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Rule 11 in the Federal Courts of North Carolina

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Since 1983, a federal practitioner who signs a document certifies that it is "gounded in fact and warranted by existing law or a good faith argument for the extension, modification or reversal of existing law." Perhaps more importantly, he or she certifies that this belief was formed "after reasonable inquiry." Referred to by one North Carolina federal judge as the "stop and think" requirement, the new rule holds attorneys to an objective standard of reasonableness and directs the court to impose sanctions when this standard is violated.

Federal judges and magistrates in North Carolina have employed Rule 11 in widely-varying factual situations. Many of those opinions are unpublished and sometimes difficult to locate. This article discusses several in an attempt to familiarize the bar with this growing body of law. The topic is particularly relevant since an identical North Carolina Rule 11 became effective January 1, 1987.

Some cases are rather straightforward, involving a finding by the court that outright deception has occurred. In **Monroe v. Goodman**, No. 86-240-CRT, (E.D.N.C. Aug. 3, 1986), a pro se plaintiff ran afoul of Rule 11 by asserting that he had not initiated any other lawsuit in federal court, when in fact the precise complaint had been filed in the Middle District earlier and dismissed there. A similar factual pattern led to sanctions in **Baldwin v. Boone**, No. 86-83-CRT, (E.D.N.C. Oct. 6, 1986) and **Morrison v. Bone**, No. 86-918-CRT, (E.D.N.C. Dec. 1, 1985). The court reprimanded the plaintiff in **Baldwin**, and ordered the plaintiffs in **Monroe** and **Morrison** to pay $200 into the Inmate Welfare Fund, with 25 percent of their trust fund deposits garnished until the sum was paid. On an unusual set of facts, the court in **Lupton v. Thornburg**, No. 85-179-CIV-4, (E.D.N.C. Nov. 24, 1986) ordered counsel for plaintiff to pay $150 to plaintiff and reasonable attorneys' fees of defendants upon determining after an evidentiary hearing that the plaintiff had never authorized the action to be filed.

Other cases involve the assertion of claims without an adequate factual basis. In **Nobles v. Widner**, 86-86-CIV-4 (E.D.N.C. Feb. 20, 1987), the court reprimanded counsel for asserting a civil rights claim against both the chief of police and a municipality arising out of the alleged unconstitutional conduct of a single police officer, when after summary judgment motions no factual predicate could be shown for the claim. Similarly, the court ordered counsel for defendant to pay plaintiff's counsel the sum of $652.50 for the assertion of defenses in a pre-trial order without any factual basis. **Spell v. McDaniel**, 84-06-CIV-3, (E.D.N.C. May 29, 1985).

Another group of cases deals with the requirement that there be an adequate legal basis for the claim. In **Price v. Livingston**, No. 86-98-CIV-5, (E.N.D.C. May 7, 1986), counsel filed a personal injury action in Wayne County against a Pennsylvania native arising out of a West Virginia accident. Upon removal, the court granted the motion to dismiss and imposed Rule 11 sanctions, holding there was no colorable legal theory upon which personal jurisdiction over the defendant could be sustained in North Carolina. Counsel for plaintiff was required to pay the attorneys' fees of counsel for defendant. In **Griffin v. Godard**, No. 86-9-CIV-4, (Jan. 26, 1987), counsel for plaintiff was reprimanded for asserting a federal cause of action against the city of Williamston for private conduct of an off-duty police officer, while in **Hasting v. Arlen**, No. C-84-931-S, (Mar. 4, 1984 M.D.N.C.), defendant's counsel was required to pay plaintiff's attorneys' fees because of a removal from state court without any legal basis. And in **Shreve v. Duke Power Company**, No. C-85-1372-G (M.D.N.C. May 4, 1987), the court assessed sanctions against plaintiff's counsel for filing a complaint outside of the applicable limitations period.

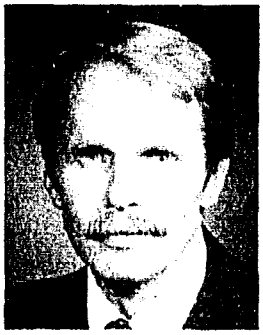
Finally, in a lengthy opinion (the appeal from which is pending in the Fourth Circuit), the court reprimanded counsel for plaintiff for filing an action attempting to stop state authorities from investigating a Goldsboro attorney who had been disbarred. **Whitted v. Jacobs**, No. 86-613-CIV-5, (E.D.N.C. Jan. 1, 1987). The court concluded that the plaintiff had "utterly failed to provide any plausible legal justification for the causes of action purportedly alleged, and in many instances failed to advance any factual support for his allegations." On the other hand, in **Suitt Construction v. Suitomo Electric Research**, No. C-85-530-D (M.D.N.C. Nov. 22, 1985), the court declined to impose sanctions when counsel argued that the longstanding test to determine residence of a corporation under diversity jurisdiction should be altered to recognize that a corporation

could have more than one principal place of business. The court concluded that even in the absence of case authority, counsel should not be punished for urging new or creative theories.

Reviewing these cases makes clear that the holdings are very specific to the facts of each, and that judges have great discretion in determining whether to employ Rule 11. Nonetheless, the concluding paragraph of a recent opinion makes clear that the pleading climate has changed:

> This court will not tolerate from any member of the bar such abuse of judicial resources. It matters not whether the signer is black or white, sole practitioner or senior partner in a multi-member firm, young or old, male or female, small town lawyer or corporate counsel — the fundamental requisites for pleading as well as professional ethics establish minimum requirements of competency, candor and diligence in the practice of law.

Whitted, supra, slip. op. at 16, (Fox, J.). ■



J. Rich Leonard has been a clerk of the United States District Court for the Eastern District of North Carolina since 1979 and has been a United States Magistrate since 1981.

He received an undergraduate and a masters degree from the University of North Carolina at Chapel Hill and a law degree from Yale University. Following his graduation, he served as a law clerk to Judge Franklin Dupree, Jr., and from 1978 to 1979 he worked in private practice.

Duty and the Law: And the

By William C. Burris
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John J. Parker was for over 30 years a towering figure in the American judicial system. His accomplishments in the improvement of the administration of justice in the Federal courts is unparalleled in this century. His imprint on the development of constitutional law through a period of turbulent change in American political policy (1925-1958) was profound.

His long-term impact on the Federal judiciary dwarfs the single event for which his career is most remembered — the narrow and controversial defeat in the United States Senate (41 to 39) of his nomination to the United States Supreme Court in 1930. Indeed, his influence on the law might well have been lessened by being one of 9 justices in an oft-divided court, rather than being the strong Chief Judge of the Fourth Circuit Court of Appeals for several decades where he was able to impose his considerable will on his colleagues on the bench and the bar.

While he was Chief Judge, the Court was rarely divided, and dissenting opinions were few and far between. As the author says: "He felt that dissenting opinions usually did more harm than good . . . he refused to accept the view, and he was adamant about this, that a judge had a duty to cling to his own views after a majority had determined otherwise." In Judge Parker's words, "a judge is taking himself much too seriously if he feels impelled to file a dissenting or concurring opinion every time his own opinion does not coincide with the majority." No doubt he had the United States Supreme Court in mind when he made that comment. One cannot help but wonder whether if he had actually gone to the Supreme Court and become Chief Justice he would by force of his personality have been able to impose that view on his colleagues more successfully than recent Chief Justices have. If so, the state of the law would today be much less confused and uncertain.

Judge Parker was a North Carolinian through and through. Born and reared in Monroe, of humble working-class stock on his father's side and more prominent lineage on his mother's side, related to several Governors, he was from his early days bright, ambitious and serious. He was educated at the University of North Carolina, both undergraduate and law, where he was a student leader and president of Phi Beta Kappa. After finishing in 1908, he began practicing law briefly in Greensboro, then moved to Monroe, and then in 1922 joined an old firm in Charlotte.

Going against family and community tradition, Parker joined the Republican party right out of law school, and became actively involved in politics. He ran unsuccessfully for Congress, for Attorney General, and then in 1922, at the young age of 35, for Governor. At that time, the Republican party in North Carolina was dominated by John Motley Morehead, and the Democratic party by U.S. Senator Furnifold Simmons, head of the famous "Simmons machine." Interestingly, during that period the state Democratic party was identified as the white supremacy party, while the Republican party was charged with being the "old friend of the Negro." Indeed, statements made by Parker in that gubernatorial campaign to try to defuse that issue were used against him later in the Supreme Court nomination battle by his opponents contending, unfairly, that he was racist.

With the strong support of North Carolina Democratic and Republican leaders alike, he was appointed to the