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## ABA Urges You to Oppose Passage of H.R. 758, the Lawsuit Abuse Reduction Act

Dear Representative:

On behalf of the American Bar Association, with over 400,000 members, I am writing to urge you to vote against H.R. 758, the Lawsuit Abuse Reduction Act of 2015, which is scheduled for a floor vote this week. Even though on the surface the legislation may seem straightforward and appealing, a thorough examination of the issue provides compelling evidence that, rather than reducing frivolous lawsuits, H.R. 758 will encourage civil litigation abuse and increase court costs and delays.

H.R. 758 seeks to amend Rule 11 of the Federal Rules of Civil Procedure by rolling back critical improvements made to the Rule in 1993. The legislation would reinstate a mandatory sanction provision that was adopted in 1983 and eliminated a decade later after experience revealed its unintended, adverse consequences. It also would eliminate the “safe harbor” provision added in 1993, which has helped reduce frivolous lawsuits by allowing parties to withdraw claims within 21 days after a motion for sanctions is served.

The ABA urges you to oppose enactment of H.R. 758 for three main reasons. First, the legislation was drafted in an empirical and historical vacuum without the input of the judicial branch. Second, there is no demonstrated evidence that the existing Rule 11 is inadequate and needs to be amended. And third, by ignoring the lessons learned from ten years of experience under the 1983 mandatory version of Rule 11, Congress incurs the substantial risk that the proposed changes will harm litigants by encouraging additional litigation and increasing court costs and delays.

### **I. Amendments to the Federal Rules should be vetted through the Rules Enabling Act Process.**

The Rules Enabling Act was established by Congress to assure that amendment of the Federal Rules occurs only after a comprehensive and balanced review of the problem and proposed solution is undertaken by the Judicial Conference of the United States, the policy-making arm of the federal judiciary, in consultation with lawyers, scholars, individuals, and organizations devoted to improving the administration of justice. Prior to submission to Congress, a proposed amendment undergoes extensive review and public comment, a process that often takes over two years and offers Members assurance the proposed amendment is necessary and wise.

September 17, 2015

Page 2 of 2

In stark contrast, H.R. 758 proposes to amend the Federal Rules over the objections of the Judicial Conference and despite compelling evidence that it will adversely affect the administration of justice.

## **II. There is no empirical evidence that Rule 11 is inadequate and needs to be amended.**

Proponents state that the legislation is needed to stem the growth in frivolous lawsuits that, according to the written statement of the National Federation of Independent Business, has “created a legal climate that hinders economic growth and hurts job creation.”

There simply is no proof that problems created by frivolous lawsuits have increased since 1993 or that the current Rule 11 is ineffective in deterring frivolous filings. In fact, it is more likely that problems have abated since 1993 because Rule 11’s safe harbors provision provides an incentive to withdraw frivolous filings at the outset of litigation. In addition, according to Professor Danielle Kie Hart and other researchers, after the current version of Rule 11 went into effect, there was an increased incidence of sanctions’ being imposed under other sanction rules and laws, including 28 U.S.C. § 1927, as well as pursuant to the court’s inherent power. Judges have numerous tools at their disposal to impose sanctions and prevent frivolous lawsuits from going forward.

## **III. There is substantial risk that H.R. 758 would impede the administration of justice by encouraging additional litigation and increasing court costs and delays.**

Most importantly, there is no evidence that the proposed changes to Rule 11 would deter the filing of non-meritorious lawsuits. In fact, as stated earlier, past experience strongly suggests that the proposed changes would encourage new litigation over sanction motions, thereby increasing, not reducing, court costs and delays. This is a costly and completely avoidable outcome.

## **IV. Conclusion**

The 1983 version of Rule 11 was ill-conceived and created significant unintended adverse consequences that harmed litigants and impeded the administration of justice. We urge you to avoid making the same mistake and to oppose passage of H.R. 758.

Sincerely,



Thomas M. Susman