

GOVERNMENTAL AFFAIRS
OFFICE

AMERICAN BAR ASSOCIATION

Governmental Affairs Office

740 Fifteenth Street, NW
Washington, DC 20005-1022
(202) 662-1760
FAX: (202) 662-1762

DIRECTOR
Robert D. Evans
(202) 662-1765
rdevans@staff.abanet.org

SENIOR LEGISLATIVE COUNSEL
Denise A. Cardman
(202) 662-1761
cardmand@staff.abanet.org

Kevin J. Driscoll
(202) 662-1766
driscollk@staff.abanet.org

Lillian B. Gaskin
(202) 662-1768
gaskinl@staff.abanet.org

LEGISLATIVE COUNSEL
R. Larson Frisby
(202) 662-1098
frisbyr@staff.abanet.org

Kristi Gaines
(202) 662-1763
gainesk@staff.abanet.org

Kenneth J. Goldsmith
(202) 662-1789
goldsmithk@staff.abanet.org

Ellen McBarnette
(202) 662-1767
mcbarnee@staff.abanet.org

E. Bruce Nicholson
(202) 662-1769
nicholsonb@staff.abanet.org

DIRECTOR GRASSROOTS
OPERATIONS/LEGISLATIVE COUNSEL
Julie M. Strandlie
(202) 662-1764
strandlj@staff.abanet.org

INTELLECTUAL PROPERTY
LAW CONSULTANT
Hayden Gregory
(202) 662-1772
gregoryh@staff.abanet.org

STATE LEGISLATIVE COUNSEL
Rita C. Aguilar
(202) 662-1780
aguilarr@staff.abanet.org

EXECUTIVE ASSISTANT
Julie Pasatiempo
(202) 662-1776
jpasatiempo@staff.abanet.org

STAFF DIRECTOR FOR
INFORMATION SERVICES
Sharon Greene
(202) 662-1014
greenes@staff.abanet.org

EDITOR WASHINGTON LETTER
Rhonda J. McMillion
(202) 662-1017
mcmillionr@staff.abanet.org

May 20, 2005

The Honorable F. James Sensenbrenner, Jr.
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515-6216

Dear Mr. Chairman:

We understand that your committee will soon begin consideration of H.R. 420, the "Lawsuit Abuse Reduction Act." This legislation would impose mandatory sanctions for any violation of Rule 11 of the Federal Rules of Civil Procedure and remove its current "safe harbor" provisions; impose federal mandatory Rule 11 sanctions upon any civil state court claim that materially affects interstate commerce; and impose specific venue designation rules upon any personal injury claim filed in any state or federal court.

As a threshold matter, the ABA strongly opposes this legislation because these amendments to the Federal Rules of Civil Procedure are being proposed without going through the process set forth in the Rules Enabling Act. The ABA fully supports the Rules Enabling Act process, which is based on three fundamental concepts: (1) the central role of the judiciary in initiating judicial rulemaking, (2) procedures that permit full public participation, including by the members of the legal profession, and (3) a congressional review period. We view the proposed rules changes to the Federal Rules in H.R. 420 as a retreat from the Rules Enabling Act.

In 28 U.S.C. §§ 2072-74, Congress prescribed the appropriate procedure for the formulation and adoption of rules of evidence, practice and procedure for the federal courts. This well-settled, Congressionally-specified procedure contemplates that evidentiary and procedural rules will in the first instance be considered and drafted by committees of the United States Judicial Conference, will thereafter be subject to thorough public comment and reconsideration, will then be submitted to the United States Supreme Court for consideration and promulgation, and will finally be transmitted to Congress, which retains the ultimate power to veto any rule before it takes effect.

This time-proven process proceeds from separation-of-powers concerns and is driven by the practical recognition that, among other things,

- 1) rules of evidence and procedure are inherently a matter of intimate concern to the judiciary, which must apply them on a daily basis;
- 2) each rule forms just one part of a complicated, interlocking whole, rendering due deliberation and public comment essential to avoid unintended consequences; and
- 3) the Judicial Conference is in a unique position to draft rules with care in a setting isolated from pressures that may interfere with painstaking consideration and due deliberation.

We do not question congressional power to regulate the practice and procedure of federal courts. Congress exercised this power by delegating its rulemaking authority to the judiciary through the enactment of the Rules Enabling Act, while retaining the authority to review and amend rules prior to their taking effect. We do, however, question the wisdom of circumventing the Rules Enabling Act, as H.R. 420 would. The ABA supports the current version of Rule 11 because it has proven to be an effective means of discouraging dilatory motions practice and frivolous claims and defenses. There has been no demonstrated problem with the enforcement or operation of Rule 11. A return to the mandatory imposition of sanctions without following the processes set forth in the Rule Enabling Act would frustrate the purpose of the act and potentially harm the effective functioning of the judicial system.

In addition, the ABA strongly opposes enactment of H.R. 420 because Congress should not dictate venue rules for state courts. State rules related to venue and jurisdiction should be developed at the state level and supported by extensive study, vetted publicly, and made subject to comment by the legal profession. To do otherwise would violate our long-established principles of federalism. It should remain solely within the purview of the individual states to establish local rules for procedures, either through their state legislatures or through a grant of rulemaking authority to their state judiciary. The imposition of Rule 11 mandatory sanctions upon the individual state courts would also violate our time-honored principles of federalism.

On January 26, 2005, the Conference of Chief Justices adopted Resolution No. 26 “in opposition to federal usurpation of state court authority as guaranteed by the United States Constitution.” This resolution “strongly opposed” the enactment of any federal legislation that would “drastically change the traditional state role in determining ethics, jurisdiction and venue rules in state litigation.” Great deference should be given to the views of these state court leaders.

May 20, 2005
Page 3

We respectfully urge you and the members of the Committee not to report H.R. 420 from Committee.

Sincerely,

A handwritten signature in cursive script that reads "Robert D. Evans". The signature is written in black ink and is positioned to the right of the word "Sincerely,".

Robert D. Evans

cc: Members, House Judiciary Committee