shows the number and percentage of motions/orders before each judge or group of judges. For example, thirty-four (13%) of the motions were before Judge 1. The second, third, and fourth columns show the outcome of the motions/orders before each judge or group of judges; the percentages are of the number of motions/orders before each judge. For example, Judge 1 had ruled on twenty-four (71%) motions, had not ruled on six (18%) motions, and had four (12%) motions pending. We later refer to all non-pending motions collectively as resolved motions. The fifth column shows, for each judge, the number of orders imposing sanctions; the percentages are of the number of motions/orders ruled on by each judge. For example, nine (38%) of Judge 1's rulings imposed sanctions.

We conducted several statistical analyses to examine the sanctioning practices of the judges who were on active status during the entire study period.[23] These analyses showed that there was significant variation in the number of motions before each judge (column 1). Indeed, the number of motions ranged from 14 motions before Judge 5 to 53 motions before Judge 2. In addition, the percentage of motions that were pending (column 2) versus resolved (columns 3 and 4

23. The category of "other judges" was excluded from these analyses. A statistical package designed to analyze sparse contingency tables was used to conduct the analyses. A relationship was considered significant when the probability associated with the corresponding Fisher's Exact statistic was less than .05. The Fisher's Exact test examines whether there is a significant relationship between two categorical variables.

combined) significantly differed between judges. Few of the motions before Judges 1, 2, and 6 were pending whereas 27%, 29%, and 40% of the motions before Judges 4, 5, and 3, respectively, were pending. Considering only resolved motions, however, the percentage of motions not ruled on (column 3) versus ruled on (column 4) did not significantly differ between judges. Furthermore, considering only motions that were ruled on, the percentage of rulings imposing sanctions (column 5) did not significantly differ between judges.

Variations between judges in their sanctioning practices may reflect more than their differing receptivity to Rule 11. For example, variation in the number of motions before each judge may exist because the bar accurately or inaccurately perceives differences between the judges in their receptivity to Rule 11 motions, and acts accordingly. Judges also may differ in the amount of sanctions activity they delegate to the magistrate judges working with them. Furthermore, some judges may diminish the incentive to file a Rule 11 motion by early and active case management. For example, if a judge dismisses a groundless complaint at the Rule 16 conference, the cost of pursuing a Rule 11 motion may exceed any potential recovery. In summary, variations between judges exist, although the source of the variation is likely to be multi-faceted. Our data do not address the causes of the variation between judges.

Appendix A
Sanctions Awards to Opposing Party and Court

Amount of sanctions to opposing party

$10.00	$750.00	$2,562.40
$71.00	$1,000.00	$3,645.00
$250.00	$1,000.00	$3,697.10
$450.00	$1,500.00	$4,500.00
$500.00	$1,583.10	$5,000.00
$500.00	$1,987.00	$5,000.00
$500.00	$2,166.21	$5,000.00
$500.00	$2,175.00	$6,619.07
$500.00	$2,275.00	$19,551.96
$500.00		

The amount of one award was specified as $300 only after reconsideration and another award of $500 was set aside after reconsideration.

Amount of sanctions to the court

$10	$200	$200
$30	$200	$350
$100	$200	$350

One fine of $30 was reduced to $10 after reconsideration.

Appendix B
Non-Monetary Sanctions

The orders that imposed non-monetary sanctions are described below. One judge entered five of the orders, three judges entered three orders apiece, and another judge entered one order. Two magistrate judges entered the other six orders.

Order 1 (prisoner petition)
Pro se plaintiff enjoined from filing papers with court until $10 sanction to opposing party was paid and affidavit to that effect was filed with the court.

Order 2 (personal injury–medical malpractice)
Plaintiff's attorney ordered to participate in ten hours continuing education on legal ethics. Also ordered to pay opposing party $1,000. Sanction upheld on reconsideration.

Order 3 (other civil rights)
Plaintiff's attorney ordered to participate in twenty-four hours of continuing legal education over a two year period (twenty hours on trial practice and procedure and four hours on legal ethics). Also ordered to pay opposing party $500. On reconsideration, non-monetary sanction upheld but monetary sanction rescinded.

Order 4 (other statutory action)
Defendant's attorney reprimand.

Order 5 (other contracts)
Plaintiff's attorney warned.

Order 6 (ERISA)
Plaintiff's attorney reprimanded for filing amended complaint contrary to court order and cautioned that further pleadings/motions must comply with Rule 11.

Order 7 (other civil rights)
As sanction against pro se plaintiff, all pleadings in case were stricken. Plaintiff also ordered to pay costs and attorney fees.

Order 8 (civil rights—employment)
Defendant (unspecified) sanctioned by holding request for attorney's fees in abeyance. Also ordered to pay opposing party $71.

Order 9 (other civil rights)
Plaintiff's attorney fined $100 and strongly admonished in a written opinion for failure to present legal authority in support of motion for remand.

Order 10 (other contracts)
Plaintiff's attorney fined $350 fine and admonished that any request for reconsideration would result in additional sanctions.

Order 11 (other contracts)
Defendant's attorney ordered to pay $350 fine to court and admonished that any request for reconsideration would result in additional sanctions.

Order 12 (contract—insurance)
Defendant's attorney warned about Rule 11 infraction and ordered to send a copy of the warning to the party he represented.

Order 13 (Social Security—DIWC)
Defendant's attorney warned.

Order 14 (other statutory actions)
Court dismissed pro se plaintiff's claim and struck documents from the record.

Order 15 (prisoner petition)
Court dismissed pro se plaintiff's complaint with prejudice and enjoined him from filing further pleadings without leave of court.

Order 16 (federal tax suit)
Pro se plaintiff ordered to pay opposing party $5000 and enjoined from further filings until the sanctions were paid.

Order 17 (prisoner petition)
Plaintiff's attorney ordered to sign complaint.

Order 18 (prisoner petition)
Pro se plaintiff barred from further filings without leave of court and until $30 fine to court was paid. On reconsideration, non-monetary sanction upheld but monetary sanction reduced to $10.

Order 19 (prisoner petition)
Pro se plaintiff barred from further filings without leave of court and until $10 fine to court was paid.

Order 20 (prisoner petition)
Pro se plaintiff ordered to pay $200 fine and barred from filing further lawsuits until fine was paid. Sanction upheld on reconsideration.

Order 21 (other contracts)
As sanction against plaintiff and attorney, allegations of fraud and gross negligence and accompanying request for exemplary damages were struck. Information surreptitiously obtained by plaintiff's attorney was made available to both parties. Sanctioned attorney was allowed to remain on case but was not allowed to speak in courtroom. Another attorney was substituted as lead counsel. Plaintiff and attorney also ordered to pay opposing party $5000. Sanction upheld on reconsideration.

Section 4
Summary of All "Other Civil Rights" and Employment Discrimination Cases in Five District Courts

Following is a district-by-district summary of all the sanctions imposed in "other civil rights" (Administrative Office Nature of Suit Code 440) and employment discrimination (Administrative Office Nature of Suit Code 442) cases. We emphasize cases involving counsel, particularly counsel for plaintiffs, because they have been the focus of attention and debate regarding chilling effects on creative advocacy. For each district, we will present a summary of the type of party involved, the amount of the sanctions, the type of case, the argument that led to the sanctions, and the reason for the sanctions. Following the summary for each district is a summary of each of the civil rights cases in which sanctions were imposed, with more detailed information about the type of case, the argument that led to sanctions, and the stated reason for sanctions.

Section 4A
District of Arizona Summary

This court granted six of the twenty-two Rule 11 motions it decided in civil rights cases. Only one of those six cases imposed sanctions on a represented plaintiff.

There were four "other civil rights" (Nature of Suit Code 440) cases in Arizona and two employment discrimination (Nature of Suit Code 442) cases. No sanctions were imposed as a final matter on an attorney for a plaintiff in a civil rights case. In two of the Nature of Suit Code 440 cases, pro se plaintiffs were sanctioned, one with a warning and the other for $500.

One of the Nature of Suit Code 440 cases involved sanctions imposed on a plaintiff and his attorney, but the award against the attorney was reversed on reconsideration, leaving an award of all attorneys' fees against the plaintiff under 42 U.S.C. § 1988. One case involved sanctions imposed on a municipal defendant (and presumably its attorneys) for asserting legally groundless defenses of immunity and failure to exhaust administrative remedies [defendant, unspecified; $7,218.85]. The case in which the court retracted a sanctions order against a plaintiff's attorney involved an action for damages for breach of constitutional rights, trespass, and intentional infliction of emotional distress against the police for their response to a report of a woman being beaten in plaintiff's apartment [plaintiff and attorney, sanctioned; $6,054.50].

Neither of the Nature of Suit Code 442 cases involved sanctions on a represented plaintiff. One involved a pro se plaintiff whose case was dismissed and who had sanctions of $14,029.86 imposed for filing a groundless claim to harass defendants and for failure to cooperate in discovery. In the other Nature of Suit Code 442 case, defendant's counsel, experienced employment discrimination attorneys, were sanctioned in the amount of $2,500 for failing to make an adequate inquiry into the time period for measuring inclusion of an employer under Title VII.

In the three pro se cases, one simply involved a warning; one imposed a $500 award on a plaintiff who sued eleven absolutely immune defendants; and the last imposed the costs of litigation against a plaintiff who evidenced an intent to harass by refusing to participate in the prosecution of her own case.

Hopkins v. City of Sierra Vista, Docket No. 88-00723 (D. Ariz. 1989)
[counseled plaintiff]

Sanctioned party
Plaintiff and his attorney were sanctioned in the amount of $6,054.50. On reconsideration, the court vacated the Rule 11 sanction and awarded the same amount against the plaintiff under 42 U.S.C. § 1988.

Nature of the underlying action/claim and any counterclaims
Plaintiff sued for violation of constitutional rights, trespass, and intentional infliction of emotional distress. The gist of the claim was that the police did not have probable cause to enter plaintiff's apartment in response to an anonymous tip that a woman was being beaten. The police reported hearing sounds of furniture being moved, and they said that the plaintiff had been involved in prior domestic disturbances.

Nature of the claims or defenses that were the subject of the sanctions
Plaintiff's claim of lack of probable cause.

Stated basis for the sanctions
Inadequate legal inquiry: Defendant had provided plaintiff with a tape of the anonymous call (which the judge believed demonstrated probable cause) and plaintiff persisted in filing the case.

Comments
The case involved a claim of qualified immunity by the police. The original order relied on both Rule 11 and 42 U.S.C. § 1988. Plaintiff's attorney moved for reconsideration, arguing that the Rule 11 sanction would have a chilling effect on attorneys representing plaintiffs in civil rights cases. The court modified the order, limiting the award to one against the plaintiff under the reverse fee-shifting standard of § 1988 and vacating the Rule 11 award against the attorney.

Wedges/Ledges of Cal. v. City of Phoenix, Docket No. 89-00354 (D. Ariz. 1990)
[counseled defendant]

Sanctioned party
Defendant, City of Phoenix, was represented by counsel and was sanctioned in the amount of $7,218.85. The court did not specify whether the sanctions applied to counsel, to the city, or to both.

Nature of the underlying action/claim and any counterclaims
Plaintiff sued under 42 U.S.C. § 1983, claiming that the city's denial of plaintiff's application for a license to use an amusement game was based on secret standards, in violation of the Due Process Clause.

Nature of the claims or defenses that were the subject of the sanctions
The defenses that were the subject of sanctions were defendant's claims for summary judgment on the grounds of absolute immunity (ignoring the fact that plaintiff had sued the city in addition to the quasi-judicial license appeals board and ignoring the claim for injunctive and declaratory relief, which is not subject to absolute immunity) and on the ground of plaintiff's failure to exhaust administrative remedies (ignoring the Supreme Court's decision in *Board of Regents of Florida v. Patsy*, 457 U.S. 496 (1982)).

Stated basis for *the sanctions*
Defendant failed to make an adequate legal inquiry. The court imposed sanctions on defendants for asserting legally groundless defenses (including absolute immunity).

Comments
The court denied a later motion by defendant to set aside the sanctions. There is an interlocutory appeal pending on the Rule 11 issues. Defendant has filed a motion to clarify the district court's order to determine whether it applies to counsel (and is therefore appealable as a final order).

Scott v. Savage, Docket No. 87-00654 (D. Ariz. 1987)
[pro se]

Sanctioned party
Plaintiff, appearing pro se in a class action, was sanctioned in the form of an order warning of Rule 11's requirements and requiring that plaintiff and any assistants (who must be identified) certify they had read Rule 11.

Nature of the underlying action/claim and any counterclaims
Plaintiff had been a prisoner incarcerated at the Federal Correctional Institution in Tucson. His fifteen-page, twelve-count class action complaint encompasses numerous challenges to the conditions of confinement, including denial of halfway house treatment to inmates convicted of white-collar crimes, allowing staff promotions in exchange for sexual favors, and spraying sewage water near inmates.

Nature of the underlying action/claim and any counterclaims
All of the above claims were subject to the order.

Stated basis for the sanctions
The sanctions order was a warning (which appears to apply to all pro se complaints). The court issued the order sua sponte seven weeks after the complaint was filed. It consists of a general warning about frivolous pleadings and a format for certifying compliance with Rule 11 by plaintiff and anyone who assists with future filings.

Comments
The case involved qualified immunity of prison officials. The form order has been used in a number of prisoner pro se cases in this district.

Aldridge v. Corbin, Docket No. 87-01819 (D. Ariz. 1988)
[pro se]

Sanctioned party
Plaintiff, appearing pro se and in behalf of his minor son, was sanctioned in the amount of $500.

Nature of the underlying action/claim and any counterclaims
Plaintiff filed eight claims for relief against thirty defendants, including an assistant attorney general, various child protective service workers, and school, juvenile, and police officials. Plaintiff labeled the claims as negligence, misfeasance, malfeasance, nonfeasance, enticement, invasion of privacy, intentional infliction of emotional distress, and an unspecified "claim upon which relief can be granted." The claims relate to treatment of his son in school, at the Arizona Boy's Ranch, and otherwise. The claims relate to alleged improper medication, incarceration with criminal and insane people, and encouraging plaintiff to run away from home and go to a temporary shelter.

Nature of the claims or defenses that were the subject of the sanctions
Same as above.

Stated basis for the sanctions
Plaintiff alleged no facts and asserted no arguments in support of federal subject-matter jurisdiction. In addition, plaintiff sued eleven defendants who were absolutely immune from suit because they acted pursuant to a juvenile court order. Three of the defendants were attorneys for co-defendants in a similar case in state court, which was dismissed.

Comments
The court awarded sanctions under Rule 11 in behalf of those three defendants who had represented other defendants in the state-court action. The court found that plaintiff was motivated by an improper purpose of harassment and that those defendants had absolute immunity.

EEOC v. YWCA of Tucson, Docket No. 89-157 (D. Ariz. 1989)
[counseled defendant]

Sanctioned party
Defendant's attorney was sanctioned in the amount of $2,500. The court order specified that the "sanction is not to be paid by the client."

Nature of the underlying action/claim and any counterclaims
The complaint alleged discrimination based on gender because of the policy of local and national YWCAs to refuse to consider males for position of executive director of a local YWCA.

Nature of the claims or defenses that were the subject of the sanctions
The defense that was the subject of sanctions was defendant's claim that it was not covered by Title VII because it did not have fifteen or more employees in 1988 and 1989. Plaintiff discovered that defendant had arguably employed more than fifteen people during 1986, the year preceding the alleged violation. Under Title VII, the relevant time periods are the year of the alleged violation and the preceding year.

Stated basis for the sanctions
The court ruled that counsel for the defendant "failed to make a reasonable inquiry into the law" by failing to inquire into the statutory calendar year.

Comments
Plaintiff requested $11,680 in attorneys' fees for work done in connection with the motion to dismiss, including factual and legal research to present a theory of joint liability of local and national defendants. However, the court found that defendant's counsel did not act in bad faith, that the amount requested outweighed the magnitude of the violation, and that $2,500 "will deter further abuses and streamline litigation." Defendant's attorneys were experienced Title VII attorneys, including a former chairperson of the EEOC.

Canisales v. M/A COM Omni Spectra, Docket No. 87-2256 (D. Ariz. 1987)
[pro se]

Sanctioned party
Plaintiff, appearing pro se, was sanctioned in the amount of $13,035 for defendants' attorneys' fees and $994.86 in costs. The court also dismissed plaintiff's complaint for failure to cooperate in discovery, including failure to comply with a court order to answer questions.

D. Ariz. Nature of Suit Code 442 Cases

Nature of the underlying action/claim and any counterclaims

Plaintiff, a woman of Mexican-American origin, brought suit pro se, alleging violations of Title VII of the Civil Rights Act based on discriminatory treatment, including job assignments, harassment, suspension, denial of short-term disability payments, and termination of employment.

Nature of the claims or defenses that were the subject of the sanctions

Defendant's motion for sanctions was addressed to the complaint and to plaintiff's behavior in resisting discovery. Defendant alleged that plaintiff had not intended to pursue the claim and that she filed it solely to harass defendant. Plaintiff allegedly failed to appear at several depositions, refused to answer questions during her only appearance, failed to produce legible documents, and failed to comply with a court order to answer questions.

Plaintiff did not oppose a motion to dismiss pursuant to Fed. R. Civ. P. 37 and did not oppose the motion for sanctions and attorneys' fees.

Stated basis for the sanctions

In dismissing the complaint, the court found that "the plaintiff has been uncooperative and has disregarded this court's order." In imposing attorneys' fees, the court simply noted that defendant's motion was unopposed.

Comments

Defendant's motion for attorneys' fees also relied on 42 U.S.C. § 1988. Plaintiff did not oppose the motion.

Section 4B
District of the District of Columbia Summary

This court granted five of the twenty Rule 11 motions that it decided in civil rights cases. Two of those five cases imposed sanctions on a counseled plaintiff.

There were three "other civil rights" (Nature of Suit Code 440) cases in the District of Columbia in which sanctions were imposed. Two of the cases involved sanctions on the plaintiff [one, $500; the other, $3,775.50], both of whom were attorneys representing themselves, for bringing claims that were res judicata. In the third case, sanctions were imposed on a defendant who was alleged to have misinformed the court about the existence of a critical document [unspecified as to amount or liability of defendant or attorney or both]. There were no cases in which sanctions were imposed on a counseled plaintiff.

Sanctions were imposed on plaintiff's counsel in two Nature of Suit Code 442 cases. In the first, plaintiff was sanctioned $1,000 and her attorney, $4,000. These sanctions appeared to be designed specifically to deter an attorney who had appealed the district court's rejection of an ill-conceived theory. The attorney began to relitigate it even after the court of appeals affirmed the district court's initial rejection. In the second case, the court warned plaintiff and defendant about "constant bickering" and "repeated attacks" on each other. The court sanctioned plaintiff by forbearing from sanctioning defendant, sua sponte, for misconduct equivalent to plaintiff's misconduct.

District of D.C. Nature of Suit Code 440 Cases

Doe v. Howard University, Docket Number 88-3412 (D.D.C. 1989)
[counseled defendant]

Sanctioned party
The court imposed sanctions on the defendants without specifying the liability of counsel. All defendants were represented by counsel. The amount of the sanctions was not specified except to say that it would equal the costs and attorneys' fees involved in redeposing three witnesses.

Nature of the underlying action/claim and any counterclaims
This was an action against Howard University and a security officer for declaratory judgment, injunctive relief, and monetary damages for injuries to plaintiff resulting from the university's hospital's alleged discrimination in providing inferior medical services to plaintiff because of her AIDS physical handicap.

D.D.C. Nature of Suit Code 440 Cases

Plaintiff claimed violations of the Rehabilitation Act of 1973, the D.C Human Rights Act, and common-law torts of negligence, assault, battery, false imprisonment, and tortious breach of duty.

Nature of the claims or defenses that were the subject of the sanctions
Plaintiff moved for sanctions based on the failure of defendant to produce documents relating to defendant's policies regarding treatment and isolation of AIDS patients. Plaintiff alleged that defendant submitted pleadings to the court that falsely stated that there was no written policy of the psychiatric department excluding patients with AIDS from the psychiatric ward of the hospital. Defendant later submitted such a written policy to plaintiff.

Stated basis for the sanctions
The court did not state a basis for imposing the sanctions, but the reason appears to be an inadequate factual investigation into defendant's written policies. Plaintiff's argument for sanctions was based on Rules 11, 37, and the inherent power of the court. The sanctions imposed were the costs and attorneys' fees relating to retaking the depositions of three MDs who had been deposed after the documents had been requested and before they were made available.

Comments
The case involved experienced counsel engaged in a discovery dispute in an acrimonious case. The court's authority to impose sanctions included Rules 11, 37, and its inherent power.

Richardson v. Jones, Docket No. 89-2694 (D.D.C. 1990)
[pro se]

Sanctioned party
Plaintiff, an attorney and former law professor, appeared pro se. He was sanctioned in the amount of $3,775.50, which represented defendants' costs in obtaining dismissal of the complaint.

Nature of the underlying action/claim and any counterclaims
Plaintiffs claimed that defendants (who were the parties, judge, and lawyer involved in a Florida probate case) violated due process and equal protection of the laws by obtaining a personal judgment against him in the Florida state courts. That judgment was based on overpayment by the deceased and her estate for legal services.

Nature of the claims or defenses that were the subject of the sanctions
Defendant challenged the complaint on the grounds that the court lacked personal jurisdiction over any of the defendants and that the subject matter of the suit was res judicata. Plaintiff had unsuccessfully appealed the judgment.

Stated basis for the sanctions
The district court found the complaint to be "manifestly frivolous and malicious."

Comments
The res judicata defense seems clearly applicable. There were also grounds for a defense of absolute immunity for the state judge.

Plaintiff filed a motion for reconsideration, which was denied, and a notice of appeal, which appears to be untimely. The appeal is pending.

Avins v. Cavasos, Docket No. 89-2057 (D.D.C. 1989)
[pro se]

Sanctioned party
Plaintiff represented himself and two other plaintiffs, the Northern Virginia Law School (NVLS) and a student. He was sanctioned in the amount of $500.

Nature of the underlying action/claim and any counterclaims
Plaintiff is a faculty member and director of NVLS. He and a student sued the Virginia Council of Higher Education, claiming unconstitutional denial of accreditation to NVLS, a part-time weekend law school, because it is a conservative school. Plaintiffs also claimed violations of the Sherman Act based on the council's refusal to renew NVLS's license to confer the juris doctor degree.

Nature of the claims or defenses that were the subject of the sanctions
Plaintiffs claimed that the injury occurred in D.C. because they received "threatening letters" from a Virginia assistant attorney general and that the D.C. court had jurisdiction over the Virginia defendants by virtue of D.C.'s long-arm statute. Defendants sought sanctions for this jurisdictional claim and also claimed that the complaint was barred by res judicata.

Stated basis for the sanctions
The court imposed sanctions because of the res judicata defense. The court found that an identical case had been filed and dismissed in both a Virginia state court and the U.S. District Court for the Eastern District of Virginia. The latter case was itself dismissed on res judicata grounds.

Comments
The case involved clear res judicata grounds.

District of D.C. Nature of Suit Code 442 Cases

Awkward v. SEC, Docket No. 87-0835 (D.D.C. 1987)
[counseled plaintiff]

Sanctioned party
Plaintiff and counsel were both sanctioned: plaintiff, $1,000 and her attorney, $4,000.

Nature of the underlying action/claim and any counterclaims
Plaintiff sued the SEC and six current or present employees of the agency for discrimination on the basis of race, gender, and handicap in violation of federal employment discrimination statutes. Plaintiff's allegations related primarily to sexual harassment and constructive discharge for refusal to participate in sexual activities. Plaintiff also asserted tort claims of assault and battery and intentional infliction of emotional distress.

Nature of the claims or defenses that were the subject of the sanctions
The relevant conduct had occurred in 1983 and 1984. Plaintiff filed suit in 1984. The same district judge dismissed that case for failure to exhaust administrative remedies; the court of appeals affirmed. Plaintiff was still in the counseling stages of the administrative process when she filed the 1987 case. She had not filed a formal complaint, claiming that the agency had refused to provide counseling for the disability and constructive discharge claims and that she could not, therefore, certify that counseling efforts were final. This impasse was broken, and plaintiff filed a formal administrative complaint during the pendency of the 1987 case.

Stated basis for the sanctions
By filing the case before filing a formal administrative complaint with the SEC, plaintiff had by her own admission again failed to exhaust administrative remedies. Exhaustion is clearly a prerequisite to filing a civil action. The court found that plaintiff had not even attempted to file a formal administrative complaint and could not have a good-faith basis for filing a suit. The district court and the court of appeals had previously rejected (in the 1984 action) her argument that exhaustion of administrative remedies would be futile.

Comments
Because plaintiff was represented by counsel, it is difficult to understand how this case foundered twice on the shoals of the exhaustion rules. The judge's allocation of the sanction suggests that he allocated responsibility primarily, but not exclusively, to counsel. Plaintiff filed a notice of appeal, which she later dismissed voluntarily. Plaintiff and defendant apparently settled the appeal after the district court directed them to negotiate a plan for payment of the sanctions as a "substitute security" for a stay of execution pending appeal.

Young v. Potomac Electric Power Co., Docket No. 87-1177 (D.D.C. 1987)
[counseled plaintiff]

Sanctioned party
Plaintiff's counsel was sanctioned by use of warning language and by the court's forbearance from imposing sanctions on defendant's counsel for equivalent behavior.

Nature of the underlying action/claim and any counterclaims
This is one of eight consolidated actions brought by plaintiff's counsel, alleging violations of federal and D.C. employment discrimination laws on the basis of race, gender, and national origin. Plaintiff originally alleged a broad class action in behalf of all present and future employees and applicants for employment as well as potential applicants who may have been discouraged from applying.

Nature of the claims or defenses that were the subject of the sanctions
Plaintiff filed a motion to intervene in the case that used broader class allegations (all black employees) than one previously rejected by the trial court as too broad (all non-exempt black employees).

Stated basis for the sanctions
Plaintiff filed the allegation that violated the previous order without asking for reconsideration or explicitly challenging the basis for the order. Counsel simply ignored the prior order.

Comments
The court took the occasion of defendant's motion for sanctions to lecture both parties for conduct that the court characterized as "continued bickering between, and repeated attacks on, opposing counsel." The court imposed a creative nonmonetary sanction: refraining from sua sponte imposition of sanctions on defendant's counsel for conduct that is "as sanctionable" as plaintiff's counsel's conduct (in responding to a request for production of documents). Technically, this case is coded solely as a sanction imposed on plaintiff's counsel. In reality, the judge warned both sides.

Section 4C
Northern District of Georgia Summary

This court granted nineteen of the fifty-nine Rule 11 motions it decided in civil rights cases. Seven of eighteen cases imposed sanctions on a represented plaintiff. (One case involved two orders responding to two motions.) The total number of "other civil rights" (Nature of Suit Code 440) cases was twelve. Two individuals were sanctioned more than once (one three times; one twice). Of the twelve cases, eight involved pro se litigants (seven plaintiffs, one attorney-intervenor). Except for the attorney-intervenor case, all of the pro se cases involved relitigation of issues involving the same parties in either federal or state court. Three of the pro se cases were brought after claims of absolute judicial immunity had been invoked in prior litigation.

In the four cases involving represented parties, one involved sanctions imposed on defendants and their attorneys; one case involved sanctions on a plaintiff's attorney only; one on plaintiff only; and in one case the court did not allocate liability between plaintiff and plaintiff's attorney.

The subject matter of the counseled-plaintiff Nature of Suit Code 440 cases included

- a claim under the Education for the Handicapped Act that defendant violated due process and the plaintiff's First Amendment rights by calling for an administrative hearing (same issue and attorney in two cases) [plaintiff attorney only, $496.30 in one; plaintiff-intervenor, pro se attorney, $1,615],
- a challenge to the "downzoning" of plaintiff's property, alleging an unconstitutional "taking" [plaintiff, unallocated, $18,575.88]; and
- an action by a minority contractor who argued that defendant had deprived it of the benefits of a minority set-aside program [plaintiff, unallocated, $15,327.05].

In two of the three cases, the complaint was the subject of the sanctions. The other involved a motion to recuse and depose the judge. In two of the cases, failure to conduct legal and factual investigations were implicated; in the other, the court based sanctions on the failure to investigate the law.

There were six cases classified as Nature of Suit Code 442 cases, four of which involved sanctions imposed on attorneys for plaintiffs and two of which involved pro se plaintiffs. (One of the four counseled-plaintiff cases appears to have been misclassified. It involved a breach of contract claim that the defendant removed from state court. There were no allegations of violations of civil rights.)

All four of the counseled cases involve sanctions imposed on the attorney specifically and not the client. The amounts of the sanctions were $300, $821, and $6,000; one was an award of fees and costs for opposing a motion, in an amount to be determined. Three of the awards were based on an inadequate inquiry into the law. In two the claims related to forms of relief (punitive damages, mental anguish, injunctive relief) that are not available under Title VII according to recent case law from the circuit court of appeals. In the third, the plaintiff moved for a default on an amended complaint after defendant failed to amend its motion to dismiss or answer the amended complaint. The fourth case also involved a motion for default against a party actively litigating the case. In that case, plaintiff's attorney was sanctioned for failure to check the date of service of the complaint. These latter two instances illustrate "game-playing" to gain an advantage, for example, by using deadlines or technical rules. When this is done without checking on the application of the rules to the case, sanctions may follow. The following two pro se cases also illustrate this high-risk factor.

In the pro se Nature of Suit Code 442 cases, plaintiffs were sanctioned in the amounts of $100 and $187.50. The first was for improper filing of a motion for default judgment against a defendant who had answered. The other was for filing a motion to compel responses to interrogatories before the thirty-day answer period had expired.

Northern District of Georgia Nature of Suit Code 440 Cases

Campbell v. DeKalb School District, Docket Nos. 88-1263 & 1264 (N.D. Ga. 1990)
[counseled plaintiff]

Sanctioned party
Plaintiff's attorney was sanctioned in the amount of $496.30.

Nature of the underlying action/claim and any counterclaims
The original action (#88-1263) was a ten-count complaint brought primarily under the Education for the Handicapped Act and 42 U.S.C. § 1983. The EHA claim arose out of the school district's request for an administrative hearing to determine that it had a right to have a psychological evaluation of the child before developing an individual education plan or ruling on plaintiff's claim for reimbursement for private schooling. A hearing officer held that plaintiff could remove her child from public school and resist testing, but that she would have to agree to testing as a precondition to a claim for reimbursement. Plaintiff asserted that this ruling meant that she prevailed at the administrative level and was entitled to attorneys' fees under the EHA.

The § 1983 claim was that defendant's action in seeking an administrative hearing was itself a violation of due process of law. Plaintiff also claimed that calling

the hearing was intended to chill her First Amendment rights and to retaliate for her filing a complaint with the Office of Civil Rights.

The other claims were state-law tort claims. The district court granted summary judgment on the federal claims and dismissed the state law claims for lack of jurisdiction.

Nature of the claims or defenses that were the subject of the sanctions
Plaintiff's motion to recuse the district judge (filed three days after the summary judgment ruling) and plaintiff's notice of deposition of the judge and her husband were the subjects of the sanctions. The alleged basis for the motion for recusal was that the hearing officer in the EHA case was a tenant in a small office building owned by the judge's husband.

Stated basis for the sanctions
Plaintiff's attorney renewed the motion to disqualify the judge in a second case (apparently an EHA case involving the attorney's child) after the chief judge of the court ruled in the first case that there was no basis in law for the motion (under 28 U.S.C. § 455) and no factual predicate for the notice of deposition.

Comments
The case involved both judicial immunity from process and issue preclusion. This attorney was suspended from the practice of law by the Georgia Supreme Court on March 12, 1990. That decision was based on a finding by a special master, after extended hearings, that the attorney was suffering from "an obsessive compulsive personality disorder with attendant paranoia" and that he "is impaired to the degree that he cannot effectively represent his clients as an attorney."

In imposing sanctions in this case, the court refused to impose sanctions for filing the first motion to recuse and the deposition subpoena. The court also rejected a motion for sanctions based on a lack of inquiry into a charge of corruption against defendant's attorney because the charges had not been made in writing and, hence, were not subject to Rule 11.

See also Jackson v. Atlanta School District, Docket No. 87-1245A (N.D. Ga.. 1987), summarized below, in which the same attorney, representing himself, was sanctioned for filing a groundless motion to intervene and raise the same underlying argument that was involved in this case.

King v. City of Dalton, Docket No. 88-115 (N.D. Ga. 1988)
[counseled plaintiff]

Sanctioned party
Plaintiffs, represented by counsel, were sanctioned in the amount of $18,575.88. The court did not specify as to responsibility of attorneys and parties.

N.D. Ga. Nature of Suit Code 440 Cases

Nature of the underlying action/claim and any counterclaims
Plaintiffs sued the city and the mayor and members of council for voting in favor of "downzoning" plaintiffs' property from an R-2 classification to a less intensive R-1 classification, claiming a deprivation of constitutional rights, including a taking of their property.

Nature of the claims or defenses that were the subject of the sanctions
Plaintiffs' argument that the mayor and council, acting in their official capacities, could be sued for voting on a zoning matter was the subject of the sanction.

Stated basis for the sanctions
The court found that plaintiffs' "failure to investigate more current case-law is unacceptable."

Comments
The court ruled that the mayor and council clearly had absolute immunity from suit under prevailing Supreme Court precedent. Plaintiff had relied on a 1979 Fifth Circuit decision that the Fifth Circuit had repudiated as inconsistent with a later Supreme Court ruling.

Hunter Grading Contracting v. Columbus Co., Docket No. 88-617 (N.D. Ga. 1988) [counseled plaintiff]

Sanctioned party
Plaintiff, represented by counsel, was sanctioned in the amount of $15,307.05, based on the attorneys' fees and expenses of defendant. The court did not specifically allocate liability between plaintiff and its attorney.

Nature of the underlying action/claim and any counterclaims
Plaintiff, a minority construction contractor, filed a complaint alleging that the principal contractors on a construction project had deprived plaintiff of the benefits of a minority business set-aside program. Plaintiff had submitted an oral bid for a contract in the amount of $446,842. Defendant told plaintiff that the minority participation had already been satisfied via a contract with *T* and that plaintiff should submit a more realistic bid for a subcontract. Defendant awarded a subcontract to plaintiff for $238,087. Later, *T* took a lessened role in the project and defendant pressured plaintiff to submit paperwork showing that its contract satisfied the minority set-aside provision. Plaintiff sued, claiming that defendant's action deprived plaintiff of the benefits of the minority set-aside program, claiming the $208,755 difference in the two bids to be lost profits. Plaintiff claimed that these actions violated 42 U.S.C. § 1985(3) and § 2000d.

Nature of the claims or defenses that were the subject of the sanctions
Plaintiff's president and project manager each testified that there was no racial animus behind defendant's actions, that they were solely motivated by eco

nomics. Nevertheless, plaintiff continued to argue against summary judgment on the ground that it had been deprived of a benefit under the minority set-aside program and its regulations. The court granted summary judgment for defendant and later awarded sanctions in a 7.5 page order.

Stated basis for the sanctions
The court found that plaintiff's argument for an economic benefit under the minority set-aside program was not a good-faith argument to extend existing law and that the attorneys failed to investigate the factual basis for the claim.

Comments
Plaintiff was represented. The case did not include an issue of res judicata or an immunity defense.

Cobb County v. Butler, Docket Nos. 87-1838 to 87-1842
(five consolidated cases) (N.D. Ga. 1988)
[counseled defendant]

Sanctioned party
Defendants and their attorneys were sanctioned $1,312.50 in attorneys' fees.

Nature of the underlying action/claim and any counterclaims
Plaintiff, a county government, filed suit to enforce, by injunctive relief, a municipal ordinance that restricted the height of commercial signs in certain zoning districts. Defendants were five businesses with signs that allegedly did not conform to the ordinance. They filed answers and counterclaims, asserting that the ordinance violated their First Amendment rights to "commercial free speech." At the same time they filed petitions for removal to federal court.

Nature of the claims or defenses that were the subject of the sanctions
Defendants argued for federal jurisdiction, despite the absence of any federal claims in the complaint, because the primary issue was the constitutionality of the sign ordinances. They alleged that plaintiffs had artfully drafted the complaint to disguise the federal issues. The court granted plaintiff's motion for remand and imposed sanctions based on the "settled law" since 1887 that a case cannot be removed on the basis of a federal defense. The court held that plaintiff's claim arose under municipal law rather than federal law and that defendants had improperly removed it.

Comments
As in the previous case, sanctions were imposed on a represented party in a case not involving issue preclusion, defendant immunity, or illogical pleadings.

N.D. Ga. Nature of Suit Code 440 Cases

Jackson v. Atlanta School District, Docket No. 87-1245A (N.D. Ga. 1987)
[pro se]

Sanctioned party
An attorney (prospective-intervenor as a plaintiff) was sanctioned twice. Monetary sanctions totaled $1,615. The attorney was not represented by counsel in the sanctions matter.

Nature of the underlying action/claim and any counterclaims
The case involved a claim by a parent on behalf of a child for review of an individual education plan (IEP) under the Education for the Handicapped Act. Plaintiff alleged that defendant's evaluation was incomplete and the school's placement of the child inappropriate.

Nature of the claims or defenses that were the subject of the sanctions
An attorney filed a motion to intervene in his own behalf as "an attorney practicing exclusively in the area of School Law" to challenge the decision of a hearing officer that would "have an impact on his practice and the rights of current and future clients." Plaintiffs were represented by attorneys for the Atlanta Legal Aid Society. The sanctioned attorney claimed that the state hearing officer had erroneously ruled that the school district could stop an IEP meeting with a parent and call for a hearing. The issue in the case was whether or not the school system has a right to call for a hearing.

Stated basis for the sanctions
The court found that neither the attorney nor his clients had standing or a cause of action and that the "motion is so frivolous as to offend the policies against frivolous pleadings set down in Rule 11." The court imposed sanctions sua sponte in the amount of the fees of plaintiffs and defendants, a total of $1,041. In response, the attorney-intervenor filed a motion for reconsideration and clarification, a motion to correct the facts of the case, and a motion for sanctions against both plaintiffs' and defendants' attorneys, a motion to stay the sanctions pending a (premature) appeal, and a motion for a hearing. The court denied all of the motions, finding them to be "as frivolous as the previous motion to intervene" and imposed an additional $574 in sanctions.

Comments
See also *Campbell v. DeKalb School District* (Dkt. # 88-1263 and 1264), page 2 *supra*, in which this same attorney was sanctioned for filing groundless motions to recuse and to depose a judge who ruled against him on the same underlying issue. The attorney was suspended from practice on March 12, 1990.

Talley v. Bennigan's, Docket No. 88-1299 (N.D. Ga 1989)
[pro se]

Sanctioned party
Plaintiff was sanctioned in the amount of $1,044.80 in attorneys' fees and costs incurred in responding to plaintiff's post-judgment motions. Plaintiff was not represented, but the case citations and the form of the complaint suggest assistance by someone with legal training. Plaintiff had been represented by counsel in his earlier workers' compensation proceedings.

Nature of the underlying action/claim and any counterclaims
Plaintiff sued his former employer for wrongful discharge, citing eleven different tort theories. The most viable was a claim that his discharge was in retaliation for reporting an accident to his employer, as required by the state workers' compensation statute.

Nature of the claims or defenses that were the subject of the sanctions
On defendant's motion to dismiss (Rule 12(b)(6)) and for summary judgment, the court ruled that plaintiff's claim were res judicata because they had been settled in an agreement under which plaintiff had accepted $1,000 to settle "all claims and disputes arising out of the accident or injury." The court also ruled that Georgia law clearly does not recognize a public policy exception to the employment-at-will doctrine. Plaintiff filed a flurry of motions after the court's ruling, including a motion to reconsider, a motion to stay, a motion to amend, and a motion to correct and clarify the judgment. The court denied all of these motions.

Stated basis for the sanctions
The court imposed sanctions under Rule 11 for the plaintiff's continuing to litigate the issues that the court resolved by summary judgment.

Comments
The case involved an element of res judicata, which depended on an interpretation of the settlement agreement. Plaintiff's argument re public policy could be construed as an argument for the extension of existing law; the issue seems arguable and the principal case for the contrary position was an intermediate appellate court decision, not a definitive ruling by the the Georgia Supreme Court. The court imposed sanctions not for filing the complaint, however, but for rearguing the issues that the court had already resolved by summary judgment.

Scott v. McLaughlin, Docket No. 88-144 (N.D. Ga. 1990)
[pro se]

Sanctioned party
Plaintiff, appearing pro se, was sanctioned in the amount of $7,097.50 in attorneys' fees and costs of four defendants.

N.D. Ga. Nature of Suit Code 440 Cases

Nature of the underlying action/claim and any counterclaims
The original action was an effort by plaintiff to intervene in a state-court probate proceeding (apparently on behalf of his fiancée, who had obtained a judgment against one of the beneficiaries of the estate). The probate court held that he had no standing to intervene and found that his arguments were frivolous and were imposed for delay. The probate court awarded attorneys' fees and expenses of litigation against plaintiff in the amount of $1,617.50 pursuant to a Georgia statute that is modeled on Fed. R. Civ. P. 11. Plaintiff then filed this action against the judges of the probate court and the parties to the probate litigation, seeking money damages and a declaration that the Georgia abusive litigation statute be declared unconstitutional as violating the First, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, and Tenth Amendments to the U.S. Constitution.

Nature of the claims or defenses that were the subject of the sanctions
Plaintiff argued that the statute has a chilling effect as to claims that "may be seen in the eyes of any judge to be positioned past the cutting edge of the law, or developing new theories or new applications of the law."

Stated basis for the sanctions
The court found no case or statutory support for plaintiff's arguments, noting that the statute is similar to federal Rule 11. The court also found that the claims were being used to harass or cause delay or unnecessary expense.

Comments
This case involved claims relating to the absolute immunity of judges from action. The court construed plaintiff's claims to be an action for damages against the judges and dismissed them on absolute liability grounds. The court also saw plaintiff's arguments as an attempt to obtain federal review of final state decisions.

Winfrey v. American Postal Workers Union, Docket No. 87-2009 (N.D. Ga. 1987)
[pro se]

Sanctioned party
Plaintiff, appearing pro se, was sanctioned in an amount to be determined based on the attorneys' fees of the opposing party. The court also issued an order prohibiting plaintiff from filing any additional papers in this closed case and relieved defendant of any obligation to respond to any future filings.

Nature of the underlying action/claim and any counterclaims
Plaintiff was discharged from employment as a postal worker. The union filed a grievance in his behalf, which was denied. Plaintiff claimed a breach of the union's duty of fair representation and negligence in handling the grievance. He sued the union for $1 million and for back pay. He also complained that the

union discriminated against him on the basis of his religion and on the basis of "myself." The court adopted the magistrate judge's report & recommendation, which recommended dismissal of plaintiff's claims and found that plaintiff's claim of religious discrimination was frivolous and that defendant was entitled to attorneys' fees under the standard of *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412 (1978).

Nature of the claims or defenses that were the subject of the sanctions
After the case was dismissed, plaintiff continued to file papers and motions that had no relation to the status of the case (e.g., motion for injunctive relief, demand for jury trial). Defendant moved for Rule 11 sanctions and for injunctive relief against further filings. The court granted the injunctive relief and warned that further filings would result in Rule 11 sanctions. Plaintiff filed two papers, one captioned "Inadvertence" and the other "Pro Se Motion for Jury Trial Date." Defendant moved for sanctions and the court granted them in the form of reasonable attorneys' fees.

Stated basis for the sanctions
Plaintiff's pleadings had no basis in fact or law.

Comments
The case involves litigation of issues already held to be frivolous, after final judgment and despite warnings from the court.

Cooksey v. Cohen, Docket Nos. 89-486 & 89-732 (N.D. Ga. 1989)
[pro se]

Sanctioned party
Plaintiff, appearing pro se, was sanctioned in the amount of $6,642.40.

Nature of the underlying action/claim and any counterclaims
Plaintiff filed a complaint with the State Bar of Georgia against an attorney who represented him in securing a loan. The state bar wrote to him stating concern about its jurisdiction over the subject of his complaint. Plaintiff filed suit in state court challenging the investigation of his complaint. After hearing argument on judicial immunity from suit, the state court dismissed the claim. Plaintiff then filed a § 1983 action charging the same defendants plus the Supreme Court of Georgia with conspiracy, violation of equal protection and due process, discriminatory enforcement, and something called "maintenance of action" in violation of various laws. The court found the action to be frivolous as to all defendants.

Nature of the claims or defenses that were the subject of the sanctions
Same as above.

Stated basis for the sanctions
Plaintiff's claims had no basis in law.

Comments
This is an action by a pro se litigant against a defendant that the court found to be entitled to judicial immunity. The claim had previously been dismissed in the state court.

The above plaintiff brought the following two cases.

Cooksey v. Abrams, Docket No. 89-572 (N.D. Ga. 1989)
[pro se]

Sanctioned party
Plaintiff, appearing pro se, was sanctioned in the amount of $4,038.48.

Nature of the underlying action/claim and any counterclaims
Plaintiff sued an attorney who represented him in a mortgage loan transaction. He alleged that the attorney asked him to sign predated documents and he refused to do so. The complaint alleged that the attorney was acting under color of state law to deprive him of equal credit opportunity, his right to liberty, and equal protection of law. He also alleged breach of contract and "maintenance of action" "by approaching plaintiff . . . with new predated contract documents." A similar case, absent the Equal Credit Opportunity claim, had been voluntarily dismissed with prejudice in the state court.

Nature of the claims or defenses that were the subject of the sanctions
Same as above.

Stated basis for the sanctions
There was no basis for federal jurisdiction. The federal district court dismissed all claims on the grounds of res judicata, ruling that the Equal Credit Opportunity claim could have been filed in state court with the related action.

Comments
Plaintiff was pro se; the claim had been brought in state court and dismissed with prejudice. The same plaintiff filed the previous case and the following case.

Cooksey v. Turnipseed, Docket No. 89-571 (N.D. Ga. 1989)
[pro se]

Sanctioned party
Plaintiff, appearing pro se, was sanctioned in the amount of $4,405.45 in attorneys' fees.

Nature of the underlying action/claim and any counterclaims
Plaintiff sued two defendants, husband and wife, both of whom are attorneys, in a dispute arising out of a home remodeling contract relating to defendants' home. Because both defendants are attorneys, plaintiff claimed that all their actions were under color of state law. In addition, plaintiff claimed that defendants deprived him of equal protection, due process, and other rights.

Nature of the claims or defenses that were the subject of the sanctions
Same as the preceding case. Plaintiff had filed the same or similar claims in state court and had voluntarily dismissed them with prejudice.

Stated basis for the sanctions
The court invited a motion for sanctions and issued an injunction prohibiting plaintiff from filing additional motions or other pleadings against these defendants. The court held that the claims were barred as res judicata.

Comments
This is the same plaintiff as in the previous two cases. Defendants did attempt to collect the sanctions judgment by writ of execution, but there is no evidence in the record that any property was obtained under the writ.

Hatfield v. Huff, Docket No. 89-496 (N.D. Ga. 1989)
[pro se]

Sanctioned party
Plaintiff, appearing pro se, was sanctioned in the amount of $3,665.43, his ex-wife's attorneys' fees.

Nature of the underlying action/claim and any counterclaims
Plaintiff sued his ex-wife, two judges of the county juvenile court, a probation officer, two attorneys, numerous deputy sheriffs, and others under 42 U.S.C. §§ 1983, 1985, and 1986 for depriving him of "substantive due process of law." Plaintiff claimed that defendants conspired to deprive him of the "lawful state created custody of his minor son." After plaintiff was arrested on a theft charge and was in jail, defendant brought an action for custody. She was awarded temporary custody, pending an investigation. That decision was affirmed on appeal in the state courts. Plaintiff then filed an action for damages against the judge who awarded temporary custody. That case was dismissed on the basis of judicial immunity. Another state judge granted permanent custody to his ex-wife. Plaintiff then sued both judges and others in the U.S. District Court for the Middle District of Georgia.

Nature of the claims or defenses that were the subject of the sanctions
Same as above. The complaint was the target.

Stated basis for the sanctions
The court dismissed plaintiff's claims as frivolous under 28 U.S.C. § 1915(d) because of lack of federal jurisdiction and because the claims were barred as res judicata.

Comments
This case involved a pro se complaint against judges with immunity. Both federal and state courts had upheld judicial immunity defenses.

Northern District of Georgia Nature of Suit Code 442 Cases

Evans v. Rapid Mart, Ltd., Docket No. 87-01883 (N. D. Ga. 1988)
[counseled plaintiff]

Sanctioned party
Plaintiff's attorney (and expressly not the client) was sanctioned in the amount of $300 and the portions of the complaint claiming exemplary and punitive damages and damages for mental anguish were stricken from the amended complaint.

Nature of the underlying action/claim and any counterclaims
Plaintiff sued her former employer under Title VII for discrimination based on gender. Plaintiff claimed that defendant discharged her in retaliation for her filing of a complaint with the EEOC to protest her demotion from manager to cashier because of her pregnancy.

Nature of the claims or defenses that were the subject of the sanctions
Plaintiff included claims for "humiliation, mental pain and anguish" and for "exemplary and punitive damages" in her complaint. In amending her complaint, after being advised during her client's deposition that Title VII does not permit such damages, plaintiff repeated her claim for damages for humiliation and mental pain and anguish, and she did not remove the claim for punitive damages.

Stated basis for the sanctions
Plaintiff's counsel failed to make an inquiry into whether the damage claims were warranted by law or a good-faith argument for extension, modification, or reversal of existing law. Plaintiff failed to respond to defendant's motion for sanctions, and plaintiff has not attempted to justify her actions.

Comments
Defendant sought $550 and the court found that to be excessive and awarded $300.

Groves v. Systemax, Inc., Docket No. 87-02802 (N.D. Ga. 1989)
[counseled plaintiff]

Sanctioned party
Plaintiff's attorney was sanctioned in an amount to be determined based on defendant's attorneys' fees incurred in responding to two specific claims by plaintiff's attorney and in filing the Rule 11 motion. After that order the parties stipulated to an order setting the award at $6,000, payable in monthly instalments.

Nature of the underlying action/claim and any counterclaims
Plaintiff brought a claim for compensatory and punitive damages and injunctive relief under Title VII of the Civil Rights Act. The basis of the claim was that plaintiff was constructively discharged on the basis of her pregnancy coupled with defendant's policy of not granting medical leave to any employee during the first year of employment.

Nature of the claims or defenses that were the subject of the sanctions
Defendant moved for sanctions and attorneys' fees under Rule 11 and 42 U.S.C. § 1988 after the court granted summary judgment on the briefs of the parties and plaintiff's agreement with defendant's statement of facts. Plaintiff had dropped her claim for injunctive relief and punitive damages after defendant filed its brief, which cited a recent ruling of the Eleventh Circuit Court of Appeals that those remedies are not available in Title VII cases. After a magistrate judge issued a report and recommendation that summary judgment be granted, plaintiff objected to some of the magistrate judge's findings of fact, which were based on defendant's statement of facts, with which plaintiff had previously agreed.

Plaintiff's attorney argued that abandonment of the claims for injunctive relief and punitive damages was not an admission that these claims were groundless, but simply an economic decision that plaintiff could not afford to challenge defendant's interpretation of the current law of the circuit. Plaintiff's attorney also reasserted his belief that his challenge to the magistrate judge's findings of fact had merit.

Stated basis for the sanctions
The magistrate judge found that the abandonment of claims was sanctionable and cited in support of that finding plaintiff's attorney's statement that "The request for such damages is not frivolous although it may be in the face of most of the authority in recent cases." The magistrate judge also found that plaintiff's objections to the magistrate judge's report and recommendation attempted to introduce evidence of facts contrary to those previously admitted as accurate and undisputed.

Comments
This is a case in which plaintiff's attorney claimed to be making an argument for extension, modification, or reversal of existing law and then abandoned this

claim in the face of the opposition briefs because of limited economic resources to pursue the claim through an appeal. Plaintiff also claimed a lack of intent to abuse the litigation process, noting that he had stipulated facts and forgone discovery in an effort to focus on the disputed issues of law.

Hicks v. Prudential Insurance Co., Docket No. 88-00193 (N. D. Ga. 1988)
[counseled plaintiff]

Sanctioned party
Plaintiff's attorney was sanctioned in the amount of $821.

Nature of the underlying action/claim and any counterclaims
Plaintiff claimed that defendant breached a contract of employment by terminating plaintiff for failure to meet sales productivity standards. There were no allegations of discrimination and no claims of violation of civil rights. The case is a simple breach of contract case filed in state court and removed to federal court solely on grounds of diversity of citizenship. The case appears to be misclassified.

Nature of the claims or defenses that were the subject of the sanctions
Plaintiff moved for a default judgment, claiming that defendant had been in default before filing the removal petition and that the removal petition had been untimely. Plaintiff also stated that he had reviewed the file in federal court and that no answer had been filed more than two months after removal. The federal court file, however, showed that the answer had been filed within five days after removal.

Stated basis for the sanctions
Plaintiff failed to ascertain the date of service by the sheriff, which showed that the petition for removal was indeed filed on a timely basis. Plaintiff also refused to withdraw the motion for default judgment even after being apprised of the dates of service and of filing the answer.

Comments
The case does not involve civil rights in any way. It appears to be misclassified.

Defendant claimed fourteen hours of work were expended in opposing the motion for default. The court found this excessive and awarded $821 based on a finding that six hours of work would have been reasonable.

Plaintiff's pleadings were difficult to comprehend in parts and there appear to be clear misstatements of facts.

Taylor v. Fulton DeKalb Hospital Auth., Docket No. 89-2460 (N.D. Ga. 1990)
[counseled plaintiff]

Sanctioned party
Plaintiff's attorney alone, "and not his client," was ordered to pay defendant's costs in opposing plaintiff's motion for a default judgment and in filing an amendment to defendant's motion to dismiss (amount undetermined).

Nature of the underlying action/claim and any counterclaims
Plaintiff filed claims for violations of 42 U.S.C. §§ 1981, 1983, 1985, the Fair Labor Standards Act, and the state-law tort of intentional infliction of emotional distress. All claims arose out of plaintiff's discharge from her position of head nurse.

Nature of the claims or defenses that were the subject of the sanctions
Plaintiff filed a motion to dismiss the complaint and plaintiff filed an amended complaint. Defendant failed to amend its motion to dismiss or answer the amended complaint. Plaintiff moved for a default judgment and defendant moved for Rule 11 sanctions on the ground that a pending motion to dismiss need not be amended to challenge an amended complaint. Plaintiff insisted that Fed. R. Civ. P. 15(a) demands a response within ten days of the filing of an amended complaint.

Stated basis for the sanctions
The court found that plaintiff's motion for default judgment was not warranted by existing law and was unreasonable in light of plaintiff's knowledge of defendant's active participation in defending the case, including appearing at a motions hearing three weeks before plaintiff's motion for default. The court also found that plaintiff's motion "served only to further delay this litigation."

Comments
Plaintiff appealed the sanctions order; the appeal was dismissed because the court had not specified the amount and, therefore, the order was not final and appealable. The litigation seemed generally acrimonious. Defendant had previously moved to disqualify plaintiff's attorney (later denied) and to impose Rule 11 sanctions against plaintiff for falsely certifying that plaintiff mailed a notice of a third-party deposition to defendant (ruling postponed).

Alexander v. Stewart James Co., Docket No. 88-01120 (N. D. Ga. 1989)
[pro se]

Sanctioned party
Plaintiff, appearing pro se, was sanctioned in the amount of $187.50.

Nature of the underlying action/claim and any counterclaims
Plaintiff claimed that she was the victim of racial discrimination and sexual harassment during her employment with the defendant.

Nature of the claims or defenses that were the subject of the sanctions
Plaintiff filed a motion for default and default judgment. Defendant had previously filed a motion to dismiss the complaint and had later filed an answer to plaintiff's amended complaint. The magistrate judge, sua sponte, issued an order to show cause why Rule 11 sanctions should not be imposed.

Stated basis for the sanctions
Plaintiff filed the motion with knowledge that defendant had filed an answer to her complaint more than four months earlier.

Comments
Plaintiff filed numerous motions that were legally meaningless. Her original complaint included a number of Latin phrases. The court granted plaintiff's motion to strike these phrases because they did not meet the "short and plain statement" standard of Rule 8. Ultimately, her claim was dismissed for want of prosecution about a year after the Rule 11 activity (which was the last activity before dismissal).

Brazil v. Powell, Goldstein, Docket No. 89-00192 (N.D. Ga. 1990)
[pro se]

Sanctioned party
Plaintiff, appearing pro se, was sanctioned in the amount of $100, representing defendant's fee for filing a response to a frivolous motion to compel.

Nature of the underlying action/claim and any counterclaims
Plaintiff, a black female and a former employee of the defendant-law firm in its word-processing department, filed suit under Title VII of the Civil Rights Act, alleging that the firm discriminated against her on racial grounds in discharging her.

Nature of the claims or defenses that were the subject of the sanctions
Plaintiff filed a motion to compel responses to interrogatories and a request for production of documents. Plaintiff was under the misimpression that the "rules" required a response within fifteen days. She called defendant's counsel to ask when the responses would be filed and he responded that the rules permitted thirty days. She reviewed the local rules, found no time limit, and filed her motion before the thirty days expired. Defendant moved for sanctions under Rule 11, claiming that plaintiff's motion was a willful harassment of defendant.

Stated basis for the sanctions

The magistrate judge found that it was clear that the motion to compel was improperly filed and that plaintiff failed to show cause why sanctions should not be imposed. The court affirmed, rejecting plaintiff's claim that the violation was an unknowing error.

Section 4D
Eastern District of Michigan Summary

This court granted twelve of the twenty-nine Rule 11 motions it decided in civil rights cases. Six of eleven cases imposed sanctions on a represented plaintiff. (One case involved two orders responding to two motions.)

The total number of "other civil rights" (Nature of Suit Code 440) cases in which sanctions were imposed in Eastern Michigan was ten. In four cases, pro se plaintiffs were sanctioned. Five of the remaining cases involved plaintiffs who were represented by counsel, and one involved a defendant-counterclaimant who was represented. In one of the counseled-plaintiff cases, the award was specifically imposed on the attorney. That award, however, was reversed on appeal. In the other cases, the court did not specify whether plaintiff or plaintiff's attorney, or both, was liable.

The subject matter of the counseled-plaintiff cases included:

- a false arrest claim alleging a lack of probable cause to arrest a driver whose driving restriction had been removed [plaintiff attorney only; $718.25; reversed on appeal];
- an action against a federal agency for retaliatory discharge of plaintiff in response to filing EEO claims and pressing for accommodation of religious practices [plaintiff, unallocated; $1,353.20, reduced to $500 on reconsideration];
- an action for damages allegedly inflicted by a sheriff's deputy while plaintiff was in custody [plaintiff, unallocated; $545];
- an action for declaratory and injunctive relief relating to enforcement of a clause in a divorce decree that permitted the husband to deduct from alimony the amount of joint debts that wife discharged in bankruptcy [plaintiff only; $350, affirmed on appeal];
- a claim that a private insurance provider refused to contract with a black psychologist because of race [plaintiff, unallocated; $3,912.33].

In three of the cases, the complaint was the subject of the sanctions. The other cases involved a motion to compel and a motion for an automatic stay. Three of the cases were based on lack of an adequate legal inquiry, one on lack of an adequate factual inquiry, and one on both of those grounds.

One of the awards was reversed on appeal; one affirmed.

There was one employment discrimination (Nature of Suit Code 442) case in which sanctions were imposed. Sanctions of approximately $680 were imposed

on counsel for plaintiff for filing a motion to remand without an adequate inquiry into the law.

Eastern District of Michigan Nature of Suit Code 440 Cases

Patterson v. City of Laingsburg, Docket No. 88-40262 (E.D. Mich. 1989)
[counseled plaintiff]

Sanctioned party
Sanctions in the amount of $718.25 were imposed on plaintiff's attorney and reversed (3–0) on appeal.

Nature of the underlying action/claim and any counterclaims
Plaintiff sued for false arrest under 42 U.S.C. § 1983. Plaintiff's drivers' license had been restricted, but the restriction was removed after three days. Plaintiff was stopped and arrested for violating the restriction after the arresting officers asked for a computer check of plaintiff's record. The removal of the restriction had not been updated; plaintiff claimed that the arrest was without probable cause.

Nature of the claims or defenses that were the subject of the sanctions
After the case had been pending for about nine months, plaintiff filed for bankruptcy and filed with the court and the defendants a notice of automatic stay. Defendant opposed application of the stay to the case on the grounds that it applies only to actions against a bankrupt and not to an action initiated by a bankrupt as plaintiff. Defendant moved for sanctions in opposing the motion for automatic stay.

After the court accepted the magistrate judge's report and recommendation that there was probable cause for the arrest, defendant requested attorneys' fees based on the filing of a groundless complaint.

Stated basis for the sanctions
The court denied the request for attorneys' fees based on the complaint, finding that there was sufficient factual basis for arguing the lack of probable cause.

The court found that plaintiff's attorney had no basis in law for filing the application for a stay based on plaintiff's bankruptcy filing and imposed sanctions limited to defendant's costs in opposing the motion to stay the proceedings.

Comments
This is a case in which an attorney was sanctioned because of a groundless legal argument. Plaintiff's attorney, however, did not claim to make an argument for the extension, modification, or reversal of existing law. The sanctioned claim did not relate to civil rights. A panel of the U.S. Court of Appeals for the Sixth Circuit reversed the imposition of sanctions on the merits of the sanctions issue in a 3–0

decision. No reason was stated for the reversal of sanctions. That panel affirmed the grant of summary judgment for the defendants on the merits of the case.

Riselay v. Secretary, Health & Human Services,
Docket No. 88-40251 (E.D. Mich. 1989)
[counseled plaintiff]

Sanctioned party
Plaintiff, represented by counsel, was sanctioned originally in the amount of $1353.20, reduced on reconsideration to $500. The court did not specify whether plaintiff or attorney or both were liable.

Nature of the underlying action/claim and any counterclaims
Plaintiff had been employed by the Social Security Administration for fifteen years. After his discharge, he filed suit, claiming that the reason for his discharge was based on his filing of EEO complaints and pressing for accommodation of his religious beliefs and practices as a Christian Scientist.

Nature of the claims or defenses that were the subject of the sanctions
After the parties stipulated to a dismissal of the claim (without any response from the plaintiff to the government's motions to dismiss, including a Rule 12(b)(6) motion alleging failure to state a claim), the government moved for sanctions based on the lack of legal support for the complaint (which sought a *Bivens* remedy based on an employment relationship, an unprecedented step).

Stated basis for the sanctions
Plaintiff presented no legal basis for the complaint. On a motion for reconsideration, plaintiff argued an intent to modify existing law, but the court rejected that argument because no claim to modify existing law was presented before the motion for reconsideration of sanctions.

Comments
The court reduced the amount of sanctions from full attorneys' fees of $1,353.20 to $500 because the smaller amount would be sufficient to ensure compliance with Rule 11 in the future.

Bright v. Wilson, Docket No. 89-40198 (E.D. Mich. 1990)
[counseled plaintiff]

Sanctioned party
Plaintiff, represented by counsel, was sanctioned in the amount of $545. The court did not specify whether plaintiff or attorney or both were liable.

E.D. Mich. Nature of Suit Code 440 Cases

Nature of the underlying action/claim and any counterclaims
Plaintiff claimed damages for personal injuries allegedly inflicted by a sheriff's deputy while plaintiff was in custody.

Nature of the claims or defenses that were the subject of the sanctions
Plaintiff's claim that the county sheriff and the board of commissioners were liable for injuries inflicted by the deputy sheriffs.

Stated basis for the sanctions
Plaintiff failed to investigate the facts and failed to present any evidence linking the dismissed defendants to plaintiff's injuries. Plaintiff amended his complaint by dropping these defendants the day after defendants filed a motion for summary judgment.

Comments
The case involved application of qualified sovereign immunity to the facts of the case. As of September 1990, the case was still pending against the other defendants.

Mitan v. Mitan, Docket No. 88-74867 (E.D. Mich. 1989)
[counseled plaintiff]

Sanctioned party
Plaintiff (alone) was sanctioned in the amount of $350. Plaintiff's son represented her on the sanctions issue (and apparently drafted the complaint). Sanctions were imposed solely on plaintiff.

Nature of the underlying action/claim and any counterclaims
Citing 42 U.S.C. § 1983 as her basis for a claim, plaintiff sought a declaratory judgment and injunctive relief against enforcement of a clause in a divorce property settlement that was incorporated in the final decree. The clause allowed the husband to deduct from his alimony obligation the amount of any payments of joint debts that his wife discharged in bankruptcy. Plaintiff claimed that this clause interfered with her statutory right to file bankruptcy.

Nature of the claims or defenses that were the subject of the sanctions
The motion for sanctions challenged the substance of the complaint and the jurisdiction of the court.

Stated basis for the sanctions
The court held that the complaint was frivolous because there was no state action and no statutory right to support an action under § 1983, because the court had no subject-matter jurisdiction to review a divorce settlement and decree, and because plaintiff had previously litigated the same claims throughout the state system and up to the U.S. Supreme Court.

Comments
The case included a patently valid defense of issue preclusion as well as an effort to engage the federal courts in resolution of domestic relations issues (which are generally outside of the subject-matter jurisdiction of federal courts). Plaintiff appealed and a panel of the U.S. Court of Appeals for the Sixth Circuit affirmed the dismissal of the complaint and the sanctions order. That same panel denied a petition to rehear the order "including her challenge to the allowance of attorney's fees."

Thomas v. Blue Cross/Blue Shield, Docket No. 88-73549 (E.D. Mich. 1989)
[counseled plaintiff]

Sanctioned party
Plaintiff, represented by counsel, was sanctioned in the amount of $3,912.33. Liability was not specified between plaintiff and his attorney.

Nature of the underlying action/claim and any counterclaims
Plaintiff is a licensed psychologist who is black. He contracted to purchase a clinic that had been approved by defendant as a provider whose patients would be eligible for reimbursement by Blue Cross/Blue Shield. Defendant refused to approve transfer of the provider status and plaintiff sued on the grounds (1) that the refusal to contract with plaintiff was racially motivated and (2) that plaintiff was the third-party beneficiary of defendant's contractual relationship with the prior clinic owner.

Nature of the claims or defenses that were the subject of the sanctions
Plaintiff alleged as a factual basis for the discrimination claim that defendant had approved him as an owner until it discovered that he was black. After a personal meeting, a representative of defendant reported that plaintiff "did not look like an owner." Defendant claimed that this statement referred to plaintiff's casual dress, not his race. In a deposition, plaintiff's witness reinforced defendant's version, expressing surprise that plaintiff would dress in sweater and jeans for a business meeting.

Stated basis for the sanctions
Plaintiff's lack of inquiry into the factual basis for the claims of racial discrimination.

Comments
Defendant moved for sanctions after plaintiff's voluntary dismissal of the federal claims. There was some suggestion that plaintiff had filed the discrimination claims to gain federal jurisdiction and a better forum for discovery. The case included broad allegations of an offense involving moral turpitude (racial discrim-

ination). Such allegations appear to increase the risk of a motion for sanctions if there has not been an adequate factual inquiry.

Moore v. Political Office Watchers, Docket No. 88-75116 (E.D. Mich. 1989)
[counseled defendant]

Sanctioned party
Sanctions were imposed on the attorney for defendant-counterclaimant in the amount of $1,192.50.

Nature of the underlying action/claim and any counterclaims
Plaintiffs, the former mayor of Pontiac, Michigan, and his reelection finance committee, sued a non-profit corporation for defamation and libel relating to allegations of drug use by the mayor. The issues arose during a recall campaign against the mayor. Defendants brought in the City of Pontiac, the Pontiac police department, and an individual. Defendants also cross-claimed on the grounds that the suit interfered with their First Amendment rights and that campaign materials had been converted.

Nature of the claims or defenses that were the subject of the sanctions
Defendants claimed that a plaintiff's attorney witnessed the plaintiff's use of defendant's property and that her law firm should be disqualified because defendant proposed to call her as a witness. Defendant also alleged that plaintiff's lawyer was in possession of the allegedly stolen placard, which she allegedly used in support of plaintiff's motion for a temporary restraining order.

Stated basis for the sanctions
The magistrate judge recommended sanctions on the grounds that defendant failed to present any facts that would tend to show that plaintiff's lawyer met the standard for disqualification as a "*necessary* witness." All of the facts alleged to be within her knowledge were also known and provable by other witnesses. Defendant also failed to show any legal basis for imputing a disqualification to the entire law firm. The rule requires a conflict of interest, and defendant did not pinpoint any specific conflicts. Defendant also failed to conduct an adequate inquiry into existing law, as evidenced by the fact that they cited to Michigan ethics rules that had been superseded eight months earlier.

Comments
Sanctions were imposed on the attorney for the defendant-counterclaimant, for pursing a factually and legally groundless motion to disqualify plaintiff's counsel.

Haynes v. Brown, Docket No. 89-73340 (E.D. Mich. 1990)
[pro se]

Sanctioned party
Plaintiff, appearing pro se, was sanctioned in the amount of $27.10.

Nature of the underlying action/claim and any counterclaims
Plaintiff, a former prisoner, sued three prison employees and alleged that they tampered with his mail and failed to deliver it.

Nature of the claims or defenses that were the subject of the sanctions
The motion for sanctions was directed at the complaint. Defendants claimed and the magistrate judge found that the three named defendants did not have any responsibility for handling plaintiff's mail.

Stated basis for the sanctions
Plaintiff failed to conduct a factual inquiry.

Comments
Plaintiff was pro se. The complaint raised an issue of qualified immunity of prison officials. The court also imposed costs on plaintiff in the amount of $47.10, citing Rule 54(d). The total of costs and sanctions was $74.20.

Vecchio v. West Bloomfield, Docket No. 89-72904 (E.D. Mich. 1990)
[pro se]

Sanctioned party
Plaintiffs were sanctioned in an amount not yet determined. Both plaintiffs were pro se at the time of the sanctions. Liability for the sanctions was not specified between the two parties (one of whom was attorney for the other at the time of filing, but who was later disqualified as having a conflict of interest).

Nature of the underlying action/claim and any counterclaims
Plaintiffs claimed a deprivation of civil rights under 42 U.S.C. § 1983, a violation of Title VII of the Civil Rights Act, false arrest, assault and battery, intentional infliction of emotional distress, and punitive damages arising out of an arrest. One plaintiff is an attorney, the other plaintiff his female companion. They were arrested for resisting arrest after being stopped and detained, they allege, without probable cause.

Nature of the claims or defenses that were the subject of the sanctions
Defendant moved for sanctions and dismissal on the grounds that plaintiff twice failed to appear for scheduled depositions and that he invoked the physician–patient privilege regarding his medical records. Plaintiff also proffered (but did not file) a motion to compel. He withdrew the motion after defendant prepared a response.

Stated basis for the sanctions
The court found that there was no basis in law or fact for the motion to compel, there being no requests for discovery from plaintiff.

Comments
The sanctions award was based on both Rule 37 and Rule 11. This case was still pending as of September 1990, six months after the sanctions ruling. The case did involve qualified immunity of a governmental unit.

Siegle v. Badalow, Docket No. 89-71449 (E.D. Mich. 1989)
[pro se]

Sanctioned party
Plaintiff, appearing pro se, was sanctioned by a court order prohibiting him "from filing further actions in this Court that contest the validity of his divorce or the lawful existence of the State of Michigan."

Nature of the underlying action/claim and any counterclaims
Plaintiff asserts a number of constitutional violations that apparently arise from the state's issuance of a divorce decree and enforcing that decree by involuntarily transferring property rights. Plaintiff sues the governor, the state attorney general, the mayor of Dearborn Heights, and the city, county, and state governments. He claims that the state has violated the First Amendment (by incorporating Mormon and Jewish practices into its no-fault divorce system), that it fails to provide qualified judges and a legitimate forum for petition for redress of grievances (by allowing the private bar to license attorneys who then become judges), that it usurps the jurisdiction of juries, that it fails to provide a republican form of government (because of the absence of qualified judges), and that by allowing filing fees to be used for state retirement funds it compromises all judges.

Nature of the claims or defenses that were the subject of the sanctions
The court limited its order to claims relating to the validity of plaintiff's divorce and to claims relating to the lawful existence of the state.

Stated basis for the sanctions
Plaintiff had once previously attempted to litigate and appeal the same claims in the same court.

Comments
Plaintiff's complaint had previously been dismissed and plaintiff's appeal was dismissed for want of prosecution. Plaintiff's claims also involved qualified, and perhaps absolute, immunity as to some defendants.

Despite a motion for attorneys' fees, the court did not award fees. Plaintiff did not specify the sanctions order as part of his appeal.

Mullins v. Mester, Docket No. 89-73020 (E.D. Mich. 1990)
[pro se]

Sanctioned party
Plaintiff, appearing pro se, was sanctioned in a total amount of $3,000, representing attorneys' fees of $1,000 each for three defendants.

Nature of the underlying action/claim and any counterclaims
Plaintiff sued state election officials and the State Bar of Michigan in one twenty-four-page complaint seeking damages of $100 million and an order that "all citizens be allowed to have their name on the ballot for judge or any office or position available by appointment or election." He also asked that he be allowed to petition for redress of grievances before a qualified judge. The gist of his complaint was that the state had failed to establish a system of licensing lawyers, that the State Bar of Michigan was not authorized to license lawyers, and that because all lawyers are improperly licensed, the state and the bar have created a monopoly of unqualified lawyers and judges. He alleged violations of the U.S. Constitution, the Judiciary Act, and RICO as well as a number of state-law claims.

Nature of the claims or defenses that were the subject of the sanctions
The complaint as a whole was the subject of sanctions. Plaintiff had previously filed an almost identical complaint in federal court, and it had been dismissed as being without a rational basis in law or fact.

Stated basis for the sanctions
Defendants moved for sanctions, and the court found a lack of adequate inquiry into the facts underlying the complaint. The court also found that plaintiff could not have reasonably believed that he had a valid claim because the prior dismissal was based on the absence of a rational factual or legal basis. In dismissing the second complaint, the court also found that the state officials were immune.

Comments
This pro se case involved both issue preclusion and sovereign immunity issues.

Eastern District of Michigan Nature of Suit Code 442 Case

Stevens v. Consolidated Freightways, Docket No. 88-40289 (E.D. Mich. 1988)
[counseled plaintiff]

Sanctioned party
Plaintiff was represented by counsel until the sanctions issue was raised. Upon referral of the sanctions issue, the magistrate judge suggested that plaintiff's attorney had a conflict of interest with his client. The attorney then withdrew from representation of the client, who appeared pro se at subsequent hearings.

E.D. Mich. Nature of Suit Code 442 Cases

Sanctions were imposed solely on plaintiff's attorney, in the amount of approximately $680, for a violation of Rule 11. The court found that plaintiff's attorney also violated 28 U.S.C. § 1927 by failing to dismiss a case after its lack of merit became obvious. The court awarded a total of $7,392.50 for the two violations.

Nature of the underlying action/claim and any counterclaims

Plaintiff sued his former employer in state court for violation of an express or implied contract of employment and for age discrimination in violation of both state and federal laws. Defendant removed the case to federal court and plaintiff moved to remand to state court.

Nature of the claims or defenses that were the subject of the sanctions

Plaintiff argued that the state-law claims were the primary claims, that state courts have concurrent jurisdiction over the federal age discrimination claim, that the state courts were more competent to handle the state-law claims, and that the federal court's management procedures and scheduling order were not as flexible as state procedures in permitting adequate discovery before trial.

Stated basis for the sanctions

The court found that plaintiff "failed to cite any legal authority to support his motion to remand" and that the existence of concurrent jurisdiction is not a sufficient reason to remand.

Comments

Plaintiff conceded during his deposition that he had been fired for failure to perform his job. Plaintiff's attorney agreed to dismiss the case voluntarily but later refused to dismiss it. Defendant filed a motion for summary judgment and plaintiff's attorney voluntarily dismissed the case with prejudice. Defendant moved for attorneys' fees under Rule 11, 42 U.S.C. § 1988, and 28 U.S.C. § 1927; the court referred the matter to the magistrate judge. The magistrate judge ruled that Rule 11 did not apply to the full application for fees because plaintiff did not file any opposition to the motion for summary judgment, that § 1988 did not apply to an ADEA claim, and that plaintiff's attorney had vexatiously multiplied the proceedings contrary to § 1927. The magistrate judge recommended sanctions of $7,392.550 for the violation of Rule 11 relating to the motion to remand and for the violation of § 1927 relating to the summary judgment proceedings. The number of hours attributable to the motion to remand would have resulted in an award under Rule 11 of approximately $680. The district court followed the magistrate judge's recommendation.

The case is pending on appeal.

Section 4E
Western District of Texas Summary

This court granted fifteen of the forty-nine Rule 11 motions it decided in civil rights cases. Nine of the fourteen cases imposed sanctions on a represented plaintiff. (One case involved two orders responding to two motions.)

The total number of "other civil rights" (Nature of Suit Code 440) cases in Western Texas was nine, six of which involved counseled-plaintiffs. The subject matter covered a broad spectrum of civil litigation. The counseled cases involved

- a challenge to a statute allowing a mandatory continuance in cases involving members of the legislature [plaintiff (unallocated), $1,583.10];
- an action for damages for negligent arrest and failure to provide medical care [plaintiff (unallocated), $100]
- a challenge to a state university tenure decision, including claims of gender-based discrimination and interference with plaintiff's right of free association (plaintiff's counsel only, continuing legal education credits plus $500, the latter vacated on appeal);
- a constitutional challenge to the disqualification and recusal practices of Texas Supreme Court justices [plaintiff and attorney, $23,189.06];
- a due process challenge to the set-off of federal workers' compensation overpayments against federal retirement payments [plaintiff's attorney only; $200 fine]; and
- a RICO claim that judges, prosecutors, and bank officials conspired to use the grand jury process to collect a civil debt [plaintiff's attorney only, $6,619.07].

In three of the Nature of Suit Code 440 cases, sanctions were imposed as a final matter exclusively against plaintiff's attorney; in two, sanctions were imposed on plaintiff without specifying the attorney's liability, if any; and in one, sanctions were imposed on both plaintiff and plaintiff's attorney.

The sanctions imposed solely on counsel were $200, $500 (vacated on appeal), and $6,619.07. In the $500 case, the district court mandated continuing legal education in ethics and procedure and reinstated that sanction on remand. The case involving both plaintiff and plaintiff's attorney resulted in an award of $23,189.06. The unallocated cases involved $100 and $1,583.10.

There were three pro se Nature of Suit Code 440 cases; two involved businessmen. One businessman-defendant was sanctioned in the amount of $1,000; the other, a former bail bondsman, was sanctioned in the amount of $1,500. The third

award against a pro se litigant included attorneys' fees and costs, but it was not reduced to judgment.

In four of the six counseled Nature of Suit Code 440 cases, the complaint was the subject of the sanctions and in three cases, the court found a lack of subject-matter jurisdiction. One case involved an application for entry of default and the other involved a motion to remand the case to state court.

In four of the six counseled Nature of Suit Code 440 cases, a ground for imposing sanctions was the failure of counsel to conduct an adequate legal inquiry. In one case the court found an inadequate factual inquiry and in the other inadequate factual and legal inquiries. In two cases the court also found that plaintiff's claims were filed for the improper purpose of harassing state officials. Two of the cases involved questions of claim preclusion and three involved issues of sovereign immunity.

Two of the three pro se sanctions were directed at the lack of a factual or legal basis for a complaint and a counterclaim. The other was directed at a petition to remove a case, without any legal basis for showing federal jurisdiction.

There were five employment discrimination (Nature of Suit Code 442) cases. Three involved sanctions imposed on counseled plaintiffs; two involved sanctions imposed on counseled defendants. The amounts imposed on plaintiffs were $500, $2,175, and an amount to be determined. The $2,175 was not allocated between plaintiff and plaintiff's attorney. The other two awards were imposed solely on plaintiff's attorney. The amounts imposed on defendants were $71 (allocation unspecified) and $750 (imposed on attorney).

Sanctions were imposed on plaintiffs for filing claims after the statute of limitations had run; for violation of a scheduling order; and for filing a complaint after the statute of limitations had run and without meeting the statutory prerequisites. Sanctions were imposed on defendants for filing of three discovery motions to harass plaintiff and for refusal to acknowledge service of process under Rule 4(c).

Western District of Texas Nature of Suit Code 440 cases

Shine-Lagow v. Shine, Docket No. 87-00147 (W.D. Tex. 1987)
[counseled plaintiff]

Sanctioned party

Plaintiff was represented. The court imposed sanctions in the amount of $1,583.10 and did not specify whether plaintiff or counsel or both were liable.

Nature of the underlying action/claim and any counterclaims

Plaintiffs were a divorced woman, her two minor children by a prior marriage, and her current husband. They sued their ex-husband and two judges of the

Texas state district court, the latter being joined "with great hesitancy, if not regret" (Complaint ¶ 10), on the theory that they would be essential parties if the court granted the injunctive relief sought by plaintiffs. Plaintiffs sought to enjoin enforcement of a Texas statute (which plaintiff described as a mandatory continuance statute) that provides for an "almost automatic continuance" for members of the state legislature (Complaint ¶ 18).

Plaintiff has custody of the two children of the marriage, but the terms of the divorce decree prohibit her from moving them from Bell County without the permission of the court. Plaintiff filed a motion in state court and her ex-husband, a state legislator, invoked the statute. Plaintiff filed for a writ of mandamus in the Texas Court of Appeals, which denied relief. Plaintiff then brought this action attacking the constitutionality of the mandatory continuance statute as a violation of procedural due process and an interference with the constitutional rights to marry and raise a family.

Nature of the claims or defenses that were the subject of the sanctions
Defendants challenged the complaint, especially the jurisdiction of the court to hear a challenge before plaintiff exhausted state remedies.

Stated basis for the sanctions
The court imposed sanctions at the request of the state-court judge on the grounds that plaintiff had failed to exhaust state remedies as required by the case of *McWilliams v. McWilliams*, 804 F.2d 1400 (5th Cir. 1986), which suggested a lack of adequate legal inquiry. The court refused to grant sanctions to the ex-husband.

Comments
The case involved a question of claim preclusion as well as judicial immunity from suit. Plaintiff did not, however, seek damages from the judges. Counsel for plaintiff claimed that he consulted with a law professor in Houston before filing the papers and that she advised him to follow the procedure chosen.

Lee v. Bexar County, Docket No. 87-01604 (W.D. Tex. 1988)
[counseled plaintiff]

Sanctioned party
Plaintiff was represented by counsel. Plaintiff's attorney (solely) was sanctioned in the amount of $100 and admonished by the court for failure to present legal authority in support of his claim.

Nature of the underlying action/claim and any counterclaims
Plaintiff brought an action in state court under the Texas Tort Claims Act for damages arising out a negligent arrest and for damages resulting from the failure to provide adequate medical attention during incarceration. Plaintiff later amended his complaint to allege a deprivation of liberty and property without

due process of law, contrary to the Fifth and Fourteenth Amendments to the U.S. Constitution.

Nature of the claims or defenses that were the subject of the sanctions
Defendant removed the action after the amended complaint was filed. Plaintiff moved to remand, arguing that Texas law was unsettled on the tort issues and that abstention would be proper. Defendant opposed the remand and moved for sanctions on the grounds that the motion to remand was asserted for an improper purpose of harassment.

Stated basis for the sanctions
The court imposed sanctions because plaintiff made a "bald assertion, without legal authority," that the Texas Tort Claims Act presented difficult or obscure state law issues. The court found that state-law precedent, not cited by plaintiff, clearly invalidated plaintiff's claim regarding lack of medical care.

Comments
The court invoked the "least severe sanction" rule, applying a $100 fine payable to the court, and used an admonishment as a non-monetary sanction.

Gold v. King, Docket No. 87-00168 (W.D. Tex. 1988)
[counseled plaintiff]

Sanctioned party
Plaintiff was represented by counsel, who was the target of the sanctions order. He was sanctioned in the amount of $500 and ordered to complete twenty-four hours of continuing legal education in trial practice and procedure (twenty hours) and legal ethics (four hours) over a two-year period. After appeal, on remand the court vacated the monetary sanction.

Nature of the underlying action/claim and any counterclaims
Plaintiff, a professor at the University of Texas, was denied tenure. Her action was brought under Title VII of the Civil Rights Act, alleging gender-based discrimination, and under 42 U.S.C. § 1983, alleging deprivation of First Amendment rights of association and procedural and substantive due process.

Nature of the claims or defenses that were the subject of the sanctions
In a prior action dealing with the same subject matter, the court denied plaintiff's motions for permissive joinder of parties and for leave to file an amended complaint. (The court also ruled against plaintiff on the merits of the Title VII claim, after trial and on the merits of the § 1983 claims, on summary judgment.) She then filed this action and, when defendant failed to answer, moved promptly for entry of default, five days after the answer was due. The answer had been filed two days before the motion for entry of default.

Stated basis for the sanctions
The court ruled that the filing of the second complaint violated Rule 11 because it was an attempt to evade the prior orders of the court re joinder and amendment. The court also ruled that the filing of a motion for default without inquiring whether a late answer had been filed or why a response had not been timely filed was a violation of Rule 11. On appeal, a panel affirmed the rulings on the merits, reversed the Rule 11 sanction for filing the second complaint ("absent a finding that the second filing was made without reasonable inquiry or for improper purposes"), and affirmed the Rule 11 sanctions for failure to inquire into the facts underlying the motion for default. As noted above, the district court then vacated the monetary sanction and reaffirmed the continuing education aspects of its Rule 11 order.

Comments
This litigation seemed especially acrimonious, including a motion by plaintiff to disqualify the trial judge and a discovery sanction in the form of a reprimand of plaintiff's attorney by the trial judge. Issues of qualified immunity and claim preclusion were background factors in the case.

Howell v. Supreme Court of Texas, Docket No. 88-644 (W.D. Tex. 1988)
[counseled plaintiff]

Sanctioned party
Plaintiff and counsel were sanctioned in the amount of $23,189.06, representing the costs and attorneys' fees of four sets of defendants.

Nature of the underlying action/claim and any counterclaims
Plaintiff was a sitting justice of a state court of appeals and a 1988 candidate for justice of the Texas Supreme Court. The federal case arose out of a state court action by plaintiff against three corporate defendants under the Texas Deceptive Trade Practices Act. A jury awarded defendants $75,000 in attorneys' fees against plaintiff, finding that he brought the case in bad faith. The Texas court of appeals affirmed. Plaintiff applied for a writ of error in the Texas Supreme Court and moved that each justice of that court disqualify or recuse herself or himself. Plaintiff claimed that each of the nine justices of the Texas Supreme Court were political opponents and that some of them had been involved in litigation with plaintiff. Plaintiff also challenged Texas standards for recusal or disqualification, arguing that they served to deprive litigants of due process and equal protection as guaranteed by the U.S. Constitution. None of the justices recused themselves. The court denied plaintiff's writ of error and his motion for rehearing and rejected his federal constitutional arguments. The U.S. Supreme Court denied plaintiff's application for a writ of certiorari.

W.D. Tex. Nature of Suit Code 440 Cases

Plaintiff sued all the justices of the Texas Supreme Court and the three judgment-creditors (former defendants in the state-court action) seeking declaratory and injunctive relief regarding that court's disqualification and recusal practices. Plaintiff again claimed that the justices deprived him of due process and equal protection by failing to disqualify or recuse themselves from review of his application for writ of error in the state litigation. Plaintiff sought injunctive relief against execution of the $75,000 judgment and a declaratory judgment that the state procedures were unconstitutional.

Nature of the claims or defenses that were the subject of the sanctions
The court imposed sanctions on (1) plaintiff's claim that the court had jurisdiction to review the issue and (2) plaintiff's claim of irreparable harm to support his motion for injunctive relief.

Stated basis for the sanctions
The court ruled that plaintiff failed to conduct an adequate legal inquiry into both of the claims. Plaintiff relied on the decision in *Pennzoil v. Texaco*, 107 S. Ct. 1519 (1987), to establish an exception to the rule that claims raised in state-court proceedings are ordinarily reviewable in the federal courts only by writ of certiorari. Because plaintiff had raised his federal claims in the state-court proceeding, however, the district court found the *Pennzoil* case to be distinguishable. The court also ruled that plaintiff's assertion of irreparable harm to support his motion for injunctive relief did not express existing law or evidence a good-faith effort to change the law. As such, the argument reflected inadequate inquiry into the law.

The court also found, without a hearing, that plaintiff "filed this case to harass the incumbent Texas Supreme Court justices in the three months immediately preceding the November 8, 1988 election in which he sought to become a Texas Supreme Court justice." (The court's decision was issued after the election, on November 18, 1988.) The court also found the requests for injunctive relief to be "a transparent effort to further delay . . . collection of the state judgment, for both political and personal reasons."

Comments
Plaintiff had previously litigated the question of the constitutionality of the Texas Supreme Court recusal practices, and the Fifth Circuit had, in a preliminary ruling in a 1986 case, indicated that plaintiff's constitutional arguments had little likelihood of success.

On appeal, a panel of the U.S. Court of Appeals for the Fifth Circuit affirmed the dismissal of the case and the imposition of sanctions in a 3–0 decision (published at 885 F.2d 308 (5th Cir. 1989)). Based on its "conclusion on the jurisdictional issue and the history of this litigation as set forth in the district court record," the court ruled that the district court "did not abuse its discretion." *Id.* at 313.

Maldonado v. U.S. Office of Personnel Management, Docket No. 87-1465 (W.D. Tex. 1988)
[counseled plaintiff]

Sanctioned party
Plaintiff's counsel was sanctioned in the form of a fine of $200 to be paid to the clerk of court.

Nature of the underlying action/claim and any counterclaims
Plaintiff sued for declaratory and injunctive relief to prevent defendants from continuing to set off an overpayment of $18,738.10 made to him under the Federal Employees' Compensation Act (FECA) against his federal pension from the Air Force. Plaintiff claimed a deprivation of property without due process of law. He had applied for a waiver of the obligation to repay the overpayment, which was denied. After notice of the FECA administrators' application for a setoff of the overpayment against plaintiff's retirement benefits, plaintiff demanded an individual hearing on the validity of the underlying debt overpayment. Defendants responded that he had exercised his appeal rights and waived others by failing to respond to notices, that the court had no subject-matter jurisdiction, that the decision of the Secretary of Labor under FECA was final and unreviewable, and that defendants were protected by sovereign immunity.

Nature of the claims or defenses that were the subject of the sanctions
Sanctions related to the question of whether the complaint "failed to state a claim." The court concluded that plaintiff's counsel failed to conduct a reasonable inquiry into the law supporting the complaint.

Stated basis for the sanctions
The court found that it did not have subject-matter jurisdiction to hear the case.

Comments
Plaintiff's claim of a violation of due process seemed to fly in the face of a wide panoply of procedural protections in the statutes and an express statutory bar on review of final decisions by the Secretary of Labor under FECA.

Plaintiff moved to reconsider the decision and the sanctions award. The court denied this, but did not impose further sanctions despite the lack of new evidence or legal argument.

Simmons v. Jaeger, Docket No. 88-00338 (W.D. Tex. 1988)
[counseled plaintiff]

Sanctioned party
Plaintiff's attorney was sanctioned in the amount of $6619.07, representing the attorneys' fee and costs of three sets of defendants. The State of Texas was awarded $1,398.45.

Nature of the underlying action/claim and any counterclaims
Plaintiff, a cattle rancher, filed a complaint alleging violations of due process of law and of the RICO statute. Defendants were a bank and its board of directors, two state court judges, a county attorney, and a grand jury foreman. The gist of the claim was that defendants conspired to use the grand jury process to collect a civil debt and that defendants engaged in a pattern of racketeering activity and intentionally inflicted emotional distress on plaintiff. The basis for the claim was the grand jury's consideration of an indictment against plaintiff for tampering with the bank's secured property (cattle).

Nature of the claims or defenses that were the subject of the sanctions
All of the above claims were the subject of the sanctions motion. Plaintiff's motion for a preliminary injunction precipitated the award. At the hearing on the motion, plaintiff's attorney stated, "We've not been able to get too far into the facts of the case." Plaintiff voluntarily dismissed the two judicial defendants.

Stated basis for the sanctions
Lack of a factual basis for the allegations, especially the allegation of a "pattern" of activity when plaintiff's version of the facts showed only one set of continuous events. The court also found a lack of legal basis for the claims.

Comments
Plaintiff conceded a lack of factual investigation and had delayed responses to motions to dismiss on the basis of the "complexity" of the case. No substantive responses to the motions were filed, and the court dismissed the claims.

Four of the defendants had immunity claims. Two were judicial officers, absolutely immune from damages but not from injunctive relief. The grand jury foreman and the county attorney had claims to at least qualified immunity.

Drew v. Bell County, Docket No. 87-00241 (W.D. Tex. 1987)
[pro se]

Sanctioned party
Plaintiff only was sanctioned, in the amount of $1,500. Plaintiff filed the case pro se, but later was represented by an attorney who filed a response to defendant's motion to dismiss and represented plaintiff at an evidentiary hearing on frivolousness. The attorney withdrew after defendant filed motions for summary judgment and for Rule 11 sanctions.

Nature of the underlying action/claim and any counterclaims
Plaintiff, a former bail bondsman in Bell County, sued the county, the sheriff, the county attorney, and members of their staffs. Plaintiff claimed violations of due process of law, conspiracy to deprive him of civil rights, and malicious prosecution. The claims arose out of three arrests, one for hindering the arrest of a defen-

dant released on bond and two for issuing "hot checks." Plaintiff was acquitted of the former charge and pled guilty to the latter two. Plaintiff alleged a conspiracy to drive him out of the bail bond business, but produced little or no evidence to support that conclusion.

Nature of the claims or defenses that were the subject of the sanctions
Sanctions were directed at the allegations of the complaint. Defendant claimed that there was no factual investigation into, or basis for, the allegations. Defendant also claimed that plaintiff filed the case for the improper purpose of harassment.

Stated basis for the sanctions
The magistrate judge concluded, after an evidentiary hearing, that plaintiff failed to inquire into the facts and law before and after filing the case. The magistrate judge also was persuaded that plaintiff filed the case merely to harass those officials whom he blamed for prosecuting him.

Comments
Two of the defendants were entitled to absolute immunity as prosecutors. The others had claims of qualified good-faith immunity.

Plaintiff appealed the dismissal of the case and the sanctions. While the appeal was pending, plaintiff filed for bankruptcy and the appeal was dismissed for want of prosecution after the trustee did not intervene during a thirty-day period. Costs were taxed against plaintiff.

Riggins v. Booth, Docket No. 87-1306 (W.D. Tex. 1989)
[pro se]

Sanctioned party
Plaintiff, appearing pro se, was sanctioned by striking all pleadings in the case and being held liable for costs and attorneys' fees (which were not specified or reduced to judgment more than a year after the sanctions order was issued).

Nature of the underlying action/claim and any counterclaims
In the most general terms, the action alleged a conspiracy between at least six federal defendants to deprive plaintiff of all constitutional rights. No specific acts were alleged, and it is impossible to tell from the complaint what the roles and duties of the defendants were.

Nature of the claims or defenses that were the subject of the sanctions
Sanctions were directed at the entire complaint.

Stated basis for the sanctions
The court stated that the sanctions were based on plaintiff's "filing of a patently frivolous complaint."

Comments
Plaintiff was pro se. According to defendant, a variation of the same complaint had been filed twice before in the same district and had been the subject of sanctions in one of those cases, in 1986. Defendant claimed qualified immunity from suit.

State of Texas v. Church of God–Houston, Docket No. 89-01023 (W.D. Tex. 1989)
[pro se defendant]

Sanctioned party
Defendant, appearing pro se, was sanctioned in the amount of $1,000.

Nature of the underlying action/claim and any counterclaims
The underlying action was filed in state court by the Texas Insurance & Securities Commissioners to enforce the Texas Securities Act and to enjoin defendants' offerings of loan programs, savings accounts, and precious metals programs. Plaintiff claimed that these offerings were unregistered securities and that defendants had engaged in fraudulent representations in their promotion.

Nature of the claims or defenses that were the subject of the sanctions
Defendant removed the action to federal court for the third time, just before a scheduled hearing on a temporary injunction. Plaintiff moved to remand and for sanctions in the amount of $10,000.

Stated basis for the sanctions
The court held that there was no basis for federal jurisdiction in the case and that defendant could not have a good-faith belief that the mere assertion of federal constitutional violations in a counterclaim would make removal proper.

Comments
The case involved what appear to be efforts to thwart the state judicial process through relitigation of federal jurisdictional matters. Even though defendant was pro se, it appeared to be legally sophisticated. Petitioner also filed for a writ of prohibition against the state court and an appeal of the remand order. Both proceedings were dismissed in per curiam orders by a panel of the U.S. Court of Appeals for the Fifth Circuit.

Western District of Texas Nature of Suit Code 442 cases

Herrera v. Mobil Oil, Inc., Docket No. 89-00240 (W.D. Tex. 1990)
[counseled plaintiff]

Sanctioned party
Plaintiff, represented by counsel, was sanctioned in the amount of $2,175. The court did not specifically allocate liability between plaintiff and his attorney.

Nature of the underlying action/claim and any counterclaims
Plaintiff, a Hispanic male, sued for violations of Title VII of the Civil Rights Act and of 42 U.S.C. § 1981 arising out of his discharge from the position of employee relations representative. He claimed discrimination on the basis of his ethnic origin and gender and in retaliation for helping other employees present Title VII claims.

Nature of the claims or defenses that were the subject of the sanctions
Plaintiff's § 1981 claim and his pendent state-law claim for intentional infliction of emotional distress were both filed more than two years (the applicable limitations period) after his discharge.

Stated basis for the sanctions
The court found that the two claims had no basis in law because they were filed after the statute of limitations period had run. The court concluded that plaintiff unreasonably and vexatiously multiplied the proceedings by including meritless claims in the complaint.

Comments
Defendant sent a warning letter requesting dismissal of the claims and providing a copy of a relevant Fifth Circuit decision that applied Texas's two-year statute of limitations in an employment discrimination case. Plaintiff did not dismiss the case and did not file any opposition to defendant's motion to dismiss.

Longoria v. City of San Antonio, Docket No. 89-00004 (W.D. Tex. 1989)
[counseled plaintiff]

Sanctioned party
Plaintiff was represented by counsel. Plaintiff's attorney was sanctioned in an amount to be determined, based on the expenses, attorneys' fees, and costs incurred by the defendant in filing a motion to strike plaintiff's first amended complaint. These sanctions were based on Rules 11 and 16 and 28 U.S.C. § 1927.

W.D. Tex. Nature of Suit Code 442 Cases

Nature of the underlying action/claim and any counterclaims
Plaintiff filed a claim alleging multiple federal and state claims for relief arising out his discharge from employment by the City of San Antonio. The federal claims included claims of a conspiracy under 42 U.S.C. § 1985(3) to violate plaintiff's right to privacy, employment discrimination based on national origin (Mexican-American), and retaliatory discharge arising out of the filing of the discrimination charge with the EEOC.

Nature of the claims or defenses that were the subject of the sanctions
Plaintiff filed a motion for leave to amend the complaint. Contrary to the certificates of service, plaintiff did not serve either the motion for leave to amend or the amended complaint on defendant. Defendant alleged that plaintiff's attorney had failed to serve papers once before in the litigation and that plaintiff's attorney conceded that he had failed to serve the papers. The court's scheduling order specified that no new factual allegations or causes of action were to be included in the amended complaint, but the amended complaint included both.

Stated basis for the sanctions
The magistrate judge found that the amended complaint violated the scheduling order and ordered that it be stricken and that plaintiff's counsel pay the expenses, attorneys' fees, and costs incurred by defendant in moving to strike it. The magistrate judge cited Rules 11 and 16 and 28 U.S.C. § 1927. Defendant had argued that Rule 11 was violated by the false certification that copies of the pleadings had been served on defendant's counsel.

Comments
This is primarily a Rule 16 sanction, with only an incidental connection to Rule 11. Plaintiff moved for the court to reconsider its order and the sanctions. That motion was not ruled on. Perhaps because of the motion to reconsider, defendant did not file an affidavit of fees and expenses within five days as provided in the magistrate judge's order, and fees were not determined.

Teal v. Montgomery Ward & Co., Docket No. 87-00063 (W.D. Tex 1989)
[counseled plaintiff]

Sanctioned party
Plaintiff's attorney was sanctioned in the amount of $500 for filing a frivolous complaint.

Nature of the underlying action/claim and any counterclaims
Plaintiff filed an action in state court for violation of Title VII and the Texas Commission on Human Rights Act (TCHRA) against her former employer and an individual who allegedly initiated the sexual harassment. The gist of her claim was that a sales instructor, who she alleged was a member of management, sin-

gled her out during a sales training program and tagged her with a sexually suggestive name. Plaintiff considered the incident to be "a demeaning sexual put-down." Her complaint about the incident resulted in a reprimand to the instructor. She alleged, however, that other employees picked up on the incident and used the suggestive name to harass and tease her. Plaintiff alleged that many of these follow-on incidents took place in front of management personnel and that they condoned the harassment by failing to stop it. She did not lodge any complaints about the follow-on incidents.

Defendant argued that the complaint was a single incident that did not amount to an adverse condition of employment and that management had taken action to punish the single incident.

Nature of the claims or defenses that were the subject of the sanctions

Defendant claimed that the entire complaint was frivolous. A second Title VII claim was barred for failure to meet the statutory prerequisite of filing an administrative complaint. The state-law claims were barred by the statute of limitations. In response to defendant's motion for summary judgment, plaintiff conceded that the state-law claims and the second Tittle VII claim should be denied, but she continued to assert the validity of the claim arising out of the sales training program.

Stated basis for the sanctions

The court interpreted plaintiff's response to defendant's motion for summary judgment as a concession that all her claims should be denied. On the merits, the court found that plaintiff did not elicit sufficient facts during discovery to establish two elements of a cause of action, namely, the presence of sexual harassment and the knowing or culpable failure of defendant to remedy the situation. The court also relied on plaintiff's statement that counsel had been aware of the defects relating to the statute of limitations and the statutory prerequisites before filing suit.

Comments

Plaintiff sought leave to amend her complaint (after the scheduling order's deadline for amendment had passed) to assert claims for intentional infliction of emotional distress and breach of contract. Plaintiff also argued that the court should not impose sanctions because of "the important public interest served by the pursuit of colorable Title VII and TCHRA claims, and in consideration of the vast economic disparity between the plaintiff, whose annual income is approximately $10,000, and the defendant, Montgomery Ward & Co., Inc." Defendant sought sanctions for the full costs of defending the claims. The court found that "a $500 sanction may not reflect the defendant's actual expenses in defending the action," but found that amount to be "fair and reasonable based on the circumstances of the case." The court expressly imposed the sanctions solely on plaintiff's attorney.

McConnell v. Southside Independent School District,
Docket No. 87-00511 (W.D. Tex. 1987)
[counseled defendant]

Sanctioned party
Both parties were represented by counsel. The magistrate judge imposed sanctions, sua sponte, on defendants' attorney in the amount of $750 for filing three motions relating to discovery disputes.

Nature of the underlying action/claim and any counterclaims
Plaintiff brought suit against the school district in state court to appeal a final order of the Texas Board of Education denying him relief from the nonrenewal of his contract. He challenged the merit of the decision and the procedural fairness of the procedures by which it was reached. Based on the latter constitutional claims, defendant removed the case to federal court. (Note this case is probably misclassified as a Nature of Suit Code 442 case; it does not seem to be an employment discrimination claim, but rather a claim for procedural and substantive due process under 42 U.S.C. § 1983, which should be classified as a Nature of Suit Code 440 case.)

Nature of the claims or defenses that were the subject of the sanctions
Defendant filed two motions to compel answers to interrogatories and a motion for a protective order against a deposition sought by plaintiff eight months after the scheduling order's deadline for discovery had passed. Plaintiff argued that he had cooperated with defendant in permitting eight depositions after the deadline and that the information sought in the interrogatories was obtained through depositions.

Stated basis for the sanctions
The magistrate judge found that all three of the motions were filed for improper purposes, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation and imposed sanctions, sua sponte, in the amount of $250 per motion. The magistrate judge indicated that he had twice directed the parties to resolve the issues without burdening the court with non-substantive discovery disputes

Comments
Defendant filed a lengthy appeal of the magistrate judge's sanctions orders, but the court apparently did not rule on the appeal. Plaintiff waived any federal claims, the court granted summary judgment for defendant, and the court remanded the state claims to the state court. Defendant moved for attorneys' fees of $58,416.05, which the court denied.

McGrath v. Prescription Learning Corp., Docket No. 87-01572 (W. D. Tex. 1988)
[counseled defendant]

Sanctioned party
Defendant (unspecified between defendant and attorney) was ordered to pay plaintiff $71 as the costs for securing personal service of the complaint. Plaintiff appeared pro se; his claim for $250 in attorneys' fees was held in abeyance.

Nature of the underlying action/claim and any counterclaims
Plaintiff sued under Title VII of the Civil Rights Act and 42 U.S.C. §§ 1981–1985. He claimed that defendant refused to hire him as an educational consultant on the grounds of age (fifty-nine), religion (non-denominational), and gender (male).

Nature of the claims or defenses that were the subject of the sanctions
Defendant failed to respond to plaintiff's mail service under Rule 4(c)(2)(C)(ii), forcing plaintiff to pay a private process server $71 to serve the complaint. Plaintiff claimed that defendant improperly prolonged the litigation and moved for fees and costs under Rules 4 and 11.

Stated basis for the sanctions
The court did not state a reason or cite to either rule. The court expressly held in abeyance plaintiff's request for attorneys' fees ($250 for ten hours of research).

Comments
This case could be viewed simply as an order enforcing Rule 4(c). Plaintiff was not represented by counsel. Defendant had offered to pay the $71 in costs and expenses, but resisted plaintiff's claim for attorney's fees.

Section 5
Review of Published Rule 11 Opinions

At the request of the Advisory Committee on Civil Rules, the Research Division of the Federal Judicial Center examined all opinions involving Rule 11 published from 1984 through 1989. We identified the opinions by electronically searching the WESTLAW database for references to Rule 11. Separate searches were conducted for the district court and appellate court databases. (The WESTLAW search strategies used and their results are presented in Appendix A.) All of the opinions were read by law students to determine if Rule 11 activity was involved. Only opinions in which a Rule 11 motion was filed or Rule 11 was considered sua sponte by a judge were included in the analysis. (The criteria for including an opinion in the analysis are detailed in Appendix B.)

In Part I of this section we describe the Rule 11 activity appearing in published district court opinions. We first discuss the amount and distribution of satellite litigation produced by Rule 11. We then describe the nature of the Rule 11 activity, including a preliminary analysis of whether Rule 11 is applied disproportionately in specific types of cases or to particular types of litigants. Then we discuss judicial variations in Rule 11 practices.

In Part II we examine published Rule 11 opinions from the appellate courts. We first present the number of published appeals and their outcomes. This is followed by a preliminary analysis of whether Rule 11 appeals are disproportionately concentrated in specific types of cases.

These data are limited because they are derived solely from published opinions. We do not know how representative the opinions are of all Rule 11 activity, so we caution the reader not to generalize from these data to all Rule 11 activity.

I. District Court Opinions

A. How much satellite litigation has Rule 11 produced?

1. Incidence of Rule 11 activity

From 1984 through 1989, 835 opinions resolving Rule 11 issues at the district court level appeared in published reporters.[1] The total number of district court opinions published during the time period was 36,150.[2] Rule 11 was addressed in 2.3% of all published opinions.

The opinions discussed 816 individual cases. Sixty-seven cases involved two or more Rule 11 motions/orders. Nineteen cases produced two different published opinions. The opinions resolved 931 Rule 11 motions/orders.

The origin of the 931 motions/orders is shown in Table 1. Unless specifically included, sanctions-related motions for reconsideration of judges' orders and appeals from or objections to magistrate judges' orders or recommendations are excluded from subsequent analyses to avoid duplication.

Table 1
Source of Rule 11 activity, 1984 through 1989

Source of Rule 11 Activity	Number of Motions or Orders
Motion	809
Sua sponte order	93
Subtotal	902
Motion for reconsideration of judge's order	23
Appeal/objection to magistrate judge's order/recommendation	6
Total	931

Table 2 shows the annual number of published opinions resolving Rule 11 issues between 1984 and 1989. The percentages in the second row of the table represent published Rule 11 opinions as a percentage of all published opinions. Although there was an increase in the number of opinions during each of the first four years (1984–1987) of the study, the number appeared to remain relatively stable in the years 1987 and 1988. There was a modest decline in the number in

1. The WESTLAW search produced 1731 opinions that referred to Rule 11. Less than half (48%) of the opinions involved Rule 11 motions or sua sponte considerations. The majority of opinions discussed Rule 11 by way of analogy or as an incidental point to the application of other sources of authority.

2. This figure was derived from an electronic search of the WESTLAW database. We searched the DCTR file for the name of each district court. A example of the search strategy follows: CO(E.D. VIRGINIA) & DA(AFT 1983 & BEF 1990).

1989. Appellate opinions followed a similar trend (see Table 22). These data, of course, may simply represent changes in publication practices or filing rates and not changes in the underlying Rule 11 activity. Without an examination of unpublished decisions, we cannot draw conclusions about all Rule 11 activity. This point should be kept in mind throughout this report, especially when making comparisons across districts or judges.

Table 2
Rule 11 activity: 1984 through 1989

	1984	1985	1986	1987	1988	1989	Total
Opinions	41	102	154	181	186	171	835
(as percentage of all published opinions)	(0.7%)	(1.6%)	(2.6%)	(3.0%)	(2.8%)	(2.7%)	(2.3%)
Number of motions/ orders	43	110	175	201	216	186	931

There is wide variation in the number of Rule 11 opinions published across the districts. The vast majority of districts (seventy-six) were represented by at least one published Rule 11 decision during the study period. Over half (58.9%) of the decisions, however, were published by only ten districts. The Southern District of New York (25.0%) and the Northern District of Illinois (13.2%) accounted for 38% of all the published Rule 11 opinions. Table 3 charts the number of Rule 11 opinions published during the study period for the ten districts that produced almost three fifths of the opinions. The top ten districts generally showed modest variations from the trend observed in Table 2. The publication leader, the Southern District of New York, demonstrated a steady increase in the number of Rule 11 opinions. The Northern District of Illinois showed a decrease of sixteen published opinions between 1988 and 1989. We do not know whether the higher number of published Rule 11 opinions in these ten districts reflects different publication practices or different underlying Rule 11 activity.

Table 3
Number of Rule 11 opinions in the ten districts with the most published opinions: 1984 through 1989

District	1984	1985	1986	1987	1988	1989	Total
S.D.N.Y.	9	23	35	43	45	54	209
N.D. Ill.	4	12	16	26	34	18	110
E.D.N.Y.	1	4	7	5	7	5	29
D.D.C.	4	4	4	5	8	3	28
E.D. Pa.	0	4	4	3	8	3	22
S.D. Fla.	1	2	4	5	3	5	20
N.D. Ind.	0	3	4	10	2	0	19
N.D. Cal.	4	1	2	6	2	3	18
D. Minn.	1	3	7	4	1	1	17
D. Colo.	0	4	3	5	3	2	17
Total	24	60	86	112	113	94	489

2. Demands on judges and attorneys

Pre-ruling activities. Judges indicated in the published opinions that they conducted ninety-five hearings involving a total of ninety (10%) of the motions/orders. These numbers undoubtedly underestimate the amount of hearing activity.[3] Twenty-seven motions were addressed in conjunction with at least one other issue in the litigation and fifty-eight motions were the subject of hearings devoted exclusively to sanctions issues. Five motions were heard at both types of hearings. Evidence on the Rule 11 issue was presented in thirty-five hearings (representing 39% of all motions/orders that were heard, and only 4% of all motions/orders).

The decision to hold a hearing did not appear to be related to the centrality of the issue or pleading that was the target of Rule 11 activity. For seventy-one (75%) of the ninety-five hearings, the underlying sanctions issue was related to claims essential to the continued prosecution or defense of the action. Similarly, for 83% of the motions that were not heard, the underlying sanctions issue was judged to be essential.[4]

3. Hearings are reported here only if the judge specifically mentioned a hearing in the opinion. In the field study, we examined court records to determine the number of hearings. In all five districts the number of hearings exceeded 10% and in two districts it was in the 40-50% range. See the summary of the field study in Section 1B.

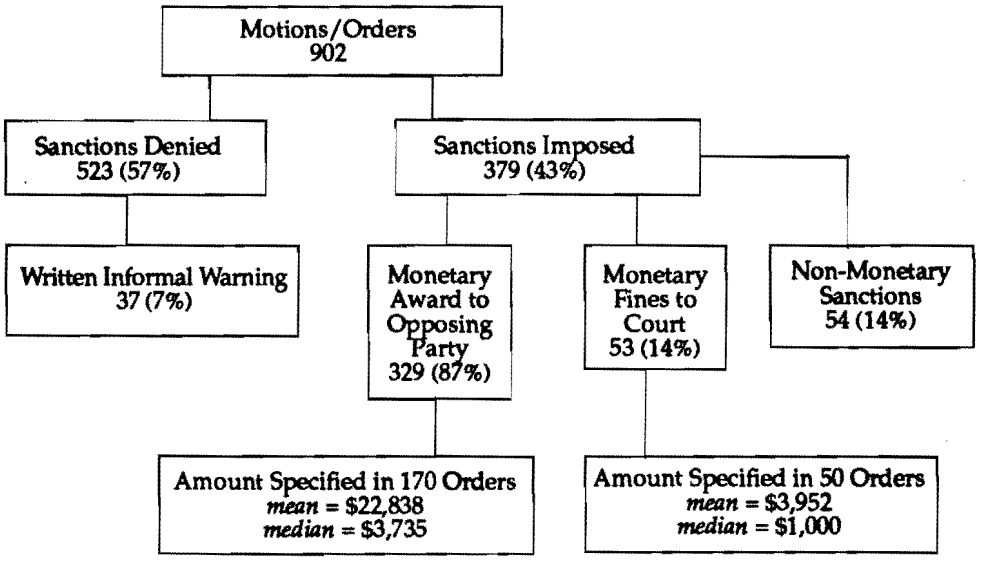
4. To determine whether the Rule 11 activity related to peripheral issues in the litigation, we reviewed the issue forming the basis of the Rule 11 motion/order.

Judges initiated the sanctions process by sua sponte orders ninety-three times (10% of the motions/orders). In thirty-four (37%) of the ninety-three instances, the opinion indicated that the court used a show cause order to provide notice and an opportunity to be heard. Hearings were held pursuant to fifteen sua sponte orders; six of the hearings were evidentiary. The target of twenty-two (24%) orders was not represented by counsel.

Activities associated with rulings. The 835 published opinions occupied 5,034 printed pages. Of that amount, 1,614 pages were devoted to discussion of Rule 11. The average opinion was six pages in length with 1.9 pages discussing Rule 11 issues.

Figure 1 shows the outcomes of the motions/orders. Judges imposed sanctions in 379 orders (43% of all motions). Most of the orders imposing sanctions (87%) awarded monetary fees to an opposing party. The awards ranged from $100 to $954,800, with a mean of $22,838 (standard deviation = $88,401) and a median of $3,735.[5] Fifty-three orders (14%) imposed fines payable to the court. The fines ranged from $40 to $29,580, with a mean of $3952 (standard deviation = $6,662) and a median of $1,000.[6]

Figure 1
Outcome of motions/orders



5. The monetary fee awarded was available for 170 orders. The median is the better measure of central tendency because the mean is heavily influenced by the few extraordinary awards. The standard deviation is a measure of the variability or dispersion of individual values around the mean.

6. The fine imposed was available for fifty orders.

Table 4 shows the size of monetary fees awarded in the years between 1984 and 1989. Note the large standard deviations recorded in 1986 through 1989. During those four years there were nine sanctions awards of $100,000 or greater. Although the number of high awards was relatively small, their impact on the means for those years was great. The median is not as strongly affected by those few extraordinarily high awards, so it is the better statistic to use for comparison of the awards across the years. Comparing the medians shows relatively little change in award sizes during the study period.

Table 4
Monetary fees awarded, 1984 through 1989

	1984	1985	1986	1987	1988	1989	Total
Mean	8,792	7,546	27,627	11,364	32,928	47,192	22,838
Std. deviation	11,402	11,213	54,873	21,451	109,556	179,466	88,401
Median	3,570	2,000	4,000	3,854	4,245	3,366	3,735

Fifty-four orders (14%) imposed non-monetary sanctions. The types of non-monetary sanctions imposed are summarized in Table 5. The most common sanction involved a formal reprimand or warning from the court. Injunctions were the next most popular sanction. There were three general types of injunctions applied in fifteen cases. One permanently enjoined the target from filing similar actions against the same defendants (applied two times); one regulated future filings (applied seven times); and the third enjoined the target of monetary sanctions from further filings until the sanctions were paid (applied six times). The target of ten of the fifteen injunctions was a pro se litigant.

Table 5
Non-monetary sanctions imposed, 1984 through 1989

Type of Sanction	Number
Reprimand, admonishment, or warning	18
Injunction prohibiting or establishing procedures for future filings	15
Striking of target motion or dismissal of complaint	11
Referral to local disciplinary board	4
Continuing legal education	1
Other	5
Total	54

In addition to formal sanctions, judges issued thirty-seven informal warnings in opinions that did not impose sanctions. The informal warnings generally placed parties/attorneys on notice about the applicability of Rule 11 or identified specific filings that came close to violating Rule 11 standards.

Post-ruling activities. Little post-trial activity was evident in the published opinions. Table 6 shows the number of motions seeking reconsideration of judicial sanctions orders and the outcome of those motions. Table 7 provides similar information for magistrate judges' recommendations or orders. Hearings were held on two of the motions for reconsideration. Four of the six objections and appeals to magistrate judges' actions produced hearings. None of the hearings were evidentiary.

Table 6
Judges' orders: reconsiderations, 1984 through 1989

Outcome	Number
Affirmed imposition of sanctions	15
Reversed imposition of sanctions	3
Affirmed denial of sanctions	1
Reversed denial of sanctions	0
Modified type or amount of sanctions	4

Table 7
Magistrate judges' recommendations or orders: objections and appeals, 1984 through 1989

Outcome	Number
Affirmed imposition of sanctions	3
Reversed imposition of sanctions	0
Affirmed denial of sanctions	0
Reversed denial of sanctions	2
Modified type or amount of sanctions	1

Seventy of the published district court decisions were the subject of review in published appellate court decisions. Note that this number does not represent all appeals of the published district court decisions because not all of these appeals would have appeared as published appellate opinions and because appeals of the

later district court cases could have been pending at the close of the study. Table 8 shows a breakdown of the number of appellate decisions by circuit.

Table 8
Number of published district court opinions reviewed in published appellate court opinions, 1984 through 1989

Circuit	Number of Opinions	Percentage of Total	Circuit	Number of Opinions	Percentage of Total
1	1	1%	8	2	3%
2	12	17%	9	7	10%
3	4	6%	10	3	4%
4	4	6%	11	9	13%
5	12	17%	D.C.	3	4%
6	3	4%	Federal	1	1%
7	9	13%	Total	70	100%

Where the district court imposed monetary sanctions, there was no significant difference during the limited period of the study between the amounts awarded in cases appealed and those in which no appeal was taken. The mean award to an opponent in appealed cases was $23,495 (standard deviation = $42,170). The mean sanction in cases not appealed was $24,038 (standard deviation = $99,109).[7] This result does not necessarily indicate that the size of the sanction imposed by the district court is unrelated to a party's decision to appeal. Without complete data about appeals, we cannot reach a reliable conclusion. In the above comparison, the median year of the district court decision appealed was 1986 and the median for decisions not appealed was 1987. It is possible that many of the appeals of the later cases were pending at the close of the study and that inclusion of these appeals would lead to a different conclusion.

The outcomes of the appeals are shown in Table 9. Eighty-nine percent (62) of the rulings were unanimous decisions, 7% (5) of the rulings were split decisions, and 4% were en banc decisions. By comparison, approximately 96% of all appellate cases terminated during the years 1984–1989 were decided by a unanimous court.[8] Parties sanctioned by a district court prevailed on appeal (reversal/remand) in 22% of the opinions. The appellate court issued Fed. R. App. P. 38 sanctions in seven appeals.

7. A *t*-test showed no statistically significant difference between the two means. A *t*-test examines whether the difference between the two means is reliable.

8. Data obtained from the Federal Judicial Center's Integrated Database.

Table 9
Appellate Court Outcomes, 1984 through 1989

Outcome	Number	Percentage of Total
Affirmed imposition of sanctions	26	37%
Reversed imposition of sanctions	15	21%
Affirmed denial of sanctions	12	17%
Reversed denial of sanctions	5	7%
Remanded to adjust amount of sanction	5	7%
Remanded to clarify or specify grounds for ruling	2	3%
Sua sponte Rule 11 sanctions at appellate level	1	1%
Other	4	6%
Total	70	100%

B. Has Rule 11 activity been disproportionately concentrated in specific types of cases or disproportionately focused on particular types of litigants?

1. Activity in Motions/Orders

The next five tables provide information about the nature of the activity targeted by the Rule 11 motions/orders in the published opinions. Note that Tables 10 through 12 present information separately for the following three types of motions: (1) motions in prisoner cases; (2) motions in non-prisoner cases in which the target was pro se; and (3) motions in non-prisoner cases in which the targeted side was represented by counsel.

The pleading or paper that was the primary target of the Rule 11 motion/order is shown in Table 10. Complaints were targeted most frequently (58% of all published Rule 11 motions/orders). In contrast, answers were targeted by only 2% of the motions/orders, motions to dismiss by 5%, and motions for summary judgment by 4%.

Table 10
Targeted pleading or paper in published Rule 11 opinions in the district courts, 1984 through 1989

Targeted Pleading	All Motions or Orders	Represented Targets	Pro Se Targets	Motions in Prisoner Cases
Complaint	525 (58%)	465 (57%)	56 (80%)	4 (33%)
Answer	17 (2%)	17 (2%)	0	0
Motion to dismiss (Rule 12(b)(6))	13 (1%)	10 (1%)	1 (1%)	2 (17%)
Motion to dismiss (Rule 12(b)(1))	6 (1%)	6 (1%)	0	0
Other motion to dismiss	30 (3%)	29 (4%)	1 (1%)	0
Motion for summary judgment	33 (4%)	32 (4%)	0	1 (8%)
Rule 11 Motion	23 (3%)	23 (3%)	0	0
Discovery	25 (3%)	25 (3%)	0	0
Counterclaim or third-party claim	23 (3%)	22 (3%)	1 (1%)	0
Removal-remand issue	25 (3%)	24 (3%)	1 (1%)	0
Reconsideration motion	29 (3%)	29 (4%)	0	0
Motion to disqualify	7 (1%)	6 (1%)	1 (1%)	0
Default motion	3 (1%)	2 (1%)	1 (1%)	0
Opposition to dispositive motion	9 (1%)	9 (1%)	0	0
Other	134 (15%)	121 (15%)	8 (11%)	5 (42%)
Total	902 (100%)	820 (100%)	70 (100%)	12 (100%)

Note: The first column of numbers includes all motions/orders. The second column includes motions in which the targeted side was represented by counsel, excluding prisoner cases. The third column includes motions in which the target was pro se, excluding prisoner cases; it may include some motions in which the target was an attorney appearing pro se. The last column includes all motions brought in prisoner cases, including those in which the target was a represented party or an attorney.

The person targeted by the motions/orders is shown in Table 11. The plaintiff's side was the target in 73% (662) of all the published Rule 11 motions/orders. The defendant's side was targeted only 24% (219) of the time. These findings are consistent with the finding that the complaint is the most frequently targeted pleading.

Table 11
Targeted person in published Rule 11 opinions in the district courts, 1984 through 1989

Targeted Pleading	All Motions or Orders	Represented Targets	Pro Se Targets	Motions in Prisoner Cases
Plaintiff	100 (11%)	33 (4%)	66 (94%)	4 (33%)
Plaintiff's attorney	133 (15%)	133 (16%)	—	0 (0%)
Plaintiff and attorney	100 (11%)	99 (12%)	—	0 (0%)
Plaintiff (unspecified)	329 (36%)	324 (39%)	—	3 (25%)
Subtotal–plaintiff	662 (73%)	589 (72%)	66 (94%)	7 (58%)
Defendant	13 (1%)	11 (1%)	4 (6%)	0 (0%)
Defendant's attorney	41 (5%)	39 (5%)	—	2 (17%)
Defendant and attorney	29 (3%)	28 (3%)	—	1 (8%)
Defendant (unspecified)	136 (15%)	132 (16%)	—	2 (17%)
Subtotal–defendant	219 (24%)	210 (26%)	4 (6%)	5 (42%)
Other (e.g., third-party and cross-claims)	21 (2%)	21 (3%)	0 (0%)	0 (0%)
Total	902 (100%)	820 (100%)	70 (100%)	12 (100%)

The natures of suit engendering Rule 11 motions/orders are shown in Table 12. We have combined similar nature-of-suit categories into twelve groups, following the format used on the civil cover sheet (JS 44). Rule 11 activity was concentrated in three nature-of-suit groups. Sixty-eight percent of all Rule 11 motions/orders were accounted for by contract disputes (22%), civil rights cases (22%), and actions based on a collection of miscellaneous federal statutes (24%). We were unable to determine the overall number of published opinions that fell into the twelve nature-of-suit groups, so we could not determine the percentage of all published opinions involving Rule 11 for each nature-of-suit category.

Table 12
Nature of suit of published Rule 11 opinions in the district courts, 1984 through 1989

Nature of Suit	Rule 11 Opinions	Motions or Orders	Represented Targets	Pro Se Targets
Contract	175 (21%)	195 (22%)	186 (23%)	9 (13%)
Real property	14 (2%)	17 (2%)	14 (2%)	3 (4%)
Torts	96 (12%)	103 (11%)	99 (12%)	4 (6%)
Civil rights	179 (21%)	195 (22%)	165 (20%)	30 (43%)
Prisoner petitions	11 (1%)	12 (1%)	0	0
Forfeiture or penalty	3 (1%)	3 (1%)	3 (1%)	0
Labor	69 (8%)	72 (8%)	70 (9%)	2 (3%)
Property rights	50 (6%)	57 (6%)	56 (7%)	1 (1%)
Bankruptcy	3 (1%)	3 (1%)	3 (1%)	0
Social Security	13 (2%)	13 (1%)	13 (2%)	0
Federal tax	17 (2%)	17 (2%)	11 (1%)	6 (9%)
Other statutes	205 (25%)	215 (22%)	200 (24%)	15 (21%)
Total	835 (100%)	902 (100%)	820 (100%)	70 (100%)

Table 13 shows, for each nature of suit, the number of motions/orders that targeted plaintiffs, defendants, and other parties.

Table 13
Nature of suit by targeted party of published Rule 11 opinions in the district courts, 1984 through 1989

	Plaintiff	Defendant	Other
Contract	121 (62%)	66 (34%)	8 (4%)
Real property	12 (71%)	5 (29%)	0
Torts	81 (79%)	18 (17%)	4 (4%)
Civil rights	170 (87%)	25 (13%)	0
Prisoner petitions	7 (58%)	5 (42%)	0
Forfeiture/penalty	2 (67%)	1 (33%)	0
Labor	53 (73%)	18 (25%)	1 (1%)
Property rights	36 (63%)	18 (32%)	3 (5%)
Social Security	5 (39%)	8 (61%)	0
Other statutes	143 (73%)	48 (25%)	5 (3%)

Note: Data are not available for thirty-eight cases. The percentages reflect the proportion of motions/orders in each nature of suit that targeted the plaintiff, defendant, and other party/non-party, respectively.

2. Outcomes of Rulings on Motions/Orders

The four tables that follow depict the outcomes of the Rule 11 motions/orders. The first group of four tables examines whether sanctions were imposed in relation to the targeted pleading or paper (Table 14), the person targeted (Table 15), and the nature of suit (Tables 16 and 17). Note that in this group of tables the percentages in the first column are based on the column total and the percentages in the second and third columns are based on the row totals.

The relationship between targeted pleading or paper and the imposition of sanctions is shown in Table 14. Sanctions were imposed pursuant to 43% of the motions/orders that targeted the complaint. The 43% figure was also the overall sanctioning rate. It is risky to compare the imposition rates for other types of pleadings or papers with the rate for complaints. In relation to complaints, the other pleadings or papers are so under-represented that a small difference in number imposed can have a large effect on the sanctioning rate. Although statistical tests can compensate for this problem, the results must be interpreted with caution. Statistical analysis of the table showed a statistically significant difference in the number of sanctions imposed across the targeted pleadings.[9]

9. A statistical package designed to analyze sparse contingency tables was used to conduct this analysis using the chi-square statistic. The chi-square test examines whether there is a significant relationship between two categorical variables. The above comparison was significant at $p < .01$.

Table 14
Disposition by targeted paper in published Rule 11 opinions in the district courts, 1984 through 1989

Targeted Pleading	Motions/ Orders	Sanctions Not Imposed	Sanctions Imposed
Complaint	517 (58%)	293 (57%)	222 (43%)
Answer	17 (2%)	9 (53%)	8 (47%)
Motion to dismiss (Rule 12(b)(6))	12 (1%)	11 (92%)	1 (8%)
Motion to dismiss (Rule 12(b)(1))	6 (1%)	6 (100%)	0
Other motion to dismiss	30 (3%)	18 (60%)	12 (30%)
Motion for summary judgment	33 (4%)	30 (91%)	3 (9%)
Rule 11 motion	23 (3%)	17 (74%)	6 (26%)
Discovery	24 (3%)	11 (46%)	13 (54%)
Counterclaim or third-party claim	23 (3%)	10 (43%)	13 (57%)
Removal-remand issue	25 (3%)	15 (60%)	10 (40%)
Reconsideration motion	29 (3%)	13 (45%)	16 (55%)
Motion to disqualify	7 (1%)	5 (72%)	2 (28%)
Default motion	3 (1%)	1 (33%)	2 (67%)
Opposition to dispositive motion	9 (1%)	3 (33%)	6 (67%)
Other	132 (15%)	67 (51%)	65 (49%)
Total	890 (100%)	509 (57%)	379 (43%)

Note: The disposition of two of the motions was pending at the time of publication. The disposition of ten motions was unavailable. These are not included in the table. The percentages in the first column are based on the column total and the percentages in the second and third columns are based on row totals.

The person targeted by orders imposing sanctions is shown in Table 15. Overall, sanctions were imposed pursuant to 46% of the motions or orders that targeted the plaintiff's side, compared with 35% of the motions or orders that targeted the defendant's side and 29% of those that targeted another party or non-party. When specifically targeted, attorneys for the plaintiff and defendant were sanctioned at about the same rate; when specifically targeted, the plaintiff was more likely to be sanctioned (71%) than the defendant (46%).[10]

10. These differences were significant ($p < .01$) based on the chi-square statistic.

Table 15
Disposition by targeted person in published Rule 11 opinions in the district courts, 1984 through 1989

Targeted Person	All Motions or Orders	Sanctions Not Imposed	Sanction Imposed
Plaintiff	99 (11%)	29 (29%)	70 (71%)
Plaintiff's attorney	130 (15%)	27 (21%)	102 (79%)
Plaintiff and attorney	99 (11%)	27 (28%)	71 (72%)
Plaintiff (unspecified)	327 (37%)	271 (83%)	56 (17%)
Subtotal–plaintiff	653 (73%)	354 (54%)	299 (46%)
Defendant	13 (1%)	7 (54%)	6 (46%)
Defendant's attorney	40 (4%)	10 (25%)	30 (75%)
Defendant and attorney	29 (3%)	11 (38%)	18 (62%)
Defendant (unspecified)	132 (15%)	112 (85%)	20 (15%)
Subtotal–defendant	214 (24%)	140 (65%)	80 (35%)
Other (e.g., third-party and cross-claims)	21 (2%)	15 (71%)	6 (29%)
Total	890 (100%)	509 (57%)	379 (43%)

Note: The disposition of two of the motions was pending at the time of publication. The disposition of ten motions was unavailable. The percentages in the first column are based on the column total and the percentages in the second and third columns are based on row totals.

Disposition by nature of suit is examined in Tables 16 and 17. Table 16 shows all motions/orders, but Table 17 is restricted to only those motions/orders where the targets were represented by counsel. We chose to treat represented targets separately because the disposition for certain nature-of-suit categories such as civil rights, prisoner petitions, and federal tax might be affected by the presence of a large number of pro se parties.

Overall, the imposition rate for most natures of suit was roughly 43%. There were two notable exceptions. Sanctions were imposed pursuant to only 30% of the motions/orders in labor cases and in 56% of the motions/orders in civil rights cases.[11] Analyses that focus on sanctions imposed only on represented plaintiffs, the center of the debate, have yet to be performed and may influence the interpretation of the results. (See the reports of the field study districts, Sections 3A–3E and 4A–4E, above.)

11. See Note 9. A chi-square analysis of the tables showed a statistically significant relationship between the number of sanctions imposed and nature of suit ($p < .05$).

Table 16
Disposition by nature of suit in published Rule 11 opinions in the district courts, 1984 through 1989

Nature of Suit	All Motions or Orders	Sanctions Not Imposed	Sanctions Imposed
Contract	191 (22%)	112 (59%)	79 (41%)
Real property	17 (2%)	9 (53%)	8 (47%)
Torts	101 (11%)	64 (63%)	37 (37%)
Civil Rights	193 (22%)	85 (44%)	107 (56%)
Prisoner petitions	12 (1%)	7 (59%)	5 (41%)
Forfeiture or penalty	3 (1%)	1 (33%)	2 (67%)
Labor	71 (8%)	50 (70%)	21 (30%)
Property rights	56 (6%)	38 (68%)	18 (32%)
Bankruptcy	3 (1%)	1 (33%)	2 (67%)
Social Security	13 (2%)	8 (62%)	5 (38%)
Federal tax	16 (2%)	9 (56%)	7 (44%)
Other statutes	214 (%)	125 (58%)	88 (42%)
Total	890 (100%)	509 (57%)	379 (43%)

Note: The disposition of two of the motions was pending at the time of publication. The disposition of ten motions was unavailable. The percentages in the first column are based on the column total and the percentages in the second and third columns are based on row totals.

Table 17
Disposition by nature of suit in published Rule 11 opinions in the district courts: represented targets only, 1984 through 1989

Nature of Suit	All Motions or Orders	Sanctions Not Imposed	Sanctions Imposed
Contract	182 (22%)	106 (58%)	76 (42%)
Real property	14 (2%)	9 (64%)	5 (36%)
Torts	97 (12%)	63 (65%)	34 (35%)
Civil rights	164 (20%)	76 (45%)	87 (55%)
Prisoner petitions	8 (1%)	6 (75%)	2 (25%)
Forfeiture or penalty	3 (1%)	1 (33%)	2 (67%)
Labor	69 (8%)	50 (72%)	19 (28%)
Property rights	55 (7%)	38 (69%)	17 (31%)
Bankruptcy	3 (1%)	1 (33%)	2 (67%)
Social Security	13 (2%)	8 (62%)	5 (38%)
Federal tax	11 (2%)	8 (73%)	3 (37%)
Other statutes	199 (%)	119 (60%)	79 (40%)
Total	818 (100%)	485 (59%)	331 (41%)

Note: The disposition of two of the motions was pending at the time of publication. The disposition of ten motions was unavailable. The percentages in the first column are based on the column total and the percentages in the second and third columns are based on row totals.

C. Are there variations between judges in their application of Rule 11?

Table 18 presents information about variations in the number of published Rule 11 opinions between the judges. During the six-year study period, 334 judges published Rule 11 opinions. Fifty percent (166) of those judges published one opinion. Another 23% published two opinions. Twenty percent of all the Rule 11 opinions were published by ten of the judges. Among those judges who wrote Rule 11 opinions, the number of opinions ranged from one to twenty-nine, with a mean of 2.5 (standard deviation = 3.2) and a median of two. Based on the total number of judgeships available (575), 1.5 Rule 11 opinions were published per judgeship during the study. We do not know whether the relatively high number of Rule 11 opinions published by some judges reflects differences in their sanctioning practices or publication policies. This same qualification applies to the information presented in Table 19.

Table 18
Judicial variations in published Rule 11 opinions in the district courts, 1984 through 1989

Number of Opinions	Number of Judges	Number of Opinions	Number of Judges
1	166 (50%)	10	2 (1%)
2	78 (23%)	12	1 (1%)
3	33 (10%)	13	3 (1%)
4	16 (5%)	19	1 (1%)
5	15 (5%)	24	1 (1%)
6	10 (3%)	28	1 (1%)
7	4 (1%)	29	1 (1%)
8	2 (1%)	Total	334 (100%)

Variations in the imposition of sanctions by the judges is shown in Table 19. Thirty-eight percent (126) of the judges who published Rule 11 opinions did not impose sanctions. Among those judges who published, 40% (133) wrote one opinion imposing sanctions and 22% (75) wrote two or more opinions imposing sanctions. One judge imposed sanctions in nineteen opinions between 1984 and 1989.

Table 19
Judicial variations in published opinions that impose Rule 11 sanctions in the district courts, 1984 through 1989

Number of Opinions Imposing Sanctions	Number of Judges	Number of Opinions Imposing Sanctions	Number of Judges
0	126 (38%)	6	2 (1%)
1	133 (40%)	7	1 (1%)
2	43 (13%)	9	1 (1%)
3	17 (5%)	10	1 (1%)
4	6 (2%)	19	1 (1%)
5	3 (1%)	Total	334 (100%)

II. Appellate Court Opinions

A. How much satellite litigation has Rule 11 activity produced?

1. Incidence of Rule 11 activity

From 1984 through 1989, a total of 346 published appellate court decisions reviewed Rule 11 issues. The opinions discussed 338 individual cases. Eight cases produced two different published opinions. The opinions reviewed 352 Rule 11 motions/orders.

A breakdown of the number of opinions by circuit appears in Table 20. The appellate courts showed less disparity in the number of opinions across courts than the district courts did (see Table 4).

Table 20
Number of published Rule 11 decisions in the courts of appeals, 1984 through 1989

Circuit	Number of Opinions	Percentage of All Published Rule 11 Opinions	Circuit	Number of Opinions	Percentage of All Published Rule 11 Opinions
1	13	(4%)	8	18	(5%)
2	38	(11%)	9	66	(19%)
3	15	(4%)	10	12	(4%)
4	23	(7%)	11	23	(6%)
5	49	(14%)	D.C.	9	(3%)
6	16	(4%)	Federal	2	(1%)
7	62	(18%)	Total	346	(100%)

The number of Rule 11 opinions published between 1984 and 1989 is shown in Table 21. Trends over time parallel those in the district courts (see Table 2). At both levels, published opinions grew from 1985 to 1988 and declined for the first time in 1989. We do not know whether these numbers reflect changes in filing rate, publication practices, or underlying Rule 11 activity.

Table 21
Rule 11 activity, 1984 through 1989

	1984	1985	1986	1987	1988	1989	Total
Published opinions	4	22	56	85	100	79	346
Motions or orders	4	22	57	85	103	81	352

2. Demands on judges and attorneys

Activities associated with rulings. The outcomes of the appeals of the Rule 11 motions/orders are shown in Table 22. This table shows the outcome for all published appellate opinions, whereas Table 9 showed the outcomes for only those cases for which there was both a district court and appellate court opinion. Oral hearings were conducted in 74% of the cases. (Data were unavailable for thirteen cases.) Ninety-two percent (324) of the rulings issued were unanimous; 4% (fifteen) of the rulings were split decisions; and 4% (fifteen) involved separate opinions or were en banc decisions. In comparison, 96% of all appellate cases terminated between 1984 and 1989 were decided unanimously, according to data in the Federal Judicial Center's Integrated Database.

Table 22
Appellate court decisions, 1984 through 1989

Court Decision	Number of Opinions	Percentage of All Published Rule 11 Opinions
Affirmed imposition of sanctions	108	31%
Reversed imposition of sanctions	69	20%
Affirmed denial of sanctions	87	25%
Reversed denial of sanctions	21	6%
Remanded to adjust amount of sanction	15	4%
Remanded to clarify/specify grounds for ruling	13	4%
Sua sponte remanded to consider Rule 11 sanctions	5	1%
Sua sponte imposed Rule 11 sanctions	8	2%
Denied request for Rule 11 sanctions at appellate level	2	1%
Appeal dismissed for procedural grounds	9	3%
Other	15	4%
Total	352	100%

The basis for the sixty-nine reversals of sanctions is shown in Table 23. We grouped the grounds for reversal into three broad categories. It was possible for a reversal to be based on more than one ground, which is why the percentages do not add to 100.

Table 23
Basis for reversal of sanctions, 1984 through 1989

Basis for Reversal	Number of Reversals	Percentage of Total Reversals
Rule 11 procedural grounds	7	10%
Merits of sanctions	55	80%
Merits of claim or defense	13	19%

Reversals based on Rule 11 procedural grounds fell into the first category. Failure to give notice and opportunity to respond to the sanction motion or sua sponte order was the only procedural ground discussed in the opinions.

The second category involves reversals based on the merits of the sanctions. Reversals grounded on the finding of adequate prefiling inquiry into the law or facts are represented in this category. Also included are reversals based on the application of an incorrect standard (e.g., applying a bad-faith standard) or the application of the rule beyond its scope (e.g., failure to attend a conference or trial misconduct).

The final category represents reversals based on the merits of the targeted claim or defense. Cases were included in this category if the court of appeals reversed the district court ruling on the substantive issue related to the sanctioned pleading/paper. A clear example is the case where the appellate court reversed the dismissal of a complaint that was also the target of sanctions by the district court. This occurred in thirteen cases, representing 4% of all published appellate cases and 19% of the cases in which sanctions orders were reversed.

Appellate sanctions (Fed. R. App. P. 38) were imposed in 9% of all appeals of Rule 11 issues.

B. Has Rule 11 activity been disproportionately concentrated in specific types of cases?

The natures of suit of the cases brought on appeal are shown in Table 24. (Information on nature of suit was obtained from the Federal Judicial Center's Integrated Database.) As with district court activity, Rule 11 appeals were concentrated in four nature-of-suit groups: 76% of the cases appealed were contract disputes (17%), civil rights cases (20%), torts (12%), or actions based on a collection of miscellaneous federal statutes (27%).

Table 24
Nature of suit of published Rule 11 opinions in the courts of appeals, 1984 through 1989

Nature of Suit	Number of Opinions	Percentage of All Published Rule 11 Opinions
Contract	59	17%
Real property	6	2%
Torts	42	12%
Civil rights	70	20%
Prisoner petitions	10	3%
Forfeiture/penalty	0	
Labor	26	7%
Property rights	15	4%
Bankruptcy	0	
Social Security	2	1%
Federal tax	0	
Other statutes	92	27%
Total	346	100%

Note: The nature of suit was unavailable for twenty-four cases.

Appendix A

Methodology for Creating Databases of Published Opinions

I. Previous Research

The basic methodology for creating the databases was developed during the production of a 1988 Federal Judicial Center publication on Rule 11. (*See* T. Willging, The Rule 11 Sanctioning Process 191-93 (Federal Judicial Center 1988)). That study used the WESTLAW database and the West key number system to identify potential Rule 11 decisions. The key numbers used in the searches were these:

1. 45K24
2. 92K317(1)
3. 45K32(11)
4. 170AK2721

Separate searches were conducted on the Supreme Court (SCT), Circuit Courts of Appeal (CTA), and District Courts (DCT) databases on WESTLAW. The searches were limited to cases decided after 1983. The study analyzed a random sample of cases generated by the searches.

II. Current Methodology

We expanded the basic search strategy of the 1988 study to develop the databases for this analysis. The goal of this study was to analyze all appellate and district court published opinions involving Rule 11 from 1984 through 1989. We decided to restrict the analysis to cases appearing in the following published reporters: *Federal Supplement, Federal Reporter 2d,* and *Federal Rules Decisions.* Unpublished decisions appearing on WESTLAW were not included in the analysis. We conducted the searches on the DCTR and CTA databases.

The searches were conducted in four stages:

(1) The key numbers from the original study were used with the proper date restriction. A sample search follows:

45K24 & DA(AFT 1983 & BEF 1990)

One problem with this strategy was that key number categories included more than just Rule 11 cases. The categories were broad and included a variety other sanctions and attorney fees opinions.

(2) In an effort to more closely approximate the body of cases dealing with Rule 11, the next stage of searches looked for specific references to Rule 11 within the body of the opinions. A sample search follows:

45K24 & DA(AFT 1983 & BEF 1990) &
("RULE 11" "F.R.C.P. 11" "FED.R.CIV.P. 11" "FED.R.CIV.PRO. 11")

In reviewing the results of the searches we discovered two more problems with the strategy. First, cases were duplicated across the different key numbers because the key number categories were not mutually exclusive. Second, we discovered another key number that included Rule 11 opinions. The newly discovered key number was 170AK661.

(3) The third stage of searches attempted to reduce the amount of duplication across the key number categories and included the new key number. A sample search follows:

45K24 & DA(AFT 1983 & BEF 1990) &
("RULE 11" "F.R.C.P. 11" "FED.R.CIV.P. 11" "FED.R.CIV.PRO. 11")
% (92K317(1) 45K32(11) 170AK2721 170AK661)

The results from these searches were printed in the form of citation lists. Soon after we began reading the opinions to determine if a Rule 11 motion/order or sua sponte consideration was involved, we discovered that the citation lists omitted a significant number of opinions involving Rule 11. (See Appendix B for a discussion of the criteria used for including an opinion in the analysis.)

There were a large number of opinions that involved a discussion of Rule 11 motions/orders that were not categorized as such under the West key number system. In many of cases, Rule 11 motions were discussed and resolved in an opinion but were not the critical or significant issue in the decision. In these cases, the Rule 11 issue was hidden from the key number system. We therefore conducted the following search.

(4) The final stage of searches targeted the Rule 11 opinions not included in the key number system. The search used is presented below:

("RULE 11" "F.R.C.P. 11" "FED.R.CIV.P. 11" "FED.R.CIV.PRO. 11")
& DA(AFT 1983 & BEF 1990)
% (45K24 92K317(1) 45K32(11) 170AK2721 170AK661 TO(110))

The combination of the results of the third stage of key number searches and the text-based search used in the final stage formed the citation lists from which the district and appellate courts databases were created. The citation list for the district court database contained 1,731 opinions. The appeals court citation list contained 959 opinions.

The results of the four stages of searches on the DCTR and CTA databases are shown in Tables 25 and 26.

Table 25
Searches of the district courts (DCTR) database

Database Character String	Stage 1	Stage 2	Stage 3
45K24	351	305	125
92K317(1)	10	4	0
45K32(11)	18	18	0
170AK2721	572	512	362
170AK661	92	91	56
Total	1043	930	543

Stage 4 text search: 1188

Database Total (Stage 3 + Stage 4): 1731

Table 26
Searches of the appellate courts (CTA) database

Database Character String	Stage 1	Stage 2	Stage 3
45K24	260	161	75
92K317(1)	16	8	0
45K32(11)	10	4	0
170AK2721	301	262	188
170AK661	22	21	10
Total	609	456	273

Stage 4 text search: 686

Database Total (Stage 3 + Stage 4): 959

Appendix B
Criteria for Selecting Rule 11 Cases

The guidelines that follow were used by the law students reading the published opinions to determine if a case should be included in the Rule 11 database.

1. Include all cases involving sanctions in which Rule 11 is the primary rule affecting the sanctions decision. This should include all cases in which the application of Rule 11 is essential to the holding of the case. Include all cases in which there is a motion for sanctions that specifies Rule 11.

2. Include the case if Rule 11 and one or more other sources of authority appear to be relied on in the alternative or in approximately equal levels of importance.

3. Include the case if the court does not impose sanctions in the face of a claim that a pleading was unwarranted, and the court discussed Rule 11 in more than a passing reference.

4. Exclude all cases in which the reference to Rule 11 is by way of analogy or is otherwise incidental to the application of another source of authority. You will frequently find analogies to Rule 11 in cases dealing with frivolous appeals of sanctions decisions under Fed. R. App. P. 38 and discovery sanctions under Rule 26(g) and 37(b)(2) and (c). Most cases dealing with discovery do not need to rely on Rule 11 because Rule 26(g) overlaps and is more specific. Most cases that deal with conduct like failure to appear at a Rule 16 scheduling conference or failure to comply with a pretrial order will be covered by Rule 16(f).

5. Imposing sanctions on a lawyer will almost invariably be based on Rules 11, 16, 26, or 37. The fee-shifting statutes (e.g., 42 U.S.C. § 1988) do not provide for fees to be imposed on lawyers. 28 U.S.C. § 1927 does permit an award against lawyers but only on a finding that the lawyer acted "unreasonably and vexatiously." Often courts will discuss § 1927 and Rule 11 in the same context but rely on Rule 11 because it has a less subjective standard.