

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

**Theresa Wells, Personally and in her
Capacity as Executrix of the Estate of
Amelia Carmone;
Nicholas S. Mancieri and Mary T. Mancieri
Nicholas Mancieri;
George and Janet Mello
Michael Andreozzi, Plaintiffs and Appellants
v.**

C.A. No. PC 05-4066

**Ronald and Doris Blanchard
Defendants and Appellees et al.**

**Theresa Wells, Personally and in her
Capacity as Executrix of the Estate of
Amelia Carmone;
Nicholas Mancieri;
George and Janet Mello
Michael Andreozzi, Plaintiffs/Appellants
v.**

C.A. No. PC 06-0609

**The Town of Bristol Zoning Board of Review
Ronald and Doris Blanchard
Defendants/Appellees et al.**

**Theresa Wells, Personally and in her
Capacity as Executrix of the Estate of
Amelia Carmone
v.**

C.A. No. PC 06-5659

**Ronald and Doris Blanchard
Defendants and Appellees**

**Theresa Wells, Personally and in her
Capacity as Executrix of the Estate of
Amelia Carmone**

v.

C.A. No. PC 06-6481

Ronald and Doris Blanchard et al.

**John Wells, Personally and in his
Capacity as Successor Administrator of the Estate of
Amelia Carmone**

v.

C.A. No. PC 07-3471

**Ronald and Doris Blanchard;
Town of Bristol et al.**

**John Wells, Personally and in his
Capacity as Successor Administrator of the Estate
Of Amelia Carmone; Nicholas Mancieri;
George and Janet Mello; Plaintiffs/Appellants**

v.

C.A. No. PC 07-5153

**State of Rhode Island Building Code Standards
Committee; Ronald and Doris Blanchard; Town of Bristol, et al.**

CONSOLIDATED DECISION

HURST, J. Before the Court are Defendant Ronald Blanchard’s (“Mr. Blanchard”) Super. R. Civ. P. 11 motions for sanctions against Attorney Keven A. McKenna (“Mr. McKenna”).¹ Mr. Blanchard filed Rule 11 motions in six cases: PC 05-4066; PC 06-0609; PC 06-5659; PC 06-6481; PC 07-3471; and PC07-5153. Mr. Blanchard alleges that Mr. McKenna signed and filed papers in each of these cases without the consent of one or more of the individuals or entities that Mr. McKenna named as a party-plaintiff. Mr. Blanchard contends that in doing so, Mr. McKenna

¹ Mr. Blanchard is the only signatory seeking sanctions on the instant motions.

impliedly misrepresented certain fundamental facts to the Court and to Mr. Blanchard; i.e., that the named individual or entity genuinely sought to press specific legal claims against Mr. Blanchard and his wife (“the Blanchards”), and that the named individual or entity had authorized Mr. McKenna to assert those claims on that party’s behalf.

I

Travel and History

Beginning in 2005, Mrs. Theresa Wells of Bristol, Rhode Island (Mrs. Wells’), attempted to block the Blanchards from developing a piece of property they recently had purchased from Mrs. Wells.² With Mr. McKenna acting as her attorney, Mrs. Wells filed multiple non-judicial, administrative, and judicial challenges to the Blanchards’ development project, including four of the six lawsuits at issue in this Decision. The challenges were brought by Mrs. Wells individually, and in her capacity as Executrix of her late mother’s estate, the Estate of Amelia Carmone, which owned property near or abutting the Blanchards’ project. Although all of Mrs. Wells’ challenges involved appeals of state and local agency permitting decisions, she also asserted certain common law claims in conjunction with those challenges. Several neighbors and nearby property owners, George Mello, Janet Mello, Nicholas Mancieri, Mary T. Mancieri, and Michael Andreozzi, agreed to join forces in some of Mrs. Wells’ challenges for the limited purpose of averting any flooding that might result if the property was developed. It is undisputed that it was Mrs. Wells who financed the entire effort and paid Mr. McKenna’s fees. As the number of Mrs. Wells’ challenges and lawsuits mounted, the Blanchards began to respond by filing counterclaims that included claims for abuse of process, malicious prosecution and misrepresentation.

² Mrs. Wells’ earlier attempts to frustrate the sale to the Blanchards was the subject of a Rhode Island Supreme Court opinion in Blanchard v. Wells, 844 A.2d 695 (R.I. 2004).

Mrs. Wells died on December 24, 2006. At the time of her death, the only matters pending before the Superior Court were PC 05-4066; PC 06-0609; PC 06-5659; and PC 06-6481, all of which contained administrative appeals from Town of Bristol planning, building and zoning approvals. Also pending in the Sixth Division District Court was AA 06-81, which was an administrative appeal that had been taken from the Town's grant of the Blanchards' building permit. Shortly after Mrs. Wells died, Mr. McKenna substituted her son, John Wells, as executor of her estate and the Estate of Amelia Carmone.

After Mrs. Wells' death, Mr. McKenna filed a Complaint for Declaratory Judgment, and a Temporary Restraining Order, Preliminary, and Permanent Injunction in PC 07-3471. In it he named Mr. Wells and the Estate of Amelia Carmone as party plaintiffs. That case was dismissed on grounds that it was duplicative of other of the actions Mr. McKenna had filed. Mr. McKenna also filed a Complaint for Declaratory Relief, or in the Alternative, Administrative Appeal Complaint in PC07-5153. In it he named Mr. Wells, the Estate of Amelia Carmone, Nicholas Mancieri, George Mello and Janet Mello as party plaintiffs. That case was subsequently dismissed for lack of jurisdiction. Mr. McKenna, also in 2007, filed an appeal in PC 05-4066 which was subsequently dismissed for his failure to file his brief. In 2008, Mr. McKenna filed a notice of appeal the Rhode Island Supreme Court in PC 06-6481, an appeal that he failed to perfect and which was dismissed as a result.

Ultimately, all of the plaintiffs' claims contained in the six Superior Court cases were dismissed or decided in the Blanchards' favor. However, John Wells, the Estate of Amelia Carmone, the Estate of Theresa Wells and Mrs. Wells' neighbors and nearby property owners (collectively, "the Wells defendants") remained as defendants in the counterclaims.

In late 2010, all six of the pending cases were consolidated for purposes of case

management and trial on the Blanchards' counterclaims.

On March 7, 2011, the Court held an initial status conference in the cases. The conference took place in open court. During the conference, Mr. McKenna represented to the Court that he represented Mrs. Wells' neighbors only in connection with Count 6 in PC 05-4066. In response, Mr. Blanchard pointed out that these same individuals also were named plaintiffs in other of the cases. Subsequently, on April 6, 2011, Mr. McKenna again denied representing Mrs. Wells' neighbors in any actions other than Count 6 of PC 05-4066. He indicated they had intervened in the subsequent cases on their own behalf.

In 2011, the Blanchards, who by then had incurred approximately \$200,000 in legal fees to defend the various nonjudicial, administrative and judicial challenges to their plans and were now acting in self-represented capacities, filed Blanchard v. Wells et al, PC 11-2584. In it, they amalgamated new and previously asserted abuse of process, malicious prosecution and misrepresentation claims against the Wells defendants who had sued them. They also named Mr. McKenna as a defendant in that action. They sought damages equivalent to their attorneys' fees incurred in PC 05-4066; PC 06-0609; PC 06-5659; PC 06-6481; PC 07-3471; and PC 07-5153.

Discovery ensued in PC 11-2584. During depositions, Mr. Blanchard questioned several of the Wells defendants about their various court filings. Each denied having agreed to be named as parties to certain of Mr. McKenna's causes of actions and appeals. As a result of these discovery disclosures, the Blanchards dropped some of their abuse of process and malicious prosecution claims. The remaining claims for abuse of process and malicious prosecution, including those against Mr. McKenna, subsequently were dismissed on summary judgment.

Thereafter, on April 8, 2013, Mr. Blanchard filed a Rule 11 motion for sanctions against Mr. McKenna. Although the motion was filed in PC 11-2584, it sought sanctions for Mr.

McKenna's conduct in signing and filing documents in PC 05-4066; PC 06-0609; PC 06-5659; PC 06-6481; PC 07-3471; and PC 07-5153.

Mr. Blanchard appended copies of five of the Wells' defendants' deposition transcripts to his Rule 11 motion.³ Each of the five deponents had testified that they were unaware of one or more of the proceedings and appeals that Mr. McKenna had filed, purportedly on their behalf. They also stated that they never authorized Mr. McKenna to represent them in such proceedings.

According to Mr. Blanchard, the litigation took on a life of its own after Mrs. Wells' death, with Mr. McKenna acting as the driving force. Mr. Blanchard argued that Mr. McKenna's conduct necessitated additional litigation in the various cases and led to preventable discovery in PC 11-2584. According to Mr. Blanchard, he and his wife would not have brought abuse of process or malicious prosecution claims against the Wells' defendants had they known these defendants had not authorized the proceedings to be brought in their names.

Mr. Blanchard sought sanctions in the form of 25% of the costs of discovery in PC 11-2584. In addition, Mr. Blanchard sought sanctions equivalent to the very substantial attorneys' fees he and his wife had incurred in defending PC 05-4066; PC 06-0609; PC 06-5659; PC 06-6481; PC 07-3471; and PC07-5153. This Court determined that the Rule 11 motion filed in PC 11-2584 had merit and, accordingly, directed Mr. McKenna to show cause as to why he should not be sanctioned. Ultimately, however, the Court denied the motion on July 24, 2013. In a lengthy bench ruling, the Court explained that it was declining to impose sanctions in the context of PC 11-2584 for Rule 11 violations that had occurred in other matters, some of which had been filed in state agencies and in courts other than the Superior Court. However, recognizing that final judgment had previously entered in all of the cases except PC 05-4066, the Court left open

³ The other Wells defendants, Janet Mello and Mary T. Mancieri, were not available for deposition due to death or illness.

the question of whether or not Mr. Blanchard's request for Rule 11 sanctions in connection with those cases was timely.

Thereafter, on March 27, 2014, Mr. Blanchard filed the instant Rule 11 motions for sanctions in PC 05-4066; PC 06-0609; PC 06-5659; PC 06-6481; PC 07-3471; and PC07-5153. The grounds and supporting documentation are substantially the same as those upon which Mr. Blanchard had relied when he filed his Rule 11 motion for sanctions in PC 11-2584. According to Mr. Blanchard, Mr. McKenna was acting without the knowledge or consent of one or more of the individuals he named as parties in the papers he filed in connection with the various proceedings. Mr. Blanchard seeks sanctions of approximately \$38,000, which is equivalent to the amount of attorneys' fees that he paid after Theresa Wells died on December 24, 2006, as well as monetary sanctions commensurate with the amount of time he spent defending himself as a self-represented litigant. Although Mr. Blanchard's attorneys' billing records do not specify each task by docket number, he argues that the fees can be fairly apportioned, on a percentage basis, based upon the general activity reflected in the case docket sheets.

Mr. McKenna filed a written objection on April 9, 2014. The objection was sparse and the arguments wholly undeveloped. In addition, the objection contained unsupported assertions of law. For example, Mr. McKenna asserted that "[Mr. Blanchard] is not an attorney and, therefore, has no standing to file a Rule 11 motion;" "Keven McKenna is not a party to this matter;" and "This case is closed." Although Mr. Blanchard was very specific about the amount of sanctions he was seeking, Mr. McKenna did not assert the affirmative defense of inability to pay the requested sanction amounts.

After reviewing the materials submitted in connection with the Rule 11 motions, this Court once again determined there were grounds to require Mr. McKenna to show cause.

On May 8, 2014, this Court provided Mr. McKenna with notice of the Court's intention to consider the issue of sanctions, detailed the grounds therefore, and advised him that the Court would consider monetary sanctions.⁴ The Court further identified the improper purposes for which the pleadings seemingly may have been interposed in violation of Rule 11. The Court also pointed Mr. McKenna to the March 7, 2011 and April 6, 2001 proceedings during which Mr. McKenna denied representing Mrs. Wells' neighbors and nearby property owners except in connection with a single count in the amended complaint filed in PC 05-4066. Finally, the Court advised Mr. McKenna that he was entitled to an evidentiary hearing during which he would be permitted to present witnesses and other evidence.

The Court cautioned Mr. Blanchard to the effect that Rule 11 is not designed to be a substantive remedy nor a fee-shifting mechanism, and that Mr. Blanchard's role in the proceedings would be limited because it is the court's responsibility, not a litigant's, to vindicate any Rule 11-based abuse of the judicial process. See US v Kouri-Perez, 8 F. Supp. 2d 133, 140 (D. Puerto Rico 1998) appeal dismissed for lack of appellate jurisdiction, 187 F.3d 1 (1st Cir. 1999) (imposing, under its inherent powers and under 28 U.S.C. § 1927, a "monetary sanction to vindicate the time and effort devoted by the government, the court, and court personnel . . . and to steer th[e] case back on to a civil, respectful, and courteous course").

At the time of the May 8, 2014 hearing, Mr. McKenna also filed a document entitled "Memorandum and Statement of Keven A. McKenna Opposing to Ronald Blanchard Statement of March 27, 2014 Statement" which expanded upon his earlier filed objection papers. In

⁴ On May 8, 2014, the Court ordered Mr. McKenna to show cause only with respect to PC 07-3471; PC 07-5153; PC 05-4066; and PC 06-6481. The Court declined to require Mr. McKenna to show cause with respect to PC 06-5659 and PC 06-0609. However, upon motion of Mr. Blanchard, and after a hearing for which Mr. McKenna was present, Mr. McKenna was also ordered to show cause with respect to PC 06-0609.

addition, on July 9, 2014, Mr. McKenna filed documents in PC 05-4066, PC 06-0609, PC 06-6481 and PC 07-5153, entitled “Memorandum in Support of Motion to Dismiss by Former Counsel to Michael Andreozzi, George Mello, Nicholas Mancieri, and Theresa Wells and John Wells.”

Both Mr. McKenna and Mr. Blanchard provided the Court with exhibits, including the original depositions of five of the Wells defendants who had been available for deposition: John Wells, Nicholas Mancieri, Nicholas S. Mancieri, George Mello and Michael Andreozzi.

On July 21, 2014, Mr. McKenna also submitted affidavits that had been signed by George Mello and Michael Andreozzi on July 15, 2014.

After multiple delays, Mr. McKenna’s show cause hearing was conducted on August 20, 2014, at which time he presented evidence and made extensive oral argument, but he did not testify in his own defense.

II

The Evidence Supporting the Show Cause Order

A. Mr. McKenna’s in-Court Statements on March 7, 2011 and April 6, 2011

As previously indicated, the Court held an initial status conference in these cases on March 7, 2011. The conference took place in open court. An informal transcript of the proceedings confirms the following colloquy between the Court, Mr. McKenna, and Mr. Blanchard:

“THE COURT: Mr. McKenna, how many of these individuals do you represent? All of them?”

MR. McKENNA: In 05-4066, the appeal from the Zoning Board included the people who lived on Harker Street and Hope. That’s who those people are. They were in a group in Count 6.

THE COURT: Could you tell me –

MR. McKENNA: They only -- these people I only represented with regard to Count 6 of 05-4066 because they were the objectors at the hearings and in Bristol. So that's --

THE COURT: So you represent them, okay,

MR. McKENNA: In that count, your Honor. They're not in anything else.

MR. BLANCHARD: May I say something, your Honor? There were other cases where these -- all of these plaintiffs were -- all of the same parties, plaintiffs, in the 05 case were also plaintiffs in other cases. Not all of the cases, but some of the cases particularly having to do with the building permit appeal. One of the cases and one of the 07 cases. So they were in -- some of these parties were involved in some of the other cases.

Thereafter, the Court ordered the parties to attend a mediation to take place on April 6, 2011, at the courthouse, with court-appointed mediator Attorney John Boland.

As is reflected in the various transcripts in this case,⁵ Mr. McKenna initially attempted to obstruct the scheduled mediation. He then arrived late on April 6, 2011 and without any of his clients.

The following colloquy took place on April 6, 2011:

THE COURT: ...Where are your clients, Mr. McKenna?

MR. McKENNA: Dead.

THE COURT: All of them?

...

MR. McKENNA: Yeah, the son of Mrs. Wells lives in Tennessee and drives a truck.

THE COURT: And where is he?

MR. McKENNA: Haven't the slightest idea. He could be in California.

⁵ March 7, 2011, April 6, 2011 and May 8, 2014.

THE COURT: Why isn't he here?

MR. McKENNA: One, he has not been notified of --

THE COURT: Pardon me?

MR. McKENNA: I have not notified him.

THE COURT: You're representing him. Why didn't you notify him?

MR. McKENNA: I didn't know that he had to be here.

THE COURT: You didn't get a copy of my letter or --I'm sorry -- my order or Mr. Boland's two letters?

MR. McKENNA: Two letters? I don't think I did, no. I don't recall one letter that said the client had to be here. It would be an incredibly costly expense for him to have to travel to Rhode Island. But I didn't get in touch with him regarding --

THE COURT: Which of your clients are deceased?

MR. McKENNA: I only have one, your Honor. Mrs. Wells died.

THE COURT: What's her first name.

MR. McKENNA: Theresa Wells.

THE COURT: All right, she's deceased.

MR. McKENNA: She died. She was the executrix of the estate of her mother, Ameilia Carmone. And last year I got Mr. -- the year before, I forget which, I filed a motion to have her replaced.

THE COURT: Just tell me --

MR. McKENNA: By John.

THE COURT: Just tell me who is alive and who is dead.

MR. McKENNA: Her son John is alive. He's a truck driver in Tennessee.

THE COURT: Now, there were some other plaintiffs in one of the counts in these actions.

MR. McKENNA: I don't know if I represented any of those, your Honor. I think they came in by themselves.

THE COURT: No, I think in the last hearing you indicated that you represented them in connection with one particular count.

MR. McKENNA: The first case. The first case. In the first case there was a gentlemen named Man -- Mr. and Mrs. Mello.

THE COURT: Pardon me?

MR. McKENNA: There are two elderly clients, George and -- Mr. and Mrs. Mello. There's Mrs. Mancini -- Mancieri. They live on Hockner Street (phonetic spelling) I think those are the only three. I've forgotten, I don't think -- if there's a fourth one. So I haven't notified --

As is reflected elsewhere in the transcript of the April 6, 2011 proceedings, Mr. McKenna, despite his initial denials, had in fact received the communications and order requiring his clients' attendance that day. In addition, Mr. McKenna's billing records, which he submitted in connection with Mr. Blanchard's motions, show Mr. McKenna as has having billed for work related to receiving and reviewing the mediator's letter on March 25, 2011.

B. The Deposition Testimony

(1) Michael Andreozzi's Deposition Testimony.

Michael Andreozzi testified during his deposition that he was not generally opposed to the Blanchards' development. His concern was limited to any flooding that might negatively impact his property as a result of that development. His testimony was that he advised Mr. McKenna of his limited objectives.

Mr. Andreozzi was examined on the First Amended Complaint filed in PC 05-4066, which was signed by Mr. McKenna and filed with the Superior Court on August 12, 2005. Mr.

Andreozzi agreed that he had read that complaint which identified him as a plaintiff together with Theresa Carmone Wells, in her capacity as Executrix of the Estate of Amelia Carmone; Nicholas S. Mancieri and Mary T. Mancieri; Nicholas Mancieri; and George and Janet Mello. The complaint contained six counts. Count 1 was a claim for trespass. Count 2 was a claim brought against the State of Rhode Island Environmental Management for failing to give notice of the issuance of a wetlands permit. Count 3 contained a claim for nuisance. Count 4 sought declaratory relief declaring the Blanchard property to be under the exclusive jurisdiction of CRMC. Count 5 contained a claim for interference with riparian rights. Count 6 contained an appeal from a decision of the Town of Bristol Board of Appeals upholding approval of the Blanchards' subdivision application. Mr. McKenna had identified only the Estate of Amelia Carmone as a party to Count 1. All of the other named plaintiffs were identified as parties to Counts 2, 3, 4, 5 and 6.

When asked about Count 6—to which he had been identified as a party—Mr. Andreozzi testified: “That had nothing to do with me. Mr. McKenna told me that I was only on one count, the nuisance count.”

Mr. Andreozzi also testified that he told Mr. McKenna he did not want to be involved in further appeals in regards to the Blanchards. He was examined on an August 2007 document filed in connection with the Rhode Island Supreme Court appeal taken in connection with PC 05-4066. The document, entitled “Appellants’ Rule 12 (A) Statement of the Case,” was signed by Mr. McKenna and filed in the Rhode Island Supreme Court on August 6, 2007. The document identified Mr. Andreozzi and the other named plaintiffs in PC 05-4066 as appellants and abutting property owners. Mr. Andreozzi testified that when he told Mr. McKenna that he did not want to proceed with further appeals, Mr. McKenna explained that because Mrs. Wells had elected to

appeal, all of the plaintiffs in the underlying case, including Mr. Andreozzi, were required to be “on it.” Mr. Andreozzi testified that he did not know Mr. McKenna had filed the Rule 12 (A) statement, or that he had put Mr. Andreozzi forward as if he was a party in interest to the appeal—as opposed to an individual whose name happened to be included in the case caption for technical reasons. Similarly, Mr. Andreozzi testified that he did not remember ever giving Mr. McKenna permission to include him in two September 16, 2005 notices appealing the issuance of the Blanchards’ building permit to the Town of Bristol Zoning Board of Appeals and, further, did not recall ever having seen the September 16, 2005 notices. He testified that it was not his intention to appeal the Blanchards’ building permit.

When examined on the complaint filed in PC 06-0609—an administrative appeal challenging the issuance of the Blanchards’ building permit—Mr. Andreozzi testified that he had no recollection of having given Mr. McKenna permission to identify him as a plaintiff in that case, and he did not recall ever having seen that complaint. He also testified that he did not give Mr. McKenna permission to represent him before the Town of Bristol Town Council or to write letters to the Council on his behalf—as Mr. McKenna was demonstrated to have done.

(2) George Mello’s Deposition Testimony

George Mello testified about what he intended to be his limited involvement in the challenges to the Blanchards’ development plans. He was concerned about a house being sited within a freshwater flood zone. According to him, he was only interested in challenging the issuance of the Blanchard’s building permit.

Mr. Mello was examined on the First Amended Complaint filed in PC 05-4066. Although he signed the verification that was attached to the original complaint stating that he had read the factual allegations contained therein, he denied intending to press the claims or seek the

relief set forth in the amended complaint. Additionally, when shown a copy of the Rhode Island Supreme Court Rule 12 (A) statement of the case that Mr. McKenna filed in the Supreme Court appeal of PC 05-4066, Mr. Mello was adamant that he did not intend to be involved in that appeal. Mr. Mello also testified that he had no recollection of having authorized Mr. McKenna to include him in the various challenges to the Blanchards' development plans—other than the challenge to the Blanchards' building permit. He also testified that he never intended to be a part of any request that Bristol Town Council compel the Blanchards to perform remediation to the area of their property and to a local brook and, further, that he never authorized Mr. McKenna to represent him in connection with such a request. He testified that Mr. McKenna misrepresented his objectives. Mr. Mello specifically denied that he had given Mr. McKenna permission to name him as a party to PC 06-0609, which contained a subsequent procedural challenge to the issuance of the Blanchard's building permit.

(3) Nicholas Mancieri's Deposition Testimony

Nicholas Mancieri was examined on the First Amended Complaint filed in PC 05-4066. He testified that he intended to be involved only in Count 6 of the appeal of the Blanchard's subdivision approval. When examined on the prayer for relief which included permanent injunctive relief blocking further development of the Blanchards' property, Mr. Mancieri testified that it was not his intention to prevent any and all development. When asked if he thought Mr. McKenna misrepresented his intentions, he said "Yes."

Mr. Mancieri also was examined on the Complaint for Declaratory Relief, or in the Alternative, Administrative Appeal Complaint, signed by Mr. McKenna and filed in the Superior Court in PC 07-5153. Mr. Mancieri stated unequivocally that he did not give Mr. McKenna permission to name him as a party to that complaint. Mr. Mancieri testified similarly with respect

to the complaint filed in PC06-0609 and, also, with respect to proceedings Mr. McKenna filed in the Sixth Division District Court AA 07-152, both of which bore his name as a party plaintiff. Likewise, with respect to another administrative appeal that Mr. McKenna filed in Mr. Mancieri's name in the Sixth Division District Court in September 2006, AA 06-81, Mr. Macieri stated unequivocally that he did not give permission for his name to be used in that action.

Mr. Mancieri also testified that he did not give Mr. McKenna permission to represent him before the Town of Bristol Town Council in a December 2005 letter that Mr. McKenna was demonstrated to have sent to the Council. He testified that he never intended to ask the Town Council to require the Blanchards to pay for remediation in connection with a local brook, and that he was unaware Mr. McKenna had made the request. He again testified that Mr. McKenna had misrepresented his intentions.

Mr. Mancieri further testified that he basically had no contact with Mr. McKenna since the time when they met to file the original case, i.e. PC 05-4066. Referring to this Court's order in which it rescheduled the mediation and directed the parties to appear for mediation on May 16, 2011, he stated "The only interaction I had with Mr. McKenna were the original date that we met to file the original case which was the subdivision case. And basically had no contact from him pretty much after that until we were told to appear in court that day with Mr. Boland[.]"

During his deposition, Mr. Mancieri volunteered that he did not give Mr. McKenna permission to continuously use his name in Mrs. Wells' lawsuits. Mr. Mancieri also testified that he did not own property in the vicinity of the Blanchards' property at the time he agreed to join the PC05-4066 appeal from the Blanchards' subdivision approval. He testified that he merely resided with his parents, Nicholas S. and Mary Mancieri, who did own property adjacent to that of the Blanchards. He testified that he did not know being a property owner was a required for

bringing the appeal and, further, that Mr. McKenna never asked him if he was a property owner, in spite of the fact that the original and First Amended Complaint in PC 05-4066 specifically identified him as such.

(4) Nicholas S. Mancieri's Deposition Testimony

Nicholas S. Mancieri, father of Nicholas Mancieri and record owner of one of the properties abutting the Blanchards' property, was examined on the original and First Amended Complaint filed in PC 05-4066. Although his son, Nicholas Mancieri, was named in the original, verified complaint and identified as the property owner, Nicholas S. Mancieri had not been named. However, several days after filing the original, verified complaint, Mr. McKenna filed First Amended Complaint, not verified, in which he named Nicholas S. Mancieri as a party. Nicholas S. Mancieri testified that he never received a copy of the First Amended Complaint and never gave Mr. McKenna permission to name him as a party. He testified that he had never even met or spoken with Mr. McKenna.

(5) John Wells's Deposition Testimony

John Wells testified that when his mother, Theresa Wells, died in late 2006, he was appointed executor of her estate and of the Estate of Amelia Carmone, his late grandmother. Mr. Wells testified that Mr. McKenna informed him that although there were appeals pending in cases that his mother had brought against the Blanchards, nearly all of the work had been completed and the appeals were simply awaiting decision. Mr. Wells testified that he therefore allowed those appeals to continue. According to Mr. Wells, he never authorized any further action, either on his own behalf, or on behalf of either of the Estates. He testified that Mr. McKenna never told him that that the Superior Court had denied the appeals of the Blanchards' subdivision and building permits.

Mr. Wells specifically denied having authorized the August 27, 2007 Sixth Division District Court administrative appeal, filed in AA 07-152, in which he was named as a party both personally and in his capacity as executor of the Estate of Amelia Carmone. He testified that Mr. McKenna misrepresented both him and the Estate when he filed the appeal papers which named them as parties, thus, indicating that they had authorized the appeal. Mr. Wells also denied having authorized a notice of appeal signed and filed by Mr. McKenna on January 17, 2008, in the Superior Court in PC 06-6481. The notice of appeal was signed and filed more than a year after Theresa Wells' death.

Mr. Wells was examined on the Complaint for Declaratory Relief, or in the Alternative, Administrative Appeal, filed in PC 07-5153. Said complaint was signed and filed in the Superior Court by Mr. McKenna, and contained a challenge to a determination from the State of Rhode Island Building Code Standards Committee. Mr. Wells denied any intention of becoming involved in that case, and he testified he did not give permission for the Estate of Amelia Carmone to be named as a plaintiff. He testified he never received a copy of the complaint.

Mr. Wells also was examined on the complaint signed and filed by Mr. McKenna in PC 07-3471. He testified quite clearly and unequivocally that he did not authorize that lawsuit which was filed more than six months after his mother's death.

As with other of the deponents who denied having authorized Mr. McKenna to file certain claims and appeals, or to seek certain forms of relief on their behalf, Mr. Wells denied having authorized Mr. McKenna to seek orders requiring the Blanchards to demolish structures on their property or to restore their property to its original condition. Mr. Wells testified that he and his mother were concerned about potential flooding in the area. According to Mr. Wells, it was not his intention to force the Blanchards to give up their development rights and, to the

extent that Mr. McKenna had ever suggested this, Mr. Wells was not in agreement.

III

Rule 11

In Rhode Island, Rule 11 of the Superior Court Rules of Civil Procedure imbues trial courts with “broad authority . . . to impose sanctions against attorneys for advancing claims without proper foundation.” Pleasant Mgmt., LLC v. Carrasco, 918 A.2d 213, 216-17 (R.I. 2007) (quoting Michalopolous v. C&D Resaurant, Inc., 847 A.2d 294, 300 (R.I. 2004)) (internal quotations omitted). Rule 11 provides, in pertinent part:

“The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer’s knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, any appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney’s fee.” Super. R. Civ. P. 11.

“The language of Rule 11 derives from the 1983 amendment to Rule 11 of the Federal Rules of Civil Procedure and is similar * * *, though not identical, to that of its federal counterpart.” Pleasant Mgmt., LLC, 918 A.2d at 217 (quoting Lett v. Providence Journal Co., 798 A.2d 355,

365 (R.I. 2002)) (internal quotations omitted).⁶ However, the Rhode Island Supreme Court has said that “where the federal rule and our state rule of procedure are substantially similar, we will look to the federal courts for guidance [and] interpretation of our own rule.” Crowe Countryside Realty Associates, Co., LLC v. Novare Engineers, Inc., 891 A.2d 838, 840 (R.I. 2006) (quoting Smith v. Johns-Manville Corp., 489 A.2d 336, 339 (R.I. 1985)).

When determining whether a Rule 11 violation has occurred, the standard under which an attorney is measured is an objective, not subjective standard of reasonableness under the circumstances.” Raylon, LLC v. Complus Data Innovation, Inc., 700 F.3d 1361, 1367 (Fed. Cir. 2012) (quoting Whitehead v. Food Max of Miss., Inc., 332 F.3d 796, 803 (5th Cir. 2003)) (internal quotations omitted). In its objective analysis, the Court cannot “endorse the notion that an attorney can do or say anything and everything imaginable within the course of client representation under the guise of vigorous representation of his client.” United States v. Cooper, 872 F.2d 1, 5 (1st Cir. 1989). In fulfilling his or her responsibilities pursuant to Rule 11 “[a] lawyer is required to ‘stop-and-think’ before . . . making legal or factual contentions.” Jenkins v. Methodist Hospitals of Dallas, Inc., 478 F.3d 255, 265 (5th Cir. 2007) (citing Fed. R. Civ. P. 11 advisory committee note (1993 Amendments)); see also Taylor v. United States, 151 F.R.D. 389, 392-93 (D.Kan. 1993) (“The ‘reasonable inquiry’ requirement mandates that an attorney stop, think, and assure himself of the legal and factual basis of a pleading before signing and presenting it to the court.”). However, “[a] . . . lawyer can run afoul of the ‘reasonable inquiry’ clause by failing either (1) to make a reasonable inquiry into the facts or (2) to make a reasonable

⁶ The Federal Rule 11 “states that upon finding a violation the court ‘shall’ impose a sanction, while the text of this amendment and the Rhode Island statute provide that the court ‘may’ impose a sanction.” Super. R. Civ. P. 11, 1995 Editor’s Committee Note. Additionally, the federal rule differs from that of Rhode Island as it allows for the opposing party to remove the offensive pleading within 21 days of being served with a motion for sanctions. See Fed. R. Civ. P. 11(C)(2).

inquiry into (and an informed assessment of) the law.” Lancellotti v. Fay, 909 F.2d 15, 19 n.4 (1st Cir. 1990). In making a Rule 11 determination, “Courts must strive to avoid the wisdom of hindsight in determining whether a pleading was valid when signed, and any and all doubts must be resolved in favor of the signer.” Eastway Const. Corp. v. City of New York, 762 F.2d 243, 254 (2nd Cir. 1985).

For purposes of determining what constitutes a reasonable inquiry under the circumstances of this case, Article V of the Supreme Court Rules of Professional Conduct⁷ is relevant. Although this Court has no authority to discipline Mr. McKenna for violations of the Rules of Professional Conduct, Article V is nonetheless pertinent to what is expected of attorneys concerning communicating with their clients and defining the scope of their representation. See DiLuglio v. Providence Auto Body, Inc., 755 A.2d 757 n.16 (R.I. 2000) (“Even though violations of the rules of professional conduct cannot be used to establish a cause of action or to create any presumption that a legal duty has been breached, the violation of a professional rule may be relevant [to other matters]”) Thus, Article V provides guidance as to what constitutes a reasonable inquiry in the context of Rule 11 motions such as the ones before the Court. See Pleasant Mgmt., LLC, 918 A.2d at 218 (“To comply with the requirements of Rule 11, counsel must “make [a] reasonable inquiry to assure that all pleadings, motions and papers filed with the court are factually well-grounded, legally tenable and not interposed for any improper purpose.”) (quoting Mariani v. Doctors Associates, Inc., 983 F.2d 5, 7 (1st Cir.

⁷ The current articulation of the Supreme Court Rules of Professional Conduct did not become effective until April 15, 2007. However, as the commentary to the published Rules and the Reporters notes make clear, the newly adopted Rules did not substantially depart from were not a substantial departure from the preexisting requirements but, instead, they merely refined and codified them.

1993)).⁸ⁱ Furthermore, it should be self-evident that the fact that possible disciplinary infractions may lie at the heart of an alleged Rule 11 violation does not necessarily render Rule 11 inapplicable or otherwise preclude sanctions. Compare Huntley v. State, No. 2013-353, slip op. at 8 (R.I., filed Feb 12, 2015) with In re Gelfuso, No. 2015-36-M.P., order (R.I., filed February 24, 2015) (standing for proposition that “egregious misrepresentations” sanctionable under Rule 11 may also serve as a basis for discipline).

A Rule 11 violation “is complete when the paper is filed” Cooter & Gell v. Hartmarx, 496 U.S. 384, 395 (1990) (internal citation omitted) (upholding sanctions awarded three and a half years after a voluntary dismissal). Furthermore, “a voluntary dismissal does not expunge the Rule 11 violation.” Id.⁹ This is because, like “the imposition of costs, attorney’s

⁸ The relevant portions of Article V of the Supreme Court Rules of Professional Conduct are attached as Endnote i.

⁹ The federal Rule 11 was amended in 1993 to afford greater protections to ensure the parties subject to sanctions receive greater procedural protections. See 5A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1337 (3d ed. 2004). Under the 1993 amendment, a party bringing a motion for Rule 11 sanctions must bring it before final judgment has entered. Id. The reason is because, in party initiated sanctions proceedings, the offending attorney or party is given a safe-harbor period during which he or she has the opportunity to withdraw or modify the challenged paper. Id. at § 1377.2. Prior to the 1993 amendments, it had become “settled law . . . that a Rule 11 motion could be made after final judgment, subject to local rules establishing timeliness standards.” Ridder v. City of Springfield, 109 F.3d 288, 295 (6th Cir. 1997). Several federal courts later held that the 1993 amendments superceded Cooter & Gell. See id.; Wright & Miller, Federal Practice and Procedure at § 1337.2.

However, Rhode Island has not followed the federal courts’ lead and has never adopted the amendments, presumably because an argument can be made that safe harbor provisions render Rule 11 toothless. See Amendment to Federal Rules of Civil Procedure, 146 F.R.D. 401, 507-08 (1993) (Scalia, J., Dissenting) (“The proposed revision would render the Rule toothless, by allowing judges to dispense with sanction, by disfavoring compensation for litigation expenses, and by providing a 21-day ‘safe harbor’ within which, if the party accused of a frivolous filing withdraws the filing, he is entitled to escape with no sanction at all.”). Considering that Rhode Island did not amend its rule to conform with the federal rule, it is not bound by the twenty-one day safe-harbor requirement found in federal Rule 11; thus, the holding in Cooter & Gell—that “a voluntary dismissal does not expunge the Rule 11 violation”—has not been superceded as it applies to Rhode Island. Cooter & Gell, 496 U.S. at 395. Consequently, in Rhode Island, although an offer to withdraw or correct the challenged paper certainly would be

fees, and contempt sanctions, a sanction is not a judgment on the action's merits, but simply requires the determination of a collateral issue, which may be made after the principal suit's termination." Id. at 385. Although a "motion[] for Rule 11 sanctions should be filed[] as soon as practicable after discovery of a Rule 11 violation," Rule 11 sanctions may "be imposed as a result of a motion . . . submitted to the court after judgment." Divane v. Krull Electric Co., Inc., 200 F.3d 1020, 1025-27 (7th Cir. 1999) (granting leave to file a motion for Rule 11 sanctions on same day judgment entered) (internal quotations omitted). Furthermore, "for purposes of timely filing of a sanctions motion, '[r]easonableness is necessarily dictated by the specific facts and circumstances in a given case.'" Divane, 200 F.3d at 1027 (quoting Kaplan, 956 F.2d at 152).

Rule 11 permits the Court to impose

"any appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee." Super. R. Civ. P. 11.

In determining the actual penalty, the judge has discretion to fashion "what he or she considers to be an appropriate sanction." Pleasant Mgmt., LLC, 918 A.2d at 217; see also Bay State Towing Co. v. Barge American 21 (O.N. 517472), 899 F.2d 129, 133 (1st Cir. 1990) ("The court 'has discretion to tailor sanctions to the particular facts of the case, with which it should be well acquainted,' all in light of the rule's 'deterrent orientation.'") (quoting Fed. R. Civ. P. 11 advisory committee's note on 1983 amendment). However, in fashioning a sanction, the court must do so "in accordance with the articulated purpose of the rule: 'to deter repetition of the

relevant to the trial justice's decision on whether or not to impose sanctions, there is no automatic safe harbor. Indeed, simply withdrawing or correcting the offensive filing may not constitute sufficient remedy where, similar to the instant matter, years of litigation ensued as a result of the improper filings.

harm, and to remedy the harm caused.” Pleasant Mgmt., LLC, 918 A.2d at 217 (quoting Michalopoulos, 847 A.2d at 300); see also Katzman v. Victoria’s Secret Catalogue, 167 F.R.D. 649, 661 (S.D.N.Y. 1996) (stating “the purpose of the sanctioning mechanism of Rule 11 is not reimbursement but sanction, and that, accordingly, Rule 11 sanctions shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others.”) (quoting Pavelic & LeFlore v. Marvel Entertainment Group, 493 U.S. 120, 126 (1989)) (internal quotations omitted). Furthermore,

[s]ince the purpose of Rule 11 sanctions is to deter rather than compensate, . . . if a monetary sanction is imposed, it should ordinarily be paid into the court as a penalty. However, under unusual circumstances . . . deterrence may be ineffective unless the sanction not only requires the person violating the rule to make a monetary payment, but also directs that some or all of this payment be made to those injured by the violation.” Katzman, 167 F.R.D. at 661.

However, “Rule 11 is not a fee-shifting statute in the sense that the loser pays.” Divane v. Krull Elec. Co., 319 F.3d 307, 314 (7th Cir.2003) (quoting Mars Steel Corp. v. Cont. Bank, 880 F.2d 928, 932 (7th Cir.1989)). Rather, “Rule 11 ensures that each side really does bear the expenses of its own case—that the proponent of a position incurs the costs of investigating the facts and the law.” Id. Nevertheless,

“if the court determines that an award of attorney’s fees will serve the deterrent purpose of Rule 11, it has an obligation to award only those fees which directly resulted from the sanctionable conduct This ensures that the proponent of a sanctionable position ultimately pays the costs resulting from it, serving a dual purpose of deterrence and restitution, while avoiding blanket fee-shifting, which would have the tendency to overcompensate the opponent and penalize the proponent.” Id.

With respect to awards to self-represented litigants, Rule 11 only permits recovery for “the amount of the reasonable expenses incurred . . . , including a reasonable attorney’s fee.”

Super. R. Civ. P 11 (emphasis added). The requirement that expenses, including attorney's fees, be "incurred" is the controlling term because

“the term means ‘[t]o have liabilities cast upon one by act or operation of law, as distinguished from contract, where the party acts affirmatively[; t]o become liable or subject to.’ Thus, one cannot ‘incur’ fees payable to oneself, fees that one is not obliged to pay. Moreover, the word ‘attorney’ connotes an agency relationship between two parties (client and attorney), such that fees a lawyer might charge himself are not ‘attorney fees.’ Nor are such fees a payable ‘expense,’ as there is no direct financial cost or charge associated with the expenditure of one’s own time.” In re Affiliated Foods Southwest, Inc., 472 B.R. 538, 558-59 (Bkrcty. E.D.Ark. 2012) (quoting Pickholtz v. Rainbow Tech., Inc., 284 F.3d 1365, 1375 (Fed. Cir. 2002) (construing language similar to Rule 11)).

Stated otherwise, “[b]ecause a party proceeding pro se cannot have incurred attorney’s fees as an expense, a . . . court cannot order a violating party to pay a pro se litigant a reasonable attorney’s fee as part of a sanction.” In re Affiliated Foods Southwest, Inc., 472 B.R. at 558 (quoting Massengale v. Ray, 267 F.3d 1298, 1299 (11th Cir. 2001)).

IV

Mr. McKenna’s Arguments and Evidence

In light of the Wells defendants’ sworn deposition testimony, Mr. McKenna’s burden was to demonstrate that “to the best of his knowledge, information and belief formed after reasonable inquiry [each filing] was well grounded in fact and warranted by existing law. . . and that it [was] not interposed for any improper purpose such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.” Super. R. Civ. P. 11. More specifically, for each document that he signed and filed in the Superior Court that contained allegedly unauthorized causes of actions, claims for relief, and appeals, Mr. McKenna’s burden was to demonstrate that the individual in question in fact had engaged his services in connection with the particular

filing, wished to commence the action or appeal, and that he was authorized to commence the proceeding on the behalf of such individual. See DiLuglio, 755 A.2d at 766 (holding “that the existence of an attorney client relationship is a question of fact” and the burden of proving the existence such a relationship is on the party asserting it as an affirmative defense). In addition, it is well settled that “[t]he burden of proof is on the Rule 11 fee opponent to establish objective reasonableness and adequate pre-filing investigation once a prima facie showing of sanctionable conduct has occurred.” Vandeventer v. Wabash Nat. Corp., 893 F. Supp. 827, 840 (N.D.Ind. 1995) (citing Shrock v. Altru Nurses Registry, 810 F.2d 658 (7th Cir.1987)).

As previously indicated, Mr. McKenna submitted affidavits signed on July 15, 2014, by George Mello and Michael Androzzi. The affidavits are nearly identical and, in them, Mssrs. Mello and Androzzi state that “in approximately 2005, my late neighbor, Theresa Wells, asked for my support in opposing the development of the neighboring lots because of the flooding problem in our neighborhood, including my back yard.” Both men stated that they, and several of the neighbors, “agreed to jointly retain Mr. McKenna to represent [them].” Each stated that “my goal was to prevent flooding, or at least not make it worse.” Both averred that they left the legal theories and strategies up to Mr. McKenna; did not approve or disapprove any particular claims; did not understand much of the terminology; but understood that Mr. McKenna was acting to address their concerns about flooding. They averred that in 2005 they testified at the Bristol Town Hall and, also, testified in Providence before the State Housing Code Commission. They also averred that they listened to former Superior Court Justice Stephen Fortunato’s 2006 decision in PC 05-4066. Both averred that they did not understand how the various cases were related, or how Mr. McKenna decided what to do next. They stated, “I understood that whatever he was doing, he was doing in order to stop the development from flooding my yard.” Both also

stated, “I would not have supported any improper actions, but I do not know what Attorney McKenna did, if anything, that was improper.”

Other exhibits submitted by Mr. McKenna included:

(1) an April 2005 letter written by Nicholas Mancieri to the Bristol Planning Board in which Mr. Mancieri describes local flooding (Ex. 11(1));

(2) a death notice indicating Theresa Wells died on December 24, 2006 (Ex. 11(3));

(3) a single page of hand written file notes (Ex. 11(4)) reflecting an April 19, 2007 meeting between Mr. McKenna and Mr. Wells during which Mr. Wells:

(a) indicated his concern about the effects of flooding in the area of his late grandmother’s property;

(b) set forth his dual goals of possibly selling his grandmother’s house to the Town of Bristol and preserving the Blanchard’s remaining lot as a drainage easement: and

(c) reviewed his billing records with Mr. McKenna;

(4) services rendered invoices (Ex. 11 (5)) sent to Theresa Wells regarding “Wells, Mancieri vs Town of Bristol, Ronald and Doris Blanchard” which include services rendered from 2005 to May 2011; and

(5) a 2005 docket sheet in PC 05-4066 reflecting activity in August and September 2005, including proceedings before the former Superior Court Justice Stephen Fortunato (Ex. 11(6)).

Mr. McKenna also produced Nicholas Mancieri to testify. In response to a series of leading questions, Mr. Mancieri testified that he and his parents joined Mrs. Wells’ group of individuals who were concerned about flooding in the neighborhood. He also testified that he had occasional conversations with Mr. McKenna, and that although he was never asked to contribute to the cost of litigation, the group received packets from the attorneys that included the case filings. When questioned by Mr. McKenna, he spoke in terms of a single case only. He further testified that he did not understand all of the workings of the case but, to the best of his

knowledge, Mr. McKenna didn't do anything Mr. Mancieri didn't want him to do. Mr. Mancieri also testified that the group left it up to the attorneys as to how to proceed.

When examined by Mr. Blanchard, Mr. Mancieri testified consistently with the averments contained in affidavits of George Mello and Michael Andreozzi. Mr. Mancieri testified he was involved in two challenges to the Blanchards' development plans, one of which culminated in a hearing before Superior Court Justice Stephen Fortunato, and the other of which culminated in a hearing taking place before the State Housing Code Commission. Although this testimony, like that of Mr. Andreozzi and Mr. Mello, was vague as to the timing of those two events, Mr. Mancieri essentially affirmed his deposition testimony and clearly stated that he was only involved at the beginning of Mrs. Wells' various judicial and non-judicial challenges. He testified that he was not involved in any subsequent challenges to which Mr. McKenna had identified him as a party or participant. Mr. Mancieri corroborated his father Nicholas S. Mancieri's deposition testimony by testifying that it was his mother who attended the group's meetings and the State Housing Code Commission administrative hearings.

As indicated, Mr. McKenna presented extensive argument, much of which was flatly contradicted by the sworn testimony. In addition, Mr. McKenna offered no explanation for his representations made to this Court on March 7, 2011, and April 6, 2011, in which he disavowed representing the Mellos, the Mancieris, and Mr. Andreozzi, in any Superior Court action other than PC. 05-4066.

As indicated, Mr. McKenna's billing records are in evidence as Exhibit 11(5). On balance, they support the witnesses' testimony and affidavits in that, for the most part, the records evidence a remarkable lack of communication between Mr. McKenna and his clients. In addition, the records are consistent with Nicolas Mancieri's sworn testimony in which he stated

that the neighbors' group did not hear from Mr. McKenna from the time of the initial meeting in 2005 until 2011, when they were called into court for mediation. Indeed, the records verify that Mr. McKenna had no communications with either Mr. Mancieri, George Mello, or Janet Mello, near or around the time when he named Mr. Mancieri and the Mellos as parties in PC 07- 5153. Furthermore, although the billing records do reflect Mr. McKenna's conference with Mr. Wells on April 19, 2007, when they reviewed Mr. Wells' goals for the litigation, the records also confirm that Mr. McKenna had no communications with Mr. Wells at or near the time when he filed PC 07-3471 approximately 4 months later. In addition, the records reveal that Mr. McKenna's associate, attorney Bruce Hodge, began preparing the complaint in PC 07-5153 before Mr. McKenna's September 15, 2007 conversation with Mr. Wells in which the billing records indicate they discussed Mr. Wells' options. Similarly, the records make no mention whatsoever of a January 17, 2008 notice of appeal filed in PC 06-6481, much less any communication with John Wells during which he might have authorized the appeal and the ensuing Supreme Court proceedings.

With respect to Janet Mello, Mr. McKenna presented no evidence whatsoever to suggest that she had authorized him to represent her in PC 06-0609 and PC 07-5153, wherein she was named as a party plaintiff. Unlike the original complaint filed in PC 05-4066, the complaints in the subsequently filed cases were not verified and Mr. McKenna produced no fee agreement, letter of engagement or correspondence from which the parameters of his authority, if any, could be discerned. Similarly, Mr. McKenna presented no evidence concerning an attorney-client relationship with Nicholas S. Mancieri.

As part of his arguments, Mr. McKenna reminded the Court that attorneys can have implied authority for handling matters that are incidental to managing the client's cause of

action. In that context, he argued that the successive judicial and non-judicial claims, causes of action and appeals that he brought should not be viewed as discrete proceedings but, instead, merely steps in the continuum of achieving a single objective; namely, to stop any flooding that might be caused by the Blanchards' development project. Mr. McKenna also argued that Rule 1.2 of the Supreme Court Rules of Professional Conduct, which required him to act as a zealous advocate, gave implied authorization to file the challenged documents. Finally, Mr. McKenna argued that any failure on his part to adequately communicate his activities to his clients, as required by Article V, Rule 1.4 of the Supreme Court Rules of Professional Conduct, were matters reserved solely for the Rhode Island Supreme Court Disciplinary Counsel and, therefore, could not serve as grounds for Rule 11 sanctions.

V

FINDINGS

The threshold question is whether Mr. Blanchard's delay in bringing his Rule 11 requests was unreasonable. The Court finds that it was not. Mr. McKenna's conduct was not revealed until discovery ensued in PC 11-2584 on the Blanchards' amalgamated abuse of process and malicious prosecution claims. It was only after Mr. McKenna and Mr. Blanchard's March 7, 2011 and April 6, 2011 colloquy with the Court that Mr. Blanchard began to challenge whether the various individuals who were named as parties to the claims and appeals brought against him in fact knew about, and authorized, the proceedings to which they had been named. The reasons for the delay in making this inquiry are obvious.

First, it is inconceivable to think that a licensed attorney would name an individual as a party to a lawsuit or other legal proceeding without that individual's consent. Yet, when Mr. McKenna filed the documents, he signed them as attorney for the named individuals, thus

expressly representing to the Blanchards, their attorneys, and the Court, that the named parties had authorized him to do so. Considering that there is an initial presumption that attorneys have authority to act on matters *outside* of the original cause of action, it certainly is reasonable to conclude that there also is an initial presumption that attorneys have authority to file that original cause of action in the first instance. See *In re Paige*, 476 B.R. 867, 870 (M.D. Pa. 2012) (stating “attorney authority may initially be presumed” when it comes to “matters that are distinguished from the cause of action itself”). And, because the named parties were unaware of what Mr. McKenna was doing, they did not have the opportunity to disavow his conduct until the depositions were conducted in PC 11-2584. See *Anderson v. Crawford*, 94 S.E. 574, 576 (Ga. 1917) (“The party for whom the appearance has been entered, if without knowledge of that fact, may object at any time on being informed thereof, even after judgment.”)

Furthermore, the violations are not “stale” because a malicious prosecution claim is not ripe until the underlying claims are final and Rule 54(b) final judgments have only recently entered in these cases. See *Salvadore v. Major Elec. & Supply, Inc.*, 469 A.2d 353, 357 (R.I. 1983) (declaring “that a cause of action for malicious prosecution accrues on the date of entry of judgment in the action claimed to have been malicious”). In addition, reliance on counsel can be a defense in malicious prosecution claims. (see *Solitro v. Moffatt*, 523 A.2d 858, 861 n.3 (R.I. 1987) (recognizing “that reliance on the advice of an attorney can be a complete defense to an action for malicious prosecution when the accuser makes a full and fair disclosure of all the facts within his knowledge that a reasonable man would regard as pertinent”). Thus, Mr. McKenna’s relationship to the individuals he named as parties to the various proceedings brought against the Blanchards and their intentions remained central throughout.

Having determined that Mr. Blanchard's requests for Rule 11 sanctions are timely, the Court will now turn to the overarching question: whether Mr. McKenna violated Rule 11: (a) by signing and filing papers in the Superior Court in which he expressly and impliedly represented as fact that he was authorized to act as counsel for each of the named parties and that each of them desired to assert the claims therein; and (b) by failing to make a reasonable inquiry as to whether those factual representations were well grounded.¹⁰

This Court accepts the witnesses' affidavits and testimony as credible. Each affiant and witness testified consistently, and their overall testimony was consistent with, and supported by, the averments and testimony of the others.

Although George Mello's deposition testimony might appear to be somewhat contradicted by his having verified the facts contained in the highly complex and multi-count original complaint in PC 05-4066, all of the deponents' testimony was generally consistent. Their testimony also was supported by Mr. McKenna's billing records. Those records confirm that Mr. McKenna spent little time communicating with his clients, and the few meetings that he had with them occurred only during a narrow window of time between September 2005 into 2006, when the Bristol Town Hall and State Housing Code Commission hearings were taking place. The testimony and averments also are consistent with Mr. McKenna's statements made to this Court during the April and May 2011 proceedings in which he claimed that, with respect to the six cases then pending before the Superior Court, he represented the Mellos, Mancieris and Michael Andreozzi only in connection with PC 05-4066.

¹⁰ The question before the court is not, as Mr. McKenna has suggested, one of whether his pleadings and other papers lacked substantive merit. Indeed, for purposes of this decision, the Court assumes, without deciding, that all of Mr. McKenna's filings would have been meritorious had he in fact been authorized to file them.

The Court finds credible Mr. Wells' testimony during which he recounted Mr. McKenna's statements concerning the status of the cases at the time of Mrs. Wells' death. The Court also finds credible Mr. Well's disavowal of Mr. McKenna's subsequent filings. Close examination and comparison of Exhibit 11(4)¹¹ and Exhibit 11(5)¹² pinpoints the two men's conversation as having taken place during an April 19, 2007 meeting at Mr. McKenna's office. Yet, Mr. McKenna's billing records and his various filings confirm that Mr. McKenna engaged in substantial activities thereafter, including filing new Superior Court proceedings, Supreme Court appeals and administrative appeals. Mr. Wells' testimony also is supported by Mr. McKenna's billing records, which indicate that Mr. McKenna had only three conversations with Mr. Wells between April 19, 2007 and April 6, 2011. Mr. Wells' testimony also was consistent with the testimony of the other witnesses and affiants.

The Court further finds that the Andreozzi and Mello affidavits are of little assistance to Mr. McKenna. Although the affidavits might be construed as carrying a flavor of ratification, the affidavits' contents fall far short of confirming that, by signing them, either man was adopting, as binding upon him, Mr. McKenna's actions in filing the offending documents. See Bank of Am. Trust & Sav. Ass'n v. Hall, 261 P.2d 545, 547 (Cal. Dist. Ct. App. 1953) (declaring "for purposes of ratification there must be confirmatory conduct, or at least conduct inconsistent with disapproval. Facts are not to be stretched, or ambiguous, inconclusive or independent acts made the basis for ratification.") (internal quotations omitted). Even pretending that Mr. Andreozzi and Mr. Mancieri, by their after-the-fact affidavits, were intending to authorize and/or adopt Mr. McKenna's previously filed document as legally binding upon them, it is clear from the two

¹¹ Exhibit 11(4) contained Mr. Wells' handwritten notes setting forth his concerns and objectives and Mr. McKenna's handwritten notes concerning the billing records.

¹² Exhibit 11(5) consisted of itemized billing records.

men's deposition testimony that they had not authorized Mr. McKenna's filings *at the time the filings were made*. Thus, for purposes of the instant Rule 11 inquiry, the relevant question is whether these individuals in fact wished to assert the various claims at the time McKenna filed them, and whether Mr. McKenna made reasonable inquiry into those facts.

Moreover, the fact that the client is a lay person who necessarily must leave the legal theories and strategy to the attorney, as stated in the affidavits, merely underscores the need for an attorney to make a reasonable inquiry into certain fundamental facts; i.e. whether the client genuinely wishes to assert or institute a legal claim or proceedings against another party, and whether the attorney is authorized to proceed on the client's behalf. See In re Seare, 493 B.R. 158, 190 (D.Nev. 2013). Indeed, the contents of the affidavits are consistent with the two men's deposition testimony, which indicated their lack of clarity about what Mr. McKenna was doing when he named each of them as a party to certain claims and proceedings or, in the case of Mr. Andreozzi, put him forth as a participant in an unwanted appeal.

Similarly, Nicholas Mancieri's testimony during the August 20, 2014 show cause hearing was of little assistance to Mr. McKenna.

The Court finds that a pattern existed wherein Mr. McKenna initiated a series of independent legal proceedings on behalf of at least four of the Wells defendants by signing and filing of documents with the Superior and other courts, administrative agencies and in non-judicial proceedings, but without first investigating to determine his client's desires and whether or not he had the authority to initiate those proceedings. The evidence is that Mr. McKenna unreasonably failed to take steps to determine his clients' wishes concerning the continuing objectives of his representation and the means by which those objectives would be accomplished. His failure to make the necessary inquiry and investigation in the first instance compels the

conclusion that any belief he may have held as to the facts relevant to his clients' intentions and the parameters of his authority, could not have been formed after reasonable inquiry. Thus, the evidence also compels the conclusion that Mr. McKenna's conduct in filing the offending documents in the Superior Court was not objectively reasonable because he failed to investigate and ascertain the accuracy of the critical facts he was expressly and impliedly representing as true.

The Court further finds that Mr. McKenna acted intentionally and without proper purposes when he named his clients as parties to various of the claims and cases that he filed without their knowledge and consent.

Although not properly an object of sanctions by this Court, Mr. McKenna's actions in filing and signing papers in non-judicial proceedings, administrative agencies, and in other courts, are nonetheless relevant to the question of whether his conduct was deliberate in the instant matters. When taken together, all of the filings demonstrate a persistent course of conduct taking place over a long enough period of time such that Mr. McKenna reasonably could have discovered the parameters of this authority and rectified his errors. The picture is not one of an overzealous attorney who made an isolated mistake due to genuine confusion about the scope of his authority. Mr. McKenna is a licensed attorney who necessarily must be familiar with his professional obligations to communicate and consult with his clients. Yet, Mr. McKenna ignored his professional obligations when dealing with the Wells defendants—all the while filing multiple documents in multiple venues. The un-contradicted evidence is that Mr. McKenna made almost no effort to investigate the wishes of these individuals such that he would have been able to draw the line between zealous advocacy and unacceptable conduct. See Kouri-Perez, 8 F. Supp. 2d at 140 (stating sanctions should not be imposed "to chill an attorney's enthusiasm,

creativity or zealous advocacy” but that “there is a point beyond which zeal becomes vexation. . . .”) The evidence also is that on March 7, 2001, and April 6, 2011, Mr. McKenna attempted to deny his unauthorized filings and, further, attempted to circumvent an order of this Court that necessarily would result in his clients’ discovering his unauthorized actions.

As a result of his intentional conduct, Mr. McKenna acted contrary to his clients’ wishes concerning the limited role they wished to play in his various attacks on the Blanchards and their development plans. Furthermore, in the case of Nicholas S. Mancieri, Mr. McKenna signed and filed a document purportedly on his behalf, but in the absence of any attorney-client relationship whatsoever. Given an attorney’s professional obligations in this regard, it is crystal clear that Mr. McKenna’s abject failure to investigate before signing and filing documents with this Court was objectively unreasonable. See Super. R. Civ. P. 11 (requiring signature as certification that signer had read the relevant document and is certifying that “to the best of the signer’s knowledge, information, and belief formed after reasonable inquiry” that the signed document “is well grounded in fact”) (emphasis added); In re Seare, 493 B.R. at 190 (“The attorney must be on the same page with the client concerning the client’s objectives.”)

Whether the purposes behind his unauthorized conduct were to benefit his client, Theresa Wells, by using her neighbor’s names to lend credence to her claims, or to wear down the Blanchards financially by increasing the cost of litigation, or to cause unnecessary delay, or to generate controversy and increased client billings, inflate client billings or some other reason altogether, likely will never be known. Indeed, Mr. McKenna’s personal animus for the Blanchards, Mr. Blanchard in particular, has been palpably obvious throughout the proceedings in these cases. However, regardless of what drove them, Mr. McKenna’s filings in which he named parties without their authorization could not have served any proper purpose.

This Court also rejects any notion that Mr. McKenna bundled the named parties as “plaintiffs” or “appellants” out of mere carelessness or for mere expediency’s sake.—Mr. McKenna is a seasoned litigator who plainly understands that there are elements to every cause of action; not every client can demonstrate those elements or has standing to bring a specific claim; and, not every client wishes to pursue every possible claim or remedy. Indeed, Mr. McKenna distinguished between claims in these cases when he wanted to do so. For example, in PC 05-4066, he limited the trespass claims only to the Estate of Amelia Carmone. He also verbally reassured some of his clients that they were parties to certain claims only.

To the extent Mr. McKenna relies on an expanded theory of implied authority, such reliance is misplaced. The attorney-client relationship is a question of fact, and the fact that an attorney represents a client in a particular matter does not necessarily create an attorney-client relationship as to other matters. See Robertson v. Gaston Snow & Ely Bartlett, 536 N.E.2d 344, 348-49 (Mass. 1989) (stating “the fact that an attorney agreed to, or did, represent a client in a particular matter does not necessarily create an attorney-client relationship as to other matters or affairs of that client”); Delta Equip. and Const. Co., v. Royal Indem., 186 So.2d 454, 458 (La. App. 1966) (“Authorization to represent a client in connection with a specific legal matter does not imply authorization to handle all others, nor does the agreement or consent of an attorney to represent a prospective client in a particular matter create an attorney-client relationship as regards other business affairs of the client.”). Indeed,

“[t]he legal relationship of attorney and client is purely contractual and results only from the mutual agreement and understanding of the parties concerned. Such relationship is based only upon the clear and express agreement of the parties as to the nature of the work to be undertaken by the attorney and the compensation which the client agrees to pay therefor.” Delta Equip. and Const. Co., 186 So.2d at 458.

Thus, it is axiomatic that the scope of an attorney’s representation is client-driven and must be based upon informed consent. See In re Seare, 493 B.R. at 189 (“To determine the client’s objectives, a lawyer must properly communicate with the client to understand the client’s expectations, learn about the client’s particular legal and financial situation, and independently investigate any ‘red flag’ areas.”) Thus, “the client’s objectives drive the analysis, the purpose of which is to guide the client to reasonable objectives and determine which services are reasonably necessary to meet those objectives.” Id. Therefore, it is incumbent on the attorney to define the goals of representation and to adhere to them after the client decides whether and how to proceed—anything less than that is unreasonable. See id. (“The lawyer’s duty is to competently attain the client’s goals of representation.”); see also Art. V, Rule 1.2(a) of the Supreme Court Rules of Professional Conduct (“[A] lawyer shall abide by a client’s decisions concerning the objectives of representation and . . . shall consult with the client as to the means by which they are pursued.”).

Furthermore, it is well settled that “[w]hether an attorney-client relationship has formed is a question of fact governed by the principles of agency.” Bucci v. Lehman Bros. Bank, FSB, 68 A.3d 1069, 1082 (R.I. 2013) (quoting Credit Union Central Falls v. Groff, 966 A.2d 1262, 1268 (R.I. 2009)); see also New Eng. Educ. Training Serv., v. Silver St. P’ship, 528 A.2d 1117, 1119 (Vt. 1987) (stating “[t]he attorney-client relationship is governed by the law of agency”). The general rule is that an attorney “has authority to act on behalf of his [or her] client and to control the procedural aspects of his [or her] case without his [or her] client’s express consent.” Id. However, said rule “is limited to control over procedural matters incident to litigation; the client has control over the subject matter of the litigation.” Id. See also In re Paige, 476 B.R. at 870 (declaring “implied and apparent authority attach to the attorney’s broad powers for

handling matters that are incidental to the cause of action.”) (Emphasis added.) Thus, Mr. McKenna’s attempt to transmogrify his clients’ reliance upon his professional skill and judgment into unlimited authority to instigate a series of independent legal proceedings also is unavailing.

The reason is that

“the law of mutual mistake has no place in the retention of an attorney. The attorney bears the burden of failing to ascertain the client’s objectives and/or failing to shape their objectives to conform to the remedies available under . . . law. Once again, the lawyer is the expert, not the client.” In re Seare, 493 B.R. at 190.

Plainly, neither the client’s reliance on the attorney’s expertise nor any “zealous advocacy” requirement to which the attorney is subject transmogrifies the scope of representation into a carte blanche. See Kouri-Perez, 8 F. Supp. 2d at 140 (observing that “there is a point beyond which zeal becomes vexation. . . .”). Just as importantly,

“An attorney in discharging his [or her] professional duties acts in a dual capacity. In a limited or restricted sense he [or she] is an agent of his [or her] client. But he [or she] has powers, including those to issue judicial process, far superior to those of an ordinary agent.

“As an officer of the court, his [or her] duties are both private and public. Where the duties to his [or her] client as an officer of the court to further the administration of justice, the private duty must yield to the public duty . . .

By its very nature, an abuse of legal process by an attorney . . . violates an attorney’s oath, his [or her] canons of ethics, and his [or her] duty to the public as an officer of the court . . .

Accordingly the scope of the attorney’s implied authority as an agent should not, as a matter of law, extend to acts which would constitute an abuse of legal process.” Fite v. Lee, 521 P.2d 964, 968-69 (Wash. App. 1974).

Furthermore, the fact that the named parties’ goals were broadly stated as an attempt to avert flooding is of no assistance to Mr. McKenna. The uncontradicted testimony was that each of the Wells defendants had different and limited objectives within that context. As indicated

above, it is incumbent upon the attorney to assist the client in refining the goals and objectives of the representation. See In re Seare, 493 B.R. at 189. Moreover, it is self-evident that the client's reliance on the attorney's professional skill and judgment does not obviate the requirement that the attorney obtain the clients' informed consent concerning the manner in which the client's objective will be achieved. See Art. V. Rule 1.4(b) of the Rhode Island Supreme Court Rules of Professional Conduct ("A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.") (Emphasis added.)

Therefore, given the well settled law of agency, including attorney-client relationships and professional obligation requirements, Mr. McKenna's conduct, to the extent that he may have been relying on principles of agency when filing the offending papers in the Superior Court, was not objectively reasonable for the reason that it was not warranted by existing law or by a good faith argument for the extension, modification or reversal of existing law. As previously noted, the standard for a Rule 11 inquiry is "an objective one of reasonableness under the circumstances." Kale v. Combined Ins. Co. of Amer., 861 F.2d 746, 757 (1st Cir. 1988)(internal quotations omitted); see also Super R. Civ. P 11 (requiring that the pleading, "to the best of the signer's knowledge, information, and belief formed after reasonable inquiry . . . is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law . . .").

Finally, the fact that Mr. McKenna's filing of the offending documents might also be the subject of Supreme Court discipline for failure to abide by his professional canons, does not protect him from Rule 11 sanctions because Rule 11 exists irrespective of the rules of professional responsibility. See DiLuglio v. Providence Auto Body, Inc., 755 A.2d 757, 772 n.16 (R.I. 2000) ("Even though violations of the rules of professional conduct cannot be used to

establish a cause of action or to create any presumption that a legal duty has been breached, the violation of a professional rule may be relevant [to other matters]”) Furthermore, even assuming Rule 11 is inapplicable, or otherwise not up to the task of sanctioning conduct such as the sort of conduct at issue here, courts have inherent powers including “the judicial authority to sanction counsel for litigation abuses which threaten to impugn the district court’s integrity or disrupt its efficient management of the proceedings.” Perez, 187 F.3d at 7.

In Williams v. Martin, 980 S.W.2d 248 (Ark. 1998), the court relied on inherent powers to sanction an attorney for

“engaging in a course of conduct that was prejudicial to the administration of justice by knowingly filing notices of appeal and other meritless postjudgment motions and pleadings with the trial court for purposes of delay, when he knew that he had neither obtained the authorization of his client to do so In short, [the attorney] used the trial court as a vehicle, compounding one misrepresentation after another, all at the expense of the parties involved, including his own client.” Williams, 980 S.W.2d at 251.

Plainly, it is hard to imagine anything that would impugn the court’s integrity more than compelling it to host unauthorized litigation. Likewise, it is hard to imagine anything more disruptive of this Court’s efficient management of its docket than the decade of proceedings that led up to Mr. Blanchard’s motions for Rule 11 sanctions.

Accordingly, the Court finds that Mr. McKenna’s conduct fits squarely within Rule 11’s prohibitions. This Court finds that Mr. McKenna violated Rule 11 on no less than six separate occasions in these consolidated cases by signing and filing documents that misrepresented certain fundamental facts to the Court and to the Blanchards, i.e., that the named individuals or entities genuinely sought to press the stated legal claims against the Blanchards, and that Mr. McKenna was authorized to put those claims forth on their behalf. More specifically, the Court finds that at a minimum, Mr. McKenna violated Rule 11 when he:

- Named Nicholas S. Mancieri as a party to the First Amended Complaint in Superior Court PC 05-4066 on August 12, 2005;
- Named Nicholas Mancieri as a party to the original Complaint filed in in Superior Court PC 06-0609 on January 31, 2006;
- Named Michael Andreozzi as a party to the original Complaint filed in Superior Court PC 06-0609 on January 31, 2006;
- Filed the Complaint for Declaratory Judgment, and a Temporary, Preliminary, and Permanent Injunction in Superior Court PC 07-3471 on July 10, 2007;
- Filed the Complaint for Declaratory Relief, or in the Alternative, Administrative Appeal Complaint in Superior Court in PC 07-5153 on September 27, 2007; and
- Filed the January 17, 2008 notice of appeal in Superior Court PC 06-6481

In light of the above findings, this Court will impose sanctions. This Court finds that substantial punishment is warranted due to the egregiousness of the violations and the obvious need to deter similar violations. Not only did Mr. McKenna bring unauthorized lawsuits against the Blanchards, two of his unauthorized filings (PC 07-3471 and PC 07-5153) additionally named the Rhode Island Building Code Standards Committee, the Town of Bristol, and multiple Town officials as party defendants. As a result, public resources also were wasted in defending these two unauthorized proceedings. In addition, Mr. McKenna's conduct exposed his unwitting clients to abuse of process and malicious prosecution claims and also forced them to participate in discovery in PC11-2585. Mr. McKenna's apparent willingness to engage in this type of conduct—as evidenced by the various filings and similar representations he made to other courts and administrative agencies about his representative capacity—demonstrates the need for strong sanctions. Likewise, the waste of judicial resources occasioned by Mr. McKenna's conduct

compels a strong response.. Finally, the showing of remorse or understanding of the transgression is a consideration in deciding the sanction and Mr. McKenna has shown none. See Filippini v. Austin, 106 FRD 425, 433 (C.D. Cal. 1985) (“If an attorney makes a mistake and admits it, there is less of a reason to sanction him or her to make sure he or she is more careful in the future.”). Indeed, Mr. McKenna has not given any indication that he understands the nature of his transgressions nor has he expressed any regret for so much as a misunderstanding of the law or the facts. The Court considers this to be another aggravating factor.

VI

SANCTIONS

This Court finds, in its discretion, that an award for attorney’s fees, pursuant to Super. R. Civ. P. 11 is justified and appropriate in this case. See Pleasant Mgmt., LLC, 918 A.2d at 217 (stating “a trial justice has discretionary authority to formulate what he or she considers to be an appropriate sanction”); Fed.R.Civ.P. 11 Advisory Comm. Notes to the 1993 amendments (stating the court has significant discretion in fashioning sanctions). The imposition of a sanction for the opposing party’s attorney’s fees serves Rule 11’s dual purpose: to deter a plaintiffs’ attorney from engaging in similar conduct the future, as well as to reimburse the aggrieved party for the money they were forced to expend defending against a plaintiff’s filings. See Pleasant Management, LLC, 918 A.2d at 217 (recognizing that the sanction imposed by a judge should be consistent with the articulated purpose of Rule 11; namely, to remedy the harm caused and to deter future harm by the offending party).

As indicated previously, Mr. Blanchard has requested sanctions equivalent to all of his attorney fees incurred subsequent to January 2007, which was shortly after Theresa Wells’ death. In support of this request, Mr. Blanchard points to John Wells’ deposition testimony in which he

recounts Mr. McKenna explaining the status of the appeals pending in PC 05-4066, PC 06-0609, PC 06-5659 and AA 06-81 and, further, stating that the cases merely were awaiting decisions, with 95% of the legal work having been completed already. Mr. Blanchard maintains that he should be awarded all of the attorney's fees that he had been charged for the various unauthorized proceedings generated by Mr. McKenna. According to Mr. Blanchard's submissions, the total fees were approximately \$38,000, and that they can be generally allocated among the various cases based upon the activity reflected in the docket sheets. However, as also indicated previously, the specified attorneys' billing records do not attribute the tasks performed in each specific case. Although the nature of the work is reasonably well described for purposes of client billing, with only two exceptions, it is difficult to discern which case, claim, or proceeding actually necessitated the work, and how the line item charges can be correlated to one or more of the above-enumerated Rule 11 violations. For example, when comparing Mr. Blanchard's attorneys' billing records with Mr. McKenna's billing records and the other materials appended to the motions including the docket sheets, it is evident that the billings include work done in connection with proceedings in courts other than the Superior Court.

The only two exceptions are the August 3, 2007 invoice in the amount of \$10,265.81 and the November 29, 2007 invoice in the amount of \$4001.25. When compared with the docket sheet and pleadings in PC 07-3471, it is evident that the August 3, 2007 billed charges were in response to the complaint and request for injunctive relief filed on July 10, 2007. When compared with the docket sheet and pleadings in PC 07-5153, it is evident that the November 29, 2007 billed charges were in response to the complaint for declaratory relief filed on September 27, 2007, and served in early to mid-October 2007. The total of these two invoices is \$14,267.06.

This Court recognizes that a sanction in this amount would be a significant one (particularly for a small law firm or sole practitioner). However, as indicated above, this Court finds that the pattern evidenced by Mr. McKenna's conduct, his willingness to make repeated misrepresentations to the courts and other authorities of this State, and his lack of remorse, warrants a strong response. Furthermore, Mr. McKenna has yet to assert the affirmative defense of inability to pay the some or all of the amounts Mr. Blanchard seeks as sanctions. See Dodd Insurance Services Inc., v. Royal Insurance Co. of America, 935 F 2d 1152, 1160 (10th Cir. 1991)(stating "inability to pay should be treated like an affirmative defense, with the burden upon the parties being sanctioned to come forward with evidence of their financial status.") (internal quotations omitted); In re Kunstler, 914 F.2d 505, (4th Cir. 1990)(" Inability to pay what the court would otherwise regard as an appropriate sanction should be treated as reasonably akin to an affirmative defense, with the burden upon the parties being sanctioned to come forward with evidence of their financial status.") Therefore, the Court inposes sanctions in the amount of \$14, 267.06 to be paid to Mr. Blanchard.

In addition, this Court concludes that, when taking all of the offensive Superior Court filings into account, the need for deterrence compels sanctions in addition to the \$14,267.06 which represents only a portion of the Blanchards' calculable attorneys' fees. A central goal of Rule 11 sanctions is deterrence and Rule 11 permits the Court to impose sanctions greater than the moving party's attorneys' fees if the court in its discretion determines that such sanctions are required to deter further unreasonable conduct either on the part of the attorney whose conduct is at issue or on the part of others.

Even if award exceeds the calculable attorneys' fees of the party who incurred the expense, the award can be justified by the need for deterrence while, at the same time, avoiding

blanket fee shifting or overcompensating. See Fox v. Acadia State Bank, 937 F.2d 1556, 1571 (11th Cir. 1991) (stating “Rule 11 does not create an absolute entitlement to even reasonable attorney’s fees if the court determines that the rule’s central goal of deterrence may be achieved by a lesser sanction. [However,] [t]he reverse is also true, for the rule permits a court to impose sanctions greater than the moving party’s attorney’s fees if the court in its discretion determines that such sanctions are required to deter further unreasonable conduct.”) Bay State Towing, 899 F.2d at 133 (“Rule 11 does not limit the amount of a sanction to an attorney’s fee or to some part of an attorney’s fee . . . The court ‘has discretion to tailor sanctions to the particular facts of the case, with which it should be well acquainted,’ all in light of the rule’s “deterrent orientation.”) (quoting Fed.R.Civ.P. 11 advisory committee’s note on 1983 amendment”). Therefore, the Court sanctions Mr. McKenna in an additional amount of \$1,000 per filing for each of the five filings,¹³ for an additional sanction of \$5,000.

VII

Conclusion

After reading Mr. McKenna’s submissions and considering the evidence of record, this Court finds that Mr. McKenna has not shown cause why sanctions should not be imposed. His misrepresentations concerning the attorney-client relationship with the named plaintiffs in connection with his filings, as well his misrepresentations concerning their purported intentions to bring civil actions or other proceedings against the Blanchards, were not objectively reasonable and were in violation of Rule 11. Nor were they made after reasonable inquiry into the facts. This Court therefore assesses monetary sanctions against Mr. McKenna, personally, in the amount of \$19,267.06 to be paid to Mr. Blanchard.

¹³ For purposes of calculating sanctions, the Court treats the two Rule 11 violations in connection with Superior Court PC 06-0609 as a single filing.

This Court declines to sanction Mr. McKenna for any specious and unsupported legal arguments made in connection with his defending Mr. Blanchard's Rule 11 Motion for Sanctions.

Hurst, J. March 6, 2015

¹The relevant portions of the Art V of the Supreme Court Rules of Professional Conduct include:

Article V Scope note 17 which states,

“Furthermore, for purposes of determining the lawyer's authority and responsibility, principles of substantive law external to these Rules determine whether a client-lawyer relationship exists. Most of the duties flowing from the client-lawyer relationship attach only after the client has requested the lawyer to render legal services and the lawyer has agreed to do so. But there are some duties, such as that of confidentiality under Rule 1.6, that attach when the lawyer agrees to consider whether a client-lawyer relationship shall be established. See Rule 1.18. Whether a client-lawyer relationship exists for any specific purpose can depend on the circumstances and may be a question of fact.” Art. V, Scope n. [17] of the Supreme Court Rules of Professional Conduct.

Rule 1.0, entitled Terminology which states in part:

“(a) ‘Belief’ or ‘believes’ denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.

“(b) ‘Confirmed in writing,’ when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (e) for the definition of “informed consent.” If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

...

“(d) ‘Fraud’ or ‘fraudulent’ denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive.

“(e) ‘Informed consent’ denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate

information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

“(f) ‘Knowingly,’ ‘known,’ or “knows” denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

. . . “(h) ‘Reasonable’ or ‘reasonably’ when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

“(i) ‘Reasonable belief’ or ‘reasonably believes’ when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

“(j) ‘Reasonably should know’ when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.” Art. V, Rule 1 of the Supreme Court Rules of Professional Conduct.

Rule 1.2, entitled Scope of Representation and Allocation of Authority Between Client and Lawyer which states in part:

“[A] lawyer shall abide by a client’s decision concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of a client as is impliedly authorized to carry out the representation.” Art. V, Rule 1.2 of the Supreme Court Rules of Professional Conduct.

Rule 1.4, entitled Communication which states:

“(a) A lawyer shall:

“(1) promptly inform the client of any decision or circumstance with respect to which the client’s informed consent, as defined in Rule 1.0(e), is required by these Rules;

“(2) reasonably consult with the client about the means by which the client’s objectives are to be accomplished;

“(3) keep the client reasonably informed about the status of the matter;

“(4) promptly comply with reasonable requests for information; and

“(5) consult with the client about any relevant limitation on the lawyer’s conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

“(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

“(c) When a lawyer has not regularly represented a client and has reason to believe that the client does not fully understand the nature of the

attorney-client relationship and the expectations and obligations arising out of that relationship, the lawyer shall take reasonable steps to inform the client of the nature of the attorney-client relationship before the representation is undertaken. Such disclosure should include what the lawyer expects of the client and what the client can expect from the lawyer. A lawyer may make such disclosure by providing the client with a copy of the statement of client's rights and responsibilities contained in Appendix 2 to these rules, or in any other manner sufficient to provide the client with a clear understanding of what services will be rendered by the lawyer and what the client's responsibilities are in order that the services can be performed effectively.” Art. V, Rule 1.4 of the Supreme Court Rules of Professional Conduct.