ELECTRONICALLY FILED MAR 25, 2024 CLERK OF SUPREME COURT

In the Supreme Court of Iowa

Supreme Court No. 23-0054

Dupaco Community Credit Union,
Appellant,

v.

Iowa District Court for Linn County,
Appellee.

Review of Court of Appeals Decision dated March 6, 2024

APPLICATION FOR FURTHER REVIEW

Peter D. Arling AT0000544
Alyssa M. Carlson AT0013738
McKenzie R. Blau AT0011482
O'CONNOR & THOMAS, P.C.
1000 Main Street, Dubuque, IA 52001
Ph: 563.557.8400 F: 888.391.3056
parling@octhomaslaw.com
acarlson@octhomaslaw.com
mblau@octhomaslaw.com

QUESTIONS PRESENTED FOR REVIEW

I. Is compliance with Rule 1.413 determined objectively at the time of filing, or can all post-filing conduct, statements and remedial action on the part of the attorneys and litigants be considered?

II. Whether the courts below erroneously assessed the evidence and ignored the full spectrum of factors adopted by this Court in finding a violation of Rule 1.413?

III. Whether the lower courts improperly treated sanctions as a fee-shifting mechanism and arbitrarily awarded attorney fees to Trout in an amount equal to 40 hours of legal services?

TABLE OF CONTENTS

Questions Presented for Review 1

I. Is compliance with Rule 1.413 determined objectively at the time of filing, or can all post-filing conduct, statements and remedial action on the part of the attorneys and litigants be considered? 1

II. Whether the courts below erroneously assessed the evidence and ignored the full spectrum of factors adopted by this Court in finding a violation of Rule 1.413? 1

III. Whether the lower courts improperly treated sanctions as a fee-shifting mechanism and arbitrarily awarded attorney fees to Trout in an amount equal to 40 hours of legal services? 1

Table of Authorities 3

Statement Supporting Further Review 6

Statement of the Facts 8

Argument 16

I. Compliance with Rule 1.413 is to be determined objectively at the time of filing, and any facts developed post-filing are irrelevant and there is no continuing duty requiring remedial action. 17

II. The courts below erroneously assessed the evidence and ignored the full spectrum of factors adopted by this Court in finding that Dupaco and its counsel violated Rule 1.413. 23

III. The lower courts improperly treated sanctions as a fee-shifting mechanism and arbitrarily awarded attorney fees to Trout in an amount equal to 40 hours of legal services, which is unreasonable and has no correlation to the Rule's primary goal of deterrence. 27

Conclusion 32

Proof of Service and Certificate of Filing 34

Certificate of Compliance 35

ATTACHMENT: Decision of the Court of Appeals 1-16

TABLE OF AUTHORITIES

CASES: **PAGES**

Allen v. City of Waukee,
No. 21-1814, 2022 WL 3067060 (Iowa Ct. App. Aug. 3, 2022) 26

Barnhill v. Iowa Dist. Court for Polk Cnty.,
765 N.W.2d 267 (Iowa 2009) 6, 17, 28

Dubois v. U.S. Dep't of Agric.,
270 F.3d 77 (1st Cir. 2001) 25

Eastway Construction Corp. v. City of New York,
762 F.2d 243 (2d Cir. 1985) 18

Everly v. Knoxville Cmty. Sch. Dist.,
774 N.W.2d 488 (Iowa 2009) 17

First Am. Bank & C.J. Land, LLC v. Fobian Farms, Inc.,
906 N.W.2d 736 (Iowa 2018) 18, 22, 27, 28

Hamer v. Career Coll. Ass'n,
979 F.2d 758 (9th Cir. 1992) 26

Hensley v. Eckerhart,
461 U.S. 424 (1983) 30

In re Kunstler,
914 F.2d 505 (4th Cir.1990) 29

In re Prop. Seized For Forfeiture From Williams,
676 N.W.2d 607 (Iowa 2004) 17

Kirk Capital Corp. v. Bailey,
16 F.3d 1485 (8th. Cir. 1994) 30, 31

Kraemer v. *Grant County*,
892 F.2d 686 (7th Cir. 1990). 25

Mar Oil, S.A. v. Morrissey,
982 F.2d 830 (2d Cir. 1993) 26

Mathias v. Glandon,
448 N.W.2d 443 (Iowa 1989) 6, 16, 17, 21, 23, 24, 32

Navarro-Ayala v. Nunez,
968 F.2d 1421 (1st Cir. 1992) 29

Rowedder v. Anderson,
814 N.W.2d 585 (Iowa 2012) 28, 30

Schettler v. Iowa Dist. Court,
509 N.W.2d 459 (Iowa 1993) 6, 16, 18, 20, 21, 22, 24

Thomas v. Capital Sec. Servs., Inc.,
836 F.2d 866 (5th Cir. 1988) 18

Weigel v. Weigel,
467 N.W.2d 277 (Iowa 1991) 17

STATUTES: **PAGES**

Fed. R. Civ. P. 11 .... 25, 29

Iowa Code § 633.439 .... 12, 26, 27

Iowa R. Civ. P. 1.413 .... *passim*

OTHER: **PAGES**

ABA Section on Litigation, *Standard and Guidelines for Practice under Rule 11 of the Federal Rules of Civil Procedure* (1988), *reprinted in* 121 F.R.D. 101 (1988)..23

Mark S. Cady, *Curbing Litigation Abuse and Misuse: A Judicial Approach,* 36 Drake L.Rev. 483 (1987)..18

Iowa Public Radio, *Attorney Shortages Create Concern for Courtrooms* (Jan. 1, 2024), https://www.iowapublicradio.org/ipr-news/2024-01-01/attorney-shortages-create-concern-for-courtrooms..32

STATEMENT SUPPORTING FURTHER REVIEW

The court of appeals chiefly relied on the perfect acuity of hindsight in imposing sanctions, adopting an interpretation of Iowa Rule of Civil Procedure 1.413 in direct conflict with this Court, which has consistently held that the signor's conduct is evaluated when the pleading is signed, not with hindsight gained through later developments. *Mathias v. Glandon*, 448 N.W.2d 443, 447 (Iowa 1989). The lower courts also imposed a continuing duty on counsel to take remedial action post-filing, a stance specifically rejected by this Court in *Schettler,* which held there is no such duty. *Id.*; *Schettler v. Iowa Dist. Court*, 509 N.W.2d 459, 468 (1993). Likewise, the decision below disregards the salient ABA factors relating to sanctions continuously endorsed by this Court for decades. *Id.* at 446; *Barnhill v. Iowa Dist. Court for Polk Cty.*, 765 N.W.2d 267, 273 (Iowa 2009); (Court of Appeals Opinion 10, 12).

Further review should also be granted because the unnecessarily severe sanctions levied by the district court and perfunctorily approved by the court of appeals clash with the overall aims of Rule 1.413. Both lower courts failed to make specific findings to determine the appropriate sanction and blatantly ignored mitigating factors in imposing sanctions

totaling $14,387.60. Despite clear precedent rejecting the use of sanctions as a fee-shifting mechanism, an award of attorney fees has become the default for the lower courts, which has resulted, as it did here, in sanctions that significantly exceed the primary goal of deterrence. (Opinion 14; App. 185-6).

The decision of the court below injects an unacceptable level of uncertainty into Iowa's body of case law on sanctions. Under this radically new doctrine, Iowa attorneys and litigants will have a constant looming cloud of satellite litigation hovering above them at every move. The new obligation to endlessly update pleadings will lead to an abundance of motions to amend which will deplete the judicial branch's already stretched resources. Finally, the lower court's overbroad interpretation of Rule 1.413 will undoubtedly create a conflict between the lawyer's duty to zealously advocate for her client, and the lawyer's interest in avoiding rebuke. Because sanctions have a significant impact beyond the merits of a case and can affect the reputation and creativity of counsel, further review is not only appropriate, but necessary.

STATEMENT OF THE FACTS

Dupaco Community Credit Union is a not-for-profit credit union founded in Dubuque with nearly 700 employees who serve over 142,000 credit union members at more than 20 branches across Iowa, Illinois and Wisconsin. Connie Trout obtained a loan with Dupaco in July of 2017 to purchase a 2014 Chevy Equinox. Connie passed away on June 18, 2021 in Cedar Rapids. Later an estate was opened and Connie's son, Cory Trout, was appointed as Administrator. Trout designated Scott Shoemaker as his attorney. (App. 15, 17, 18, 23-27, 119, 127, 131, 147, 185, 228 L:5-7).

Amy Manning, the Legal and Asset Recovery Supervisor for Dupaco's Member Solutions Department, filed a claim in Connie's estate for $11,593.17 on November 3, 2021, based on the unpaid loan. After subtracting estimated debts (including Dupaco's claim), Connie's estate was valued at $90,932.19. On April 1, 2022, Shoemaker filed an affidavit of mailing claiming he sent a disallowance of claim to Dupaco four weeks earlier. No one employed at Dupaco ever received a disallowance for Connie's estate. (App. 20-28, 33-6, 51, 60-1, 130, 198 L:1-14; 229 L:2-7).

In May of 2022, Lisa Elskamp, the manager of the Member Solutions Department, called Trout about Dupaco's claim. Trout said his attorney

sent a 20-day notice and Dupaco never responded so its claim was disallowed. Upon learning from Lisa about the disallowance, Amy called Shoemaker, but he did not answer. Amy left a message for Shoemaker requesting a call back, but Shoemaker never returned Amy's call. (App. 147-48, 172, 226 L:9-24).

Next, Amy called Dupaco's attorneys, McKenzie Blau and Thomas Bright with O'Connor & Thomas, P.C., with whom she worked with often, and explained Trout's contention that Dupaco's claim was barred because no request for hearing was filed within 20 days. Amy went through all her files and no disallowance was found. Receipt of the disallowance had not been logged in Dupaco's Workflow History where all updates must be logged. Amy checked with all employees in her department to see if anyone received the disallowance and no one had. Having no record of receiving the disallowance, Dupaco's attorneys filed a request for hearing on May 13, 2022. (App. 37, 147-48, 220 L:5-23; 221 L:4-25; 222 L:1-19; 226 L:9-25 228 L:1-11).

Trout filed a resistance arguing Dupaco's request was untimely. The following documents, which Dupaco had never seen before, were attached:

- **(A)** a disallowance of claim dated March 4, 2022;
- **(B)** a certified mail receipt showing an item was addressed to Amy Manning, PO Box 179, Dubuque Iowa 52004-0179;
- **(C)** an undated, incomplete return receipt signed by "Ron LeConte," and;
- **(D)** a tracking printout from USPS's website. (App. 38-45)

The court ordered Dupaco to file a reply addressing Trout's arguments "prior to 4:30 p.m. on June 2, 2022." The court warned that the "Failure . . . to file a reply may result in the [district court] denying the Request for Hearing" (App. 46).

To prepare the reply in [1]one week, Dupaco's attorneys spoke with Amy at length regarding her process for filing estate claims. Amy had been employed at Dupaco for seven years. She oversaw the filing of small claims, claims in bankruptcy and claims in estates. Amy knew the disallowance procedure well and was cognizant of the short deadline to request a hearing. She estimated that she files 15 to 20 estates claims per month. This was the only time she failed to receive a disallowance. (App. 220 L:1-19; 224 L:15-25, 234 L:13-23; 251 L:19-21).

[1] The Order instructing Dupaco to file a reply was entered the Wednesday before Memorial Day, which shortened preparation time. (App. 46).

Counsel also questioned Amy about LeConte, the individual who signed the return receipt. No one in the Member Solutions Department recognized LeConte's name. Amy searched Dupaco's phone directory where all 700 employees were listed, but LeConte's name was not there. She also checked Dupaco's intranet, and searched Dupaco's internal messages and links for any LeConte references which similarly yielded no results. (App. 42, 133, 227 L:12-23; 228 L:1-10).

Amy advised that all mail addressed to Dupaco at a Dubuque address was transferred to its main mailroom at its [2]JFK branch. From there, all legal related mail goes to the Member Solutions Department in Asbury. If a disallowance was sent to another department, Amy said it would be re-routed to Member Solutions. Amy also met with Abby Kramer, the head associate in the main mailroom at Dupaco's JFK branch. Amy regarded Abby as the managerial employee most likely to know who was authorized to sign certified mail. While Abby did not recognize LeConte's name, she thought he was the gentleman she occasionally saw dropping off mail at the JFK branch. However, Abby believed that gentleman was

[2] The address of the "JFK branch" is on the corner of JFK and Hillcrest Road, which is a different location from the Member Solutions Department. (App. 22-8).

employed by the post office. (App. 133-35, 227 L:1-6, 228 L: 11-22, 254 L:14-19, 255 L:1-3).

Dupaco filed its reply on June 1, 2022 stating that (1) Dupaco did not receive the disallowance; (2) LeConte was not an agent of Dupaco; (3) *upon information and belief*, LeConte was an agent of the post office; and (4) there were enough irregularities in the return receipt and tracking printouts that, "the Notice of Disallowance was not given to Dupaco via 'certified mail addressed to the claimant at the address stated in the claim.'" (quoting Iowa Code §§ 633.439). The reply relied upon and incorporated the affidavit of Amy where she made the following statements:

> I never personally received, and no one acting on my behalf or Dupaco's behalf received a Notice of Disallowance related to Dupaco's November 3, 2021 claim . . .
>
> ***
>
> Ron LeConte is not an agent, employee, or representative of Dupaco. *To the best of my knowledge*, Ron LeConte is an agent of the United States Postal Service.

(App. 48-52 (emphasis added)).

After the reply was filed, the district court set a hearing for July 1, 2022. Dupaco sought leave to allow Amy to participate remotely since she would be 39 weeks pregnant, and travel was not advised. Trout

resisted, opining that the "minuscule amount of travel involved" from Dubuque to Cedar Rapids would not "represent any real danger" to Amy. The court allowed Amy to participate remotely. However, by that point, counsel for Trout and Dupaco stipulated that the hearing would be for legal argument only. (App. 57-8, 62, 70, 134).

Early on July 1, 2022, Amy began her maternity leave. Bright drove to Cedar Rapids for the twenty-minute hearing, which concluded with Judge Miller setting an evidentiary hearing for August 31, 2022. Amy gave birth to a baby girl on July 3, 2022. Counsel notified the court and Shoemaker on July 7, 2022, that Amy was on maternity leave for 12 weeks. (App. 67, 134-35, 165-66, 191 L:12-13, 202 L1-25; 203 L:1-21; App.; 204 L:12-13).

Counsel for Dupaco confirmed that they would bring a substitute representative up to speed before the evidentiary hearing. The intended substitute was to be Lisa Elskamp, but she later became unavailable because her teenage daughter was tragically killed in a car accident on July 1, 2022. Dupaco's attorneys determined that Julie Hoffmann, another Member Solutions employee, would be the substitute. Nobody objected to Julie being the substitute during Amy's maternity leave and

Lisa's bereavement. Without speaking to counsel for Dupaco, and having been advised of Dupaco's substitute witness, Shoemaker had the Dubuque County Sheriff serve a subpoena to appear at the hearing on Amy at her home while she was on maternity leave. (App. 88, 135, 165-66, 229 L:16-20).

A week prior to the hearing, Julie met with counsel to prepare. To gain first-hand knowledge, Julie retraced Amy's steps and then began performing her own investigation. Julie contacted Deb Digman, the long-time secretary to Dupaco's leadership team with vast institutional knowledge about Dupaco. Deb confirmed that LeConte was not an employee but thought he could have a business under a different name. After researching, Deb called Julie and explained that LeConte owned a business called Swift Delivery, and while there was no written contract, she believed Dupaco had an oral contract with Swift Delivery to sign for certified mail. (App. 123, 135, 243 L:10-16; 244 L:1-5; 255 L:1-13).

Meanwhile, Shoemaker retained a private investigator in early August to locate LeConte. On August 24, unbeknownst to Dupaco, Shoemaker drove to Dubuque to obtain LeConte's signature on an affidavit and returned to Cedar Rapids. Shoemaker filed LeConte's affidavit on August

24, 2022, around the time Dupaco was uncovering its connection to Swift Delivery. According to his affidavit, LeConte retrieved Dupaco's mail from the post office, placed it in a bin, and left the bin in a vestibule at Dupaco's JFK branch. LeConte had no contact with Dupaco employees during this process. (App. 89, 170, 186).

Once Dupaco learned LeConte owned Swift Delivery, which orally contracted with Dupaco, it moved to dismiss its request for hearing, which was granted the same day. While Dupaco maintained (and still maintains) it never received the disallowance, it conceded the evidence showed the disallowance was received by an agent of Dupaco. (App. 92-101, 108-109).

Trout filed a motion for sanctions against Dupaco, Blau and Bright. Dupaco and its attorneys resisted. The hearing was held before Judge Clay, who had not previously presided over the case. Blau, Bright, Amy and Julie traveled to Cedar Rapids for the hearing. The morning of the hearing, Shoemaker filed a fee affidavit with an itemization of services attached to his request for $24,431.45 in sanctions. The itemization had one- or two-word descriptions of the services performed (i.e. "Research", "Review File"). Dupaco's attorneys objected because it was filed that

morning, but the district court admitted it. (App. 130-171, 213 L:22-25; 214 L:1-3).

The district court granted Trout's motion for sanctions, finding that Dupaco's reply filed on June 1 violated Rule 1.413. The district court found Trout's request for $24,431.45 for 68.2 hours of work was not reasonable, and without explanation, limited it to 40 hours, with $5,000 assessed against Blau, $2,000 assessed against Bright and $7,387.60 assessed against Dupaco. Dupaco and its attorneys sought certiorari review. The court of appeals annulled the writ, declined to disturb the sanctions, and directed the clerk to send its decision to the Attorney Discipline Board. (App. 185-6; Opinion 15).

ARGUMENT

An order imposing sanctions is reviewable for an abuse of discretion. *Mathias,* 448 N.W.2d at 445. The Court will find an abuse "when the district court exercises its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable." *Schettler,* 509 N.W.2d at 464. A material error of law or a clearly erroneous assessment of the

evidence is an abuse of discretion. *Everly v. Knoxville Cmty. Sch. Dist.*, 774 N.W.2d 488, 492 (Iowa 2009).

Rule 1.413 requires each signer of a "motion, pleading or other paper" to certify: (1) that the signor has read the pleading, (2) that the signor has concluded after reasonable inquiry into the facts and law that there is adequate support for the filing, and (3) that the signor is acting without an improper motive. These are referred to as the "reading, inquiry, and purpose elements." *Weigel v. Weigel,* 467 N.W.2d 277, 280 (Iowa 1991). The test is "reasonableness under the circumstances," and the standard to be used is "that of a reasonably competent attorney admitted to practice before the district court." *Barnhill,* 765 N.W.2d at 272.

I. Compliance with Rule 1.413 is to be determined objectively at the time of filing, and any facts developed post-filing are irrelevant and there is no continuing duty requiring remedial action.

A. *The courts below impermissibly focused on Dupaco and its counsel's post-filing statements and investigative efforts.*

In interpreting Rule 1.413, this Court has found the plain meaning mandates that the court evaluate the signer's conduct at the time of signing the pleading. *Mathias*, 448 N.W.2d at 447; *In re Prop. Seized For*

Forfeiture From Williams, 676 N.W.2d 607, 614 (Iowa 2004). The purpose of the Rule is to stop abuses in *the signing* of pleadings. *Id.* Like a snapshot, the Rule focuses upon the instant when the picture is taken—when the signature is placed on the document. *Thomas v. Capital. Sec. Servs., Inc.*, 836 F.2d 866, 874 (5th Cir. 1988). "Courts must examine all prefiling efforts taken by the attorney. The temptation to judge by using the wisdom of hindsight must be avoided. The reasonableness of the conduct at the time the document is filed with the court is the focus." Mark S. Cady, *Curbing Litigation Abuse and Misuse: A Judicial Approach*, 36 Drake L. Rev. 483, 502 (1987). Any and all doubts must be resolved in favor of the signer. *Eastway Constr. Corp. v. City of New York,* 762 F.2d 243, 254 (2d Cir.1985).

In *Schettler,* this Court held that any facts developed after the filing are simply irrelevant to the propriety of the filing. The perfect acuity of hindsight has no place in a Rule 1.413 motion for sanctions. *Schettler,* 509 N.W.2d at 468. More recently in *First Am. Bank*, this Court held it was an abuse of discretion for the district court to rely on a litigant's letter to the court after the Supreme Court denied further review. *First Am. Bank v. Fobian Farms, Inc.*, 906 N.W.2d 736, 753 (Iowa 2018).

Here, the court of appeals neglected to view Dupaco and its counsel's conduct at the time of filing the reply, and instead concentrated solely on their investigative efforts after filing the reply on June 1, 2022. The court repeatedly criticized Dupaco and its counsel for not continuing their inquiry into LeConte, claiming the investigation should have been done "before the July 1 hearing" but bemoaning it "did not actually happen until August 24." The court went on to emphasize several times that Dupaco and its attorneys did a "second investigation" several weeks after the reply was filed that "discovered LeConte's relationship with Dupaco in a single business day." Relying on the wisdom of hindsight, the court of appeals implied that this "second investigation" should have been done sooner since it only took a single business day. (Opinion 4, 5, 6, 10, App. 183).

Similarly, in its decision, the court of appeals remarked that at the July 1 hearing Shoemaker "accurately described LeConte's identity and relationship to Dupaco" by stating that he was "[3]under contract by Dupaco." The court then faulted Dupaco and its attorneys for not confirming that information fast enough. The statements of opposing

---

[3] Shoemaker did not disclose that LeConte owned Swift Delivery until August 24, 2024. (App. 89).

counsel at a hearing a month after the reply was filed have no bearing on whether Dupaco's counsel conducted a reasonable inquiry into the facts prior to filing the reply. This is precisely the type of "perfect acuity of hindsight" argument that has no place in a Rule 1.413 determination. *Schettler,* 509 N.W.2d at 468. (Opinion 10).

Whatever investigative steps Dupaco took or failed to take after filing the reply on June 1, 2022 are irrelevant to whether or not Dupaco and its attorneys conducted a reasonable inquiry into the facts prior to filing the reply. *Schettler,* 509 N.W.2d at 468. It was an abuse of discretion for the lower courts to view Dupaco and its counsel's conduct retrospectively, instead of evaluating their conduct at the time of signing the reply.

The court of appeals also wildly mischaracterized the allegations at issue by holding that "an attorney who asserts an 'interloper' signed for and seized a party's mail makes a serious accusation—a federal felony. *See* 18 U.S.C. § 1708." But Dupaco did not assert that "an interloper seized the disallowance" in its reply filed June 1. Instead of analyzing the language of the reply itself, the court of appeals fixated on the word interloper—a word used by Dupaco once in its resistance to Trout's motion for sanctions filed on September 12, 2022, more than three

months after the reply was filed. The word appeared in a sentence describing what Dupaco believed at the time it filed its reply ("Dupaco believed—after a good faith investigation—an interloper had signed for the disallowance"). The court of appeals abused its discretion in inaccurately characterizing the relevant allegations and by focusing on a word that appeared in the pleadings more than three months after the filing of the reply. (Opinion 3, 6, 9, 10, 11, 14; App. 133).

B. Rule 1.413 does not impose a continuing duty on counsel to take remedial action after signing a pleading if counsel later discovers information that renders an allegation in its pleading no longer well-grounded in fact.

If a "reasonable inquiry" has been made prior to the filing of the pleading, Rule 1.413 is satisfied. There is no continuing post-filing duty under the rule, and even where counsel learns that the facts or law are not as counsel believed prior to filing, there is no duty to dismiss under the sanction rule. *Mathias*, 448 N.W.2d at 447. The Supreme Court confirmed this interpretation in *Schettler* by stating, "*Mathias* specifically rejected any notion that Rule [1.413] imposes a continuing duty on the signer to dismiss the action if the signer later learns the client has no case. There is no such duty." *Schettler*, 509 N.W.2d at 465.

The court of appeals' decision directly contradicts this Court's rulings in *Schettler* by holding that not only is the failure to take corrective action after signing a pleading a legitimate consideration under Rule 1.413, but that signers have an affirmative obligation to take corrective action post-filing. *Id.* The lower court erroneously quoted from *First Am. Bank* in support of its contention that corrective action is relevant as part of the "pattern of activity" giving rise to the sanction. 906 N.W.2d at 748. This Court only examined the "pattern of activity" in *First Am. Bank* when determining the amount of sanctions to impose, not when evaluating whether a violation of Rule 1.413 occurred. *Id.*;(Opinion 11-2).

Finally, the court of appeals agreed with the district court that Dupaco and its attorneys' failure[4] to show remorse, accept responsibility or correct its reply after filing was a proper consideration in determining whether there was a violation of Rule 1.413. Discarding this Court's binding precedent in *Schettler*, the court of appeals held that "if criminal offenders can be penalized at sentencing for not expressing remorse . . . an attorney's failure to do the same can be considered an aggravating factor in assessing intent and determining sanctions." *Schettler*, 509 N.W.2d at

[4] The court ignored that Dupaco and its counsel did take remedial action by dismissing the request for hearing. (App. 92-101, 108-109).

465. This incongruent interpretation of Rule 1.413 constitutes an error of law and must be rectified by the Supreme Court. (Opinion 13-4).

II. The courts below erroneously assessed the evidence and ignored the full spectrum of factors adopted by this Court in finding that Dupaco and its counsel violated Rule 1.413.

The Iowa Supreme Court has encouraged courts to utilize the ABA factors in determining a violation under Rule 1.413, including but not limited to: (a) the amount of time that was available to the signer to investigate the facts; (d) the extent to which pertinent facts were not readily available to the signer; and (f)/(g) the extent to which counsel relied, or had to rely upon her client for the facts underlying the pleading. ABA Section on Litigation, *Standard and Guidelines for Practice under Rule 11 of the Federal Rules of Civil Procedure* (1988), *reprinted in* 121 F.R.D. 101, 114 (1988).

Dupaco and its counsel argued that the fictitious name of LeConte's courier business, Swift Delivery, was a pertinent fact unavailable to Dupaco and that it was difficult to substantiate an oral contract. The court of appeals disregarded this as, "problems of Dupaco's creation," because Dupaco "chose to . . . rely on an oral agreement." Many of the ABA factors describe circumstances that are often created by the client.

For instance, in *Mathias*, the client contacted the attorney "almost literally within hours" of the statute of limitations deadline. *Mathias*, 448, N.W.2d 446. When sanctions were lodged against the attorney, this Court found the pre-filing investigation was reasonable given the proximity to the deadline. *Id.* It did not discount the statute of limitations concerns as a problem of the client's creation. (Opinion 12).

The court was also to consider the extent counsel reasonably relied on Amy and other experienced employees of Dupaco in obtaining the facts that formed the basis for its reply. Dupaco's attorneys reasonably relied on Amy's representations regarding whether LeConte was an employee of Dupaco because Amy had access to the databases and other information necessary to make that determination. The Supreme Court has held that relying on representations of experienced individuals with knowledge of key facts does not rise to the level of sanctionable conduct. *See Schettler,* 509 N.W.2d at 468 (relying on client's accountant regarding a company's net worth constituted a reasonable investigation into the facts). (App. 51, 123, 220 L:1-23; 227 L:5-25; 228 L:1-10; 234 L:8-23).

The lower courts lamented the fact that there was an employee at Dupaco who could uncover information about the oral contract, but it

took Dupaco until August 24, 2022, to uncover the specifics. It would be an unreasonable standard to impute the institutional knowledge of an executive secretary who has been employed by Dupaco for over 30 years to every other employee of Dupaco. The lower courts' finding implied that Dupaco and its counsel should have interviewed all 700 of Dupaco's employees to see if any knew LeConte, a feat that would have proved impossible in the one-week deadline. (Opinion 6; App. 183, 246 L:8-25).

There is no support in Iowa law for such a robust and protracted pre-filing investigation. "It is not necessary that an investigation into the facts be carried to the point of absolute certainty." *Kraemer* v. *Grant Cty.*, 892 F.2d 686, 689 (7th Cir. 1990). Courts have similarly found that the failure to perform a particularly onerous task does not amount to conduct warranting sanctions. *Dubois v. U.S. Dep't of Agric.*, 270 F.3d 77, 83 (1st Cir. 2001) (failure to independently survey 150 Forest Service units was not a violation of Rule 11). Failing to interview 700 employees of Dupaco in a one-week timeframe also did not violate Rule 1.413. *Id.* (Opinion 6; App. 123, 243 L:19-23, 246 L:9-11, 251 L:8-10).

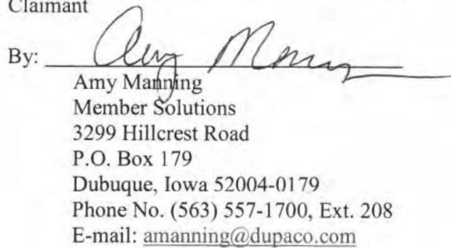
The statements in the reply relating to LeConte's employment at the post office were based on Amy's affidavit and the statements were made

"*upon information and belief*," which signaled that the statements were based on her belief and not on evidence. Relying on a client's statements under oath has been deemed sufficient to constitute a reasonable investigation when expedient action by counsel is necessary. *Hamer v. Career Coll. Ass'n*, 979 F.2d 758, 759 (9th Cir. 1992).

Counsel for Dupaco also reasonably relied on first-hand information from Amy that she had not received the disallowance. *See Allen v. City of Waukee,* No. 21-1814, 2022 WL 3067060, at *3 (Iowa Ct. App. Aug. 3, 2022) (owner's statement under penalty of perjury that he did not receive the notice was sufficient to defeat summary judgment). Given Amy's experience, there was no reason for Dupaco's counsel to distrust Amy's narrative or find it not plausible. An attorney is not required to resolve all factual issues against the client. *Mar Oil, S.A. v. Morrissey*, 982 F.2d 830, 844 (2d Cir. 1993); (App. 220 L:1-19; 227 L:1-8).

There is nothing sanctionable about Dupaco and its counsel's argument that the disallowance was not given to Dupaco "by certified mail *addressed to the Claimant* . . ." because the disallowance was incorrectly addressed to "Amy Manning at P.O. Box 179." *See* Iowa Code section 633.439; (Emphasis added). The court of appeals errantly held

that "the only address Dupaco provided on its claim listed Amy Manning as the addressee." Diagram 1 below shows both Dupaco and Amy listed in the signature block on the claim. Further, Iowa Code section 633.439 requires the disallowance to be addressed to the claimant. *Id.* It is undisputed that Dupaco was the claimant, not Amy.


DUPACO COMMUNITY CREDIT UNION,
Claimant

By: ______________________
Amy Manning
Member Solutions
3299 Hillcrest Road
P.O. Box 179
Dubuque, Iowa 52004-0179
Phone No. (563) 557-1700, Ext. 208
E-mail: amanning@dupaco.com

(Diagram 1; App. 22, 41-2, 49, 196 L:7-9; 241 L:6-12; Opinion 10, 13). The addressee of the disallowance was also relevant to Swift Delivery's authority to sign for the mailing. Swift Delivery was authorized to sign for Dupaco's certified mail, but it was not authorized to sign for Amy's certified mail.

III. The lower courts improperly treated sanctions as a fee-shifting mechanism and arbitrarily awarded attorney fees to Trout in an amount equal to 40 hours of legal services, which is unreasonable and has no correlation to the Rule's primary goal of deterrence.

Rule 1.413 "is intended to discourage parties and counsel from filing frivolous suits and otherwise deter misuse of pleadings, motions, or other papers." *First Am. Bank,* 906 N.W.2d at 745. "The primary purpose of sanctions under rule 1.413 is deterrence, *not compensation.*" *Id.* (Emphasis added). To that end, "[t]here exists no mathematical formula for calibrating sanctions to the optimal sum that will preserve a deterrent effect while imposing no more a burden on the parties or attorneys than is necessary." *Id.* at 748. However, Iowa courts have made clear that "[a] sanction imposed under this rule must be limited to what suffices to deter repetitions of such conduct or comparable conduct by others similarly situated." *Barnhill*, 765 N.W.2d at 276.

In determining an appropriate sanction, Iowa courts have followed the four-factor test articulated by the Fourth Circuit and have required district courts to make specific findings as to: "(1) the reasonableness of the opposing party's attorney fees; (2) the minimum to deter; (3) the ability to pay; and (4) factors related to the severity of the . . . violation." *Id; Rowedder v. Anderson*, 814 N.W.2d 585, 590 (Iowa 2012). Iowa courts also consider factors set forth by the American Bar Association. *Id.* at 276–77.

Here, the lower courts improperly used sanctions as a fee-shifting tool rather than as a deterrent. Neither court determined the *minimum* amount needed to deter the conduct at issue or made specific findings as to the four factors. The court of appeals took no issue with the district court's lack of analysis, and instead held that there was "no abuse of discretion in the district court's *implied* determination" that the fees sought were a reasonable deterrent and that the court was "confident the [district] court considered the relevant factors" despite the lack of any stated analysis of said factors in the order. The court of appeals' failure to apply the four-factor test and dissect the district court's award gives the district court unfettered authority to craft a sanction without showing its work. (Opinion 14, App. 185-6)

In determining the appropriate sanction, the courts only looked at the attorney fees submitted by Shoemaker. This method has been explicitly rejected by federal courts reviewing sanctions imposed pursuant to Rule 11 (the federal corollary to Rule 1.413): "It is clear that Rule 11 should not blindly be used to shift fees." *In re Kunstler*, 914 F.2d 505, 522 (4th Cir. 1990). Similarly, the First Circuit has also emphasized:

> Nevertheless, the court of appeals must be careful not merely to "rubber-stamp the decisions of the district court." Appellate review of

> the appropriateness of the sanction cannot be allowed to deteriorate into a perfunctory ritual.

Navarro-Ayala v. Nunez, 968 F.2d 1421, 1426 (1st Cir. 1992). The court of appeals was overly deferential to the district court—especially considering the district court failed to apply any of the *Rowedder* factors. *Rowedder*, 814 N.W.2d at 590. Allowing the appellate decision to stand amounts to the type of perfunctory ritual of which the First Circuit warned. (Opinion 14-5, App. 170, 185-6)

Perhaps the lower courts skipped determining the reasonableness of Shoemaker's attorney fees because Shoemaker's itemization of services was devoid of details necessary to determine the reasonableness of his fees. "Where the documentation of hours is inadequate, the district court may reduce the award accordingly." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). According to his itemization of services, Shoemaker spent 68.2 hours responding to the sanctioned motion, including 34.5 hours on "Research" (which is the only description in twelve separate time entries) and 19.2 hours preparing a 10-page brief. If Dupaco's legal argument was so tenuous as to be considered entirely "unsupported by existing law," it is inconceivable how Shoemaker billed 68.2 hours resisting that same motion. *See Kirk Cap. Corp. v. Bailey*, 16 F.3d 1485, 1491 (8th Cir.

1994)("There is something very inconsistent with the assertion that plaintiffs filed a patently frivolous complaint meriting sanctions…and contending it took 279.10…hours of legal work to reveal what defendants contend is obvious."). The amount of fees claimed by Shoemaker demonstrates the danger of blind reliance on fees as the proper measure of sanctions. (App. 170).

While the district court ultimately held that the sanctions "should be limited to 40 hours at attorney Shoemaker's hourly rate of $350," it is entirely unclear how the district court determined that 40 hours, as opposed to 68.2 hours, was reasonable. While the court of appeals notes that because "[t]he district court *could have* reasonably concluded all billable work identified by the estate lawyer was triggered by the sanctionable conduct . . . it was not an abuse of discretion to consider *about half* of the billable work as an appropriate sanction," it again merely rubber-stamps this arbitrary reduction in an attorney-fee award. (Opinion 14-5, App. 185-6).

Attorneys Blau and Bright, both admitted to practice within the last ten years and with no prior instances of attorney discipline, have been subjected to an overly harsh indictment of the way they zealously

advocated for their client in this case. To be clear, Dupaco and its counsel appreciate the purpose of Rule 1.413 and the overarching goal "to maintain a high degree of professionalism in the practice of law." While there are certainly instances in which sanctions are warranted, this is not one of them. Allowing this decision to stand will cause Iowa[5] attorneys to be loath to advance creative arguments, rely on the statements of their long-time clients, challenge precedent, and fight uphill battles, as the threat of excessive sanctions (and public referral to the Attorney Discipline Board) will stifle such ingenuity.

CONCLUSION

The lower courts abused their discretion in assessing excessive sanctions against Dupaco and its counsel based on their post-filing conduct, when both the statute and the Iowa Supreme Court, through binding case precedent, are clear there is no continuing post-filing duty under Rule 1.413. *Mathias*, 448 N.W.2d at 447. The courts below

[5] This is especially dire because Iowa is on the verge of a critical attorney shortage. *See* Iowa Public Radio, *Attorney Shortages Create Concern for Courtrooms* (Jan. 1, 2024), https://www.iowapublicradio.org/ipr-news/2024-01-01/attorney-shortages-create-concern-for-courtrooms (From 2014 to 2022, the number of licensed lawyers who live and practice in the state fell by more than 260, or about 3.5%).

disregarded the relevant ABA factors that applied to this case, and treated sanctions as a fee-shifting mechanism, which resulted in an overly harsh sanction that far exceeded what was necessary for deterrence. Further review is necessary to correct these errors.

Proof of Service and Certificate of Filing

I certify that on March 25, 2024, I, the undersigned party or person acting in their behalf, did serve Appellants' Application for Further Review on counsel for all parties to this action using the Iowa Judicial Branch EDMS system, which will send notification of such filing to all counsel and all parties to this action.

I further certify that on March 25, 2024, I filed Appellants' Application for Further Review with the Clerk of the Iowa Supreme Court using the Iowa Judicial Branch EDMS system.

O'CONNOR & THOMAS, P.C.
1000 Main Street
Dubuque, Iowa 52001
Phone: 563.557.8400
Fax: 888.391.3056

By: /s/ *Peter D. Arling*

Certificate of Compliance with Typeface Requirements and Type-Volume Limitation

This Application complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(*d*) and 6.903(1)(*g*)(1) or (2) because:

[X] this brief has been prepared in a proportionally spaced typeface using Bodoni MT in size 14 font and contains 5,585 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.1103(4); or

[ ] this brief has been prepared in a monospaced typeface using [state name of typeface] in [state font size] and contains [state number of] lines of text, excluding the parts of the brief exempted by Iowa R. App. P.6.903(1)(*g*)(2)

Dated this 25th day of March 2024.

By: /s/ Peter D. Arling

ELECTRONICALLY FILED MAR 06, 2024 CLERK OF SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 23-0054
Filed March 6, 2024

DUPACO COMMUNITY CREDIT UNION,
Plaintiff,

vs.

IOWA DISTRICT COURT FOR LINN COUNTY,
Defendant.

Appeal from the Iowa District Court for Linn County, Valerie L. Clay, Judge.

A credit union and its attorneys seek certiorari review following an award of sanctions for failing to adequately investigate claims made in pleadings. **WRIT ANNULLED.**

McKenzie R. Blau of O'Connor & Thomas, P.C., Dubuque, for appellant.

Scott A. Shoemaker of Scott Shoemaker and Associates, P.L.C., Cedar Rapids, for appellee.

Considered by Tabor, P.J., Buller, J., and Vogel, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2024).

BULLER, Judge.

In this certiorari action, we review sanctions imposed against two attorneys and their client, Dupaco Community Credit Union ("Dupaco"). The district court imposed sanctions after concluding the attorneys violated their professional obligations when they filed pleadings without reasonably inquiring into asserted facts. Because the district court did not abuse its discretion, we annul the writ and allow the order for sanctions to stand.

I. Background Facts and Proceedings

The alleged attorney misconduct arose from estate proceedings. Dupaco electronically filed a claim in probate through a non-attorney agent, Amy Manning, asserting it was owed a debt. The claim was signed by Manning and listed a Dubuque address and P.O. Box 179. The estate sent Dupaco a notice of disallowance by first class and certified mail to the P.O. box listed on the claim and subsequently filed an affidavit of mailing.

Seventy days after the notice was mailed, Dupaco requested a hearing and asserted in pleadings through attorney McKenzie Blau that the notice was never sent to Dupaco by certified mail at the address on the claim. The estate resisted and attached the affidavit of mailing, the return receipt signed by Ron LeConte, and a printout of the tracking history from the United States Postal Service (USPS) website. The court directed Dupaco to address these contentions, and Dupaco—in a filing signed by Blau—asserted the notice was "never received by [Dupaco] at P.O. Box 179 or at any other address associated with [Dupaco], whether by certified mail, ordinary mail, or otherwise." Dupaco further asserted that LeConte was "not an agent or representative of [Dupaco]" and was actually "an agent of the

United States Postal Service." Last, Dupaco claimed the USPS printout did not confirm delivery, but instead showed an "individual" picked up the mail. As Dupaco's attorneys described this pleading later, they asserted "an interloper" who worked for USPS "had signed for the disallowance without authorization and the disallowance never was received by Dupaco."

A few weeks later, attorney Thomas Bright joined Blau in representing Dupaco. At a July 1 hearing, Bright orally represented to the court that "the notice of disallowance was not actually sent via certified mail to the address listed in the claim." The estate's attorney argued that LeConte was a long-time courier for Dupaco, "under contract by [Dupaco] to retrieve their mail pieces from the P.O. box and to deliver them to [Dupaco]'s loading dock." Bright responded that "from [his] conversations with Ms. Manning," LeConte was a "representative of the United States Postal Service" who was not authorized to receive mailings and sign for them on behalf of Dupaco. Bright further claimed "no one affiliated with Dupaco, as an employee of Dupaco or someone authorized to receive their mail, had any knowledge of these mailings at any time." In total, Bright represented at least seven times at the hearing that the notice was never mailed, received, or handled by anyone associated with Dupaco. Bright also argued witness testimony was necessary to resolve the issue, and an evidentiary hearing was scheduled for about sixty days later.

A week before the scheduled evidentiary hearing, the estate filed an affidavit from LeConte. LeConte's affidavit established he owned and operated a delivery service known as "Swift Delivery" and had been authorized by Dupaco to retrieve mail from its P.O. Box and deliver it to their office for more than ten years.

LeConte testified he was authorized to sign for certified mail and had done so "on a regular basis" while contracted with Dupaco. He believed his signature confirming receipt of the notice by certified mail was authentic. And he testified he was not an employee or agent of USPS.

Two days later, Blau and Bright moved to dismiss their request for a hearing. They indicated "it ha[d] recently come to Dupaco's attention that Ron LeConte owns a delivery service that contracts with Dupaco to receive mail that is sent to Dupaco's P.O. Box." They maintained Dupaco never received the notice of disallowance but conceded it was sent by certified mail. The court canceled the hearing.

The estate moved for sanctions against Dupaco, attorneys Blau and Bright, "or all of them" for making arguments unsupported by existing law, "fail[ing] to perform even the most rudimentary investigation into the facts on their claim," and presenting false or misleading facts to the court. Relying on Iowa Rule of Civil Procedure 1.413(1) and Iowa Code section 619.19 (2021), the estate sought $24,351.45 in fees, costs, and expenses.

Dupaco filed a lengthy resistance to the sanctions motion. In this pleading, Blau and Bright repeatedly cast aspersions on the testator and the estate's attorney and complained it was unfair that the estate's arguable debt would not be paid due to Dupaco's failure to timely claim the debt. Blau and Bright disclosed a "second investigation" in which it took them less than a day to determine LeConte was, in fact, "hired to pick up mailed items at Dupaco's P.O. box." This investigation was conducted the same day the estate filed LeConte's affidavit, but Dupaco did not disclose this to the court until weeks after. Despite confirming

LeConte's work for Dupaco, Blau and Bright only admitted LeConte "may have been authorized to receive and sign for certified mail" at the P.O. box.

At a contested sanctions hearing, Blau and Bright called Manning as a witness to explain her investigation. Manning testified she first learned about the notice of disallowance through Iowa Courts Online website and then got in touch with the attorneys. She testified she learned about LeConte from the estate's resistance and she could not find him on the company phone directory or intranet. She also asked a mailroom employee if the employee knew LeConte, and the mailroom employee said LeConte "dropped off our mail" and "her assumption [was] he worked for the post office." Manning explained that, when a second employee investigated, the employee quickly discovered LeConte worked as a courier for Dupaco.

Bright argued for himself, Blau, and Dupaco at the sanctions hearing. He maintained "there were so many questionable facts surrounding this alleged mailing [of the notice] . . . there was reason to believe it hadn't actually been given on the day that was set forth in the affidavit [of mailing completed by the estate lawyer]." Bright maintained that, even after presented with the certified mailing records, he still doubted the affidavit. And he complained again about the unfairness of Dupaco not having its debt against the estate paid, despite the untimely claim. The court reporter's transcript also reflects Bright made air quotes when referring to the certified "mailing," even though the mailing was proven at that point by the affidavit of mailing and USPS records.

Under questioning by the court, Bright admitted no investigation was conducted between June 1 (when Dupaco knew LeConte had signed for the

certified mail) and August 24 (when the "second investigation" discovered LeConte's relationship with Dupaco in a single business day). Also under questioning by the court, Bright asserted his conversation with Manning was sufficient to investigate the facts, regardless of whether anyone else at Dupaco knew about LeConte's relationship to the company and the improbability of the "interloper" assertion. The court also questioned the estate's attorney about his billing, inquiring why he billed more than fifty hours of research. The estate attorney explained he "was mystified by the nature of the allegations" made by Dupaco and its attorneys "and it took . . . a great deal of time to make sense . . .of them."

The district court—at the invitation of Dupaco and its attorneys—evaluated each of Dupaco's pleadings independently. The court found the initial request for a hearing did not warrant sanctions but the subsequent reply pleading and false oral statements did. Specifically, the district court found Blau and Bright did not conduct a reasonable investigation into the facts regarding Manning's belief LeConte worked for USPS—which turned out to be based on "essentially, second-hand assumptions of a mailroom employee." The court found Blau and Bright acted unreasonably when they made no effort to confirm whether LeConte worked for USPS, even though they had at least one week to reply to the estate's resistance and could have sought an extension of time if necessary. The court found, at minimum, "Dupaco and its attorneys certainly should have conducted the inquiry [into LeConte's employment] before the July 1 hearing," but the investigation did not actually happen until August 24.

In addition to the unreasonably incomplete investigation into LeConte, the district court found Blau did not conduct an adequate investigation when she asserted the notice was not sent by certified mail. As the court put it, “Blau was either confused by the information she found on the USPS tracking site or was attempting to confuse or mislead the court.” Or, as put more bluntly a bit later in the ruling, “The court is unable to explain what Blau was looking at when she reached her conclusions.” The court noted that, even if Blau made a mistake rather intentional misrepresentation, the false assertions “did cause confusion and waste of time for both [the estate attorney] and the court to work through.”

The district court also considered whether sanctions would deter future misconduct and found they would. The court found the attorneys “ha[d] not acknowledged any responsibility for [their] own actions in this case” and concluded no reasonable attorney would have behaved as they did. The court also found Dupaco had engaged in “a pattern of miscommunication and mistakes in this matter.”

Based on these findings, the district court imposed sanctions in the reduced amount of $14,387.60. The court assessed $5000 against attorney Blau, $2000 against attorney Bright, and $7387.60 against Dupaco. Dupaco and its attorneys filed a notice of appeal, then sought certiorari review in their proof brief. *See Hearity v. Iowa Dist. Ct.*, 440 N.W.2d 860, 862 (Iowa 1989) (“Review of a district court’s order imposing sanctions is not by appeal, but rather is by application for issuance of a writ of certiorari.”). The supreme court granted certiorari review under Iowa Rule of Appellate Procedure 6.108 and transferred the case to our court for resolution.

II. Standard of Review

We review sanctions orders for an abuse of discretion. *Mathias v. Glandon*, 448 N.W.2d 443, 445 (Iowa 1989). "The question presented to the district court . . . is not whether a court shall impose sanctions when it finds a violation [of what is now rule 1.413 and Iowa Code section 619.19]—it must; instead, the question is how to determine whether there was a violation." *Id.* If supported by substantial evidence, we are bound by the district court's fact findings. *Id.*

III. Discussion

The district court found Blau and Bright violated Iowa Rule of Civil Procedure 1.413 and Iowa Code section 619.19, both of which impose "three duties known as the reading, inquiry, and purpose elements." *Barnhill v. Iowa Dist. Ct.*, 765 N.W.2d 267, 272 (Iowa 2009) (citation and quotation marks omitted). If an attorney files a pleading in violation of any of these three duties, the attorney has violated the rule and the Code, and the court must impose a sanction. *Id.* The analysis focuses on "the time the paper is filed" and measures attorney conduct to determine whether it was "reasonable[ ] under the circumstances," judged against the standard of "a reasonably competent attorney admitted to practice before the district court." *Id.* (citation omitted). The reasonableness of an attorney's inquiry into facts and law depends on various factors, including but not limited to:

> (a) the amount of time available to the signer to investigate the facts and research and analyze the relevant legal issues;
> (b) the complexity of the factual and legal issues in question;
> (c) the extent to which pre-signing investigation was feasible;
> (d) the extent to which pertinent facts were in the possession of the opponent or third parties or otherwise not readily available to the signer;
> (e) the clarity or ambiguity of existing law;
> (f) the plausibility of the legal positions asserted;

> (g) the knowledge of the signer;
> (h) whether the signer is an attorney or pro se litigant;
> (i) the extent to which counsel relied upon his or her client for the facts underlying the pleading, motion, or other paper;
> (j) the extent to which counsel had to rely upon his or her client for facts underlying the pleading, motion, or other paper; and
> (k) the resources available to devote to the inquiries.

Id. at 273.

The primary purposes of the rule and Code section are to "maintain a high degree of professionalism in the practice of law" and "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.* In other words, the rule, Code section, and resulting sanctions have both general- and specific-deterrence purposes. *See id.* Sanctions also have the secondary purpose of partially compensating parties victimized by attorney misconduct. *Rowedder v. Anderson*, 814 N.W.2d 585, 591–93 (Iowa 2012).

Applying this case law, we turn to the district court's ruling on Blau, Bright, and Dupaco's investigation into the facts supporting claims in the pleadings. (Like the district court, we elect to not rely on the estate's allegation that Dupaco and its attorneys failed to investigate the law, as we find the failure to investigate the facts dispositive.) In short, we do not disagree with the district court's ruling in any material aspect, we find the court recited and applied controlling case law, and we discern no abuse of discretion.

We specifically find the district court correctly ruled that an attorney who asserts an "interloper" signed for and seized a party's mail makes a serious accusation—a federal felony. *See* 18 U.S.C. § 1708. Such an accusation requires

more investigation than taking a witness's second-hand hearsay statements, based on self-described assumptions, at face value.

We also agree with the district court that assuming the "interloper" was a USPS employee was so implausible that a reasonably competent attorney would have conducted additional investigation before repeating the assumptions of a mailroom employee. That the estate's lawyer determined LeConte's identity before asserting facts about him is strong evidence a reasonable attorney could and should have taken these steps. We also find it telling that, seven weeks after the estate's attorney accurately described LeConte's identity and relationship to Dupaco during a hearing, Blau, Bright, and Dupaco conducted a "second investigation" that confirmed the information in less than one business day. Last, we agree with the district court's conclusion that the attorneys' repeated assertions claiming the notice of disallowance was never sent by certified mail, even though the estate's filings and Dupaco's own exhibits proved it was, also violated the rule and Code.

The main thrust of Blau and Bright's defense is they believe they reasonably relied on information provided to them by their client's agent, Manning, and no further investigation was necessary. We, like the district court, disagree. "Generally, an attorney must do more than rely on a client's assurance of the existence of facts when a reasonable inquiry would reveal their accuracy." Mark S. Cady, *Curbing Litigation Abuse and Misuse: A Judicial Approach*, 36 Drake L. Rev. 483, 492 & n.66 (1987) (collecting cases). And "if the information provided by a client is inconsistent or otherwise questionable, verification is an absolute necessity." *Id.* "The rule requires that an attorney be satisfied in the existence of

the facts. Mere conjecture, suspicion or rumor are not ingredients of a reasonable factual basis." *Id.* (footnote omitted). "Allegations cannot be made in pleadings which a reasonable factual investigation would disprove." *Id.* at 493. The record here establishes Blau and Bright did little if any investigation to satisfy for themselves that Manning provided accurate information. The claim LeConte was a postal service "interloper" was at best "questionable," and the basis for that claim was "conjecture, suspicion or rumor." *See id.* at 492. Blau and Bright did not fulfill their obligations under rule 1.413 and section 619.19.

In their appellate briefing, Blau, Bright, and Dupaco make several attacks on the district court's ruling, none of which we find persuasive. For example, they claim "[i]t is important to note that several different judges were involved in this case," and they suggest this means we should give less deference to the district court. We reject this argument. Sanctionable conduct is an offense against the court as an institution and the profession as a whole, not the individual judge who presides over a particular hearing. Blau and Bright also claim their false statements "did not relate to the core facts underlying the claim Dupaco filed in [the] estate [case]." This argument displays some sleight of hand; why Dupaco originally filed the claim is irrelevant to this dispute, and the false statements about LeConte and whether the notice was mailed or received concerned the *only* facts of consequence here.

Dupaco and its attorneys also claim the district court impermissibly considered the lack of further investigation after the false statements were called to their attention. We understand this argument to assert that, because additional false papers were not filed, the court should not have considered the lack of

corrective action. We disagree. Even setting aside the rule and Code provision, attorneys have a legal and ethical obligation to "correct a false statement of material fact or law" made to a tribunal, not just a duty to tell the truth in the future. *E.g.*, *Iowa Sup. Ct. Att'y Disciplinary Bd. v. Rhinehart*, 953 N.W.2d 156, 163 (Iowa 2021) (quoting Iowa R. of Prof'l Conduct 32:3.3(a)(1)). This behavior may not have independently supported a sanction, but it was relevant as part of the "pattern of activity" giving rise the sanction. *See First Am. Bank v. Fobian Farms, Inc.*, 906 N.W.2d 736, 748–53 (Iowa 2018). We also find unpersuasive Blau and Bright's contention their lack of public attorney-discipline history should be a mitigating factor when determining rule- and Code-based sanctions, particularly given the district court's finding Dupaco engaged in "a pattern of miscommunication and mistakes in this matter." Contrary to claims made in their appellate brief, the district court did not impose sanctions based on "[t]he perfect acuity of hindsight." Instead, the court found Blau and Bright behaved unreasonably when comparing their conduct to the investigation a reasonably competent attorney would have undertaken.

On the facts, Dupaco and its attorneys assert they should not have been expected to know about LeConte because he operated under the name "Swift Delivery" and his relationship with Dupaco was based on an oral rather than written agreement. But these are problems of Dupaco's creation. Dupaco chose to contract with LeConte as a courier and rely on an oral agreement. This does not excuse Blau and Bright's failure to investigate; if anything, these business practices by Dupaco favor requiring more—rather than less—investigation of

implausible claims, such as the allegation a postal worker committed a felony by intercepting the mail.

Dupaco and its attorneys also continue to make a false or misleading claim in this appellate proceeding when they allege the estate "incorrectly addressed the notice of disallowance." Dupaco and its attorneys have shifted their argument slightly on appeal, now complaining that the address used for the certified mail should have listed "Dupaco" instead of "Amy Manning" as the recipient. An insurmountable problem with this argument is that the only address Dupaco provided on its claim listed "Amy Manning" as the addressee and the P.O. box as the only complete address. Consistent with the district court's observation, we find the estate mailed the notice to the only complete address Dupaco provided and Dupaco's claims otherwise are false or misleading.

Blau, Bright, and Dupaco also complain in a footnote that the district court "expected a post-filing apology" and object that the court's ruling noted "[c]ounsel has not acknowledged any responsibility for the attorneys' own actions in this case." The lack of remorse or acceptance of responsibility was a proper consideration. Not only did the failure to correct the false statements likely constitute a separate violation of the rules of professional conduct, our case law recognizes that—even in criminal cases—courts may consider an offender's "lack of remorse . . . highly pertinent to evaluating his need for rehabilitation and his likelihood of reoffending." *State v. Knight*, 701 N.W.2d 83, 88 (Iowa 2005); *see State v. West Vangen*, 975 N.W.2d 344, 355–56 (Iowa 2022) (re-affirming *Knight*). If criminal offenders can be penalized at sentencing for not expressing remorse or taking responsibility, despite the protections of the Fifth Amendment, an attorney's

failure to do the same can be considered an aggravating factor in assessing intent and determining sanctions.

Last, Dupaco and its attorneys claim the district court "ignored the *Rowedder* factors and assessed sanctions in an excessive amount." As a preliminary note, we observe the appellate brief is signed only by Blau, and that neither she nor Dupaco request the sanction be apportioned differently than the district court's ruling. On the substantive challenge to the amount of sanctions, we do not agree with Dupaco and its attorney. The district court exercised its discretion appropriately when it reduced the requested amount by almost half, from $24,351.45 to $14,387.60. The gist of Dupaco's complaint is that the district court did not make a necessary finding the fees sought were reasonably necessary to defend against the sanctionable motions. We see no abuse of discretion in the district court's implied determination otherwise, and we are confident the court considered the relevant factors based on the questions asked by the court at the sanctions hearing. *See Rowedder*, 814 N.W.2d at 591 (affirming sanctions even though the district court failed to expressly consider one of the factors). We find Blau, Bright, and Dupaco cannot reasonably complain about the considerable research undertaken by the estate lawyer given their unusual and ultimately false claim that a postal-employee "interloper" had stolen mail. The false factual statements identified in this opinion permeated litigation over the claim (and some even persist on appeal). The district court could have reasonably concluded all billable work identified by the estate lawyer was triggered by the sanctionable conduct; it was not an abuse of discretion to consider about half of the billable work an appropriate sanction.

IV. Disposition

Overall, we find the arguments Blau, Bright, and Dupaco advance in mitigation do little more than highlight or reinforce the district court's rationale for imposing sanctions. We annul the writ of certiorari and decline to disturb the sanctions imposed. And we, like the district court, find the attorneys' false statements violated Iowa Rule of Civil Procedure 1.413 and Iowa Code section 619.19. We direct the clerk of appellate courts to transmit a copy of this opinion to the Attorney Discipline Board. *See* Iowa R. of Prof'l Conduct 32:8.3 (on the duty to report misconduct); Iowa Code Judicial Conduct 51:2.15(B) (same).

WRIT ANNULLED.

State of Iowa Courts

Case Number	**Case Title**
23-0054	Dupaco Community Credit Union v. District Court

Electronically signed on 2024-03-06 08:27:36