

SECOND REGULAR SESSION

SENATE BILL NO. 611

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR EMERY.

Pre-filed December 1, 2015, and ordered printed.

ADRIANE D. CROUSE, Secretary.

4432S.02I

AN ACT

To amend supreme court rule 55.03, for the purpose of modifying procedures for filing a motion for sanctions, with an effective date.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Supreme court rule 55.03 is amended, to read as follows:

55.03. (a) Signature Required. Every pleading, motion and other filing
2 shall be signed by at least one attorney of record in the attorney's individual
3 name or by the self-represented party. An attorney who assists in the
4 preparation of a pleading, motion, or other filing for an otherwise self-represented
5 person is not required to sign the document. Every filing made electronically
6 must add a certificate verifying that the attorney or party signed the
7 original. The original signed filing must be maintained by the filer for a period
8 of not less than the maximum allowable time to complete the appellate process.

9 Below the signature shall be printed the signer's name, Missouri bar
10 number (if applicable), address, telephone number, facsimile number, and
11 electronic mail address, if any.

12 An unsigned filing or an electronic filing without the required certification
13 shall be stricken unless the omission is corrected promptly after being called to
14 the attention of the attorney or party filing same.

15 (b) Entry of Appearance of Counsel. An attorney who appears in a case
16 shall be considered as representing the parties for whom the attorney appears for
17 all purposes in that case, except as otherwise provided in a written entry of
18 limited appearance. If an entry of limited appearance is filed, service shall be
19 made as provided in Rule 43.01(b).

20 An attorney appears in a case by:

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

21 (1) Participating in any proceeding as counsel for any party unless limited
22 by an entry of limited appearance;

23 (2) Signing the attorney's name on any pleading, motion, or other filing;
24 however, if an attorney is identified on a pleading, motion, or other filing as
25 having only assisted in the preparation of the pleading, motion, or other filing,
26 the attorney has not entered an appearance in the matter; or

27 (3) Filing a written entry of appearance. A written entry of appearance
28 may be limited by its terms to a particular proceeding or matter. If so limited,
29 the written entry of appearance shall be titled "Entry of Limited Appearance" and
30 shall state the physical and mailing addresses, telephone number, facsimile
31 number, and electronic mail address, if any, of each person for whom the attorney
32 is making a limited appearance.

33 (c) Representation to the Court. By presenting and maintaining a claim,
34 defense, request, demand, objection, contention, or argument in a pleading,
35 motion, or other paper filed with or submitted to the court, an attorney or party
36 is certifying that to the best of the person's knowledge, information, and belief,
37 formed after an inquiry reasonable under the circumstances, that:

38 (1) The claim, defense, request, demand, objection, contention, or
39 argument is not presented or maintained for any improper purpose, such as to
40 harass or to cause unnecessary delay or needless increase in the cost of litigation;

41 (2) The claims, defenses, and other legal contentions therein are
42 warranted by existing law or by a nonfrivolous argument for the extension,
43 modification, or reversal of existing law or the establishment of new law;

44 (3) The allegations and other factual contentions have evidentiary support
45 or, if specifically so identified, are likely to have evidentiary support after a
46 reasonable opportunity for further investigation or discovery. An attorney
47 providing drafting assistance may rely on the otherwise self-represented person's
48 representation of facts, unless the attorney knows that such representations are
49 false; and

50 (4) The denials of factual contentions are warranted on the evidence or,
51 if specifically so identified, are reasonably based on a lack of information or
52 belief.

53 (d) Sanctions. If after notice and a reasonable opportunity to respond the
54 court finds that Rule 55.03(c) has been violated, the court, subject to the
55 conditions below, [may] **shall** impose an appropriate sanction upon the lawyers,
56 law firms, or parties that have committed or are responsible for the violation.

57 (1) How Initiated.

58 (A) By Motion. A motion for sanctions under this Rule 55.03 shall be
59 made separately from other motions or requests and shall describe the specific
60 conduct alleged to violate Rule 55.03(c). The motion shall be served as provided
61 in Rule 43.01. [The motion shall not be filed with or presented to the court
62 unless, within 30 days after service of the motion, the challenged claim, defense,
63 request, demand, objection, contention, or argument is not withdrawn or
64 appropriately corrected.] If warranted, the court [may] **shall** award to the party
65 prevailing on the motion the reasonable expenses and attorney's fees incurred in
66 representing or opposing the motion. Absent exceptional circumstances a law
67 firm shall be held jointly responsible for violations committed by its partners,
68 associates, or employees.

69 (B) On Court's Initiative. On its own initiative the court may enter an
70 order describing the specific conduct that appears to violate Rule 55.03(c) and
71 directing a lawyer, law firm or party to withdraw or correct the questioned claim,
72 defense, request, demand, objection, contention or argument or to show cause why
73 it has not violated the rule with respect thereto.

74 (2) Nature of Sanction - Limitations. A sanction imposed for violation of
75 this Rule 55.03 shall be limited to that which is sufficient to deter repetition of
76 the conduct or comparable conduct by others similarly situated **and to**
77 **compensate parties injured by such conduct.** Subject to the limitations in
78 Rule 55.03(d)(1), the sanction [may] **shall** consist of [or] **an order to pay to the**
79 **party or parties the amount of the reasonable expenses incurred as a**
80 **direct result of the violation, including reasonable attorney's fee and**
81 **costs. The court may** include directives of a nonmonetary nature, [an order to
82 pay a penalty into court,] or, if imposed on motion and warranted for effective
83 deterrence, an order directing payment [to the movant of some or all of the
84 reasonable attorney's fees and other expenses incurred as a direct result of the
85 violation] **of a penalty into the court.**

86 (A) Monetary sanctions shall not be awarded against a represented party
87 for a violation of Rule 55.03(c)(2).

88 (B) Monetary sanctions shall not be awarded on the court's initiative
89 unless the court issues its order to show cause before a voluntary dismissal or
90 settlement of the claims made by or against the party that is, or whose lawyers
91 are, to be sanctioned.

92 (3) Order. When imposing sanctions, the court shall describe the conduct

93 determined to constitute a violation of this Rule 55.03 and explain the basis for
94 the sanction imposed.

95 (e) Withdrawal of Counsel. An attorney may withdraw from a case:

96 (1) When a matter is completed, upon filing a withdrawal memorandum
97 demonstrating that there are no pending claims or issues in the matter;

98 (2) When a matter is not completed, with leave of court after filing a
99 motion to withdraw showing compliance with Rule 4-1.16; or

100 (3) Upon the filing of a "Termination of Limited Appearance" by an
101 attorney who had filed an entry of limited appearance. The "Termination of
102 Limited Appearance" shall demonstrate that the attorney has completed the
103 duties set out in the entry of limited appearance.

104 Withdrawal memoranda, motions to withdraw, and notices of Termination
105 of Limited Appearance shall include the client's last known address and shall be
106 served on the client in addition to all others required to be served.

107 (f) Inapplicability to Discovery. This Rule 55.03 does not apply to
108 disclosures and discovery requests, responses, objections, and motions that are
109 subject to the provisions of Rules 56 to 61.

110 (g) Sanctions for Conduct in Prior Action. If conduct constituting a
111 violation of Rule 55.03(c) occurs but the civil action is dismissed and if a civil
112 action based upon or including the same claim against the same party is
113 thereafter filed, the court, on its own motion or on motion of a party to the first
114 action, may impose an appropriate sanction in the second action for the violation
115 of Rule 55.03(c). The sanction shall be imposed in the manner provided by Rule
116 55.03(d). In determining the sanction to impose, the court shall consider the costs
117 and expenses incurred in the action previously dismissed, including the
118 reasonable attorney's fees incurred in the first action.

Section B. The repeal and reenactment of supreme court rule 55.03 shall
2 become effective January 1, 2017.

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