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Introductory Remarks

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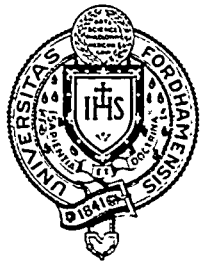

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SYMPOSIUM

AMENDED RULE 11 OF THE FEDERAL RULES OF CIVIL PROCEDURE: HOW GO THE BEST LAID PLANS?

On April 24, 1985, the Association of the Bar of the City of New York sponsored a Symposium addressing the use and impact of the amended version of Rule 11 of the Federal Rules of Civil Procedure. What follows is a transcript of those proceedings.

INTRODUCTORY REMARKS

*PAUL A. BATISTA**

Tonight's panel on Rule 11 presents what we at the Association believe to be one of the most sensitive issues confronting lawyers today: the use of sanctions, particularly monetary sanctions, against lawyers for abuse of the litigation process.

This has become an acutely controversial issue since August of 1983 when, after years of sharp debate, the Supreme Court adopted the amendments to Rule 11 of the Federal Rules of Civil Procedure under which we now live. There is no mystery on what the Rule now says. There is also no mystery on what the Supreme Court intended the amended Rule to achieve. The message in fact is clear and explicit. Amended Rule 11 is designed to encourage federal judges and magistrates to impose financial penalties on lawyers with greater frequency for violation of the certification requirements of the amended Rule. Under Rule 11, a lawyer is required to sign all pleadings and motions and, to quote the language of the Rule itself, the signature is a certificate of the lawyer that "the pleading or motion is well grounded in fact and is warranted by existing law, or a good faith argument for the extension, modification or reversal of existing law, and that it has not been introduced for any improper purpose such as to harrass, or to cause unnecessary delay, or needless increase in the cost of litigation."

When the Rule amendments were proposed more than three years ago by the United States Judicial Conference, a group that consists primarily of senior federal judges, the amendments were met with a great deal of debate. Most of the organized bar associations expressed concern about the usefulness of the proposed amendments, the standards that would be applied under the proposed amendments, and the impact that the changes would have on the litigation process. There was concern, for

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example, that the amendments to the rules would generate what is known as "satellite litigation" in which lawyers battle with one another over their conduct, as opposed to the merits of the actual litigation.

Despite the widespread opposition to the amendments by the organized bar, they were implemented intact by the Supreme Court. That may have had something to do with the fact that the proposed amendments received unusual public exposure, particularly in the media, and approval. *The New York Times*, for example, editorially endorsed the concept of increased sanctions on lawyers and also the idea of tightening the standards under which the litigation process is conducted.

And, in fact, the amendments are intended to be stringent standards, as the Advisory Committee notes accompanying the adoption of the amendments show. They are not, however, self-defining standards and they do not reflect any bright line guidance. In fact, I think it is fair to say that we as lawyers stepped into a mysterious and somewhat intimidating new world in August of 1983.

What do the new standards in fact mean? How should they be applied? In what kinds of cases? For what kinds of conduct? And what would the arguments be in favor of or in opposition to such motions? Our purpose tonight is to shed some light on these dark places. We now have almost two years of experience with life under these rules. But I think it is fair to say that there is a general lack of information on how amended Rule 11 in fact is operating in the federal courts.

We have an opportunity tonight to learn some of the answers to those questions from the people who make the decisions. Our panelists tonight are Magistrate A. Simon Chrein of the Eastern District of New York; John F. Cannon, a partner at Sullivan & Cromwell and the Chairman of the Lectures and Continuing Education Committee of the Association; Judge Robert L. Carter of the Southern District of New York; Judge Charles Sifton of the Eastern District of New York; Judge Kevin Thomas Duffy of the Southern District of New York; Magistrate Naomi Reice Buchwald of the Southern District of New York; and Melvyn I. Weiss, a senior partner in one of the nation's premier class action law firms.

A word about the structure of tonight's program. We have in effect three keynote speakers. We have asked Judge Carter to speak for a few minutes on the purpose and intent of amended Rule 11. We have asked that John Cannon, when Judge Carter has concluded, respond to the comments made by Judge Carter by providing his own commentary on the purpose and scope of the rules. That presentation will be followed by Magistrate Chrein's comments on the actual operation of Amended Rule 11. We think that Magistate Chrein is—as are all of the other panelists—in a unique position to tell us what if anything is actually happening with the amended rules and if they have made any difference at all in the actual conduct of the litigation process.

Following Magistrate Chrein we will have Judge Duffy respond to

Magistrate Chrein's description of the operation of the rule with his own views. Our final keynote speaker will be Mel Weiss. We have asked Mel to provide a practitioner's commentary on the actual use of the rules and we have asked Judge Sifton and Magistrate Buchwald to respond to Mel Weiss' comments.