Inn of Court - CLE

Frivolous Lawsuits

Frivolous vs. Legitimate Lawsuits

Team Farley

I. "Frivolous" Defined in Plain English

Frivolous is defined as:

> referring to a legal move in a lawsuit clearly intended merely to harass, delay or embarrass the opposition.
>
> Frivolous acts can include filing the lawsuit itself, a baseless motion for a legal ruling, an answer of a defendant to a complaint which does not deny, contest, prove or controvert anything, or an appeal which contains not a single arguable basis (by any stretch of the imagination) for the appeal.
>
> A frivolous lawsuit, motion or appeal can result in a successful claim by the other party for payment by the frivolous suer of their attorneys' fees for defending the case. Judges are reluctant to find an action frivolous, based on the desire not to discourage people from using the courts to resolve disputes.

http://dictionary.law.com

There are many tools to use when preventing legal frivolity. The practitioner need only review Fed. R. Civ. P. 16(f), 26, and 37 to find the basis for a variety of sanctions. There are also many sanctions contained within specific statutory schemes like the anti-trust laws and the Clean Water Act. However, the two most common and over reaching sanctions provisions sanctioning frivolous lawsuits are found in Fed. R. Civ. P. Rule 11 and the court's "inherent power" codified at 28 U.S.C.A. 1927.

II. Hot Coffee

Case Study:

Stella Liebeck v. McDonald's Restaurants, P.T.S., Inc., et al., 1995 WL 360309 (N.M. D. C. 1994)

This case has been said to be the poster child for "frivolity" and the basis for national tort reform movements. However, the facts of the case and a healthy dose of hind site might have made the original $2.7 Million punitive damage award a matter of covering the medical bills that Medicare would not cover for around $11,000.00.

III. Rule 11. Signing Pleadings, Motions, and Other Papers; Representations to the Court; Sanctions

> **(a) Signature.** Every pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney's name--or by a party personally if the party is unrepresented. The paper must state the signer's address, e-mail address, and telephone number. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention.

1. Signature Requirement, Fed. R. Civ. P. 11(a)

Electronic signatures are signatures. *Ideal Instruments, Inc., v. Rivard Instruments, Inc.*, 243 F.R.D. 381, n. 36, (N. D. Iowa 2007) (outside, inside, and local counsel sanctioned).

Signature requirement is not limited to the lawyers. Any signing party, whether signature required or not, whether represented or not can be sanctioned. *Bus. Guides, Inc., v. Chromatic Commc'ns Enterprises, Inc.*, 498 U.S. 533, 111 S. Ct. 922 (U.S. 1991).

Case Study:

Ideal Instruments, Inc., v. Rivard Instruments, Inc., 243 F.R.D. 381, n. 36, (N. D. Iowa 2007). Ideal Instruments sued Rivard Instruments for patent infringement. They both manufactured "detectable" hypodermic needles for use in hypodermic syringes for livestock. They are "detectable" so that if they break off or are otherwise inadvertently left behind in the course of injecting an animal, they can be found in a slaughterhouse animal by a metal detector.

Rivard asserted a counterclaim for false advertising under the Lanham Act, claiming that Ideal's needles weren't really all that detectable. Rivard then filed for a preliminary injunction seeking to enjoin Ideal from the "false advertising," and instituting a recall of the needles. Ideal resisted and urged Rivard to withdraw its motion for preliminary injunction or face sanctions.

In ruling on the injunction, the trial court found there was no chance of Rivard proving the "literal falsity" or its "irreparable harm" elements of its false advertising claims.

Rivard's expert report "has no probative value whatsoever within the meaning of the livestock and meat processing industries owed to the flawed procedures that bore no relationship to industry conditions or the conditions of prior tests commissioned by the [National Pork Board]."

Ideal moved for sanctions under Rule 11 and/or the court's inherent powers, 28 U.S.C. § 1927, alleging that Rivard moved for injunction without conducting a reasonable inquiry and that Rivard's counsel acted recklessly and with improper motives and because Rivard's motion was disingenuous. Plaintiff alleged that Rivard's intent "was to force Ideal to yield to is position or be crushed under the weight of misstated facts and drowned in bombast." Rivard's outside, inside, and local counsel were all ultimately sanctioned along with the client.

Question: Was the defendant's motion for preliminary injunction in this case unreasonable and in bad faith or just wholly unpersuasive?

Holding: Following the Eighth Circuit Court of Appeals' authority and applying the "objectively unreasonable" test, all legal fees incurred in litigating the preliminary injunction motion and certain of the fees for discovery disputes were awarded against the lawyer, client, and law firm jointly and severally.

Analysis: Rivard had evidence by its own expert that previously found the questioned needles "100% detectable.

The court found it just "barely possible" that the defendant's original pleadings were believable. However, the flaws in the "expert's evidence should have been so readily apparent on any reasonable examination or inquiry," that the evidence was not found to be "objectively reasonable." The court cited the deposition of the expert where the doctor said "the evidence would support" that the needles are detectable.

"[U]nwarranted eagerness by Rivard and its attorneys to seize upon flimsy evidence," gives rise to the intent to harass or delay the litigation.

The duty of a party to assess the validity of a claim is a continuing duty.

> Ultimately, the court must determine whether a reasonable and competent attorney would believe in the merit of an argument. (Citations omitted.)

If there is no evidence, the appropriate course would be to withdraw the motion until valid support was assembled. "Indeed, . . . [had the motion] been presented in its final, complete form, instead of episodically, the court would be unlikely to impose any sanctions at all."

Moreover, Rivard was a sufficiently sophisticated industry player to know better.

> **(b) Representations to the Court**. By presenting to the court a pleading, written motion, or other paper--whether by signing, filing, submitting, or later advocating it--an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, **formed after an inquiry reasonable under the circumstances**: (emphasis added)
>
> > **(1)** it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
> >
> > **(2)** the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

> **(3)** the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and
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> **(4)** the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

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2. **Duty of Reasonable Inquiry, Fed. R. Civ. P. 11(b)**

Case study:

Bus. Guides, Inc., v. Chromatic Commc'ns Enterprises, Inc., 498 U.S. 533, 111 S. Ct. 922 (U.S. 1991).

Business Guides, Inc., publishes trade magazines. To protect its directories against copying, it inserted "seeds"-- incorrect addresses, fictitious businesses, et cetera, into its guides. The presence of these seeds in a competitor's directory was then taken by Business Guides to be evidence of copyright infringement.

Upon finding a "seed," Business Guides filed for a TRO against a competitor, Chromatic. The TRO was signed by the lawyer and the client. Three days before the TRO hearing, a law clerk phoned counsel to ask for specifics. Counsel relayed the request to the client's research department. This was apparently the first time the law firm asked its client for details. After research, the lawyer informed the court it was withdrawing three of the ten claims.

Unknown to counsel, the law clerk undertook an independent investigation and discovered that nine of the ten listings claimed to be "seeds" actually contained correct information. Unaware of the court's investigation, the lawyers prepared an affidavit for its client as to the seven of the ten claimed "seeds." The client signed the affidavit on the morning of the TRO hearing.

The court denied the TRO and referred the case to a magistrate for a Rule 11 investigation. Following two evidentiary hearings, Rule 11 sanctions were recommended.

Later the parties asked for a third hearing claiming to have uncovered the true facts. It was determined that the final version of the directory was compared to the questionnaires used to elicit information. Any disparities were then included in the "seed" list. The employee preparing the directory assumed that the information on the questionnaires was accurate. Thus, the competitor simply had accurate market research rather than copyright protected material from Business Guide's trade magazine which had flawed questionnaires.

The lawyers claimed they had an urgent need to act and relied on their sophisticated client for the information supporting the TRO. The court found that Business Guides violated the rule initially and its lawyers violated the rule when they persisted in the first and second evidentiary hearings without investigating.

What is an improper purpose? Fed. R. Civ. P. 11(b)(1)

Fed. R. Civ. P. 11(b)(1) specifically provides that any purpose that is to harass, cause unnecessary delay, or to needlessly increase the cost of litigation is an "improper purpose." The determination of whether or not litigation is filed for an improper purpose is based upon circumstantial evidence and inferences drawn therefrom.

The following have been found to be circumstantial evidence of an improper purpose:

- overlong documents
- unsupported attempts to controvert facts
- failure to provide record cites
- improper use of cumbersome cross references
- inappropriate inclusion of legal argument in a purported listing of material facts
- making unsupported claims
- being unable to demonstrate any basis for the claims or defenses
- a pattern of conduct, *Ideal Investments, Inc., v. Rivard Instruments, Inc.*, 243 F.R.D. 322 (N. D. Iowa 2007)
- Filing a RICO lawsuit without investigation so as to benefit from publicity generated by defendant's criminal sentencing on bank fraud charges. *Bryant v. Brooklyn Barbeque Corp.*, 932 F.2d 697 (8th Cir. Mo. 1991)

When is a claim unwarranted? Fed. R. Civ. P. 11(b)(2)

Filing malicious prosecution, excessive force, and trespass action against the government when an officer is hit, kicked, bit, and property is destroyed while executing a levy is considered an unwarranted filing. *Coonts v. Potts*, 316 F.3d 745 (C. A. 8th 2003)

Case Study:

Coonts v. Potts, 316 F.3d 745 (C. A. 8th 2003)

Following the execution of a levy on property, the Coontses sued a store owner and law enforcement officers for violation of their 4th Amendment rights--trespass, illegal arrest, malicious prosecution, and conversion.

Mrs. Coonts alleged she was arrested and charged under the wrong statute and therefore summary judgment should not have been granted. The court agreed she was arrested under the wrong statute but said she was guilty of conduct that supported other offenses.

Upon execution of the levy, Mrs. Coonts would not let the sheriff in to seize the property, so she was arrested and charged but never prosecuted. On a second visit, Mrs. Coonts fought, kicked, hit and attempted to bite the officers. They restrained her. When they finally released her she threw a candle at the large screen television being seized and destroyed the screen.

Summary judgment was found for the property owners, and the court issued a *sua sponte* show cause order. Counsel for the Coontses did not address the claims of malicious prosecution, excessive force, and trespass. The court found them frivolous.

The court said the lawyer did not conduct a reasonable inquiry into the factual and legal basis for the claims for malicious prosecution, excessive force and trespass, suggesting that appropriate force was used and that no malice existed when Mrs. Coonts hit, kicked, bit, and destroyed property.

Counsel was sanctioned $2,000.

The following have also been found to have been unwarranted claims:

- Drafting a complaint without reading the case law. *Crookham v. Crookham*, 914 F.2d 1027 (8th Cir. Iowa 1990)

- Filing a second action after executing a release. *DePugh v. Clemens*, 966 F. Supp. 898 (W. D. Mo. 1997)

- Pressing a claim(s) for infliction of emotional distress, breach of fiduciary duty, when MCI suspended customer's ability to receive calls from customer's son stationed in Iraq that later died, legitimate temporary interruption of service did not cause son's death. *Davis v. MCI Commc'ns Services, Inc.*, 421 F. Supp. 2d 1178 (E. D. Mo. 2006)

- Defending a social security claim when overwhelming evidence of entitlement to benefits. *Adamson v. Bowen*, 855 F. 2d 668 (10th Cir. Colo. 1988)

- Arguing that while they failed to make a colorable argument, a competent attorney would have done so. *White v. Gen. Motors Corp., Inc.*, 908 F.2d 675 (10th Cir. Kan. 1990)

- Filing obviously time barred Title VII suit. *Scott v. Boeing Co.*, 204 F.R.D. 698 (D. Kan. 2002)

- Bringing claims in court that "could have been brought" in a previous arbitration. *Western Maryland Wireless Connection v. Zini*, 601 F. Supp. 2d 634 (D. Md. 2009)

- Alleging antitrust violation without any allegation of antitrust injury. *Eastway Const. Corp. v. City of New York*, 762 F.2d 243 (2d Cir. N.Y. 1985)

- Defending a loan default action by alleging lack of consideration for entering into a loan agreement when trade debt was assumed. *Caisse Nationale de Credit Agricole - CNCA New York Branch v. Valcorp, Inc.*, 28 F.3d 259 (2d Cir. N.Y. 1994)

- Suing state court judges in a § 1983 action claiming the § 1983 action was an exception to judicial immunity, when statute was amended 10 years earlier. *Kircher v. City of Ypsilanti*, 458 F. Supp. 2d 439 (E. D. Mich. S. Div. 2006)

- Asserting factual contentions that have no evidentiary support. The remedy of dismissal and enjoinder against an abusive serial litigant was proper under Rule 11. *McKinzy, Sr., v. Union Pac. R. Co.*, Slip Copy, 2001 WL 6047853 (W. D. Mo. 2011)

- Suspended lawyer arguing violation of constitutional rights during disciplinary proceedings had no legal basis for her claims and was sanctioned. *Warren v. Bundi*, Slip Copy, 2011 WL 572424 (E. D. Mich. 2011)

What demonstrates evidentiary support? Fed. R. Civ. P. 11(b)(3)

Case Study:

Leary v. State Farm Cas. Co., Slip Copy WL 604330 (W. D. Pa. 2012). Insurance company recommended a contractor whose shoddy work cost a homeowner $92,293.39, to correct. A judgment was secured against the contractor and a subsequent action was filed against State Farm for unfair trade practices.

Plaintiff asserted that the evidence needed to substantiate their allegations was "solely within the knowledge and possession" of defendant. State Farm moved to dismiss under 12(b)(6). The court found that Rule 11(b)(3) specifically allowed this type of argument advancement, and that plaintiffs were not required to <u>prove</u> their allegations at the pleadings stage.

When are denials unwarranted? Fed. R. Civ. P. 11(b)(4)

Bergson v. Dilworth, 749 F. Supp. 155 (D. Kan. 1990). In a personal injury action it was error to award sanctions against a lawyer for denying liability despite reports of collision expert to the contrary, where defendant's version of the facts, although suspect, could have presented a triable issue. *Bergeson v. Delworth*, 749 F.Supp. 1555 (D. Kan. 1990).

(c) Sanctions.

(1) *In General.* If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. **Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee**. (Emphasis added.)

(2) *Motion for Sanctions.* A motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b). The motion must be served under Rule 5, but it must not be filed or be

presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets. If warranted, the court may award to the prevailing party the reasonable expenses, including attorney's fees, incurred for the motion.

(3) ***On the Court's Initiative.*** On its own, the court may order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated Rule 11(b).

(4) ***Nature of a Sanction.*** A sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. The sanction may include nonmonetary directives; an order to pay a penalty into court; or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation.

(5) ***Limitations on Monetary Sanctions.*** The court must not impose a monetary sanction:

(A) against a represented party for violating Rule 11(b)(2); or

(B) on its own, unless it issued the show-cause order under Rule 11(c)(3) before voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned.

(6) ***Requirements for an Order.*** An order imposing a sanction must describe the sanctioned conduct and explain the basis for the sanction.

(d) Inapplicability to Discovery. This rule does not apply to disclosures and discovery requests, responses, objections, and motions under Rules 26 through 37.

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§ 30. Checklist for avoiding Rule 11 sanctions

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Each time a filing is made in federal court, an attorney and his or her clients are exposed to a possible Rule 11 sanction motion. Few attorneys, however, perform a mental inventory of the requirements of Rule 11 each and every time they send a pleading, motion, or other paper to the court. The following helpful checklist should therefore be committed to memory, or, at a minimum, consulted each time the attorney signs and files a document with the district court.

1. I have made an "objectively reasonable inquiry" of the facts.

☐ I have interviewed my client as to each element of his/her claim(s)/defense(s).

☐ I have seen all documents upon which my client will rely (to the extent such documents are in my client's possession, custody, or control).

☐ I have interviewed key witnesses, to the extent my client will need to rely upon their testimony to establish an element of any claim(s)/defense(s).

☐ I have consulted with experts, if necessary, to determine if my client's claim(s)/defense(s) are valid in light of the appropriate practice in the industry/standard of care/etc.

☐ I have reviewed all facts and discovery available to me before bringing/opposing any motion.

2. I have made an "objectively reasonable inquiry" of the law.

☐ I have researched the relevant case law that supports my client's claim(s)/defense(s)/motion(s).

☐ I have researched the relevant statutes and/or regulations that supports and/or governs each of my client's claim(s)/defense(s)/motion(s).

☐ I have ensured that all authorities relied on are valid and up-to-date.

☐ There is jurisdiction in the district court for my claim(s)/defense(s).

☐ My client has standing to assert his/her claim(s)/defense(s).

☐ My client's claim(s)/defense(s) are ripe for adjudication.

☐ None of my client's claim(s)/defense(s) are barred (i.e., by a statute of limitations, preemption of law, etc.).

☐ If there is no law which directly supports my client's claim(s)/defense(s)/motion(s), I can make a good-faith argument for the extension, modification, or reversal of the law. I have found support for such a position in out-of-state cases/nonbinding precedent/authoritative commentary/policy arguments. I have or will identify the authority in support of, and all binding precedent contrary to, my client's position.

☐ I have complied with the Federal Rules of Civil Procedure in bringing, pleading, filing, and serving my client's claim(s)/defense(s)/motion(s).

☐ I have complied with the district court's local rules in bringing, pleading, filing, and serving my client's claim(s)/defense(s)/motion(s).

3. I have not asserted, brought, or maintained any claim(s)/defense(s)/motion(s) for an improper purpose.

☐ I have a good-faith belief that my client's claim(s)/defense(s)/motion(s) are valid.

☐ My client and I can articulate a meritorious reason for bringing each claim/defense/motion.

☐ None of my client's claim(s)/defense(s)/motion(s) have been brought solely for the purpose of harassing the opponent.

☐ None of my client's claim(s)/defense(s)/motion(s) have been brought solely for the purpose of delay.

☐ None of my client's claim(s)/defense(s)/motion(s) have been brought solely to increase the cost or complexity of the litigation.

Case Study:

It is often the case that both Rule 11 and § 1927 are asserted or found simultaneously. The colorful language of the comments to the Rule has found its way into 10th Circuit cases.

Hamilton v. Boise Cascade Express, 519 F.3d 1197, 1202 (10th Cir. 2008) ("where 'pure heart' not withstanding, an attorney's momentarily 'empty head' results in objectively vexatious and unreasonable multiplication of proceedings at the expense of his opponent, the court may hold the attorney personally responsible.")

IV. 28 U.S.C.A. § 1927. Counsel's liability for excessive costs.

Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.

Case Study:

Medical Supply Chain, Inc., v. Neoform, Inc.,419 F. Supp. 2d 1316 (D. Kan. 2006).

The Complaint consisted of 16 counts including anti-trust under both federal and Missouri law, RICO and The Patriot Act.

Plaintiff's filing of a nearly unintelligible 115 page Complaint suggested to the court that suit was brought to harass. The Complaint re-litigated claims barred by claim preclusion. Thus, the court found the plaintiff unreasonably and vexatiously multiplied the proceedings.

Plaintiff also failed to heed court's admonitions. The disbarred lawyer and client were assessed fees under 28 U.S.C. § 1927.

Case Study:

In re Outboard Marine Corp., et al., 2011 WL 2632115 (Bkrtcy. N. D. Ill. 2011)

A trustee sought sanctions over a dispute regarding a release in a bankruptcy involving a debtor and its related debtor entities. Apparently, a creditor's attorney allowed a release to be drafted that was broader than what he intended. The Trustee warned him twice that the executed release applied to the claims being made but the creditor persisted.

The court found the creditor and its attorney liable under the bankruptcy equivalent of Fed. R. Civ. P. 11, Bankruptcy Rule 9011, and sanctionable under 28 U.S.C. § 1927 finding that sanctions will be awarded when an attorney has acted in an:

> "objectively unreasonable manner" by engaging in "serious and studied disregard for the orderly process of justice," pursued a claim that is "without a plausible legal or factual basis and lacking in justification," or "pursue[d] a path that a reasonably careful attorney would have known, after appropriate inquiry, to be unsound[.]" (Citations omitted.)

Case Study:

Kapco Mfg. Co., Inc., v. C&O Enterprises, Inc., 886 F.2d 1485 (C.A. 7th 1989).

Kapco alleged that defendants had misappropriated its right to manufacture and market a car battery charger known as "Dash-go." During the pretrial conference, a settlement evolved and was read into the record. However, Kapco then filed a "plethora of motions" a second complaint and four published opinions issued.

Kapco wanted the case reinstated and the court declined, suggesting that the settlement simply needed to be enforced allowing leave for discovery if requested regarding ordered accountings. Kapco tried to disqualify C&O's counsel, moved to reconsider the discovery requested, and appealed the district court's order denying reinstatement. Kapco's resident agent wrote a lot of letters to the defendant and defendant's counsel and the lawyers submissions to the court "were lengthy ramblings filed with invective, often recycled from earlier submissions lack citations to authority and were filled with misrepresentations of fact and law." The court was apparently offended by the conduct.

> Friedman practically boasts as much in detailing his philosophy of litigation in his briefs before the district court.

> [S]erious litigation does amount to civilized bloodless war between the parties. . . . To maintain that this litigation, in particular, amounts to warfare merely states the obvious . . .

Although it did, the court was not required to find Kapco's claims frivolous and baseless. It only needed to find that his actions unnecessarily prolonged the litigation.

* * *

> Friedman was a zealous advocate but not a responsible one. His conduct and that of his client constitutes a severe abuse of the judicial system.

V. KANSAS:

K.S.A. 60-211 - Chapter 60. Procedure, Civil, Article 2. Rules of Civil Procedure

> **60-211. Signing of pleadings, motions and other papers; representations to the court; sanctions**
>
> **(a) *Signature.*** Every pleading, written motion and other paper must be signed by at least one attorney of record in the attorney's name, or by a party personally if the party is unrepresented. The paper must state the signer's address, e-mail address, telephone number and fax number. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit or a declaration pursuant to K.S.A. 53-601, and amendments thereto. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention.
>
> **(b) *Representations to the court.*** By presenting to the court a pleading, written motion or other paper, whether by signing, filing, submitting or later advocating it, an attorney or unrepresented party certifies that to the best of the person's knowledge, information and belief formed after an inquiry reasonable under the circumstances:

(1) It is not being presented for any improper purpose, such as to harass, cause unnecessary delay or needlessly increase the cost of litigation;

(2) the claims, defenses and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

(c) ***Sanctions.*** If, after notice and a reasonable opportunity to respond, the court determines that subsection (b) has been violated, the court may impose an appropriate sanction on any attorney, law firm or party that violated the statute or is responsible for a violation committed by its partner, associate or employee. The sanction may include an order to pay to the other party or parties that reasonable expenses, including attorney's fees, incurred because of the filing of the pleading, motion or other paper. A motion for sanctions under this section may be served and filed at any time during pendency of the action, but must be filed not later than 14 days after the entry of judgment.

(d) ***Inapplicability to discovery.*** Subsections (a) through (c) do not apply to disclosures and discovery requests, responses, objections and motions that are subject to the provisions of K.S.A. 60-226 through 60-237, and amendments thereto.

(e) ***Applicability to the state.*** The state of Kansas, including an agency or political subdivision thereof, is subject to this section.

(f) ***Monetary sanctions against inmate.*** If the court imposes monetary sanctions on an inmate in the custody of the secretary of corrections, the secretary is authorized to disburse any money in the inmate's account to pay the sanctions.

Case Study:

Subway Rest., Inc., v. Kessler, 273 Kan. 969, 46 P.3d 1113 (Kan. 2002) (sanction against attorney of $413,695.25 affirmed for asserting false fraud counterclaim).

VI. MISSOURI:

The Missouri statute is very similar in spirit to the federal rule, except a "bad faith" element is included. It seems Missouri does not share the concern of "pure heart - empty head" assertions.

V.A.M.S. 514.205 - Chapter 514. Costs (Civil Cases) (Refs & Annos) General Provisions

514.205. Frivolous suit, consequences of filing--limitations

1. In any civil action or part of a civil action pending before any division of any court of this state including the probate division of the circuit court, if the court finds after a hearing for such purpose that the cause was initiated, or a defense was asserted, or a motion was filed, or any proceeding therein was had frivolously and in bad faith, the court shall require the party who initiated such cause, asserted such defense, filed such motion, or caused such proceeding to be had to pay the other party named in such action the amount of the costs attributable thereto and the reasonable expenses incurred by the party opposing such cause, defense, motion, or proceeding, including reasonable attorney's fees and compensation of said party for the time reasonably required of the party to oppose such cause, defense, motion or proceeding. Nothing in this section shall be construed as creating any liability on the part of any attorney representing a party in the proceeding who in good faith acted at the specific direction of his client in initiating the case, asserting the defense, filing the motion, or causing the proceeding to be had.

2. The provisions of this section shall not apply to specific conduct occurring prior to September 28, 1985. The provisions of this section shall not apply to proceedings brought in the nature of a civil action where a convicted person seeks a judicial review of his conviction.

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True? / Not True?

1. Suing Anheuser-Busch for false advertising

A man sued Anheuser-Busch for $10,000. Why? False advertising. The dude claimed that unlike the beer commercials, drinking that particular beer did not cause bikini clad girls to suddenly break into a volleyball game and invite him back to their hotel room.

2. Honda lawsuit

A drunk girl drove into Galveston Bay in Texas. Her friend got out alive but the drunk driver was too drunk to unfasten her seatbelt and died. The driver's parents sued Honda for manufacturing a seat belt that cannot be easily unbuckled by a drunk driver who is under water.

3. Suing Jack Murphy Stadium

It was March 1995 and Robert Glaser was pretty excited about attending a Billy Joel and Elton John concert at Jack Murphy Stadium in San Diego. When his bladder called for him to relieve himself, he was confronted with the stadium's unisex bathroom policy. Approaching the urinals, he noticed a woman using one.

He visited a number of other bathrooms in the stadium but discovered women in all of them. He was embarrassed and claims that emotional distress prohibited him from being able to "go," and he therefore had to hold it in for around four hours. He sued the stadium and the city for $5.4 million, but lost in the end.

4. Wal-mart

A couple is suing Wal-Mart for injuries they claim were caused by canned goods and condiments that tumbled from an overfilled plastic grocery bag.

The bag broke when the couple, Ronald and Brenda Sager, were unloading their groceries at home. Brenda suffered “cracked and damaged toenails” and also claims to have a broken foot and ligament damage from the incident.

Brenda sued Wal-Mart for $30,000.

Ronald also sued for loss of consortium.

5. Sexual discrimination lawsuit

In 2003, Richard Schick sued his former employer, the Illinois Department of Public Aid. Schick sought $5 million plus $166,700 in back pay for sexual and disability discrimination. In fact, Schick was so stressed by this discrimination that he committed armed robbery of a convenience store. A jury awarded him a sizeable verdict. The decision was then reversed. Unfortunately, the $303,830 he gained on remand isn’t doing him much good during the ten years he is serving for armed robbery.

6. Kraft foods Oreos lawsuit

In May 2003, Stephen Joseph of San Francisco sued Kraft foods for putting trans-fat in their Oreo cookies. Joseph wanted an injunction to order Kraft to stop selling Oreos to children. Once the media caught wind of Joseph’s lawsuit, the media blitz became too much for him to handle. He decided to drop the suit.

7. 1995 Long Island doctor was served with divorce papers by his cheating wife. He sued for $8 Million and to get his kidney back.