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Introduction to Report of Special Committee to Consider Sanctions for Frivolous Litigation in New York State Courts

Hon. Hugh R. Jones

New York State Bar Association Special Committee to Consider Sanctions for Frivolous Litigation in New York State Courts

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Cover Page Footnote

Chair, New York State Bar Association Special Committee to Consider Sanctions for Frivolous Litigation in New York State Courts

INTRODUCTION TO REPORT OF THE SPECIAL COMMITTEE TO CONSIDER SANCTIONS FOR FRIVOLOUS LITIGATION IN NEW YORK STATE COURTS

Introduction by Hon. Hugh R. Jones*

The New York State Bar Association is pleased that the *Fordham Urban Law Journal* is publishing in this issue the Report of the Association's Special Committee to Consider Sanctions for Frivolous Litigation in New York State Courts. On April 7, 1990, the House of Delegates of our Association approved the Report.

The general objective of our Special Committee was to study and recommend appropriate means for addressing problems caused by abusive litigation in the New York State courts, including the question of when sanctions should be imposed as well as the substantive and procedural form they should take. The Committee solicited the views of thousands of lawyers and judges on this topic and also compiled voluminous materials from numerous sources throughout the United States.

The Committee's Report sets forth recommendations and a proposed sanctions rule. The recommendations reflect the Committee's consideration and rejection of certain of the basic principles which underlie Rule 11 of the Federal Rules of Civil Procedure. The Committee's major recommendations can be briefly summarized as follows:

(1) The Committee believed that the focus of sanctions rules should be on abusive conduct rather than on frivolous pleadings. The Committee found that the problems confronting the New York State courts are not caused by frivolous pleadings. Rather, the Committee concluded that excessive costs and delay are caused by abusive litigation practices. In addition, the Committee was concerned that sanctions provisions which penalize frivolous pleadings (such as Federal Rule of Civil Procedure 11) may unnecessarily chill access to the courts without preventing the conduct that actually causes needless expense and delay. Accordingly, the Committee recommends that there would ordinarily be no sanction for the mere filing of a frivolous complaint or other pleading.

(2) The Committee believed that the purpose of sanctions rules

* Chair, New York State Bar Association Special Committee to Consider Sanctions for Frivolous Litigation in New York State Courts.

should be deterrence, with fee-shifting the appropriate deterrent mechanism, rather than punitive sanctions. Accordingly, the Committee recommends that persons harmed by abusive conduct be compensated for their reasonably incurred expenses, including reasonable attorneys' fees. The Committee believed that such cost-shifting is not subject to arbitrary application as the provision for payment of punitive sanctions may be.

(3) Other recommendations by the Committee include: (a) there should be no cap on the amount of the award; (b) awards should not be dependent on the signing of a paper as is the case with Federal Rule of Civil Procedure 11; and (c) courts should be required to set forth in writing the particulars of the conduct which violated the rule and the particulars justifying the amount of costs awarded.