AMENDMENT TO H.R. 3094, AS REPORTED
OFFERED BY MR. BISHOP OF NEW YORK

Page 8, line 2, strike “and”.

Page 9, line 19, strike the second period and insert “; and” and after such line insert the following:

(3) by adding at the end the following:

“(f)(1) Prior to presenting any objection, filing, pleading, statement of position, paper, or appeal (in this subsection referred to as ‘filing’) in any proceeding prior to an election under this section, an attorney or other party representative has a duty, to the best of his or her knowledge, information, and belief, and formed after an inquiry reasonable under the circumstances, to assure that—

“(A) such a filing is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

“(B) the claims, defenses, positions, and other legal contentions in the filing are warranted by existing law or by a nonfrivolous argument for extending,
modifying, or reversing existing law or for establish-
ishing new law;

“(C) the factual contentions in the filing have
evidentiary support or, if specifically so identified,
will likely have evidentiary support after a reason-
able opportunity for further investigation or develop-
ment of the record; and

“(D) any denials of factual contentions in the
filing are warranted on the evidence or, if specifi-
cally so identified, are reasonably based on belief or
a lack of information.

“(2)(A) At any stage of a representation proceeding
prior to an election under this section, including pre-elec-
tion hearings, requests for Board reviews, or Board re-
views, the Board or its agents, upon their own motion or
that of a party to the proceeding, shall have discretion
to impose sanctions against a party for presenting a frivo-
ious or vexatious filing or raising a frivolous or vexatious
matter to the Board under this section, or upon a finding
that an attorney or other party representative breached
his or her duty under this subsection. Sanctions may in-
clude reasonable litigation costs, salaries, transcript and
record costs, travel and other reasonable costs and ex-
penses. If the Board determines that a party has raised
a frivolous or vexatious matter for purposes of delaying
an election, the Board shall immediately direct that an
election be conducted not less than 7 days after such de-
termination.

“(B) For purposes of this section, a frivolous or vexa-
tious filing is one that an attorney of ordinary competence
would recognize as so lacking in merit that there is no
substantial possibility that the Board would accept it as
valid. The Board shall be guided by Rule 11 of the Federal
Rules of Civil Procedure in determining whether an objec-
tion, filing, pleading, paper or appeal is frivolous.”.