IN THE SUPREME COURT OF IOWA
Supreme Court No. 22-0288

IN THE MATTER OF THE ESTATE OF RUTH C. BISIGNANO,
Deceased.

EXILE BREWING COMPANY, LLC,
Appellant/Cross-Appellee,

vs.

ESTATE OF RUTH C. BISIGNANO,
Appellee-Cross-Appellant.

IN THE MATTER OF THE ESTATE OF FRANK J. BISIGNANO,
Deceased.

EXILE BREWING COMPANY, LLC,
Appellant/Cross-Appellee,

vs.

ESTATE OF FRANK J. BISIGNANO,
Appellee-Cross-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
THE HONORABLE CRAIG E. BLOCK

CROSS-APPELLANTS' REPLY BRIEF

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Cross-Appellants, the Estate of Ruth C. Bisignano and the Estate of Frank Bisignano (the "Estates") submit the following argument in reply to the Exile's Cross-Appellee and Reply brief. While the Estates' opening brief adequately addresses the issues presented for review, a short reply is appropriate to address certain contentions raised by Exile.

A. Error Preservation.

Exile incorrectly asserts the Estates did not preserve error on their request for attorneys' fees. The Estates' filed a Motion for Attorneys' Fees with their Resistance to Exile's Motion to Vacate, [Estate's Resistance to Exile's Motion to Vacate and Motion for Attorneys' Fees (8/30/21) at 1], the Estates requested attorneys' fees pursuant to Iowa Rule of Civil Procedure 1.413 in their accompanying brief, [Estates' Brief in Support of Resistance to Motion to Vacate and Motion for Attorneys' Fees (8/30/21) at 29–32], and the district court denied the Estates' request for attorneys' fees, [App. 94–95, Order Denying Exile's Motion to Vacate at 12–

13]. Error is preserved. *See Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002).

B. Exile's Conduct Justifies the Imposition of Sanctions.

Exile incorrectly suggests that the filing of pleadings comprised of frivolous arguments is not a sufficient basis to impose sanctions. [*See* Exile Cross-Appellee and Reply Br. at p. 45 (arguing the Estates "provide[] no examples of cases where attorney's fees were awarded under Iowa R. Civ. P. 1.413(1) due to arguments or appeals being 'frivolous.' ")]. Counsel's signature on a pleading certifies the pleading

> 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 cause unnecessary delay or needless increase in the cost of litigation.

Iowa R. Civ. P. 1.413(1).

Sanctions are mandatory when a party violates Iowa Rule of Civil Procedure 1.413. Iowa R. Civ. P. 1.413 ("If a motion, pleading, or other paper is signed in violation of this rule, the court, upon motion or its own initiative, *shall* impose upon the person who signed it, a represented party, or both, an appropriate

sanction . . . ." (emphasis added)); *Barnhill v. Iowa Dist. Court for Polk Cnty*, 765 N.W.2d 267, 276 (Iowa 2009). The "purpose of imposing monetary sanctions is to (1) deter attorneys from filing frivolous lawsuits . . . and (2) avoid the general cost to the judicial system in terms of wasted time and money." *Barnhill*, 765 N.W.2d at 276. In *Barnhill*, the Iowa Supreme Court observed:

> [T]he federal rule is instructive in explaining the nature of sanctions: "A sanction imposed under this rule must be limited to what suffices to deter repetition of such conduct or comparable conduct by others similarly situated." Fed. R. Civ. P. 11(c)(4). Deterrence, not compensation, is the primary purpose of Rule 11 sanctions. A sanction is imposed with the hope a litigant or lawyer will " 'stop, think and investigate more carefully before serving and filing papers.' " *Cooter & Gell v. Hartmarx Corp.,* 496 U.S. 384, 398, 110 S. Ct. 2447, 2457, 110 L.Ed.2d 359, 377 (1990) (quoting Amendments to Federal Rules of Civil Procedure, 97 F.R.D. 165, 192 (1983) (Letter from Judge Walter Mansfield, Chairman, Advisory Committee on Civil Rules) (Mar. 9, 1982)). However, as the Sixth Circuit pointed out, "although it is clear that Rule 11 is not intended to be a compensatory mechanism in the first instance, it is equally clear that effective deterrence sometimes requires compensating the victim for attorney fees arising from abusive litigation." *Rentz v. Dynasty Apparel Indus., Inc.,* 556 F.3d 389, 400 (6th Cir.2009). The Sixth Circuit has also concluded that *de minimis* sanctions are "simply inadequate to deter Rule 11 violations." *Id.* at 402.

Id.

In this case, the Estates request attorneys' fees as a sanction for Exile's abusive and frivolous litigation conduct in the probate proceedings and now on appeal. *See Barnhill*, 765 N.W.2d at 277–78 (approving $25,000 sanction against attorney because, *inter alia*, the attorney asserted meritless claims and the attorney "made up the case as it went along. Such conduct will not be tolerated by our judicial system." (citation and internal quotation marks omitted)). It cannot be overlooked that it was *Exile* that insisted that Ruthie's Estate was the proper plaintiff to bring the Litigation, so Ruthie's estate was reopened. [Estates' Opening Br. at 51–54]. Nearly a year after her estate was reopened, Exile filed in the probate proceedings a dispositive motion—without making any attempt to comply with the rules governing intervention—and insisted, *inter alia*, that now it wanted Ruthie's Estate to be closed based in large part on issues that had already been raised and rejected in the Litigation by the district court. *See* Iowa R. Civ. P. 1.407.

The probate court correctly determined Exile was an interloper and, addressing the merits, correctly held that Exile's substantive arguments were meritless in view of decades of

controlling law and precedent (not to mention Exile's prior insistence that Ruthie's Estate was the only proper plaintiff to bring the lawsuit against it). But the district court did not impose any sanction against Exile. When Exile finally did file a petition to intervene, it did so in a Rule 1.904 motion (in which Exile raised a litany of other new issues for the first time) and on grounds that Exile itself now admits is erroneous. [Registrant's Reply in Support of Motion to Suspend Trademark Cancellation Proceedings at 8–9, https://ttabvue.uspto.gov/ttabvue/v?pno=92079178&pty=CAN&eno=8 (last visited Nov. 17, 2022)].

Now, on appeal, Exile continues to assert frivolous arguments and improperly attempts to reraise issues and arguments that were rejected by the district court in the underlying litigation and are not before this Court on appeal. It was improper for Exile to attempt an end-run around unfavorable rulings in the Litigation. It was improper for Exile to inject itself into the Estates' probate proceedings without making any effort to comply with the rules governing intervention. It was improper for Exile to attempt to take a second bite at the apple by reraising and rehashing issues in the

probate proceedings that had already rejected in the Litigation. It was improper for Exile to demand the Estates be closed ten months after Exile had insisted that the Estates' claims be brought by Ruthie's Estate. And it is improper for Exile to pursue this appeal (1) in light of Exile's conduct in the probate proceedings, (2) after taking incompatible positions before another tribunal in the pending trademark cancellation case, and (3) in view of the fact that the appeal is comprised of meritless issues that are belied by a century of Iowa Supreme Court precedent and controlling statutes.

Rule 1.413 requires parties "stop" and "think" before filing papers in court. *See Barnhill*, 765 N.W.2d at 276. Exile's failure to do so in the probate proceedings and now on appeal needlessly and dramatically increased the cost of this litigation and wasted the resources of the Estates, the district court, the probate court, and now this Court on appeal. Sanctions are the only remedy available to deter parties from engaging in such behavior.

Exile, in fact, knows (or should know) this appeal is meritless. It admits as much. The sole "question of law or fact in common" alleged by Exile in its petition to intervene in the probate

proceedings, was that "Exile, in good faith, purchased for value the rights to use Ruth's name and likeness by registering a trademark for the name 'RUTHIE' and using said mark in conjunction with its good and services." [App. 100, Exile Petition to Intervene in Probate Proceedings at 1]. Exile acknowledges this assertion is erroneous and further admits:

> Owning a trademark which may be the name of another person does not grant any publicity rights or rights in such other person's name, image, or likeness. The fact that Registrant [Exile] owns the registration for the 'RUTHIE' mark has no bearing on whether the Estate owns rights in Bisignano's name, image, or likeness.

[Registrant's Reply in Support of Motion to Suspend Trademark Cancellation Proceedings, at pp. 8–9, https://ttabvue.uspto.gov/ttabvue/v?pno=92079178&pty=CAN&eno=8 (last visited Nov. 17, 2022)].[1]

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[1] Even setting aside Exile's own incompatible positions, no reasonable argument can be made that the issues Exile raises on appeal are issues of first impression. For example, Exile argues a legal claim is not property. [Exile Opening Br. at 32–59]. *But see, e.g.*, Iowa Code § 4.(21) (defining "personal property" to include choses in action); *Gray v. Oliver*, 943 N.W.2d 617, 622–23 (Iowa 2020) (a legal claim is property); *Chrysler Credit Corp. v. Resenberger*, 512 N.W.2d 303, 304 ((Iowa 1994) (same). Exile argues a hearing must be held to determine whether Frank was, in fact, Ruthie's heir. [Exile Opening Br. at 78–80]. *But see, e.g.*, Iowa

Exile also argues that sanctions should not be imposed because the case involves "questions of first impression." [Exile's Cross-Appellee and Reply Br. at 46]. Exile, however, cannot fabricate an issue of first impression by snubbing controlling statutes and well-established precedent that directly contradict Exile's arguments before Judge Block and now this Court on appeal. Tellingly, Exile's Cross-Appellee and Reply brief does not mention, let alone address, Iowa Code section 4.1(21), which expressly defines "personal property" to include choses in action—

Code § 633.488 (establishing five-year deadline to reopen settlement and seek redistribution of property); App. 202–03, Probate Order Approving Final Report in Ruthie's Estate, at 2 (district court determination that Frank was Ruthie's sole heir in 1993). Exile argues the Estates waived or abandoned their interest in Ruthie's name, image, and likeness by not including them on the final inventories. [Exile Opening Br. at 60–64]. *But see, e.g.*, *In re Estate of Warrington*, 686 N.W.2d 198, 205 (Iowa 2004) (holding the argument that an estate's omission of property on an inventory constitutes waiver of the property "clearly untenable" and "lacking in merit"). These are just a few examples, and they do not even include Exile's multiple irrational arguments lacking any authority and support, such as the Estates have violated the rule against perpetuities and the Estates are monopolists who violate antitrust legislation. [Exile Opening Br., at pp. 54–56 (arguing the Estates violate antitrust laws and are monopolists); App. 108, Exile Br. in Support of Motion to Reconsider (11/24/21) at 7 (arguing the rule against perpetuities was violated)].

such as the claims filed against Exile in the Litigation. *See* Iowa Code § 4.1(21). Exile's Cross-Appellee and Reply brief also makes no meaningful attempt to explain how its arguments survive a century of precedent holding causes of action are personal property, which is the central issue on appeal. [Estates' Opening Br. at 44–50]. Exile's Cross-Appellee and Reply brief does not even attempt to explain how this appeal survives the fact that it was *Exile* that insisted the Litigation be brought by Ruthie's Estate before her estate was opened. Exile's silence on these key issues speaks volumes and shows that Exile does not, because it cannot, present a coherent and non-frivolous argument to challenge the district court's orders reopening the Estates pursuant to Iowa Code section 633.489.

Moreover, Exile shrugs off its complete failure to comply with Iowa Rule of Civil Procedure 1.407 and asserts a prospective intervenor's compliance with the rules of procedure is nothing more than "form over substance," [Exile Cross-Appellee and Reply Br. at 36], and suggests that concerns raised by a district court or a party to the litigation over a prospective intervenor's non-compliance

makes "much ado" about nothing, [Exile Cross-Appellee and Reply Br. at 35]. The procedure for intervention set forth in Iowa Rule of Civil Procedure 1.407 and, more specifically, the requirement that a third-party file a petition to intervene before filing motions in a pending action, serves the important purpose of defining the scope of a third-party's claimed interest in the litigation, similar to that of a petition in any civil proceeding. This ensures that an intervenor is not given a free and unlimited license to disrupt the proceeding and abuse its intervenor status.

This case offers a telling example. Exile's Reply brief dedicates eight pages attacking the administrator's "standing" to serve as the administrator of the Estates. Exile, however, lacks any interest in the determination of who the Estates elect to serve as their administrator. None of Ruthie's heirs object to the administrator's appointment,[2] yet Exile—an adverse party in litigation approved by the administrator—does. Exile, however, has

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[2] *See generally*, the docket in the Estate of Ruth C. Bisignano and the Estate of Frank J. Bisignano, which do not contain any motions objecting to the administrator's appointment—except Exile's.

no choice in the selection of the Estates' administrator.[3] The same is true with respect to the Estates' selection of litigation counsel, who Exile is now apparently trying to get off the case. [Exile Cross-Appellee and Reply Br. at 49 (requesting the Court on appeal to reverse and remand the probate court's "Orders granting Leave to Employ Litigation Counsel.")]. Exile cannot be allowed to abuse the probate process in this way by injecting itself into the probate proceedings and filing baseless motions attacking orders to which it has no interest or standing. Rule 1.413 and related cannons of professionalism are designed to protect parties against such conduct.

C. Exile is Judicially Estopped from Taking a Position Contrary to the Position it Took in the Trademark Cancellation Proceedings.

On October 24, 2022, the USPTO's Trademark Trial and Appeal Board ("TTAB") granted Exile's motion to suspend cancellation proceedings due to the pending civil action. [Order Granting Registrant's Motion to Suspend for Civil Action

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[3] As with all of Exile's arguments asserted on appeal, the selection of an administrator is not an issue of subject matter jurisdiction.

(10/24/22),

https://ttabvue.uspto.gov/ttabvue/v?pno=92079178&pty=CAN&eno=12 (last visited Nov. 17, 2022)]]. As a result, the Estates will be unable to file dispositive motions in the cancellation action that could have prevented Exile's continued theft of Ruthie's stolen identity while the Litigation is pending. The TTAB's decision thus at present seems to clear the way for Exile to continue selling its infringing "Ruthie" products for another year, resulting in a financial windfall to Exile. Meanwhile, the Estates are effectively precluded from taking meaningful steps to license Ruthie's name, image, and likeness to another brewery, potentially costing the Estates tens—if not hundreds—of thousands of dollars. Exile's gambit of abandoning its basis for intervention paid off, but Exile barrels ahead with this appeal anyway.[4]

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[4] Notably, in the cancellation case, Exile argued that this appeal supported its position that a stay was necessary. [Registrant's Reply in Support of Motion to Suspend, at p. 5 n.1, https://ttabvue.uspto.gov/ttabvue/v?pno=92079178&pty=CAN&eno=8 (last visited Nov. 17, 2022) ("Estate of Frank Bisignano, Case No. ESPR040450 (Iowa Dist. Polk County), is pending before the Iowa Supreme Court with Case No. 22-0289. Estate of Ruth Bisignano, Case No. ESPR033730 (Iowa Dist. Polk County), is pending before the Iowa Supreme Court with Case No. 22-0290. The

Given the TTAB's decision in Exile's favor, Exile is judicially estopped from asserting its RUTHIE mark made it a good faith purchaser of Ruthie's name, image, and likeness, which was the only basis for intervention raised by Exile in its petition to intervene. [App. 100, Exile Petition to Intervene in Probate Proceedings, at 1; *see* Estates' Opening Br. 34–35]. As the Iowa Supreme Court recently observed in *Godfrey v. State*:

> the rule of "judicial estoppel" prevents a party from changing its position after it has successfully urged a different position to obtain a certain litigation outcome. The doctrine is designed to protect the integrity of the judicial process. In *Winnebago Industries, Inc. v. Haverly*, we discussed judicial estoppel at length, finding that it barred an employer from taking inconsistent positions at different stages of the same proceeding. Because the doctrine primarily is intended to protect the integrity of the legal process, an appellate court may raise judicial estoppel on its own motion.

962 N.W.2d 84, 100 (Iowa 2021) (citations and internal quotation marks omitted)). Exile cannot now, in this appeal, assert an argument that is incompatible with its position that "[o]wning a

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Registrant has challenged the reopening of each Estate, which provides yet another basis for this Board to suspend this proceeding pending the outcome of the parties' other litigation.").

trademark which may be the name of another person does not grant any publicity rights or right sin such other person's name, image, or likeness," and "[t]he fact that Registrant [Exile] owns the registration for the 'RUTHIE' mark has no bearing on whether the Estate owns rights in Bisignano's name, image, or likeness." *See id.* That Exile is judicially estopped from pursing the grounds for intervention and yet continues to pursue this appeal is further evidence that an award of attorneys' fees is appropriate in this case.

D. Judicial Notice was Taken of the Underlying Litigation and, in any Event, this Court Should Take Judicial Notice of the Underlying Litigation and Trademark Pleadings on Appeal.

It is a rare thing for a party to make arguments in a legal proceeding that are irreconcilable with its own statements in closely related pending cases. Rarer still is it for a party to do so thinking it can conceal its prior irreconcilable statements from this Court on appeal. Yet, as discussed in detail in the Estates' opening brief, that is exactly what Exile has done throughout the district court and trademark proceedings and now attempts to do on appeal. [Exile Cross-Appellee and Reply Br. at 10–11]. Exile's request to

conceal from this Court Exile's own prior public filings and district court orders in the related pending cases should be denied.[5]

First, judicial notice was already taken of *Estate of Ruthie Bisignano et al. v. Exile Brewing Company, LLC*, Polk No. CVCV060249 (the "Litigation"). The Litigation was a major basis for reopening both Estates and therefore was closely related to, if not inextricably intertwined with, the probate proceedings in general and Exile's so-called Motion to Vacate in particular. At the probate hearing on Exile's motion, the Estates requested judicial notice to be taken of the record in the Litigation, Exile did not object, and the district court relied on the Litigation record in its analysis denying Exile's motion.[6] [App. 58, 9/28/21 Hearing Tr. at

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[5] Exile filed a Motion to Strike the Estates' designation of parts of the appendix with respect to pleadings in the Litigation and trademark cancellation proceedings. Thereafter, Exile filed its Appendix and a Cross-Appellee and Reply brief. Exile's Appendix did not include the materials of which the Estate requests this Court take judicial notice, so the Estates are contemporaneously filing a Supplemental Appendix containing the documents cited in the Estates' opening brief and reply brief. In view of the foregoing, Exile's Motion to Strike is moot.

[6] In fact, judicial notice *must* be taken where, as here, "a party requests it and the court is supplied with necessary information." Iowa R. Evid. 5.201 (emphasis added).

26; App. 160–61, Order Denying Motion for Reconsideration at 7–8 n.22].

Second, even if there were any lingering doubt about whether judicial notice of the Litigation was taken by Judge Block (there is not), the issue can easily be resolved on appeal. *State v. Washington*, 832 N.W.2d 650, 655 (Iowa 2013) ("Judicial notice may be taken on appeal."); *In re Marriage of Tresnak*, 297 N.W.2d 109, 112 (Iowa 1980) ("Courts are permitted to dispense with formal proof of matters which everyone knows."); *see* Iowa R. Evid. 5.201(a), (d) ("The court may take judicial notice at any stage of the proceeding."). The appellate court can take judicial notice of facts that are not "subject to reasonable dispute" when they "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." *See* Iowa R. Evid. 5.201; *Washington*, 832 N.W.2d at 655; *In re Marriage of Tresnak*, 297 N.W.2d at 112.

There are fifteen documents identified in the Estates' designation of parts that Exile seems to seek exclusion. [Exile Cross-Appellee and Reply Br. at 10–11]. The bulk of them are

Exile's own public court filings in the Litigation or in the trademark cancellation case,[7] public filings that were filed by the Estates to provide the full context of Exile's prior statements, transcripts from hearings on dispositive motions, and the district court's orders.

In this case, Exile cannot reasonably assert that its own public filings in closely related legal proceedings come from a source that can "reasonably be questioned." *See* Iowa R. Evid. 5.201. Thus, it is not clear what Exile is really arguing when it the documents "should not be part of the record in appeal."[8] [Exile Cross-Appellee

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[7] In their opening brief, the Estates request the appellate court take judicial notice of the trademark cancellation filings. [Estates' Opening Br. at 15 n.1]. The Estates also respectfully request the Court take judicial notice of the TTAB's order granting Exile's motion to stay, which was filed after the Estates' opening brief. [Order Granting Registrant's Motion to Suspend for Civil Action, Cancellation No. 92079178 (filed 10/24/22). https://ttabvue.uspto.gov/ttabvue/v?pno=92079178&pty=CAN&eno=12 (last visited Nov. 17, 2022)]

[8] For example, it is not known whether Exile is asserting that it *did not* insist in the Litigation that "**THE REAL PARTY IN INTEREST IS THE LEGAL REPRESENTATIVE OF THE ESTATE OF RUTHIE BISIGNANO.**" It is also not known whether Exile's complaint is that it did not in fact tell the district court "we think it's important that [the claims] be brought in [Ruthie's] name." Exile's position appears to be that a party may—without consequence—reverse its legal position in a closely related pending case, admit the position stems from a misunderstanding of law, and yet pursue this appeal without informing the appellate court

and Reply Br. at 10]. Further, it is not subject to reasonable dispute that the hearing transcripts and district court orders on dispositive and other important motions come from reliable sources. Therefore, Exile's challenge to judicial notice of its own public court filings, hearing transcripts, and the district court orders should be rejected in its entirety. *See, e.g., Meade v. Christie*, 974 N.W.2d 770, 776 (Iowa 2022); *In re A.M.H.,* 516 N.W.2d 867, 873 (Iowa 1994) (holding the court may take judicial notice of the pleadings and exhibits from previous CINA adjudications); *State v. Savage,* 288 N.W.2d 502, 506 (Iowa 1980) (taking judicial notice on appeal); *Wilson v. Bennett,* 252 Iowa 601, 602, 107 N.W.2d 435, 436 (1961) (taking judicial notice on appeal of facts appearing in the court's record); *Howell v. Bennett,* 251 Iowa 1319, 1321, 103 N.W.2d 94, 96 (1960) (taking judicial notice of appellate court's own records to show the failure of the trial court to fix the bond on appeal); *State v. Colvin*, 899 N.W.2d 740, 2017 WL 936173, at *3 (Iowa Ct. App. Mar. 8, 2017) (noting the court may take judicial

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despite its full knowledge that it abandoned its basis for the appeal. This argument collapses of its own weight.

notice of court records available on Iowa Court Online records); *see* 29 Am. Jur. 2d Evidence § 148 (citing cases and observing "A court may take judicial notice of closely related proceedings, particularly where the same parties are involved and the allegations from those proceedings have been provided, or where the cases are essentially the same.").

The remaining three documents are a few exhibits from the summary judgment record in the Litigation. The first document is the deposition transcript of the Estates' administrator, which was discussed during the hearing on Exile's Motion to Vacate without objection and that Exile included as an exhibit to its own motion in the probate proceedings that is the subject of this appeal. [App. 58, 9/28/21 Hearing Tr. 26:7–18; Exile Motion to Vacate Ex. 1]. The administrator's deposition is cited once throughout the entirety of the Estate's opening brief to support a single sentence. [Estates' Opening Br. at 65].

The other two exhibits are cited to give this Court some context about what the underlying dispute is about. Citations to the two documents (Exhibits 5 and 11 of the Estate's Summary

Judgment Motion) comprise a total of two sentences in the Estate's opening brief. [Estates' Opening Br. at 18]. Exhibit 11 is a picture of a beer can illustrating Exile's use of Ruthie's name, image, and likeness. [App. 524]. Exhibit 5 is a Des Moines Register article in which Exile's owner, R.J. Tursi, stated "Ruthie had this mass appeal." [App. 518–19]. Notably, in its summary judgment pleadings in the Litigation Exile did not contest the accuracy of the sources of Exhibits 5 and 11 and admitted that they were both true and correct documents. [Exile's Statement of Disputed Facts in Support of Resistance to Motion for Summary Judgment (CVCV060249) at 14 (8/13/2021)].

Third, the documents are directly relevant to the Estates request for attorneys' fees both in the first instance on appeal and in their cross-appeal. *See generally* Estates' Opening Br. (discussing why Exile's arguments are meritless and requesting attorneys' fees in its cross-appeal and based on the appellate court's authority to do so in the first instance). There are several factors Iowa courts consider in determining whether sanctions should be imposed, including "the plausibility of the legal positions asserted"

and "the knowledge of the signer." *Barnhill*, 765 N.W.2d at 273. "Counsel's conduct is measured by an objective, not subjective, standard of reasonableness under the circumstances," and "the standard to be used is that of a reasonably competent attorney admitted to practice before the district court." *Id.* The primary goal of the rule requiring parties to certify is "to maintain a high degree of professionalism in the practice" and is intended to "discourage parties and counsel from filing frivolous suits and otherwise deter misuse of pleadings, motions, or other papers." *Id.* Sanctions "are meant to avoid the general cost to the judicial system in terms of wasted time and money." *Id.* "The 'improper purpose' clause seeks to eliminate tactics that divert attention from the relevant issues, waste time, and serve to trivialize the adjudicatory process." *Hearity v. Iowa Dist. Ct.*, 440 N.W.2d 860, 864 (Iowa 1989) (quoting Mark S. Cady, *Curbing Litigation Abuse and Misuse: A Judicial Approach*, 36 Drake L. Rev. 483, 499 (1987)).

In this case in particular, the "plausibility" of Exile's arguments and Exile's "knowledge" are central to the question whether sanctions should be imposed, as discussed above. *See*

Barnhill, 765 N.W.2d at 273. In view of the history of this case as set forth above and in the Estates' opening brief, Exile's prior statements to the district court and the USPTO puts into sharp focus why attorneys' fees are necessary and appropriate to maintain professionalism in the practice and to deter misuse of the judicial process. Parties should not be free to whipsaw their legal positions at will with no consequence, advance meritless arguments, and conceal their own prior irreconcilable statements in related proceedings from this Court on appeal.

Therefore, judicial notice of the Litigation was properly taken in the probate proceedings without objection. In any event, because all of the records in question were publicly filed with the Iowa District Court for Polk County or in the USPTO and are from sources that cannot reasonably be questioned, judicial notice of the documents identified by the Estates should be taken on appeal, regardless of whether Judge Block took judicial notice of the Litigation in the first instance.

CONCLUSION

The Iowa Supreme Court observed ninety years ago that "[n]o one would have the temerity at this late day to insist that a chose in action is not property." *Brenton Bros. v. Dorr*, 213 Iowa 725, 239 N.W. 808, 812 (1931) (citation and internal quotation marks omitted). Yet that's what Exile insists in this appeal. Parties should not be free to flout the rules of procedure, file baseless motions challenging orders they have no interest in, abuse the judicial process by taking incompatible positions (and then attempt to conceal them from the tribunal), repeatedly raise meritless issues that had already been rejected in related proceedings, and then ignore controlling statutes and well-established precedent. In this case, it was error for the district court to decline to impose sanctions against Exile in the probate proceedings after it found Exile's arguments meritless. On appeal, the Estates respectfully request this Court assess attorneys' fees and costs as a sanction against in the first instance.

Respectfully submitted,

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CERTIFICATE OF COST

I, Scott M. Wadding, certify that there was no cost to reproduce copies of the preceding brief because the appeal is being filed exclusively in the Appellate Courts' EDMS system.

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