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In the Supreme Court of Iowa
Supreme Court No. 23-2069

Upon the Petition of
MATTHEW KRAUS,
Petitioner-Appellant,

v.

And Concerning
MOLLY KRAUS,
Respondent-Appellee.

MOLLY'S APPLICATION FOR FURTHER REVIEW

Review of Court of Appeals Decision dated January 9, 2025

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QUESTIONS PRESENTED FOR REVIEW

I. Did the Court of Appeals erroneously hold that dismissal is not an available sanction for violating Rule 1.413?

II. Does prohibiting dismissal as a sanction undercut Rule 1.413's primary goal of deterrence?

III. Is Molly entitled to receive an award of appellate attorney fees under Iowa Code § 598.36?

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STATEMENT SUPPORTING FURTHER REVIEW

Nearly 35 years ago, the Iowa Supreme Court in *K. Carr v. Hovick* gave short shrift to dismissal as a potential sanction under Iowa Rule of Civil Procedure 1.413, determining that the rule "does not provide an independent basis for dismissal." 451 N.W.2d 815, 817 (Iowa 1990). The Court did not explain how it came to such a conclusion, which has left attorneys, litigants and district courts across Iowa in the dark on the potential sanctions that can be levied for violations of Rule 1.413. While the court of appeals in *Buhr v. Howard Cnty. Equity* attempted to fill in the many blanks that the *K. Carr* case left open, none of the rationales *Burr* provides are persuasive, considering the primary purpose of the rule is to deter frivolous litigation and the broad discretion that is bestowed upon the district court in crafting an appropriate sanction. No. 10-0776, 2011 WL 1584348, at*5-6.

Under Rule 1.413, "the court ... shall impose upon the person who [violated this rule] an appropriate sanction, which may include an order to pay the other party ... the amount of reasonable expenses incurred ... including a reasonable attorney fee." Iowa R. Civ. P. 1.413(1). An award of attorney fees is the only sanction specifically mentioned in the rule. Although it is the most common sanction, others are available. District courts have discretion to tailor sanctions according to the nature of the violation. Mark S. Cady, *Curbing*

Litigation Abuse and Misuse: A Judicial Approach, 36 Drake L. Rev. 483, 505 (1987). Federal Rule 11 does not refer to dismissal as a potential sanction either, but federal courts have allowed dismissal as a sanction. *See Carman v. Treat*, 7 F.3d 1379, 1382 (8th Cir. 1993). Likewise, courts in many of Iowa's neighboring states that have comparable sanctions statutes modeled after Federal Rule 11 have found dismissal to be an appropriate sanction under their statute. *See Brown v. Kirkham,* 23 S.W.3d 880 (Mo. App. 2000).

In holding that dismissal is not an appropriate sanction under Rule 1.413, the court of appeals has removed a critical weapon in the district court's arsenal used to combat frivolous filings. It is important to remember that deterrence, not compensation, is the primary purpose of Rule 1.413 sanctions. *Barnhill v. Iowa Dist. Court for Polk Cnty.*, 765 N.W.2d 267, 276 (Iowa 2009). Dismissal of the action serves as a strong deterrent against future misconduct, both for the offending party and for others who might consider similar actions. It sends a clear message that courts will not tolerate baseless filings, and it enforces the requirement that filings must be factually and legally justified to remain viable. Because frivolous filings waste valuable judicial resources, dismissal of such filings conserves precious court time and prevents litigants, attorneys and the court from expending unnecessary effort on meritless claims. Finally, dismissal of a baseless action may be the only

effective sanction at deterring litigants who do not have the ability to pay the movant's attorney fees or who are otherwise judgment proof.

Because of the uncertainties surrounding the potential sanctions that can be levied on attorneys and litigants in Iowa, this Court should fully examine the permissible sanctions under Rule 1.413, including dismissal of the action, and provide guidance to Iowa district courts in meting out an appropriate sanction.

STATEMENT OF THE FACTS

The marriage

Molly and Matthew married on April 27, 2013 in Hopkinton, Iowa. They resided in Hopkinton during their marriage and had two sons, BAK born in 2011, and BSVK born in 2013. While living in Hopkinton, the boys attended school in the Maquoketa Valley Community School District. (D0061 Temp. Order p. 1, 4.24.21). On January 21, 2021, Matthew retained Attorney John Carr and filed for divorce, seeking shared physical care of the boys. Molly retained Attorney Stephanie Fueger and filed an answer to Matthew's petition seeking primary physical care of the boys. Shortly after the divorce was filed, the marital home was sold, and Matthew rented a home in Hopkinton, and Molly moved to Dyersville near her longtime employer. (D0001 Pet. p.1-2, 1.21.21; D0010 Ans. p. 2, 3.5.21).

On April 10, 2021, Matthew was arrested for operating a motor vehicle while intoxicated. The boys were not in the vehicle at the time. At the temporary matters hearing, the district court awarded Molly primary physical care of the boys and afforded Matthew liberal visitation. (D0061 Temp. Order p. 1-4, 4.24.21).

A year later, Molly sought to modify the temporary order due to Matthew's worsening alcohol abuse, which caused him to lose his job as an equipment

operator at Boomerang. In June of 2022, Matthew went to The Abbey Addiction Treatment Center in Bettendorf, Iowa for a 30-day program for his alcohol abuse. After completing rehab in July of 2022, Matthew agreed to reduce his visitation with the boys during the pendency of the divorce proceedings. In August of 2022, Matthew was hired by Connolly Construction as a heavy equipment operator. (D0124 App. to Modify Temp. Order p. 1-21, 5.31.22; D0175 Dep. 7 L:2-14; D0134 Order Amending Temp. Order p. 1-3, 7.22.22; D0175 Dep. 26 L:16-24).

Whether the boys would attend school in the Western Dubuque Community School District or the Maquoketa Valley Community School District was a central dispute between Molly and Matthew during the 22-month long divorce proceedings. As Molly sought primary physical care, she requested that the boys attend school in Western Dubuque, which is the school district based on her residence. Matthew sought shared care and wanted the boys to remain in the Maquoketa Valley Community School District based on his address in Hopkinton. Another contested issue was visitation. After Matthew agreed to decrease his visitation in July of 2022, he claimed that the boys were not as happy because they did not get to see him or their cousins and friends as much. (D0175 Dep. 9 L:2-13, 23 L:3-25, 24 L:3-18, 25 L:23-25, 26 L:1-5; D0201 Hrg. 34 L:5-25).

Divorce decree entered November 22, 2022

Despite these disagreements and after multiple mediation sessions, Molly and Matthew eventually resolved all issues in their divorce by signing a stipulation and agreement, which was incorporated into a decree and approved by the district court on November 22, 2022 ("the decree"). Per their agreement, Molly had primary physical care of the boys and Matthew had the same reduced amount of visitation he previously agreed to in July of 2022. The parties also agreed that, beginning with the 2023 – 2024 school year, the boys would enroll in the Western Dubuque Community School District. At the time of the decree, Matthew was working for Connolly Construction earning $54,000 annually and Molly was working for Tomy International earning $45,000 per year. The decree required Matthew to pay Molly $850 per month in child support. (D0136 Stip. p. 1-10, 11.15.22; D0137 Decree p. 1-4, 11.22.22; D0201 Hrg. 61 L:17-19).

Post-decree

Two weeks after the decree was entered, the parties were having a disagreement via text message about what time Matthew was to pick up the boys on a Wednesday when there was no school. When Molly sent Matthew a photo of the applicable paragraph in the stipulation stating that his parenting time would begin at 5:30 p.m., Matthew responded with, "Don't worry, that'll

be getting changed soon," followed by a smiley-face emoji. (D0136 Stip. p. 3, 11.15.22; D0160 Mtn for Sanctions p. 41, 8.24.23).

Just 51 days after the decree was entered, Matthew retained a new attorney, Thomas Viner, and filed a petition for modification of the decree. In support of his petition for modification, Matthew stated in part,

> 7. That since the filing of the Decree, there have been substantial and material changes in the parties' circumstances such that a modification is warranted.
>
> a. the current custody, care and visitation orders are no longer in the best interest of the children.
>
> b. The current child support and medical support orders may need adjusted.

(D0143 Pet. for Mod. p. 1-2, 1.12.23) Matthew requested that custody of the boys be modified to shared physical care instead of Molly having primary physical care of the boys. Immediately after Matthew's petition for modification was filed, Molly's attorney requested that it be dismissed as it was not filed in good faith. This request was ignored by Matthew and his counsel. (D0143 Pet. for Mod. p. 1-2, 1.12.23; D0201 Hrg. 59 L:13-24, 76 L:20-22).

Molly was baffled as to why Matthew sought to modify the decree just 51 days after it had been entered. Matthew had not made Molly aware of any issues involving the boys or changes in Matthew's financial status. The decree required the parties to exchange information concerning, "illnesses, injury, sickness or other conditions affecting the health or welfare of the children . . .

. and behavioral issues resulting in disciplinary action (whether at home or at school) . . . . within 24 hours of the same." For her part, Molly had not personally observed any changes in the boys. The boys' school, which was still in the Maquoketa Valley Community School District at the time, had similarly not alerted Molly to any concerns with the boys. (D0136 Stip. p. 5, 11.15.22; D0201 Hrg. 9 L:15-25, 10 L:1-9, 13 L:1-18).

Several days after Matthew filed his petition for modification, Molly learned through her attorney that Matthew was claiming that their youngest son had made a statement about bringing a gun to school if he had to switch to Western Dubuque schools. In response to his son's purported threat to bring a gun to school, Matthew testified that he,

> **. . . . told [my son] that was not acceptable, and other than that we just kind of left it alone.**

(D0165 Ex. MM p. 8, 9.28.23; D0175 Dep. 12 L:2-12, 13 L:3-23, 14 L:3-17, 15 L:1-4; Emphasis added). Matthew admitted that he did not inform Molly of their son's statement until after he filed the modification action. Matthew also did not notify the boys' school or counselor about the alleged gun threat until four months later. (D0175 Dep. 17 L:9-21).

At Matthew's deposition, when asked what had changed in the 51 days since the decree had been entered, Matthew claimed that his oldest son also told him that he would do anything to get expelled from Western Dubuque

schools. Matthew's deposition was the first time Molly had heard this allegation from Matthew about their oldest son. Matthew also repeated his claims that the boys were not as happy because they did not get to see him or their friends as much. (D0175 Dep. 18 L:1-25, 23 L:3-25, 24 L:3-18, 25 L:23-25, 26 L:1-5).

As to why child support needs to be adjusted after 51 days, Matthew complained that his annual salary was not $54,000, the amount he agreed to in the stipulation, but that it was closer to $49,000. Matthew argued that the $54,000 figure did not account for his layoffs in the winter months when he received unemployment instead of his salary. Matthew conceded that he had been employed in the construction industry for years and that it was common for him to experience periods of layoffs in the winter. (D0201 Hrg. 37 L:6-25, 38 L:1-18; D0175 Dep. 26 L:10-25, 27 L:1-25).

On August 24, 2023, Molly filed a motion for sanctions against Matthew asserting that his petition for modification violated Iowa Rule of Civil Procedure 1.413. Specifically, Molly argued that Matthew knew there had been no changes warranting a modification of the decree, Matthew simply wanted to rehash the provisions of the decree he disliked in the hopes he would get a more favorable result this time around. The hearing on Molly's motion for sanctions was held on October 3, 2023 before Judge Thomas A.

Bitter. Both Molly and Matthew testified at the hearing and counsel for each party gave an oral argument. (D0160 Mtn for Sanctions p. 1-8, 8.24.23; D0189 Order Sanctions p. 1, 10.23.23; D0201 Hrg. 1-87).

The district court entered an order granting Molly's motion for sanctions on October 23, 2023. The district court found that Matthew, "admitted that the modification was simply his plan to do whatever he could. . . . to fix or change the things he regretted from the original stipulation." (D0189 Order Sanctions p. 2, 10.23.23). The district court also found Matthew's request to modify child support to be without merit because even if Matthew's salary was reduced to $49,000, it would not result in a 10% deviation in the child support amount which is required under Iowa Code § 598.21C(2)(a). In concluding that sanctions were warranted, the district court held,

> It would be difficult to imagine a stronger case for the imposition of sanctions pursuant to R.C.P. 1.413. Only if Matthew had filed his petition even faster than 51 days post-decree would it be more egregious.

In dismissing Matthew's petition for modification, the district court explained that, "the court doesn't just allow a meritless claim to proceed to trial under the thinking that a remedy can be later applied." (D0189 Order Sanctions p. 1-4, 10.23.23).

Matthew filed a motion to reconsider on November 1, 2023, and Molly resisted. At the district court's invitation, Molly's counsel filed an application

and affidavit in support of attorney fees, requesting $7,226.65 in sanctions against Matthew. Molly's counsel included billing entries with her application and affidavit. On December 1, 2023, the district court denied Matthew's motion to reconsider and assessed sanctions against Matthew in the amount of $7,226.65. (D0192 Mtn to Reconsider p. 1, 11.1.23; D0194 Res. to Mtn to Reconsider p.3, 11.7.23; D0193 App. for Atty Fees p. 1-16, 11.1.23; D0195 Supp. Atty Fees p. 1-4, 11.7.23; D0196 Order for Judgment p. 1, 12.1.23).

Matthew appealed. (D0197 Notice of Appeal p. 1, 12.18.23). On January 9, 2025, the court of appeals issued its opinion, holding that the district court did not abuse its discretion in finding that Matthew's petition for modification violated Rule 1.413 or that monetary sanctions in the amount of $7,226.65 were warranted,

> The [district court] found there was no legitimate basis for the petition with its finding that Matthew's purpose "was to fix or change the things he regretted from the original stipulation" rather than assert materially changed circumstances. This fact finding is supported by substantial evidence—namely Matthew's own sworn testimony, bolstered by text messages he sent Molly, reinforced by his sworn testimony at the sanctions hearing.

(Opinion 7). However, the court of appeals reversed the district court's dismissal of Matthew's petition, finding that dismissal was not an available sanction under Rule 1.413, and remanded for further proceedings in the district court. (Opinion 10-11).

ARGUMENT

An order imposing sanctions is reviewable for an abuse of discretion. *Mathias v. Glandon*, 448 N.W.2d 443, 445 (Iowa 1989). 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 v. Iowa Dist. Court*, 509 N.W.2d 459, 464 (1993). The district court's findings of fact are binding on the Court if supported by substantial evidence. *Barnhill*, 765 N.W.2d 267, 272 (Iowa 2009). Because the district court has the advantage of having a front-row seat to the testimony, the Appellate Court must defer to the district court's credibility findings,

> A trial court deciding dissolution cases is greatly helped in making a wise decision about the parties by listening to them and watching them in person. In contrast, appellate courts must rely on the printed record in evaluating the evidence. We are denied the impression created by the demeanor of each and every witness as the testimony is presented.

In re Marriage of Vrban, 359 N.W.2d 420, 423 (Iowa 1984).

I. The Court of Appeals erroneously held that dismissal is not an available sanction for violating Rule 1.413.

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.

Rule 1.413 provides in relevant part:

> If a motion, pleading, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, ***shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include*** an order to pay the other party or parties the amount of the reasonable expenses incurred because of the filing of the motion, pleading, or other paper, including a reasonable attorney fee.

Iowa R. Civ. P. 1.413(1) (Emphasis added). The language of Rule 1.413 (formerly Iowa R. Civ. P. 80(a)) was borrowed from Federal Rule of Civil Procedure 11, prior to the 1993 amendments[1]. *Franzen v. Deere & Co.,* 409 N.W.2d 672, 673–74 (Iowa 1987). The language 'may include' gives the courts a great deal of discretion in determining how to penalize an attorney or party. *See* Mark S. Cady, *Curbing Litigation Abuse and Misuse: A Judicial Approach,* 36 Drake L. Rev. 483, 505 (1987). Paying the other party's

[1] While the text of Rule 1.413 and Federal Rule 11 differ substantially, both rules provide for sanctions, expressly mention payment of the movant's attorney fees as a sanction and do not mention dismissal as a potential sanction. *See* Federal Rule 11.

attorney fees is only an example of an appropriate sanction and not the exclusive remedy. *See* Carol C. Knoepfler, *Divining an Approach to Attorney Sanctions and Iowa Rule 80(a) Through an Analysis of Federal and State Civil Procedure Rules*, 72 Iowa L. Rev. 701, 718 (1987). The comments to Rule 11 emphasize that "[t]he court, however, retains the necessary flexibility to deal appropriately with violations of the rule. It has discretion to tailor sanctions to the particular facts of the case, with which it should be familiar." Fed. R. Civ. P. 11 (comments to 1983 amendment).

The Standards and Guidelines for Practice Under Rule 11, which has been cited with approval by the Iowa Supreme Court, identifies the dismissal of the action as a potential sanction a district court may impose. ABA, Section of Litig., *Standards and Guidelines for Practice Under Rule 11 of the Federal Rules of Civil Procedure*, 121 F.R.D. 101, 124 (1988); *First Am. Bank & C.J. Land, LLC v. Fobian Farms, Inc.*, 906 N.W.2d 736, 746 (Iowa 2018); *Barnhill,* 765 N.W.2d at 273; *Mathias*, 448 N.W.2d at 446-7.

In holding that dismissal is not an available sanction under Rule 1.413, the court of appeals relied exclusively on the case, *K. Carr v. Hovick*, 451 N.W.2d 815 (Iowa 1990). In *K. Carr*, the plaintiff partnership sued Hovick for fraud after purchasing greyhound racing dogs that failed to qualify and were eventually euthanized. Hovick counterclaimed for malicious prosecution

and abuse of process. The district court dismissed the plaintiff's suit after trial, but Hovick appealed the district court's denial of his attempt to dismiss the case before trial under Rule 1.413 (then numbered as Rule 80(a)) and Rule 1.945 (then numbered Rule 216). *Id.* at 817. In rejecting Hovick's argument that the district court should have dismissed plaintiff's claim prior to trial, the Court stated, "Rule 80 provides sanctions for the filing of frivolous suits, but it does not provide an independent basis for dismissal." *Id.* The Court did not cite any authority in support of its statement that dismissal is not an available sanction under Rule 1.413. While the Court provided an explanation as to why Rule 1.945, which relates to involuntary dismissals, did not provide a pretrial basis for dismissal, the Court did not explain how it determined that Rule 1.413 did not provide an independent basis for dismissal. *Id.*

The Iowa Supreme Court has never cited *K. Carr* for any reason, and only one unpublished court of appeals opinion cites *K. Carr* as authority that Rule 1.413 does not provide an independent basis for dismissal. The unpublished court of appeals case is *Buhr v. Howard Cnty. Equity*, where a *pro se* plaintiff filed a petition against Howard County Equity (HCE) stemming from HCE's application of herbicide to plaintiff's farmland. No. 10-0776, 2011 WL 1584348, at *1 (Iowa Ct. App. Apr. 27, 2011). However, it was not the plaintiff's petition that was sanctionable, it was plaintiff's conduct at

depositions, his failure to produce exhibits and witness lists prior to trial and his incessant filing of frivolous motions, such as a "Petition to the Court for Notice and Demand not to Violate Plaintiff's Constitutional Rights." *Id.* at *2-3. After the plaintiff failed to comply with monetary sanctions for violating discovery orders, HCE moved to dismiss under Rule 1.413. In granting HCE's motion to dismiss, the district court noted that it had warned plaintiff many times of his sanctionable filings and had previously imposed a monetary sanction on plaintiff, but plaintiff continued to file senseless motions with the intent to intimidate and harass HCE. *Id.* at *3. On appeal, the court of appeals reversed the dismissal, citing *K. Carr* as authority for the premise that Rule 1.413 is not an independent basis for dismissal. *Id.* at 5-6.

Unlike *Buhr*, the sanctionable conduct in the case at bar directly relates to the allegations in the petition for modification. *Buhr*, 2011 WL 1584348, at *6. (D0143 Pet. for Mod. P. 1-2, 1.12.23) The district court found that Matthew's purpose was to fix or change the things he regretted from the original stipulation, rather than assert materially changed circumstances, which is required under Iowa law to modify a dissolution decree. (D0189 Order Sanctions p. 2, 10.23.23); *In re Marriage of Frederici,* 338 N.W.2d 156, 158 (Iowa 1983) (party seeking modification must prove that "conditions since the decree was entered have so materially and substantially changed that the

children's best interests make it expedient to make the requested change.") In *Buhr*, plaintiff's petition against HCE regarding HCE's application of herbicide to plaintiff's farmland was never attacked as being frivolous or without merit. Because the violations of Rule 1.413 in this case were based on the meritless allegations in the petition that initiated the action, it was an appropriate sanction to dismiss the petition.

Besides pointing to the *K. Carr* case, the court of appeals made two additional arguments in support of prohibiting dismissal under Rule 1.413. First, the court of appeals noted that other rules of civil procedure, like Iowa Rule of Civil Procedure 1.517 dealing with discovery abuses, explicitly provide for dismissal of a suit as recourse for a party's misconduct, while the text of Rule 1.413 does not expressly include dismissal as a sanction. (Opinion 10). The implication being that the legislature's inclusion of dismissal as a potential sanction in Rule 1.517 and the exclusion of it in Rule 1.413, "was intentional and indicates that the terms should not be inferred where they are excluded." *Buhr*, 2011 WL 1584348, at *6.

It is highly unlikely that Iowa's legislature intentionally omitted dismissal as a potential sanction from Rule 1.413. Both Rule 1.413 and Rule 1.517 were modeled after their federal counterparts. *Barnhill*, 765 N.W.2d at 273 (stating that since Rule 1.413 is based on Federal Rule 11, the Court looks to federal

decisions applying Federal Rule 11 for guidance); *Kendall/Hunt Public Co. v. Rowe*, 424 N.W.2d 235, 242 (Iowa 1988)(noting Iowa Rule of Civil Procedure 134, now renumbered Rule 1.517, mirrors Federal Rule 37 and cases under Federal Rule 37 are persuasive authority). Federal Rule 37 explicitly mentions dismissal like Rule 1.517, and Federal Rule 11 does not mention dismissal, like Rule 1.413. Despite dismissal's exclusion from Federal Rule 11 and its inclusion in Federal Rule 37, federal courts have still allowed dismissal as a sanction under Federal Rule 11. *See Carman v. Treat*, 7 F.3d 1379, 1382 (8th Cir. 1993)(dismissal of inmate's civil rights action with prejudice was appropriate sanction for violating Rule 11 by filing a motion not well grounded in fact); *American Inmate Paralegal Assoc. v. Cline*, 859 F.2d 59, 62 (8th Cir. 1988)(dismissal of lawsuit under Rule 11 was appropriate even if complaint had merit in light of voluminous number of frivolous documents filed).

Moreover, the only sanction specifically mentioned in Rule 1.413 is an award for attorney fees. This inclusion was necessary because the district court possesses no inherent power to impose attorney fees upon a party or counsel,

> [t]he right to recover attorney fees as part of the costs does not exist at common law. They cannot be so allowed in the absence of a statute or agreement expressly authorizing it. In order that they may be so taxed the case must come clearly within the terms of the statute or agreement. Indeed the court does not have inherent power to tax costs even to the losing party.

Thorn v. Kelly, 134 N.W.2d 545, 548 (1965); *see Weaver Const. Co. v. Heitland,* 348 N.W.2d 230, 232–33 (Iowa 1984) (holding that the defendant's attorney fees were not "costs" which could be assessed against the plaintiff); *see also* Iowa Code § 625.22 ("[w]hen judgment is recovered upon a written contract containing an agreement to pay an attorney fee, the court shall allow and tax as a part of the costs a reasonable attorney fee to be determined by the court.").

However, the district court does have the inherent power to dismiss a case. *Loose v. Cooper*, 118 N.W. 406 (Iowa 1908)(finding the power of dismissal is inherent in the court); *see also Hammon v. Gilson*, 227 Iowa 1366, 291 N.W. 448, 451–52 (1940) (recognizing that, in addition to dismissal, "that courts have the inherent power to prescribe such rules of practice and rules to regulate their proceedings, in order to expedite the trial of cases, and to keep their dockets clear, and to facilitate the administration of justice").

Despite attorney fees being the only sanction expressly mentioned in Rule 1.413, Iowa courts have levied sanctions other than attorney fees. In *Hearity v. Iowa Dist. Court for Fayette Cnty.*, the Iowa Supreme Court upheld a district court's finding that an attorney violated Rule 1.413 and affirmed the district court's admonishment of the attorney as a sanction. 440 N.W.2d 860, 866 (Iowa 1989). Likewise, in *Abel v. Bittner*, the Iowa Supreme Court affirmed

the sanction of a public admonishment under Rule 1.413. *Abel,* 470 N.W.2d 348, 351 (Iowa 1991)

The second argument made by the court of appeals in its opinion for prohibiting sanctions is that federal courts allowed the dismissal of a case under Rule 11 prior to the *K. Carr* case, therefore, "our supreme court's decision in *K. Carr* reflected a deliberate departure from federal law that binds us as an intermediate appellate court." (Opinion 10) The *K. Carr* Court's conclusory nineteen-word sentence with no explanation or supporting authority cannot constitute a "deliberate departure from federal law..." *K. Carr*, 451 N.W.2d at 817. At the time the *K. Carr* opinion was issued, Rule 1.413 (formerly Rule 80) had only been in effect for a few years. About a year after the *K. Carr* decision, the Iowa Supreme Court issued its decision in W*eigel v. Weigel,* and the same Justice that authored the *K. Carr* opinion characterized Rule 1.413 as being, "quite new to Iowa procedures..." 467 N.W.2d 277, 289 (Iowa 1991). Additionally, while the Court in *K. Carr* did not rely on any supporting authority in determining that dismissal was not available as a sanction, the Court heavily relied upon federal authority interpreting Rule 11 to hold that due process requirements must be met before the imposition of sanctions. *K. Carr,* 451 N.W.2d at 818.

Courts in many of our neighboring states have allowed dismissal under their state versions of Federal Rule 11. Minnesota's sanctions rule, also called Rule 11, closely mirrors Federal Rule 11. Minn. R. Civ. P. 11. The text of Minnesota's Rule 11 does not specifically provide for dismissal as a sanction either, but Minnesota courts have allowed dismissal as a sanction. In *Olson v. Babler*, the court of appeals in Minnesota affirmed the dismissal of a petition for an order for protection under rule 11 where the district court found that a girlfriend's petition was replete with lies. No. A05-395, 2006 WL 851798, at *6 (Minn. App. 2006).

Missouri's corollary to Federal Rule 11 is Missouri Supreme Court Rule 55.03, which is similar in both its wording and purpose to Federal Rule 11. Mo. R. Civ. P. 55.03. Like Iowa's Rule 1.413, Rule 55.03 does not explicitly mention dismissal as a potential sanction. In *Hutchings v. Waxenberg,* the trial court found that the plaintiff's *pro se* petition violated rule 55.03 because it was entirely devoid of merit. 969 S.W.2d 327, 328-29 (Mo. App. 1998) The trial court dismissed the plaintiff's petition with prejudice. *Id.* Likewise, in *Brown v. Kirkham,* the defendant was granted summary judgment on the ground that the plaintiff lacked standing to bring her claim. 23 S.W.3d 880, 882 (Mo. App. 2000). When summary judgment was affirmed on appeal, the plaintiff re-filed the identical claim. In response to the defendant's motion for

sanctions, the trial court dismissed plaintiff's claim with prejudice and awarded attorney fees to the defendant. *Id.* On appeal, the Western District held that there was no error in the dismissal. *Id.* at 883. *See also Santiago v. E.W. Bliss Co.*, 941 N.E.2d 275, 285 (Ill. App. 1st Dist., 2010)(Illinois circuit courts may dismiss as a sanction under Illinois Supreme Court Rule 137, Illinois' version of Federal Rule 11).

II. Prohibiting dismissal as a sanction undercuts Rule 1.413'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 to deter frivolous litigation, not compensate the winning side." *Matter of Est. of Bisignano*, 991 N.W.2d 135, 142 (Iowa 2023)*; see Cooter & Gell v. Hartmarx Corp.,* 496 U.S. 384, 398 (1990)(the central purpose under Rule 11 is to deter baseless filings in district court). A sanction is imposed with the hope a litigant or lawyer will "stop, think and investigate more carefully before serving and filing papers." *Id.* at 398. The prospect of dismissal serves as a strong deterrent against future misconduct, both for the offending party and for others who might consider similar actions.

Sanctions are meant to avoid the general cost to the judicial system in terms of wasted time and money. *Breitbach v. Christenson,* 541 N.W.2d 840, 846 (Iowa 1995). The goals of Rule 1.413 are compromised when district courts are forced to devote their limited time and resources to the processing of baseless filings, such as Matthew's petition for modification. Matthew argued at the sanctions hearing that he should be allowed to proceed to trial on his modification action. The district court held that, "the court doesn't just allow a meritless claim to proceed to trial under the thinking that a remedy can be later applied." (D0189 Order Sanctions p. 4, 10.23.23). By dismissing Matthew's petition for modification, the district court furthered the goals of Rule 1.413 by removing a frivolous filing from the docket and discouraging Matthew and other similarly situated parties from filing meritless petitions for modification.

The deterrent purpose of Rule 1.413 is thwarted if, upon the district court's determination that a pleading is completely frivolous under Rule 1.413, the court must nevertheless allow the pleading to proceed through the court system, wasting the other party's time and money and the court's already-stretched resources. Similarly, if courts were prevented from dismissing frivolous actions, litigants would have little incentive to pursue pre-trial sanctions if the baseless claims would be allowed to proceed to trial

anyway. Moreover, dismissal of the action may be the only sanction that effectively deters litigants and attorneys who may be judgment proof or unable to pay a large attorney fee award.

While it is a rare case in which dismissal is appropriate, district courts must have an array of sanctions at their disposal, including dismissal of the action, so they can appropriately tailor the sanction to the nature of the violation.

III. Molly is entitled to appellate attorney fees under Iowa Code § 598.36.

In modification proceedings, the district court may award a reasonable amount of attorney fees to the prevailing party. Iowa Code § 598.36. That provision also gives Iowa's appellate courts discretion to award appellate attorney fees. *In re Marriage of Michael*, 839 N.W.2d 630, 639 (Iowa 2013). Courts consider the party's ability to pay the attorney fees, the needs of the party making the request, as well as whether a party was obligated to defend the district court's decision on appeal. *In re Marriage of Maker*, 596 N.W.2d 561, 568 (Iowa 1999).

This Court should order Matthew to pay Molly's appellate attorney fees under Iowa Code § 598.36. The court of appeals' error in reversing the dismissal of Matthew's baseless modification action necessitated further review from the Iowa Supreme Court. To seek further review, Molly had to incur

significant appellate attorney fees to correct the court of appeals' holding. Moreover, Matthew has the ability to pay Molly's attorney fees. At the time of the decree, Matthew was earning nearly $10,000 more annually than Molly and he testified that his income would only increase in the future. (D0201 Hrg. 52 L:7-14; (D0136 Stip. p. 6, 11.15.22). Additionally, Molly was successful at resisting the modification petition at the district court level and was required to defend the district court's order on appeal. Because all the relevant factors favor Molly, this Court should require Matthew to pay Molly's appellate attorney fees.

CONCLUSION

Molly requests that this Court reverse the court of appeals' holding that dismissal was not an available sanction for violating Rule 1.413 and order Matthew to pay Molly's appellate attorney fees under Iowa Code § 598.36.

Proof of Service and Certificate of Filing

I certify that on January 29, 2025, I, the undersigned party or person acting in their behalf, did serve Molly's 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 January 29, 2025, I filed Molly's Application for Further Review with the Clerk of the Iowa Supreme Court using the Iowa Judicial Branch EDMS system.

O'CONNOR & THOMAS, P.C.
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By: /s/ McKenzie R. Blau_

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:

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Dated this 29th day of January 2025.

By: /s/ McKenzie R. Blau

ELECTRONICALLY FILED JAN 09, 2025 CLERK OF SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 23-2069
Filed January 9, 2025

IN RE THE MARRIAGE OF MATTHEW KRAUS AND MOLLY KRAUS

Upon the Petition of
MATTHEW KRAUS,
Petitioner-Appellant,

And Concerning
MOLLY KRAUS,
Respondent-Appellee.

Appeal from the Iowa District Court for Delaware County, Thomas A. Bitter, Judge.

A petitioner appeals a sanctions order that awarded attorney fees and dismissed his petition to modify custody. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED FOR FURTHER PROCEEDINGS.**

Thomas J. Viner of Viner Law Firm, P.C., Cedar Rapids, for appellant.

Stephanie R. Fueger and McKenzie R. Blau of O'Connor & Thomas, P.C., Dubuque, for appellee.

Considered by Ahlers, P.J., and Chicchelly and Buller, JJ.

BULLER, Judge.

Matthew Kraus appeals an order imposing sanctions after he filed what the district court found was a frivolous petition to modify the custody decree for his children with Molly Kraus. We see no abuse of discretion in the court finding the petition violated Iowa Rule of Civil Procedure 1.413, and we conclude monetary sanctions were ordered in an appropriate amount. But we reverse the district court's dismissal of the petition, as dismissal is not authorized as a sanction.

I. Background Facts and Proceedings

The essential facts are uncontested. Matthew and Molly divorced on November 22, 2022, pursuant to a stipulation that granted Molly physical care and Matthew visitation and set agreed-upon child support concerning their two minor sons. Fifty-one days later, on January 12, 2023, Matthew petitioned for modification, asserting a material and substantial change warranted revisiting custody and claiming the child-support amount "may" need adjusted.

In May 2023, Molly's counsel deposed[1] Matthew and questioned him about the basis for the modification. Matthew testified he understood the stipulation when he signed it but later regretted it. He agreed he made text-message statements to Molly suggesting he would try to change the stipulation as soon as

[1] We again ask parties to stop filing condensed four-panes-per-page deposition transcripts. There is no cost-savings to filing condensed transcripts in the digital era. They violate the rules, they are difficult to read, and they impede this court's mandate to dispose justly of a high volume of cases. *See, e.g.*, *Wanatee v. State*, No. 23-0507, 2024 WL 2842258, at *1 n.1 (Iowa Ct. App. June 5, 2024) (citing Iowa R. App. P. 6.803(2)(e)); *Curry v. State*, No. 23-0533, 2024 WL 1551272, at *2 n.1 (Iowa Ct. App. Apr. 10, 2024); *In re Est. of Van Ginkel*, No. 18-1923, 2019 WL 5063326, at *5–6 (Iowa Ct. App. Oct. 9, 2019) (Doyle, J., writing separately) (lamenting "those awful condensed transcripts . . . with four pages of testimony crammed onto one page").

two weeks after it was finalized, punctuated by a smiley-face emoji. And he testified his employment was materially unchanged between the divorce and the petition. Matthew's testimony at the hearing was much the same: he agreed he had "no basis" to seek modification except that he wanted to change the terms of the agreement because he regretted signing it. He agreed with Molly's counsel that "this modification [was his] attempt to do-over the things that [he didn't] like about [the] divorce decree."

Molly moved for sanctions under Iowa Rule of Civil Procedure 1.413, which Matthew resisted. After a contested hearing, the district court made a fact finding that Matthew's intention in filing the petition to modify "was to fix or change the things he regretted from the original stipulation"—and not based on any actual change in circumstances. The court ruled: "It would be difficult to imagine a stronger case for the imposition of sanctions pursuant to [Rule] 1.413. Only if Matthew had filed his petition even faster than 51 days post-decree would it be more egregious." The court dismissed the petition for modification as a sanction for the frivolous filing and ordered Matthew to pay Molly's attorney fees in the amount of $7,226.65. Matthew appeals, contesting the appropriateness and amount of sanctions.

II. Standard and Mechanism of Review

We review sanctions orders for an abuse of discretion. *Dupaco Cmty. Credit Union v. Iowa Dist. Ct.*, 13 N.W.3d 580, 589 (Iowa 2024). "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]—it must; instead, the question is how to determine whether there was a violation." *Mathias v. Glandon*, 448

N.W.2d 443, 445 (Iowa 1989). If supported by substantial evidence, we are bound by the district court's fact findings. *Dupaco*, 13 N.W.3d at 589.

As for the mechanism of review, we note that certiorari is the typical vehicle for review of sanctions. *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."). But because the district court dismissed Matthew's petition as a sanction, it is possible this is an appeal as a matter of right. *See generally* Iowa R. App. P. 6.103(1) ("All final orders . . . materially affecting the final decision of the case may be appealed . . . ."). The parties do not address this issue in their briefs. And we conclude we need not resolve this tricky question because we are permitted to "proceed as though the proper form of review had been requested" and we find the mechanism of review is not dispositive on the issues presented. Iowa R. App. P. 6.151(1); *see also Buhr v. Howard Cnty. Equity*, No. 10-0776, 2011 WL 1584348, at *4 (Iowa Ct. App. Apr. 27, 2011) (coming to the same conclusion in a similar case by applying the predecessor to Rule 6.151).

III. Discussion

Although the parties do not frame the issues exactly this way, the core arguments briefed in this appeal concern whether there was a violation of Rule 1.413, whether the monetary sanction was appropriate, and whether dismissal was a permitted sanction. We organize the analysis in this fashion and address each question.

A. Rule 1.413

Iowa Rule of Civil Procedure 1.413 imposes "three duties known as the reading, inquiry, and purpose elements." *Barnhill v. Iowa Dist. Ct.*, 765 N.W.2d 267, 272 (Iowa 2009) (cleaned up). A pleading that does not comply with all three duties violates the rule, and the court must impose a sanction. *Id.* The analysis focuses on "the time the paper is filed" and measures 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). Relevant facts in assessing whether the rule has been violated include but are 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 (formatted for readability).

As Molly notes in her appellate brief, "Matthew largely does not dispute the district court's factual findings." But we discern two legal arguments in his brief. First, he asserts Rule 1.413 should not apply in family-law cases. He cites no authority for this argument, and we are aware of none that supports it. The Iowa

Rules of Civil Procedure, including Rule 1.413, "govern the practice and procedure in all courts of the state" except where expressly displaced by rule or statute. Iowa R. Civ. P. 1.101. And the text of the rule itself specifies it applies to every "motion, pleading, or other paper." Iowa R. Civ. P. 1.413. Also, while there may not be an Iowa appellate case affirming sanctions following a petition for modification, we reviewed such a sanction in *In re Marriage of Kloberdanz*, No. 03-1600, 2004 WL 1836235, at *2–4 (Iowa Ct. App. July 28, 2004), without suggesting the rule does not apply to the family-law docket. And there are other cases affirming Rule 1.413 sanctions in the broader family-law realm. *See, e.g.*, *In re Marriage of Whitford*, No. 17-2081, 2018 WL 6338625, at *2 (Iowa Ct. App. Dec. 5, 2018); *In re Marriage of Stark*, No. 04-0362, 2004 WL 2676431, at *4–5 (Iowa Ct. App. Nov. 24, 2004). We conclude Rule 1.413 applies to family-law cases just like any other civil litigation.

Second, Matthew asserts the motion for sanctions was untimely. We assume without deciding this issue was adequately preserved, as Molly does not contest error-preservation—though we note the district court's ruling does not seem to address timeliness. On the merits, Matthew does not cite any case law holding that a motion for sanctions filed seven months after a petition is untimely. We found a one-month delay was expeditious and without undue delay, but a sixteen-month delay was untimely in *Dutton, Daniels, Hines, Kalkhoff, Cook & Swanson, P.L.C. v. Iowa Dist. Ct.*, No. 21-1390, 2022 WL 2347197, at *5 (Iowa Ct App. June 29, 2022), where we noted the "text of rule 1.413 contains no deadline for filing sanctions motions." And we recognized there that we do "not expect an immediate motion for sanctions" and "usually wouldn't expect such a motion 'until

after the completion of discovery.'" *Id.* Here, Molly's counsel emailed Matthew's counsel "within days of . . . filing" the petition, contending it was "not filed in good faith" and suggesting Matthew voluntarily dismiss it, which he declined to do. And in May, counsel deposed Matthew (with transcript provided in mid-June), obtaining sworn testimony from Matthew that he knew he had not alleged a substantial and material change in circumstance. Following his sworn admission, Matthew did not dismiss the petition. The motion for sanctions was filed a little more than two months after Molly's counsel obtained the sworn evidence, and we find Matthew cannot claim unfair surprise or that it was Molly or her counsel dragging their feet in litigation. To the extent the timeliness issue is properly before us, we discern no abuse of discretion by the district court.

To the extent Matthew contests the facts supporting the sanction, we again discern no abuse of discretion by the district court. The court found there was no legitimate basis for the petition with its finding that Matthew's purpose "was to fix or change the things he regretted from the original stipulation" rather than assert materially changed circumstances. This fact finding is supported by substantial evidence—namely Matthew's own sworn deposition testimony, bolstered by text messages he sent Molly, reinforced by his sworn testimony at the sanctions hearing. And the district court reasonably applied the law, which required the petition to assert—and Matthew to ultimately prove—something very different from his sworn testimony: "that conditions since the decree was entered have so materially and substantially changed that the children's best interests make it expedient to make the requested change." *In re Marriage of Frederici,* 338 N.W.2d 156, 158 (Iowa 1983).

Last on this factual front, we note a loose end in the record: Matthew's contention one of the boys made a threatening statement, possibly after the divorce was finalized but before he filed the petition. The district court found Matthew's testimony on this point was not credible and noted the record was unclear on whether the statement was made before or after the divorce was finalized. We do not rest our decision on the credibility finding or murky facts surrounding the boy's statements, as we find this factual dispute is a red herring given Matthew's repeated admission that he filed the petition because he regretted the stipulated divorce decree and wanted a "do-over." Those facts drive the analysis and the district court's finding that Rule 1.413 was violated; not anything related to the children's statements.

Mindful that we are not asked to decide whether we would have imposed a sanction but instead only whether the district court abused its discretion in doing so, we affirm. The court's factual findings are supported by the record, and we recognize the court's privileged position to evaluate live testimony from the parties in rendering its decision.

B. The Monetary Sanction

The primary purposes of Rule 1.413 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." *Barnhill*, 765 N.W.2d at 273. "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 and resulting sanctions have both general- and specific-deterrence purposes. *See id.* Sanctions also have the secondary purpose of allowing partial

compensation to parties victimized by attorney misconduct. *Rowedder v. Anderson*, 814 N.W.2d 585, 591–93 (Iowa 2012).

Matthew asserts he should not have to pay Molly's attorney fees because Molly testified she thought she paid less than the total put forward in the fee affidavits and "the court did not apply proper weight to the incomes of the parties—Matt does not have a disparately greater income than Molly." Molly's appellate brief explains she did not recall the precise amount of attorney fees paid when she was asked on cross-examination, and she notes Matthew did not contest her fee affidavit as unreasonable or otherwise improper.

We do not find Molly's on-the-witness-stand recollection of her attorney-fee bills particularly insightful: she testified she didn't "have exact numbers" and thought she paid "a few thousand" dollars. In any event, the basis for the attorney-fee sanction was the fee affidavit filed by Molly's counsel—not Molly's trial testimony. And Matthew did not contest the fee affidavit in any way. As for Matthew's assertions about the lack of income disparity between him and Molly, his argument might have some sway if we were talking about allocating attorney fees under Iowa Code section 598.36 (2023). But we aren't. The award of fees here was pursuant to Rule 1.413, and Matthew cites no authority suggesting income disparity is a relevant consideration. We affirm the attorney-fee award, as we discern no abuse of discretion, the fee affidavits appear reasonable on our review, and the awarded fees are linked to the sanctionable pleadings.

Our affirmance on the monetary sanction is independent of and notwithstanding our subsequent findings on the dismissal issue. We express no

opinion on whether the filings in this appeal or any future filings in this matter may warrant additional monetary sanctions.

C. Dismissal

Matthew also argues that dismissal was not an appropriate sanction. Molly contends the list of sanctions in Rule 1.413 is not intended to be exhaustive. *See* Iowa R. Civ. P. 1.413(1) (permitting "an appropriate sanction, which *may* include . . ." (emphasis added)). Unfortunately, neither party's brief cites our previous case law addressing the issue—nor did they bring this authority to the attention of the district court.

More than a decade ago in an unpublished case, we held that dismissal is not appropriate when Rule 1.413 is the sole basis for a sanction. *Buhr*, 2011 WL 1584348, at *6. Our decision rested on three grounds. First, the supreme court interpreted the predecessor provision to Rule 1.413 as not authorizing dismissal. *Id.* (citing *K. Carr v. Hovick*, 451 N.W.2d 815, 817 (Iowa 1990)). Second, other rules of civil procedure expressly authorize dismissal as a sanction, so its omission from Rule 1.413 is persuasive. *Id.* at *6 n.4 (citing various rules). And third, while recognizing that federal courts authorize dismissal under their analogous procedural rule, our supreme court's decision in *K. Carr* reflected a deliberate departure from federal law that binds us as an intermediate appellate court. *Id.*; *K. Carr*, 451 N.W.2d at 817.

In a more recent case, our supreme court reiterated this last point—that "Iowa's rule now diverges substantially from the federal rule." *Dupaco*, 13 N.W.3d at 591 n.3. We find all the rationales we cited in *Buhr* remain applicable today, and dismissal is not an available sanction for violating Rule 1.413. And, as one

additional observation, we are mindful that depriving Matthew of his day in court "carries due process considerations," and this also weighs against imposing the ultimate civil sanction of dismissal. *See* Mark S. Cady, *Curbing Litigation Abuse and Misuse: A Judicial Approach*, 36 Drake L. Rev. 483, 517–21 (1987).

Because the district court solely relied on Rule 1.413 as the basis for dismissing the petition, we reverse on that issue and remand for further proceedings consistent with this opinion. We express no opinion on whether the matter must proceed to trial or instead be resolved through other procedural mechanisms or pretrial motions.

IV. Disposition[2]

We affirm the district court's ruling that Matthew's petition to modify violated Rule 1.413. We affirm the monetary sanction. And we reverse the portion of the ruling dismissing the petition as a sanction and remand for proceedings consistent with this opinion.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED FOR FURTHER PROCEEDINGS.

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[2] The district court ruling does not make clear if it was imposing the sanction against "the person who signed [the papers], a represented party, or both." *See* Iowa R. Civ. P. 1.413(1). We express no opinion on whether counsel has violated a rule of professional conduct.

State of Iowa Courts

Case Number	**Case Title**
23-2069	In re Marriage of Kraus

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