

104TH CONGRESS
1ST SESSION

H. R. 988

IN THE SENATE OF THE UNITED STATES

MARCH 9 (legislative day, MARCH 6), 1995

Received

MARCH 10 (legislative day, MARCH 6), 1995

Read the first time

AN ACT

To reform the Federal civil justice system.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Attorney Accountabil-
5 ity Act of 1995”.

6 **SEC. 2. AWARD OF COSTS AND ATTORNEY’S FEES IN FED-**

7 **ERAL CIVIL DIVERSITY LITIGATION AFTER**

8 **AN OFFER OF SETTLEMENT.**

9 Section 1332 of title 28, United States Code, is
10 amended by adding at the end the following:

11 “(e)(1) In any action over which the court has juris-
12 diction under this section, any party may, at any time not

1 less than 10 days before trial, serve upon any adverse
2 party a written offer to settle a claim or claims for money
3 or property or to the effect specified in the offer, including
4 a motion to dismiss all claims, and to enter into a stipula-
5 tion dismissing the claim or claims or allowing judgment
6 to be entered according to the terms of the offer. Any such
7 offer, together with proof of service thereof, shall be filed
8 with the clerk of the court.

9 “(2) If the party receiving an offer under paragraph
10 (1) serves written notice on the offeror that the offer is
11 accepted, either party may then file with the clerk of the
12 court the notice of acceptance, together with proof of serv-
13 ice thereof.

14 “(3) The fact that an offer under paragraph (1) is
15 made but not accepted does not preclude a subsequent
16 offer under paragraph (1). Evidence of an offer is not ad-
17 missible for any purpose except in proceedings to enforce
18 a settlement, or to determine costs and expenses under
19 this subsection.

20 “(4) At any time before judgment is entered, the
21 court, upon its own motion or upon the motion of any
22 party, may exempt from this subsection any claim that
23 the court finds presents a question of law or fact that is
24 novel and important and that substantially affects
25 nonparties. If a claim is exempted from this subsection,

1 all offers made by any party under paragraph (1) with
2 respect to that claim shall be void and have no effect.

3 “(5) If all offers made by a party under paragraph
4 (1) with respect to a claim or claims, including any motion
5 to dismiss all claims, are not accepted and the judgment,
6 verdict, or order finally issued (exclusive of costs, ex-
7 penses, and attorneys’ fees incurred after judgment or
8 trial) in the action under this section is not more favorable
9 to the offeree with respect to the claim or claims than the
10 last such offer, the offeror may file with the court, within
11 10 days after the final judgment, verdict, or order is is-
12 sued, a petition for payment of costs and expenses, includ-
13 ing attorneys’ fees, incurred with respect to the claim or
14 claims from the date the last such offer was made or, if
15 the offeree made an offer under this subsection, from the
16 date the last such offer by the offeree was made.

17 “(6) If the court finds, pursuant to a petition filed
18 under paragraph (5) with respect to a claim or claims,
19 that the judgment, verdict, or order finally obtained is not
20 more favorable to the offeree with respect to the claim or
21 claims than the last offer, the court shall order the offeree
22 to pay the offeror’s costs and expenses, including attor-
23 neys’ fees, incurred with respect to the claim or claims
24 from the date the last offer was made or, if the offeree
25 made an offer under this subsection, from the date the

1 last such offer by the offeree was made, unless the court
2 finds that requiring the payment of such costs and ex-
3 penses would be manifestly unjust.

4 “(7) Attorney’s fees under paragraph (6) shall be a
5 reasonable attorney’s fee attributable to the claim or
6 claims involved, calculated on the basis of an hourly rate
7 which may not exceed that which the court considers ac-
8 ceptable in the community in which the attorney practices
9 law, taking into account the attorney’s qualifications and
10 experience and the complexity of the case, except that the
11 attorney’s fees under paragraph (6) may not exceed—

12 “(A) the actual cost incurred by the offeree for
13 an attorney’s fee payable to an attorney for services
14 in connection with the claim or claims; or

15 “(B) if no such cost was incurred by the offeree
16 due to a contingency fee agreement, a reasonable
17 cost that would have been incurred by the offeree for
18 an attorney’s noncontingent fee payable to an attor-
19 ney for services in connection with the claim or
20 claims.

21 “(8) This subsection does not apply to any claim
22 seeking an equitable remedy.”.

23 **SEC. 3. HONESTY IN EVIDENCE.**

24 Rule 702 of the Federal Rules of Evidence (28 U.S.C.
25 App.) is amended—

1 (1) by inserting “(a) In general.—” before
2 “If”, and

3 (2) by adding at the end the following:

4 “(b) Adequate basis for opinion.—Testimony in the
5 form of an opinion by a witness that is based on scientific
6 knowledge shall be inadmissible in evidence unless the
7 court determines that such opinion—

8 “(1) is scientifically valid and reliable;

9 “(2) has a valid scientific connection to the fact
10 it is offered to prove; and

11 “(3) is sufficiently reliable so that the probative
12 value of such evidence outweighs the dangers speci-
13 fied in rule 403.

14 “(c) Disqualification.—Testimony by a witness who
15 is qualified as described in subdivision (a) is inadmissible
16 in evidence if the witness is entitled to receive any com-
17 pensation contingent on the legal disposition of any claim
18 with respect to which the testimony is offered.

19 “(d) Scope.—Subdivision (b) does not apply to crimi-
20 nal proceedings.”.

21 **SEC. 4. ATTORNEY ACCOUNTABILITY.**

22 (a) SANCTIONS.—Rule 11(c) of the Federal Rules of
23 Civil Procedure (28 U.S.C. App.) is amended—

24 (1) in the matter preceding paragraph (1) by
25 striking “may” and inserting “shall”;

1 (2) in paragraph (1)(A)—

2 (A) in the second sentence by striking “,
3 but shall” and all that follows through “cor-
4 rected”; and

5 (B) in the third sentence by striking
6 “may” and inserting “shall”; and

7 (3) in paragraph (2) by striking “A sanction
8 imposed” and all that follows through “violation.”
9 and inserting the following: “A sanction imposed for
10 a violation of this rule shall be sufficient to deter
11 repetition of such conduct or comparable conduct by
12 others similarly situated, and to compensate the par-
13 ties that were injured by such conduct. Subject to
14 the limitations in subparagraphs (A) and (B), the
15 sanction may consist of an order to pay to the other
16 party or parties the amount of the reasonable ex-
17 penses incurred as a direct result of the filing of the
18 pleading, motion, or other paper that is the subject
19 of the violation, including a reasonable attorney’s
20 fee.”.

21 (b) APPLICABILITY TO DISCOVERY.—Rule 11 of the
22 Federal Rules of Civil Procedure is amended by striking
23 subdivision (d).

1 **SEC. 5. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.**

2 (a) EFFECTIVE DATE.—Subject to subsection (b),
3 this Act and the amendments made by this Act shall take
4 effect on the first day of the first month beginning more
5 than 180 days after the date of the enactment of this Act.

6 (b) APPLICATION OF AMENDMENTS.—

7 (1) The amendment made by section 2 shall
8 apply only with respect to civil actions commenced
9 after the effective date of this Act.

10 (2) The amendments made by section 3 shall
11 apply only with respect to cases in which a trial be-
12 gins after the effective date of this Act.

Passed the House of Representatives March 7,
1995.

Attest:

ROBIN H. CARLE,

Clerk.