THE DECEPTIVELY SIMPLE RULE 11 SIGNATURE REQUIREMENT

*Douglas R. Richmond**

ABSTRACT

Federal district courts may sanction lawyers for misconduct in litigation under several of the Federal Rules of Civil Procedure. But, of all the rules lawyers may be sanctioned for violating, none approaches the prominence of Rule 11, which is often the focus in sanctions controversies. At the heart of Rule 11 lies the requirement that an attorney of record sign any pleading, motion, or other paper filed with the court. Indeed, signing a pleading, motion, or other court paper in federal litigation is a significant act. Yet, lawyers often sign court documents—whether by hand or electronically—without considering the significance of that act or its ramifications. They too often treat the act of signing a pleading, motion, or other paper as a rote task when, in fact, they should pause at least briefly and reassure themselves of the validity of the factual and legal contentions in the document. The Rule 11 signature requirement also has several nuanced aspects that lawyers may not recognize. This Article trains a lens on the Rule 11 signature requirement with a general focus on lawyers' conduct.

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* Senior Vice President, Lockton Companies, Olathe, KS., J.D., University of Kansas. Opinions expressed here are solely those of the Author.

I. INTRODUCTION

Federal district courts may sanction lawyers for misconduct in litigation under several of the Federal Rules of Civil Procedure.[1] Under Rule 16, for example, a court may sanction a lawyer for pretrial conference missteps or for failing to obey a pretrial order.[2] Under Rule 26(g), a court may sanction a lawyer who improperly certifies a discovery response, request, or objection.[3] A court may sanction a lawyer who "impedes, delays, or frustrates the fair examination of [a] deponent" under Rule 30(d)(2).[4] Rule 37 authorizes courts to sanction lawyers for certain discovery abuses.[5] Under Rule 45(d)(1), a lawyer who is responsible for issuing and serving a subpoena, and who imposes undue burden and expense on the person being subpoenaed, is subject to sanctions.[6] But, of all the rules lawyers may be sanctioned for violating, none approach the prominence of Rule 11, which

1. Federal courts' ability to sanction lawyers for litigation misconduct extends beyond the authority granted by the Federal Rules of Civil Procedure. *See* Parsi v. Daioleslam, 778 F.3d 116, 130 (D.C. Cir. 2015) (observing that "[i]n addition to sanctions contemplated by the Federal Rules of Civil Procedure, courts have an inherent power at common law" to impose sanctions). As the *Parsi* court noted, courts may sanction lawyers pursuant to their inherent authority or power to regulate the conduct of those who appear before them. *Id.*; *see also* Skender v. Eden Isle Corp., 33 F.4th 515, 522 (8th Cir. 2022) (quoting Wescott Agri-Prods., Inc. v. Sterling State Bank, Inc., 682 F.3d 1091, 1095 (8th Cir. 2012) (stating that courts possess the inherent power to manage their affairs, including the ability to supervise and discipline lawyers who appear before them); Carr v. Tillery, 591 F.3d 909, 919 (7th Cir. 2010) ("A court has inherent power, which is to say a common law power, to punish . . . misconduct by lawyers appearing before it."); Sahyers v. Prugh, Holliday & Karatinos, P.L., 560 F.3d 1241, 1244 (11th Cir. 2009) ("A federal court may wield its inherent powers over the lawyers who practice before it. This control derives from a lawyer's role as an officer of the court."). In addition, district courts may discipline lawyers under their local rules. *In re* Finn, 78 F.4th 153, 156 (5th Cir. 2023). Finally, federal courts are statutorily empowered to sanction lawyers "who so multipl[y] the proceedings in any case unreasonably and vexatiously" by awarding an aggrieved opponent "the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct." 28 U.S.C. § 1927.

2. FED. R. CIV. P. 16(f).

3. FED. R. CIV. P. 26(g)(3).

4. FED. R. CIV. P. 30(d)(2).

5. Lawyers may be sanctioned under Rule 37(b)(2)(A) for unjustifiably advising a party not to comply with a discovery order, under Rule 37(d)(1)(A) for unjustifiably advising a party to not attend his or her own deposition or to not respond to written discovery, or under Rule 37(f) for failing to participate in good faith in developing and submitting a Rule 26 discovery plan. *See* FED. R. CIV. P. 37.

6. FED. R. CIV. P. 45(d)(1).

is often the focus in sanctions controversies.[7] Rule 11's essential elements are set forth in subparts (a) and (b):

> (a) Signature. Every pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney's name—or by a party personally if the party is unrepresented. . . . The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention.
>
> (b) Representations to the Court. By presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:
>
> (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
>
> (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;
>
> (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and
>
> (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.[8]

7. *See* GREGORY P. JOSEPH, SANCTIONS: THE FEDERAL LAW OF LITIGATION ABUSE § 1 (6th ed. 2019) ("Rule 11 of the Federal Rules of Civil Procedure is the most prominent provision authorizing sanctions for litigation abuse. It generally occupies center stage when sanctions are discussed."). Under Rule 1 of the Federal Rules of Civil Procedure, Rule 11 applies "in all civil actions and proceedings in the United States district courts, except as stated in Rule 81." FED. R. CIV. P. 1. The limitation in Rule 1, that the Federal Rules of Civil Procedure apply to civil matters in district courts, clarifies that Rule 11 does not apply to appellate proceedings. Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 406 (1990); *see* Byrd v. Cook, No. 21-3623, 2021 WL 6298658, at *2 (6th Cir. Nov. 8, 2021) (quoting Chandler v. Vulcan Materials Co., 81 F. App'x 538, 540–41 (6th Cir. 2003)) (explaining that Rule 11 does not apply to federal appellate court filings). Lawyers who commit misconduct in appellate proceedings may be sanctioned on other bases. *See* FED. R. APP. P. 38 (governing sanctions for frivolous appeals). *See generally* Douglas R. Richmond, *Appellate Sanctions Against Lawyers*, 73 BAYLOR L. REV. 562 (2021).

8. FED. R. CIV. P. 11.

As the structure of Rule 11 establishes, compliance with the rule generally begins with the signature of the pleading, motion, or other paper by at least one attorney of record.[9] By signing a paper within the ambit of Rule 11, a lawyer presents the paper to the court and thereby certifies that the paper satisfies the requirements of Rule 11(b).[10] The lawyer presenting the paper owes a nondelegable duty to the court to comply with Rule 11(b).[11] A court understandably expects the signing lawyer to personally validate the propriety of the papers being filed.[12] As the Supreme Court has explained, a signing attorney cannot delegate to a colleague the responsibility for ensuring that a filing is factually and legally warranted; by signing, the lawyer "represents not merely the fact that it is so, but also the fact that he personally has applied his own judgment."[13]

A lawyer who violates Rule 11(b) may be sanctioned under Rule 11(c)(2) based on a party's motion or, alternatively, may be sanctioned by the court on its own initiative under Rule 11(c)(3).[14] Courts considering sanctions based on a party's motion under Rule 11(c)(2) evaluate the lawyer's compliance with Rule 11(b) against an objective standard of reasonableness.[15] In comparison, when imposing sanctions under Rule 11(c)(3) courts are split. Some courts hold that the objective reasonableness standard governs when courts impose sanctions on their

9. *See* FED. R. CIV. P. 11(a). The requirement that lawyers sign pleadings can be traced back to English equity practice at the time of Sir Thomas More. D. Michael Risinger, *Honesty in Pleading and its Enforcement: Some "Striking" Problems with Federal Rule of Civil Procedure 11*, 61 MINN. L. REV. 1, 10 (1976). The original purposes behind the signature requirement, however, seem to have been assurance that (1) litigants would be forced to engage attorneys to pursue their claims; and (2) that pleadings were submitted in proper form. *Id.* Lawyers' signatures did not then have the effect of the current Rule 11(b) certification. *See id.* at 10–11 (stating that "the requirement of counsel's signature was originally a boon rather than a burden to counsel, for it ensured that they were consulted before a Bill was filed," and that attorneys' "task was the quasi-judicial function of examining the Bill as to form," and their signatures certified nothing more). The concept that a lawyer's signature on a pleading amounted to certification that there were "good grounds" for the claim or lawsuit apparently emerged in the 1800s. *See id.* at 9–13 (attributing this construction of the signature requirement to Justice Joseph Story).

10. *See* FED. R. CIV. P. 11(b). A lawyer may also present a pleading, motion, or other paper to a court by "filing, submitting, or later advocating" the document. *Id.*

11. FED. R. CIV. P. 11 advisory committee's note to 1993 Amendment.

12. *See, e.g.*, Pavelic & LeFlore v. Marvel Ent. Grp., 493 U.S. 120, 126 (1989).

13. *Id.* at 125.

14. FED. R. CIV. P. 11(c)(2)–(3).

15. *In re* Ames, 993 F.3d 27, 34 (1st Cir. 2021); McGreal v. Vill. of Orland Park, 928 F.3d 556, 560 (7th Cir. 2019); Hourani v. Mirtchev, 796 F.3d 1, 17 (D.C. Cir. 2015); Montell v. Diversified Clinical Servs., Inc., 757 F.3d 497, 510 (6th Cir. 2014).

own initiative.[16] Other courts favor a stricter standard, such as the subjective bad faith test used to justify sanctions for contempt.[17] Courts that apply a stricter standard reason that lawyers who are served with a motion for sanctions by another party enjoy a 21-day safe harbor under Rule 11(c)(2) within which they can amend or withdraw the offending pleading or other paper, a safe harbor period which they lack when facing a court's imposition of sanctions sua sponte.[18]

16. *See, e.g.*, Jenkins v. Methodist Hosps. of Dall., Inc., 478 F.3d 255, 264 (5th Cir. 2007) (requiring the use of an objective standard when a court sanctions a lawyer under Rule 11 on its own initiative); Young v. City of Providence, 404 F.3d 33, 39–40 (1st Cir. 2005) (explaining why the objective reasonableness standard rather than the "akin to contempt" standard should apply when a court imposes Rule 11 sanctions on its own initiative).

17. *See, e.g.*, Muhammad v. Walmart Stores E., L.P., 732 F.3d 104, 108 (2d Cir. 2013) (explaining that under Second Circuit precedent, a court's sua sponte sanctions under Rule 11, like contempt sanctions, "should issue only upon a finding of subjective bad faith"); McDonald v. Emory Healthcare Eye Ctr., 391 F. App'x 851, 853 (11th Cir. 2010) (stating that, because Rule 11(c)(3) provides no safe harbor period, an initiating court must employ an "akin to contempt" standard when weighing sanctions); *In re* Bees, 562 F.3d 284, 287 (4th Cir. 2009) (same); Clark v. UPS, Inc., 460 F.3d 1004, 1010 (8th Cir. 2006) ("We have said after the amendment of Rule 11 that the rule should be applied with 'particular strictness' when sanctions are imposed on the court's own initiative, but we have found it unnecessary to decide whether the standard for sanctions initiated under Rule 11(c)(1)(B) is different from, and more stringent than, the standard for sanctions initiated by motion of a party under Rule 11(c)(1)(A).") (citation omitted).

18. Kyros Law P.C. v. World Wrestling Ent., Inc., 78 F.4th 532, 543 (2d Cir. 2023), *cert. denied*, 144 S. Ct. 822 (2024) ("When a court initiates Rule 11 sanctions sua sponte and the opportunity to correct or withdraw the challenged submission is unavailable, the court must make a finding of bad faith on the part of the attorney before imposing the sanctions."); *McDonald*, 391 F. App'x at 853 (citing Kaplan v. DaimlerChrysler, A.G., 331 F.3d 1251, 1255–56 (11th Cir. 2003)). As the Second Circuit explained in *In re Pennie & Edmonds LLP*, 323 F.3d 86, 91 (2d Cir. 2003):

> [W]hen a lawyer's submission, unchallenged by an adversary, is subject to sanction by a court, the absence of a "safe harbor" opportunity to reconsider risks shifting the balance to the detriment of the adversary process. The risk is that lawyers will sometimes withhold submissions that they honestly believe have plausible evidentiary support for fear that a trial judge, perhaps at the conclusion of a contentious trial, will erroneously consider their claimed belief to be objectively unreasonable. This risk is appropriately minimized . . . by applying a "bad faith" standard to submissions sanctioned without a "safe harbor" opportunity to reconsider.

Id. The court in *Rankin v. City of Niagara Falls* similarly justified a higher standard for sanctions imposed by a court on its own initiative:

> The higher mens rea standard of subjective bad faith applicable to Fed.R.Civ.P. 11(c)(3) sanctions . . . has been adopted to reduce the risk that a district court will

Regardless of the standard applied, courts considering sanctions must test the lawyer's conduct at the time they presented the challenged pleadings, motions, or other papers, rather than evaluating their conduct in the potentially distorting light of hindsight.[19] That is not to say compliance with Rule 11 is static; to the contrary, lawyers must be prepared to modify their positions as necessary to satisfy Rule 11's requirements.[20] It is to say, however, that when evaluating a lawyer's compliance with Rule 11 at any given time, the court must consider what the lawyer knew, or reasonably should have known *then*, rather than concluding that the lawyer's conduct was unreasonable based on information acquired after the fact or subsequent developments in the litigation.[21]

> sanction an attorney and inadvertently dampen attorneys' legitimate, zealous advocacy on behalf of clients. When a district court considers sanctioning an attorney . . . under Fed.R.Civ.P. 11(c)(3), it is usually past the time when an attorney can . . . correct or withdraw a questioned pleading or other paper . . . . To avoid the possible distortions of hindsight, a district court considering sanctions on its own initiative must evaluate the attorney's conduct and mental state with special care and restraint.

293 F.R.D. 375, 387 (W.D.N.Y. 2013), *aff'd*, 569 F. App'x 25 (2d Cir. 2014) (citations omitted).

19. *See* Scott v. Vantage Corp., 64 F.4th 462, 473 (3d Cir. 2023) (citing Mary Ann Pensiero, Inc. v. Lingle, 847 F.2d 90, 94 (3d Cir. 1988)); *see also In re* Keegan Mgmt. Co., 78 F.3d 431, 434–35 (9th Cir. 1996) (holding lawyers may not be sanctioned for filing a complaint that is warranted without first conducting a reasonable inquiry in a case where scientific evidence, unknown to the plaintiffs' lawyers when they filed suit, justified the lawsuit and clearly rendered it nonfrivolous); Gibson v. Solideal USA, Inc., 489 F. App'x 24, 29–30 (6th Cir. 2012) (citing Merritt v. Int'l Ass'n of Machinists & Aerospace Workers, 613 F.3d 609, 626 (6th Cir. 2010)) (measuring Rule 11 motions must be against an objective standard of reasonableness); Corley v. Rosewood Care Ctr., Inc., 388 F.3d 990, 1014 (7th Cir. 2004) ("We follow the district court's lead in declining to [J]udge Corley's actions in filing the lawsuit with the 20/20 vision of hindsight.").

20. FED. R. CIV. P. 11 advisory committee's note to 1993 amendment ("[A] litigant's obligations with respect to the contents of these papers are not measured solely as of the time they are filed with or submitted to the court, but include reaffirming to the court and advocating positions contained in those pleadings and motions after learning that they cease to have any merit."); JOSEPH, *supra* note 7, § 6(B) (explaining that Rule 11 contemplates a series of presentations of a pleading, motion, or other paper, such that a lawyer's compliance with Rule 11 will be retested at the time of each presentation); *see Gibson*, 489 F. App'x at 30 (citing Herron v. Jupiter Transp. Co., 858 F.2d 332, 335 (6th Cir. 1988)).

21. *See, e.g.*, *Corley*, 388 F.3d at 1014. As the *Corley* court explained:

> The focus in Rule 11 sanctions is on what counsel knew at the time the complaint was filed, not what subsequently was revealed in discovery. We follow the district court's lead in declining to [J]udge Corley's actions in filing the lawsuit with the 20/20 vision

Furthermore, sanctions for violating Rule 11 are not mandatory; when a district court finds a violation, the decision whether to sanction the lawyer is discretionary.[22] If a court decides sanctions are justified, it should fashion an "appropriate" sanction "limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated."[23] Depending on the circumstances, sanctions imposed under Rule 11(c) may include: a fine to be paid to the court; payment of a movant's reasonable attorney's fees attributable to the violation; or "nonmonetary directives," such as, striking a party's claims or defenses or dismissing a case.[24]

Essentially what this means is that signing a pleading, motion, or other court paper in federal litigation is a significant act.[25] Yet, lawyers often sign court documents—whether by hand or electronically—without considering the significance or ramifications of that act. Lawyers too often treat the act of signing a pleading, motion, or other paper as a rote task when, in fact, they should pause at least briefly and reassure themselves of the validity of the factual and legal contentions in the document.[26] The Rule 11 signature requirement also has several nuanced aspects that lawyers may not recognize.

This Article trains a lens on the Rule 11 signature requirement with a general focus on lawyers' conduct, starting in Part II with an analysis of Rule 11(a) signature mechanics.[27] Specifically, Part II covers four basic issues: (1) who must sign a pleading, motion, or other paper to satisfy Rule 11(a); (2) what constitutes

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> of hindsight. The fact that the underlying claim turned out to be groundless does not necessarily mean that Rule 11 sanctions [were] appropriate (much less required).

Id. (citation omitted).

22. Appel v. Cohen, Nos. 22-170 (L), 22-176 (XAP), 2023 WL 1431691, at *2 (2d Cir. Feb. 1, 2023); Hinterberger v. City of Indianapolis, 966 F.3d 523, 529 (7th Cir. 2020); Hueter v. Kruse, 610 F. Supp. 3d 60, 72 (D.D.C. 2022); *see* FED. R. CIV. P. 11(c)(1) ("If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court *may* impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation.") (emphasis added).

23. FED. R. CIV. P. 11(c)(1), (4).

24. FED. R. CIV. P. 11(c)(4); *see, e.g.*, Tyagi v. Smith, 790 F. App'x 42, 45 (7th Cir. 2019) (affirming the dismissal of the plaintiff's case as a sanction for violating Rule 11).

25. *See* Christian v. Mattel, Inc., 286 F.3d 1118, 1127 (9th Cir. 2002) (asserting that "[f]iling a complaint in federal court is no trifling undertaking" and explaining that a lawyer's "signature on a complaint is tantamount to a warranty" that the complaint complies with Rule 11(b) in all respects).

26. *See* FED. R. CIV. P. 11 advisory committee's note to 1993 amendment (noting Rule 11 requires "litigants to 'stop-and-think' before initially making legal or factual contentions").

27. *See infra* Part II.

a signature for purposes of the rule; (3) the effect of one lawyer signing a pleading or other paper for another lawyer; and (4) the requirement that every pleading, motion, or other paper be signed by at least one attorney of record versus the rule of unanimity in removal.[28] Part III examines the Rule 11 signature requirement in the context of local counsel and limited scope representations.[29] In short, Rule 11 contains no exception for lawyers who serve as local counsel, or who limit the scope of their clients' representations.[30] Finally, Part IV discusses "ghostwriting."[31] Ghostwriting, for Rule 11 purposes, describes a lawyer anonymously preparing pleadings, motions, or other court papers for an ostensibly pro se litigant knowing that the pro se litigant will present the lawyer's work to the court as their own.[32]

II. RULE 11(A) SIGNATURE MECHANICS

A. *Who Must Sign a Pleading, Motion, or Other Paper?*

When a litigant is represented, "[e]very pleading, written motion, and other paper [submitted to a district court] must be signed by at least one attorney of record in the attorney's name."[33] A district court "must strike an unsigned paper unless the omission is promptly corrected" after it is brought to the lawyer's attention."[34]

As Rule 11(a) clearly indicates, lawyers must sign pleadings or other papers in their own names; they cannot sign in their law firm's name or in the name of the party they represent.[35] Rule 11(a) is satisfied so long as the lawyer signs the original pleading, motion, or other paper filed with the court.[36] It does not matter for purposes of the rule whether the lawyers sign the copies of the paper served on

28. *See infra* Parts II.A–D.

29. *See infra* Part III.

30. *See infra* Part III.

31. *See infra* Part IV.

32. *See infra* notes 297–98 and accompanying text.

33. FED. R. CIV. P. 11(a).

34. *Id.*

35. *See id.* (requiring attorneys to sign pleadings, motions, and other papers in their own names).

36. Langreich v. Gruenbaum, No. 06 Civ. 4931(BSJ)(MHD), 2009 WL 321253, at *3 (S.D.N.Y. Jan. 30, 2009); Heron v. Millington, No. 88 Civ. 8949(PNL), 1992 WL 75075, at *1 n.1 (S.D.N.Y. Apr. 1, 1992) (citing Porto Transp., Inc v. Consol. Diesel Elec. Corp., 20 F.R.D. 1, 2 (S.D.N.Y. 1956)).

other parties.[37] For that matter, a pleading, motion, or other paper must be filed with a court for Rule 11 to even apply.[38]

Except for pro se litigants who sign for themselves, a nonlawyer may not sign a paper on a party's behalf.[39] The ban on nonlawyers signing pleadings, motions, and other papers in a representative capacity stands even when the signor was once licensed as an attorney.[40] Although certainly an aspect of the Rule 11(a) signature requirement, the prohibition on nonlawyers signing papers as litigants' representatives derives from 28 U.S.C. § 1654, which states that in federal courts, "parties may plead and conduct their own cases personally or by counsel" as court rules permit.[41]

37. *Langreich*, 2009 WL 321253, at *3.

38. United States v. Int'l Bhd. of Teamsters, 948 F.2d 1338, 1344 (2d Cir. 1991).

39. *See, e.g.*, Williams v. United States, 477 F. App'x 9, 11 (3d Cir. 2012) ("Parties may proceed in federal court only pro se or through counsel. [Appellant]'s power of attorney for her father . . . does not permit her to represent him pro se in federal court.") (citation omitted); Arnold v. Bay Fin. Co., No. 1:21-cv-1182 JLT SKO, 2023 WL 2088460, at *4 (E.D. Cal. Feb. 17, 2023) ("[P]ro se litigants do not have authority to represent anyone other than themselves. . . . Thus, even the signature of a spouse does not satisfy Rule 11.") (citations omitted).

40. *See, e.g.*, Hill v. First Fin. Bank Shares, No. 1:17-CV-0025-BL, 2017 WL 838267, at *2 (N.D. Tex. Mar. 2, 2017) ("As an unlicensed, former attorney, Mr. Myart may not represent anyone other than himself in this action. Section 1654 does not permit a non-attorney to represent a litigant in federal court and even a valid power of attorney does not permit it.").

41. 28 U.S.C. § 1654; *see, e.g.*, McPhail v. United States, No. 5:22-CV-253-H-BQ, 2022 WL 20510185, at *4 (N.D. Tex. Dec. 29, 2022). The *McPhail* court explained:

> "Section 1654 does not permit a non-attorney to represent a litigant in federal court . . . ." This is because to proceed "*pro se* means to appear for one's self. . . ." Thus, even if a layperson who initiated suit on behalf of another could show that he or she has . . . constitutional standing, the complaint would nevertheless suffer from a defect under § 1654 as to any claim asserted on behalf of the other.

Id. (citations omitted); *see, e.g.*, Downing v. Wolfson, No. 2:16-cv-02131-APG-PAL, 2017 WL 3382562, at *2 (D. Nev. Mar. 27, 2017) ("Although an individual is entitled to represent himself or herself, no rule or statute permits a non-attorney to represent any other person . . . or any other entity. Thus, pro se parties may not pursue claims on behalf of others in a representative capacity.") (citations omitted); Tinsley v. Union Planters Corp., No. 02-2602-Ma/A, 2002 U.S. Dist. LEXIS 26254, at *5–6 (W.D. Tenn. Aug. 8, 2002) (citing Rule 11(a) and 28 U.S.C. § 1654 in explaining the nonlawyer plaintiff had no right to represent his father in the lawsuit even though his father granted him a power of attorney).

Because corporations and other organizations may appear in court only through counsel,[42] a director's or officer's signature on a filing does not satisfy Rule 11(a), as *Operating Engineers Local 139 Health Benefit Fund v. Rawson Plumbing, Inc.* illustrates.[43] The plaintiffs in *Operating Engineers* sued Rawson Plumbing, Inc. (Rawson) in a Wisconsin federal court to recover payments allegedly owed to them under collective bargaining agreements and pension plans.[44] Rawson timely filed an answer; however, the answer was signed not by a lawyer but instead by Mark P. Derouin, who was either a Rawson officer or director.[45] Relying on the enduring principle "that a corporation may appear in the federal courts only through licensed counsel," the plaintiffs urged the court to treat Rawson's answer as a nullity rather than as a defectively signed pleading and enter a default judgment in their favor.[46] Fortunately for Rawson, the court declined the plaintiffs' invitation.[47]

The *Operating Engineers* court reasoned that the better course of action was to treat Rawson's answer signed by Derouin, a nonlawyer, as if it were an unsigned pleading within the meaning of Rule 11(a).[48] Approaching the case from that perspective, the court explained that, under Rule 11(a), an opposing party may alert a corporate litigant to the need to appear through counsel, and if the corporation does not promptly correct the deficient pleading, the opposing party should then move to strike it.[49] In ruling on such a motion, a court should strike a defectively

42. *See* Eagle Assocs. v. Bank of Montreal, 926 F.2d 1305, 1310 (2d Cir. 1991) (prohibiting a partnership from appearing through a nonlawyer partner); Watchous Enters., L.L.C. v. Pac. Nat'l Cap., No. 16-1432-JTM-ADM, 2019 WL 13339054, at *1 (D. Kan. July 15, 2019) (requiring limited liability companies to be represented by counsel); Retired Persons Fin. Servs. Clients Restitution Tr. v. United States Att'y for the N. Dist. of Tex., No. 3:03-CV-2658-D, 2004 WL 937170, at *1 (N.D. Tex. Apr. 29, 2004) ("The rationale for the rule banning pro se corporate representation extends to trusts.").

43. 130 F. Supp. 2d 1022, 1023 (E.D. Wis. 2001); *accord* White v. Smith, Dean & Assocs., Inc., No. 2:09-cv-00574, 2010 WL 795967, at *1 (S.D. Ohio Mar. 2, 2010) ("A pleading by a corporation that is not signed by an attorney is treated as unsigned for Rule 11(a) purposes.").

44. *Operating Eng'rs*, 130 F. Supp. 2d at 1023.

45. *Id.*

46. *Id.* ("Although other parties may appear pro se under 28 U.S.C. § 1654, corporations may not; a corporation is a legal entity with an independent legal existence unto its own, separate from the interest of its president and founder.") (citing Strong Delivery Ministry Ass'n v. Bd. of Appeals of Cook Cnty., 543 F.2d 32, 34 (7th Cir. 1976)).

47. *Id.* at 1023–24.

48. *Id.* at 1024.

49. *Id.*

signed pleading only if it has "severely prejudiced or misled" the movant.[50] Such restraint is justified because corporations are required to appear through counsel principally to protect their shareholders, rather than other parties or the courts.[51] Even so, where a corporation attempts to file a pleading or other paper that is not signed by counsel, the court should warn the corporation that its continued failure to appear through counsel will derail its case.[52] Indeed, a court may enter a default judgment against a corporation that disobeys an order to appear through counsel.[53]

In the end, the court ordered Rawson to file an amended answer signed by counsel within 20 days.[54] The court warned Rawson that, given its noncompliance with a prior order concerning its absence at a pretrial conference, its failure to file an amended answer signed by a lawyer would result in the entry of a default judgment against it.[55]

In *Operating Engineers*, the court afforded Rawson the opportunity to cure its signature failure by filing an amended answer signed by a lawyer.[56] Courts commonly allow parties and lawyers to cure initial noncompliance with Rule 11(a) by filing properly signed papers.[57] If a party does not comply with a court's instruction to file a properly signed pleading or other paper, however, the court will then be forced to strike the unsigned document.[58] Again, Rule 11(a) provides

50. *Id.* (citing United States v. Kasuboski, 834 F.2d 1345, 1348–49 (7th Cir. 1987)).

51. *Id.*

52. *See id.* ("[T]he court should also warn the corporation that failure to appear by counsel will lead to dismissal or default and default judgment.").

53. *Id.* (citing United States v. High Country Broad. Co., 3 F.3d 1244, 1245 (9th Cir. 1993)); SEC v. Rsch. Automation Corp., 521 F.2d 585, 590 (2d Cir. 1975)); *see also* Eagle Assocs. v. Bank of Montreal, 926 F.2d 1305, 1310 (2d Cir. 1991) ("Having determined that the district court properly ordered Eagle to appear through counsel, it was appropriate to enter a default judgment when Eagle willfully disregarded the district court's order."); Trs. of Teamsters Union Loc. No. 142 Pension Tr. Fund v. AD Conner, Inc., No. 2-10-CV368, 2012 WL 6935244, at *4 (N.D. Ind. Oct. 25, 2012) ("A corporation's failure to have counsel may be grounds for dismissal.").

54. *Operating Eng'rs*, 130 F. Supp. 2d at 1024–25.

55. *Id.* at 1025.

56. *Id.* at 1024–25.

57. *See, e.g.*, White v. Smith, Dean & Assocs., Inc., No. 2-09-CV-00574, 2010 WL 795967, at *2 (S.D. Ohio Mar. 2, 2010) (giving the defendant, who had filed an answer signed by a nonlawyer, 21 days to file an answer or amended answer signed by a lawyer).

58. *See* Marcure v. Lynn, 992 F.3d 625, 628 (7th Cir. 2021) ("By its plain terms, Rule 11(a) is mandatory when triggered—'must' does not mean 'may.' The text indicates that courts have discretion only when the party corrects its omission promptly, not as a blanket rule."); *see, e.g.*, Sky Harbor Air Serv., Inc. v. Reams, 491 F. App'x 875, 892 (10th Cir. 2012) (granting the

that a court "*must* strike an unsigned paper unless the omission is promptly corrected" after the error is called to the lawyer's or the party's attention.[59] The rule's use of "must" reflects a mandate—the court enjoys no discretion in this situation.[60]

Additionally, the *Operating Engineers* court observed that a court should strike an unsigned pleading only if the omission has somehow severely prejudiced or misled the moving party.[61] Although, in fact, the analysis is more nuanced. If a party or lawyer promptly corrects an unsigned pleading or other paper after the omission is called to the party's or the lawyer's attention, the district court has the discretion to not strike the paper.[62] And, as the *Operating Engineers* court pointed out, there are sound reasons for a court to not strike the deficient paper in that situation.[63] But where a lawyer or party fails to correct an unsigned pleading or other paper after being alerted to the omission, the court *must* strike the defective document.[64] A court need not explore prejudice in that instance.[65]

Playing out the string, it is essential to determine when an unsigned pleading or other paper is "called to [an] attorney's or party's attention" under Rule 11(a).[66] The *Operating Engineers* court effectively treated the plaintiffs' motion highlighting the deficiency in Rawson's answer as the Rule 11(a) triggering event because the motion called the issue to the court's attention.[67] Other courts have taken the same approach.[68] Still other courts reason that an opponent's motion to

defendants' motion to strike the plaintiff's motion for a new trial that was signed by a nonlawyer where a lawyer for the plaintiff signed the new trial motion's separate certificate of service, submitted the motion, and was prepared to argue it, but failed to sign the motion itself as required by Rule 11(a) even after sufficient notice of the signature deficiency); Fowler v. Elegant Auto Fin., No. 8-19-CV-00903-T-30SPF, 2019 WL 2497591, at *1 (M.D. Fla. June 14, 2019) (striking a limited liability company's answer because it was not signed by a lawyer and the LLC did not cure this deficiency after it was called to its attention).

59. FED. R. CIV. P. 11(a) (emphasis added).

60. *Marcure*, 992 F.3d at 628.

61. *Operating Eng'rs*, 130 F. Supp. 2d at 1024.

62. *See Marcure*, 992 F.3d at 629–30.

63. *Operating Eng'rs*, 130 F. Supp. 2d at 1024.

64. FED. R. CIV. P. 11(a).

65. *See Marcure*, 992 F.3d at 629–30 (distinguishing Kovilic Constr. Co. v. Missbrenner, 106 F.3d 768 (7th Cir. 1997) from United States v. Kasuboski, 834 F.2d 1345 (7th Cir. 1987)).

66. FED. R. CIV. P. 11(a).

67. *Operating Eng'rs*, 130 F. Supp. 2d at 1024.

68. *See, e.g.*, White v. Smith, Dean & Assocs., Inc., No. 2:09-cv-00574, 2010 WL 795967, at *2 (S.D. Ohio Mar. 2, 2010) (quoting *Operating Eng'rs*, 130 F. Supp. 2d at 1024).

strike in and of itself calls any deficiency to a lawyer's or party's attention.[69] There should be no question, though, that Rule 11(a) is triggered when the unsigned pleading or paper is called to the attorney's or party's attention—not solely when the court is alerted to the omission.[70] Accordingly, any act or event that reasonably calls a missing or deficient signature to the responsible lawyer's or party's attention—be it a telephone call, email, letter from opposing counsel, or a motion to strike or for sanctions—triggers the recipient's duty to remedy the defect.[71] Whether the lawyer or litigant thereafter takes prompt corrective action within the meaning of Rule 11(a) is a case-specific determination entrusted to the district court's discretion.[72]

B. *What Constitutes a Signature?*

Rule 11(a) requires every pleading, written motion, or other paper be signed by an attorney of record in the case.[73] A lawyer who signs a pleading or other paper thereby presents the pleading or other paper to the court and accordingly satisfies its compliance with the requirements of Rule 11(b).[74] For years, courts interpreted Rule 11(a) to require a handwritten signature for compliance.[75] As recently as 2001, the Supreme Court, in *Becker v. Montgomery*, concluded the use of the word

69. *See, e.g.*, Hernandez v. Siemens Corp., 726 F. App'x 267, 269 (5th Cir. 2018) (per curiam) ("Because Hernandez's counsel[, who was not authorized to practice in the district court,] did not respond to Siemens's Rule 11 motion regarding the deficiency in his motion for continuance, or take any action to correct the deficiency despite ample opportunity to do so, we affirm the district court's decision to strike the motion for continuance on this basis."); Sky Harbor Air Serv., Inc. v. Reams, 491 F. App'x 875, 892 (5th Cir. 2012) (observing that the defendants' motion to strike the plaintiff's unsigned motion gave the plaintiff notice of the deficiency for Rule 11(a) purposes).

70. *See* FED. R. CIV. P. 11(a).

71. *See* Marcure v. Lynn, 992 F.3d 625, 630 (7th Cir. 2021) (finding notice by mail sufficient notice even absent evidence the plaintiff checked his mailbox); *Sky Harbor Air Serv., Inc.*, 491 F. App'x at 892 (finding a motion to strike an unsigned motion is sufficient notice).

72. *See Marcure*, 992 F.3d at 628 (stating that appellate courts' standard of review is abuse of discretion for Rule 11(a) decisions).

73. FED. R. CIV. P. 11(a).

74. FED. R. CIV. P. 11(b). Of course, a lawyer may present a pleading or other paper to a court by filing, submitting, or later advocating it in addition to signing it. *Id.* Thus, a signature is not necessarily required for a Rule 11 violation.

75. *See, e.g.*, Gielbelhaus v. Spindrift Yachts, 938 F.2d 962, 965–66 (9th Cir. 1991) (explaining "only signing attorneys are subject to Rule 11 sanctions" and "find[ing] that for the purposes of Rule 11, a 'signature' is more than simply a typewritten name"); White v. Am. Airlines, Inc., 915 F.2d 1414, 1426 (10th Cir. 1990) (refusing to sanction a lawyer whose name appeared on the challenged papers but who did not sign them).

"signed" in Rule 11(a) did not include typed names.[76] In *Becker*, the Court interpreted the use of "signed" in Rule 11(a) "to indicate, as a signature requirement commonly does, and as it did in John Hancock's day, a name handwritten (or a mark hand placed)."[77]

The *Becker* Court acknowledged, however, that a typewritten signature could satisfy Rule 11(a) in a district that had adopted local rules on electronic filing consistent with the 1996 version of Rule 5(e) of the Federal Rules of Civil Procedure.[78] The Court also noted that Rule 11(a)'s signature requirement could be adjusted in the future to track "technological advances" in litigation practice.[79] Indeed, within a few years, most district courts had adopted electronic filing, and Rule 5 was amended accordingly in 2018 to provide that "[a] filing made through a person's electronic-filing account and authorized by that person, together with that person's name on a signature block, constitutes the person's signature."[80] Today, a represented party must file pleadings, written motions, or other papers electronically absent a showing of good cause or a local rule alternative.[81]

The obvious principle that a lawyer's typewritten signature on a pleading or other paper filed electronically constitutes the presentation of the pleading or paper to the court for Rule 11 purposes was driven home in 2021 in *King v. Whitmer*.[82] The plaintiffs in *King* sued Michigan Governor Gretchen Whitmer, Michigan Secretary of State Jocelyn Benson, and the Michigan Board of State Canvassers in a wild and ultimately fruitless challenge to the results of the 2020 presidential election.[83] The plaintiffs were represented by a collection of lawyers, three of whom electronically signed the original complaint and, four days later,

76. 532 U.S. 757, 764 (2001).

77. *Id.*

78. *See id.* at 763–64; *see also* Purvey v. Knoxville Police Dep't, No. 3:20-cv-317, 2021 WL 1840443, at *1 (E.D. Tenn. May 7, 2021) (stating in *Becker*, "the Supreme Court recognized that a court's local rules may provide for means to comply with Rule 11's signature requirement via electronic filing").

79. *Becker*, 532 U.S. at 763.

80. FED. R. CIV. P. 5(d)(3)(C); FED. R. CIV. P. 5(d)(3) advisory committee's note to 2018 amendment.

81. *See* FED. R. CIV. P. 5(d)(3)(A) ("A person represented by an attorney must file electronically, unless nonelectronic filing is allowed by the court for good cause or is allowed or required by local rule.").

82. 556 F. Supp. 3d 680, 698–99 (E.D. Mich. 2021), *aff'd in part, rev'd in part*, 71 F.4th 511 (6th Cir. 2023); *accord* Rivera v. Kalafut, 456 F. App'x 325, 327 (5th Cir. 2011) (stating that pleadings electronically signed by the appellees' lead counsel satisfied Rule 11); Williams v. The Ests. LLC, 663 F. Supp. 3d 466, 478 (M.D.N.C. 2023) (treating the lawyer's digital signature on a motion as a signature for Rule 11 purposes).

83. *King*, 556 F. Supp. 3d at 690.

electronically signed an amended complaint and motion for injunctive relief: Sidney Powell, Scott Hagerstrom, and Gregory J. Rohl.[84] A Michigan voter, Robert Davis, and the City of Detroit (the City) intervened in the case.[85] After the court ruled against the plaintiffs in key respects, Davis, the City, Whitmer, and Benson moved for sanctions against the plaintiffs' lawyers on several grounds that varied by defendant.[86] The City sought Rule 11 sanctions against the plaintiffs and their lawyers.[87]

In opposing the City's motion, the plaintiffs' lawyers contended that no attorney "whose name appeared only in typewritten form" was subject to sanctions under Rule 11.[88] The *King* court succinctly rejected this argument, reasoning that, given electronic filing, it is frivolous to argue a lawyer's electronic signature is insufficient to subject the lawyer to the court's jurisdiction if the lawyer violates ethics rules or federal rules or statutes establishing practice standards.[89]

After extensive analysis, the court concluded the plaintiffs' lawyers deserved to be sanctioned under Rule 11.[90] The lawyers appealed to the Sixth Circuit, which largely affirmed the district court's order with respect to all the plaintiffs' lawyers on the various sanctions theories.[91] Powell, Hagerstrom, and Rohl wisely did not repeat their baseless signature argument on appeal; they argued instead, with little luck,[92] that their conduct was not sanctionable under Rule 11(b).[93]

C. *Signing for Another Lawyer*

Although it has become less common with the predominance of electronic filing, which results in an increasing use of electronic signatures, lawyers sometimes sign pleadings, motions, or other papers on behalf of another lawyer.[94]

84. *Id.*

85. *Id.* at 691.

86. *Id.* at 691–93.

87. *Id.* at 694–95.

88. *Id.* at 698.

89. *Id.* at 699.

90. *Id.* at 732.

91. *See* King v. Whitmer, 71 F.4th 511, 533 (6th Cir. 2023) (reversing the award of sanctions against two lawyers who did not sign the complaints or motion, reversing the state defendants' fee award against another lawyer, and reducing the City's and state defendants' fee awards, but otherwise affirming the district court's imposition of sanctions).

92. *See id.* at 529–30 (stating only two of the plaintiffs' claims were nonfrivolous; the remaining claims were sanctionable under Rule 11).

93. *See id.* at 520.

94. *See* Abby Abide, Comment, "*An Inquiry Reasonable Under the Circumstances": Applying Rule 11 to Local Counsel*, 85 MISS. L.J. 1649, 1653, 1655 (2017).

When they do, the signing lawyer frequently signs the other lawyer's name followed by the word "by" and then the signing lawyer's initials. Less often, the lawyer may sign her own name and indicate that she is doing so "for" an attorney of record.[95] If a lawyer appears on the pleadings for a party or has otherwise entered her appearance in the case, she is an attorney of record for Rule 11 purposes even if she has not previously signed any filings.[96] In that case, the attorney should sign the pleading or other paper in her own name. If an attorney has previously had no role in the litigation but signs a paper for another attorney who is on record as representing the party, the signing lawyer thereby becomes an attorney of record for Rule 11 purposes such that the paper complies with Rule 11(a).[97] Even if the pinch hitting lawyer was not considered an attorney of record by virtue of her signature, Rule 11(a)'s signature requirement would still be met because the lawyer's notation that she was signing for the first lawyer indicates that she did so at the first lawyer's direction or with that lawyer's consent.[98] The signing lawyer's signature thus attests to the other lawyer's certification that the paper complies with Rule 11(b).[99]

A lawyer who prepares a paper that is found to violate Rule 11(b) and who authorizes a colleague to sign the paper for her cannot avoid sanctions on the basis that she did not sign the paper because she remains "responsible for the violation" under Rule 11(c)(1).[100] Furthermore, the signatory lawyer cannot disavow responsibility for the paper's contents or purposes on the basis that she was a mere functionary, because she either submitted or filed the paper and thereby presented it to the court within the meaning of Rule 11(b).[101] Of course, even where a lawyer

95. *See, e.g.*, Weldon v. United States, 845 F. Supp. 72, 83 (N.D.N.Y. 1994), *aff'd*, 70 F.3d 1 (2d Cir. 1995).

96. *See id.*

97. *See id.* Even if the lawyer signing as a surrogate has satisfied Rule 11(a), however, her signature may not satisfy a local court rule. For example, in *Zapata v. IBP, Inc.*, the plaintiffs suggested the court strike the defendant's memorandum in opposition to amending their complaint because the memorandum was not signed by a lawyer admitted to practice before the court as a local rule required. 162 F.R.D. 359, 360 (D. Kan. 1996). "One attorney, asserting his Missouri Bar number, ha[d] signed it. Two other attorneys with Kansas Bar numbers ha[d] also signed it ostensibly 'by DBB.'" *Id.* The court did not know to whom the initials "DBB" referred. *Id.* The court also stated that it knew of "no rule or accepted practice which authorize[d] an attorney to sign by delegate or surrogate." *Id.* Fortunately for the defendant, the court gave it five days to file a memorandum in opposition personally signed by its Kansas counsel. *Id.*

98. *Weldon*, 845 F. Supp. at 83; *see also* Springer v. Rancourt, 17 F. App'x 824, 826 (10th Cir. 2001) (citing *Weldon*, 845 F. Supp. at 83).

99. *See Weldon*, 845 F. Supp. at 83.

100. FED. R. CIV. P. 11(c)(1).

101. *See* FED. R. CIV. P. 11(b).

violates Rule 11, sanctions are not mandatory.[102] So, where the lawyer signed the offending paper solely to accommodate a colleague and had no reason to believe that the paper did not satisfy the requirements of Rule 11(b), there is a good argument that she should not be sanctioned.[103]

D. *Rule 11(a) Versus the Rule of Unanimity*

It is generally permissible for a lawyer to represent in a pleading, motion, or other paper that other parties join in a request for relief or consent to some action.[104] The other parties need not file separate papers signed by their lawyers that evidence their consent to satisfy Rule 11(a).[105] This result follows from the plain language of Rule 11(a), which states that any pleading, motion, or other paper "must be signed by at least one attorney of record."[106] There is little threat that the lawyer making the representation will do so falsely, first because a party whose position was misstated will surely object and thus flag the issue for the court; and second, because a lawyer who makes a misrepresentation tempts sanctions for violating Rule 11(b).[107] In fact, courts commonly rely on lawyers' representations about other parties' positions.[108]

When it comes to removing a case to federal court and signing the notice of removal, however, Rule 11(a) sometimes runs up against the "rule of unanimity,"

102. Appel v. Cohen, No. 22-170 (L), 22-176(XAP), 2023 WL 1431691, at *2 (2d Cir. Feb. 1, 2023); Hinterberger v. City of Indianapolis, 966 F.3d 523, 529 (7th Cir. 2020); Hueter v. Kruse, 610 F. Supp. 3d 60, 72 (D.D.C. 2022); *see* FED. R. CIV. P. 11(c)(1) (stating a district court "*may* impose an appropriate sanction" for a Rule 11(b) violation) (emphasis added).

103. *See Hueter*, 610 F. Supp. 3d at 72 ("Sanctions under Rule 11 are 'an extreme punishment' reserved for filings 'that frustrate judicial proceedings.'") (quoting Naegele v. Albers, 355 F. Supp. 2d 129, 144 (D.D.C. 2005)).

104. *See* Tresco, Inc. v. Cont'l Cas. Co., 727 F. Supp. 2d 1243, 1254 (D.N.M. 2010) ("Nothing in [R]ule 11 prohibits counsel for one defendant from making representations on behalf of another defendant, or that defendant's counsel.") (citing Harper v. AutoAlliance Int'l, Inc., 392 F.3d 195, 201–03 (6th Cir. 2004)).

105. *See, e.g.*, *Harper*, 392 F.3d at 201–02 (explaining nothing in Rule 11 required the defendant, Kelly, or his lawyer, to file a pleading, motion, or other paper expressly concurring in three codefendants' notice of removal or prohibited the codefendants' lawyers from making such a representation on Kelly's behalf).

106. FED. R. CIV. P. 11(a).

107. Griffioen v. Cedar Rapids & Iowa City Ry. Co., 785 F.3d 1182, 1187 (8th Cir. 2015); Mayo v. Bd. of Educ., 713 F.3d 735, 742 (4th Cir. 2013); Proctor v. Vishay Intertechnology, Inc., 584 F.3d 1208, 1225 (9th Cir. 2009); *Harper*, 392 F.3d at 202.

108. McLaughlin v. Ford Motor Co., 603 F. Supp. 3d 1079, 1085 (N.D. Okla. 2022); Roybal v. City of Albuquerque, No. CIV 08-181 JB/LFG, 2008 WL 5991063, at *8 (D.N.M. Sept. 24, 2008).

also known as the "unanimity rule," or the "unanimity requirement."[109] Under the rule of unanimity, where a case involves multiple defendants, all defendants that have been served when the notice of removal is filed must join in the notice.[110] "To join a notice of removal is to support it in writing."[111] That does not mean all defendants must sign a single notice of removal.[112] Rather, each defendant must independently and timely file a notice of its consent to removal.[113] Under the rule of unanimity as traditionally conceived, "[i]t is insufficient for the removing defendant, in its notice of removal, to represent that all other defendants consent to removal."[114] Of course, the requirement that all defendants join a notice of removal does not require that they all personally sign the documents signifying

109. The rule of unanimity traces its roots to the Supreme Court's decision in *Chicago, Rock Island & Pacific Railway Co. v. Martin*, where the Court, interpreting an early version of the removal statute, stated "all the defendants must join in the application" for removal. 178 U.S. 245, 248 (1900). The First Circuit explained the rationale for the rule of unanimity in *Esposito v. Home Depot U.S.A., Inc.*:

> The requirement of unanimity serves the interests of plaintiffs, defendants and the judiciary. Plaintiffs are advantaged, because, were the right to removal an independent rather than joint right, defendants could split the litigation, forcing a plaintiff to pursue its case in two separate forums. Defendants also stand to benefit from the requirement, as it precludes one defendant from imposing his choice of forum on a co-defendant. And the unanimity requirement prevents the needless duplication of litigation, thereby preserving court resources and eliminating the unattractive prospect of inconsistent state and federal adjudications.

590 F.3d 72, 75 (1st Cir. 2009) (citations omitted).

110. *See* Weathers v. Circle K Stores, Inc., 434 F. Supp. 3d 1195, 1202 (D.N.M. 2020); *see also* Vasquez v. Americano U.S.A., LLC, 536 F. Supp. 2d 1253, 1257–58 (D.N.M. 2008); *Esposito*, 590 F.3d at 75 ("The defect in the removal process resulting from a failure of unanimity is not considered to be a jurisdictional defect, and unless a party moves to remand based on this defect, the defect is waived and the action may proceed in federal court."); Goss v. Aetna, Inc., 360 F. Supp. 3d 1364, 1370 (N.D. Ga. 2019) ("A failure to comply with the unanimity requirement is only a *procedural* defect, not a *jurisdictional* defect.").

111. *Vasquez*, 536 F. Supp. 2d at 1258.

112. McShares, Inc. v. Barry, 979 F. Supp. 1338, 1342 (D. Kan. 1997) (citations omitted); *see also* Pritchett v. Cottrell, Inc., 512 F.3d 1057, 1062 (8th Cir. 2008); *Vasquez*, 536 F. Supp. 2d at 1258; Sansone v. Morton Mach. Works, Inc., 188 F. Supp. 2d 182, 184 (D.R.I. 2002); Jarvis v. FHP of Utah, Inc., 874 F. Supp. 1253, 1254 (D. Utah 1995).

113. *Vasquez*, 536 F. Supp. 2d at 1258.

114. *Id.* (citations omitted); *see also* Brown v. Rite Aid Corp., 415 F. Supp. 3d 588, 591–93 (E.D. Pa. 2019).

their consent; their lawyers' signatures suffice.[115] Many courts strictly adhere to the rule of unanimity.[116]

The rule of unanimity is not embodied in the general removal statute, which is codified at 28 U.S.C. § 1446(a).[117] As of 2011, however, the rule of unanimity is codified in 28 U.S.C. § 1446(b)(2)(A),[118] which provides that "[w]hen a civil action is removed solely under section 1441(a), all defendants who have been properly joined and served must join in or consent to the removal of the action."[119] Section 1441(a), in turn, provides for removal in any case in which a district court has original jurisdiction.[120] Nonetheless, over the years, some courts have declined to enforce the rule of unanimity because it is neither mandated by 28 U.S.C. § 1446(a) nor consistent with Rule 11(a).[121] In these courts, it is sufficient for the

115. *See* McGrath v. City of Albuquerque, No. CIV 14-0504 JB/SCY, 2015 WL 4994735, at *27 (D.N.M. July 31, 2015) ("Nothing in [R]ule 11 prohibits counsel for a defendant from making representations on behalf of their client or clients. In fact, [R]ule 11 expressly requires that attorneys make such representations.").

116. *See, e.g.*, Taylor v. Medtronic, Inc., 15 F.4th 148, 151 (2d Cir. 2021) (quoting Pietrangelo v. Alvas Corp., 686 F.3d 62, 66 (2d Cir. 2012)); Roe v. O'Donohue, 38 F.3d 298, 301 (7th Cir. 1994), *abrogated on other grounds by* Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc., 526 U.S. 344 (1999); Getty Oil Corp. v. Ins. Co. of N. Am., 841 F.2d 1254, 1262 n.11 (5th Cir. 1988); Doe v. Warner, 659 F. Supp. 3d 293, 299 (E.D.N.Y. 2023); *Brown*, 415 F. Supp. 3d at 591–92; *McShares*, 979 F. Supp. at 1342; *Jarvis*, 874 F. Supp. at 1254.

117. 28 U.S.C. § 1446(a) ("A defendant or defendants desiring to remove any civil action from a State court shall file . . . a notice of removal signed pursuant to Rule 11 . . . and containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action.").

118. *See Taylor*, 15 F.4th at 152 (explaining Congress codified the rule of unanimity in 2011).

119. 28 U.S.C. § 1446(b)(2)(A).

120. *Id.* § 1441(a) ("Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending."); *see also* Grandinetti v. Uber Techs., Inc., 476 F. Supp. 3d 747, 750 (N.D. Ill. 2020) ("Generally speaking, so long as the case could have originally been filed in federal court, the case may be removed.").

121. *See, e.g.*, Proctor v. Vishay Intertechnology, Inc., 584 F.3d 1208, 1225 (9th Cir. 2009) ("[T]he filing of a notice of removal can be effective without individual consent documents on behalf of each defendant. One defendant's timely removal notice containing an averment of the other defendants' consent and signed by an attorney of record is sufficient."); Harper v. AutoAlliance Int'l, Inc., 392 F.3d 195, 201–02 (6th Cir. 2004) (explaining the interplay between 28 U.S.C. § 1446(a) and Rule 11(a)); Tresco, Inc. v. Cont'l Cas. Co., 727 F. Supp. 2d 1243, 1255 (D.N.M. 2010) ("[T]he filing of a notice of removal can be effective without individual

lawyer of the movant to represent in the notice of removal that the other defendants consent to removal.[122] The difficulty with relying on many of the decisions from these courts is one of timing; that is, they pre-date the 2011 amendments to section 1446(b).[123] Of course, it remains true the general removal statute, section 1446(a), is silent on unanimity; reading section 1446(b) to require separate written consent from each defendant does not obviously follow from the post-2011 statutory language, which states that each defendant must "join in *or consent*" to removal.[124] Congress could have written section 1446(b) to provide for separate written consent to removal by each defendant had it wanted to do so, and requiring a separate writing from each defendant is inconsistent with Rule 11(a).[125] Accordingly, a fair share of courts reject an interpretation of the rule of unanimity that requires each defendant's separate written consent to removal.[126] *McLaughlin v. Ford Motor Co.* is illustrative.[127]

Christopher and Sarah McLaughlin sued Ford Motor Co. (Ford) and FRN of Tulsa, LLC (FRN) in Tulsa County, Oklahoma.[128] Ford removed the case to the U.S. District Court for the Northern District of Oklahoma.[129] In its notice of removal, Ford represented that FRN consented to removal.[130] Ford also attached as an exhibit to the notice an email message from FRN's lawyer, Troy McPherson, to Ford's lawyer in which McPherson explicitly consented to removal of the case

consent documents on behalf of each Defendant. . . . National Union's timely removal notice containing an averment of CNA's consent to removal, signed by an attorney of record, is sufficient.").

122. *Proctor*, 584 F.3d at 1225; *Harper*, 392 F.3d at 201–02; *Tresco*, 727 F. Supp. 2d at 1255.

123. *See Proctor*, 584 F.3d at 1225; *Harper*, 392 F.3d at 201–02; *Tresco*, 727 F. Supp. 2d at 1255.

124. 28 U.S.C. § 1446(b)(2)(A) (emphasis added); *see also* Griffioen v. Cedar Rapids & Iowa City Ry. Co., 785 F.3d 1182, 1187 (8th Cir. 2015) ("The 2011 amendments to § 1446 that codified the rule of unanimity did not describe the form of . . . consent when multiple defendants are involved.").

125. *Griffioen*, 785 F.3d at 1187.

126. *See, e.g.*, McLaughlin v. Ford Motor Co., 603 F. Supp. 3d 1079, 1082–85 (N.D. Okla. 2022) (outlining the split of authority among federal appellate courts and district courts in the Tenth Circuit and declining to require separate written consent); Szuszalski v. Fields, No. 1:19-cv-0250 RB-CG, 2019 WL 5964602, at *3–4, *8 (D.N.M. Nov. 13, 2019) (discussing the "decades-old circuit split regarding how co-defendants must consent to removal" and rejecting a separate written consent requirement).

127. 603 F. Supp. 3d at 1084.

128. *Id.* at 1080.

129. *Id.*

130. *Id.* at 1080–81.

to federal court.[131] The McLaughlins moved to remand the case to state court based on the 28 U.S.C. § 1446(b) unanimity requirement, which the defendants allegedly violated because FRN did not timely file a separate notice of its consent to removal.[132] When FRN then filed a separate notice of consent to removal, the McLaughlins moved to strike it.[133]

The parties' opposing positions were clear: the McLaughlins asserted that the rule of unanimity requires a defendant who does not formally join the notice of removal "to independently file a separate, written consent."[134] Not so, said Ford and FRN.[135] They argued that the consent requirement "is satisfied if the removing defendant represents in the Notice of Removal, signed [in compliance with Rule 11], that the properly joined and served codefendants consent to removal."[136]

The *McLaughlin* court began its analysis by observing that neither the Supreme Court nor the Tenth Circuit had decided what form a codefendant's consent must take to satisfy the rule of unanimity in a case where the codefendant did not formally join the removing party's notice.[137] The court further observed that the Circuit Courts of Appeals were split on the issue, with three requiring each codefendant to file an independent written indication of consent, and four finding it sufficient for the removing defendant to clearly state any codefendant's consent in the notice of removal signed in accordance with Rule 11.[138] The *McLaughlin* court sided with the courts in the latter camp and concluded that the rule of unanimity "is satisfied by a Notice of Removal, signed pursuant to Rule 11 and filed by an attorney for the removing defendant, unambiguously representing that the non-removing co-defendants consent to the removal of the action."[139] The court listed four reasons for its approach.[140]

First, 28 U.S.C. § 1446(b)(2)(A) is "silent as to the necessary form of consent" by a codefendant.[141] The statute does not mandate that a codefendant separately consent to removal in a writing filed with the court.[142]

131. *Id.* at 1081.
132. *Id.*
133. *Id.*
134. *Id.* at 1082.
135. *Id.*
136. *Id.*
137. *Id.*
138. *Id.* at 1082–83.
139. *Id.* at 1084.
140. *Id.* at 1084–85.
141. *Id.* at 1084.
142. *Id.*

Second, the general removal statute, 28 U.S.C. § 1446(a), provides that the lawyer for a defendant removing an action to federal court must file a notice signed pursuant to Rule 11.[143] By doing so, the lawyer risks sanctions for misrepresentations in the notice.[144] Plus, if the allegedly consenting codefendants did not actually consent, they may alert the court to their true positions by moving to remand the action.[145] The risk of Rule 11 sanctions and codefendants' ability to alert the court to falsehoods in the removing defendant's notice sufficiently deter removing defendants from fudging unanimous consent and dragging unwilling codefendants into federal court.[146]

Third, it was the court's normal practice to accept the representations of a lawyer for one party that other parties either consented or objected to procedural moves in other aspects of litigation.[147] Given the deterrent effect of potential Rule 11 sanctions and the absence of contrary statutory language, the court saw no reason to deviate from its usual approach with respect to notices of removal.[148]

Fourth, "FRN clearly consented to removal."[149] The email from FRN's lawyer, McPherson, that Ford attached to the notice of removal plainly demonstrated FRN's consent to removal, as did its subsequent filing of a notice of consent to removal.[150]

For these reasons, the *McLaughlin* court held that Ford's notice of removal met the requirements of section 1446 and satisfied the rule of unanimity.[151] The court therefore denied the McLaughlins' motion to remand the case to state court.[152]

The *McLaughlin* court's approach to unanimity is sensible. As noted earlier, however, there are plenty of courts that hold to the contrary.[153] The obvious lesson

143. *Id.* (quoting 28 U.S.C. § 1446(a)).

144. *Id.* at 1085 (quoting Szuszalski v. Fields, No. 1:19-cv-0250 RB-CG, 2019 WL 5964602, at *6 (D.N.M. Nov. 13, 2019)).

145. *Id.* (citing *Szuszalski*, 2019 WL 5964602, at *6; 28 U.S.C. § 1447(c)).

146. *Id.* (quoting Griffioen v. Cedar Rapids & Iowa City Ry. Co., 785 F.3d 1182, 1187 (8th Cir. 2015)).

147. *Id.*

148. *Id.*

149. *Id.*

150. *Id.* (quoting Moses v. Forkeotes, No. 16-CV-0303-CVE-PJC, 2016 WL 4449654, at *2 (N.D. Okla. Aug. 24, 2016)).

151. *Id.*

152. *Id.*

153. *See* cases cited *supra* note 116.

for lawyers is to confirm the law in the jurisdiction when removing a multi-defendant case to federal court.

III. LOCAL COUNSEL AND LIMITED SCOPE REPRESENTATIONS

A. *Local Counsel Representations*

1. *Overview*

The term "local counsel" usually describes a lawyer who practices in the venue where a case is filed and who handles tasks requiring local knowledge or presence on behalf of a party whose lead or primary counsel practices in another city or state, or outside the judicial district.[154] Frequently, the lead lawyer is not admitted to practice in the jurisdiction and must associate with local counsel to obtain pro hac vice admission.[155] Local counsel's responsibilities typically are set by agreement with lead counsel and their mutual client, as well as by court rules.[156] In some matters, local counsel may be little more than a logistical or procedural necessity—sometimes described as a "mail drop" or a "rubber stamp"—while in others they may play a significant role.[157] Either way, local counsel often must sign all pleadings, motions, and other papers filed with the court in the litigation.[158]

154. *See* Daien v. Ysursa, No. CV 09-22-S-REB, 2009 WL 10711879, at *3 (D. Idaho Feb. 9, 2009) (explaining why the district court considered local counsel essential).

155. *See* Brandy L. Stice & Stephen W. King, *Best Practices for Local Counsel*, MICH. BAR J., Dec. 2020, at 44, 44 ("Your first task on the case [as local counsel] will likely be assisting with any *pro hac vice* or other admissions required for national counsel.").

156. *See, e.g.*, D. KAN. R. 83.5.4(b) ("All pleadings or other papers signed by an attorney admitted pro hac vice must also be signed by a member of the bar of this court in good standing, who *must participate meaningfully in the preparation and trial of the case or proceedings to the extent the court requires*.") (emphasis added).

157. *See* JOSEPH, *supra* note 7, § 8(A)(8) (sketching the different roles that local counsel may play in a case); *see also* Abide, *supra* note 94, at 1653 ("The scope of local counsel's role can vary widely."); D.C. Bar Legal Ethics Comm., Formal Op. 387 (2024), https://www.dcbar.org/For-Lawyers/Legal-Ethics/Ethics-Opinions-210-Present/Ethics-Opinion-387 [https://perma.cc/2XWV-4GRW] (discussing the possible scope of local counsel representations).

158. *See* Rachel V. Rose & Robert J. Rando, *Attorney Admissions: Identifying and Working with Local Counsel and* Pro Hac Vice *Admissions*, FED. LAW., Sept. 2016, at 48, 51 ("While the pro hac vice requirements and the breadth of authority granted to the pro hac vice admittee varies greatly from federal district to district, often even after pro hac vice admission, all filings must be signed by local counsel and appearances may also require the presence of local counsel.").

And, by signing these documents, local counsel certifies that the documents comply with Rule 11(b).[159] Rule 11 contains no local counsel exception.[160]

2. *Illustrative Cases*

Val-Land Farms, Inc. v. Third National Bank is generally regarded as the leading case on local counsel's accountability under Rule 11.[161] The plaintiffs in *Val-Land* were potato growers who sold potatoes to a company called Compton Produce.[162] Unfortunately for the plaintiffs, Compton was in dire financial straits and could not pay for all the potatoes it purchased; Compton ultimately went bankrupt.[163] Unable to recover from Compton, plaintiffs sued the company's commercial lender, Third National Bank in Knoxville (Third National), in the U.S. District Court for the Eastern District of Tennessee.[164] The plaintiffs alleged that Third National had effectively engaged in fraud by lending to Compton while the company was failing, thereby creating the illusion that Compton was solvent during the time that plaintiffs were doing business with it.[165] They further asserted that Third National's lending practices violated the Perishable Agricultural Commodities Act (PACA).[166] The plaintiffs were represented by a Chicago lawyer, Keith Parr, who served as lead counsel, and two lawyers from Knoxville, Tennessee, Michael Nolan and John Threadgill, who acted as local counsel.[167]

The plaintiffs' case went poorly; the district court dismissed their PACA claim and later awarded Third National summary judgment on their fraud claim.[168]

159. *See* Middlebrooks v. SACOR Fin., Inc., No. 1:17-CV-0679-SCJ-JSA, 2017 WL 8186817, at *1 (N.D. Ga. Dec. 26, 2017) ("Having local counsel sign every pleading and motion ensures that a member of the bar of this Court is 'on the hook' and accountable for all of the professional and ethical representations supplied by Rule 11 of the Federal Rules of Civil Procedure.").

160. Gonzales v. Texaco Inc., No. C 06-02820 WHA, 2007 WL 3036093, at *12 (N.D. Cal. Oct. 16, 2007), *vacated on other grounds by* 344 F. App'x 304 (9th Cir. 2009).

161. 937 F.2d 1110 (6th Cir. 1991); *see* Ideal Instruments, Inc. v. Rivard Instruments, Inc., 243 F.R.D. 322, 348 (N.D. Iowa 2007) (citing Val-Land Farms v. Third Nat'l Bank, 937 F.2d 1110, 1118 (6th Cir. 1991); Miller v. Upton, 687 F. Supp. 2d 86, 101 (E.D.N.Y. 2009) (citing *Val-Land Farms*, 937 F.2d at 1118); JOSEPH, *supra* note 7, § 8(A)(8) (citing *Val-Land Farms*, 937 F.2d at 1118).

162. *Val-Land*, 937 F.2d at 1111.

163. *Id.*

164. *See id.* at 1112.

165. *Id.* at 1112–13.

166. *Id.* at 1112.

167. *Id.* at 1117.

168. *Id.* at 1112–13.

Third National then moved for Rule 11 sanctions.[169] The court granted the motion with respect to the plaintiffs' PACA claim.[170] "[The PACA] claim was a loser from the start, and the plaintiffs' attorneys should have known it."[171] Indeed, the court characterized the plaintiffs' PACA theory of liability as "ludicrous."[172]

The plaintiffs and their lawyers appealed the sanctions order to the Sixth Circuit.[173] The district court had sanctioned all three of the plaintiffs' lawyers—Parr, Nolan, and Threadgill.[174] The lawyers argued the district court erred by not holding a hearing to determine Nolan's and Threadgill's roles in preparing the plaintiffs' complaint.[175] They suggested that if Nolan and Threadgill, as local counsel, "relied on material submitted by [Parr,] who was actually litigating the case, [Nolan and Threadgill] should not be held liable for Rule 11 sanctions."[176] The *Val-Land* court flatly rejected this argument.[177] First, the argument ignored Rule 11's plain language, which provides no safe harbor for lawyers who sign pleadings or other filings in reliance on their cocounsel's representations.[178] Second, the argument ran afoul of Supreme Court precedent, which clarified that Rule 11 aims "to bring home to the individual signer his personal nondelegable responsibility" for the accuracy and legal soundness of the challenged paper.[179]

Lawyers who sign pleadings, motions, or other papers submitted to federal courts must ensure those materials honor Rule 11.[180] If Nolan and Threadgill in their roles as local counsel signed the plaintiffs' complaint based solely on Parr's representations, then "so much the worse for them."[181] On that unhappy note, the *Val-Land* court affirmed the district court's sanctions order.[182]

Cedar Lane Technologies Inc. v. Blackmagic Design Inc. was a patent infringement lawsuit in the U.S. District Court for the Northern District of

169. *Id.* at 1113.
170. *Id.*
171. *Id.* at 1117.
172. *Id.*
173. *Id.* at 1111.
174. *Id.* at 1117.
175. *Id.*
176. *Id.*
177. *Id.*
178. *Id.* at 1117–18.
179. *Id.* at 1118 (emphasis omitted) (quoting Pavelic & LeFlore v. Marvel Ent. Grp., 493 U.S. 120, 126 (1989)).
180. *Id.*
181. *Id.*
182. *Id.*

California.[183] Cedar Lane was represented by Kirk Anderson, who was admitted to practice in California and was a member of California's Northern District bar, and Isaac Rabicoff, who was neither a California lawyer nor a member of the Northern District bar.[184] Cedar Lane's case was a mess.[185] Rabicoff and Anderson filed multiple amended complaints without seeking Blackmagic's consent or leave of court, made misleading and objectively frivolous arguments in defending their procedural errors when opposing Blackmagic's motion to strike Cedar Lane's third amended complaint, and missed the hearing on the motion to strike.[186] The court finally issued an order requiring Cedar Lane "to show cause as to why the case should not be dismissed for failure to prosecute, and why [Anderson and Rabicoff] should not be sanctioned for their" procedural failings and misrepresentations to the court.[187]

As the show cause hearing neared, Rabicoff applied for pro hac vice admission and, in his motion, identified Anderson as "local co-counsel."[188] Although the lawyers' apparent roles in the litigation had previously differed, they admitted at the show cause hearing that Rabicoff had always been lead counsel and that he authored the objectively frivolous and misleading brief opposing Blackmagic's motion to strike.[189]

The *Cedar Lane* court easily concluded that Rabicoff should be sanctioned under Rule 11 for the objectively frivolous arguments he made on Cedar Lane's behalf and for his many misrepresentations to the court.[190] The court further determined that Anderson should be sanctioned under Rule 11:

> As Anderson acknowledged, he had a continuing obligation as local co-counsel and as signatory to the briefs to ensure that they did not contain frivolous arguments or misleading statements. He stated that he knew at the time the opposition brief was filed that its interpretation of [the Federal Rule of Civil Procedure governing amended complaints] was objectively frivolous, but that he simply did not review the brief before filing it or know that this was the argument it advanced. For purposes of Rule 11, this does not matter: an attorney certifies that a motion makes nonfrivolous arguments by "signing,

183. No. 20-cv-01302-VC, 2020 WL 6789711, at *1 (N.D. Cal. Nov. 19, 2020).

184. *Id.*

185. *See id.* at *1–2 (describing the procedural errors and misconduct by Cedar Lane's lawyers).

186. *Id.* at *1–2.

187. *Id.* at *2 (internal quotation marks omitted).

188. *Id.* at *3.

189. *Id.*

190. *See id.* at *3–4 (detailing Rabicoff's misconduct).

> filing, [or] submitting" it. Anderson did all three, and his failure to review the brief before he signed and filed it was reckless. And although Anderson would be sanctioned based on that conduct alone, he made things worse by signing, filing, and submitting the response to the order to show cause, which [misrepresented Rabicoff's reasons for failing to appear at the hearing]. Anderson's declaration in support of the response made similar representations. At the hearing on the order to show cause, Anderson stated that his understanding of the [reasons for Rabicoff's failure to appear] came from Rabicoff, but it was obvious by that time that Rabicoff could not be trusted to truthfully tell him what was happening.[191]

Luckily for Anderson, the court found that he, unlike Rabicoff, had not acted in bad faith.[192] Rather, Anderson's conduct was reckless in the sense that he should have been much more vigilant in fulfilling his duties as local counsel and in reviewing the papers prepared by Rabicoff that he signed and filed.[193] Showing some leniency in light of Rabicoff's substantially greater culpability, the court fined Anderson $500 for his Rule 11 violations.[194]

In *Williams v. The Estates LLC*, the defendants filed a motion for attorney's fees in a North Carolina federal court case where they claimed to be the prevailing parties.[195] The defendants were represented by Utah lawyer Steven Shaw and his North Carolina local counsel, John Matheny.[196] The district court determined the defendants' motion was factually and legally baseless and was unreasonable under the circumstances, and that Shaw and Matheny violated Rule 11 by pursuing it.[197]

Shaw acknowledged the motion was flawed, although he did not share the court's conclusion that it was frivolous.[198] Matheny, on the other hand, contended that "he did not violate [Rule 11] because, although his digital signature appeared on the motion, he 'did not sign, file, submit, or later advocate the motion.'"[199] Matheny swore that Shaw filed the motion while he was on vacation, that he had

191. *Id.* at *4 (second alteration in original) (citation omitted).
192. *Id.* at *5.
193. *Id.*
194. *Id.* (as opposed to the $1,000 imposed on Rabicoff).
195. 663 F. Supp. 3d 466, 471–72 (M.D.N.C. 2023).
196. *Id.*
197. *Id.* at 472.
198. *See id.* at 477.
199. *Id.* at 478 (quoting Matheny's response to the court's order to show cause).

no role in preparing the motion, and that he saw the motion only after it was filed.[200] Shaw confirmed Matheny's version of events.[201]

Matheny's ignorance of Shaw's lack of effort in preparing the motion for attorney's fees was no excuse.[202] Matheny was an attorney of record and his name and signature appeared on the motion.[203] Under a local court rule, he was responsible for the conduct of the litigation and was required to review all pleadings.[204] Instead, he gave Shaw "carte blanche to append [his] name and signature" to the defendants' filings.[205] Matheny never informed the court that he was not reviewing the defendants' pleadings or motions, nor did he file anything to clarify that he did not support or join in the motion for attorney's fees, even after the plaintiffs filed a brief illuminating its deficiencies.[206] In fact, because Shaw was not a member of the court's bar, Matheny's consent and signature as local counsel were required for the court to consider the motion.[207]

The *Williams* court observed that a lawyer's "'[t]otal reliance on [co-counsel]' can itself be 'a violation of Rule 11,' especially when the relying attorney has represented to the Court that he is responsible for the litigation and his co-counsel's adherence to the Local Rules."[208] Matheny could not explain "why he thought it was acceptable to serve as a rubber stamp or why he agreed to be an in-name-only attorney" and admitted that, in retrospect, his conduct was unacceptable.[209]

In conclusion, the court found that Matheny violated Rules 11(b)(2) and (3) by filing the factually and legally baseless motion for attorney's fees and by neglecting to reasonably investigate the applicable law.[210] The court sanctioned Matheny by fining him $2,500 and publishing the sanctions order.[211] In selecting this punishment, the *Williams* court reasoned a public declaration that Matheny

200. *Id.*
201. *See id.*
202. *See id.*
203. *Id.*
204. *Id.*
205. *Id.*
206. *Id.*
207. *Id.*
208. *Id.* (quoting *In re* Kunstler, 914 F.2d 505, 514 (4th Cir. 1990)).
209. *Id.*
210. *Id.*
211. *Id.* at 484.

had violated Rule 11 would both affect his reputation and deter other lawyers from engaging in similar misconduct.[212]

3. *Summary*

Lawyers serving as local counsel play a unique role in litigation and there are times when courts considering Rule 11 sanctions should perhaps evaluate the local lawyers' conduct more charitably than they do when evaluating lead counsel's actions.[213] For instance, local counsel should not always be expected to make the same Rule 11(b) prefiling inquiry required of lead counsel.[214] Furthermore, a lawyer who is brought into a case by another lawyer should be able to rely, at least to some extent, on the referring lawyer's prefiling inquiry into the facts and law.[215] At the same time, whether it was reasonable for local counsel to rely on lead counsel's representations or work at any point in a case always depends on the circumstances, and lawyers serving as local counsel cannot substitute lead counsel's judgment for their own.[216] Rather, lawyers serving as local counsel ought to read all papers they are asked to sign; when necessary,

212. *Id.*

213. *See, e.g.*, Gabriel Techs. Corp. v. Qualcomm, Inc., No. 08-cv-1992 AJB (MDD), 2013 WL 410103, at *12 (S.D. Cal. Feb. 1, 2013), *aff'd*, 560 F. App'x 966 (Fed. Cir. 2014) (discussing the unique role of local counsel and observing the Rule 11 reasonable inquiry required for local counsel may not always match that required for lead counsel).

214. *See, e.g.*, Uptime Sys., LLC v. Kennard L., P.C., No. 20-cv-1597 (JRT/ECW), 2021 WL 7287307, at *30 (D. Minn. June 16, 2021) (concluding the lawyer serving as local counsel conducted a reasonable prefiling inquiry where the sanctionable nature of some statements in a notice of removal required careful parsing of a state court order by someone unfamiliar with the state court proceedings, and the local lawyer was assured by lead counsel that removal was timely and warranted both factually and legally).

215. *See, e.g.*, Miller v. Bittner, 985 F.2d 935, 939 (8th Cir. 1993) ("An attorney receiving a case from another attorney is entitled to place some reliance upon that attorney's investigation.") (internal citation omitted); Smith v. Our Lady of the Lake Hosp., Inc., 960 F.2d 439, 446 (5th Cir. 1992) (holding similarly); Coburn Optical Indus., Inc. v. Cilco, Inc., 610 F. Supp. 656, 660 n.7 (M.D.N.C. 1985) ("The Court does recognize that local counsel must be able to rely to some extent on the representations of reputable out of state attorneys . . . ."); Highmark, Inc. v. Allcare Health Mgmt. Sys., Inc., 732 F. Supp. 2d 653, 675 (N.D. Tex. 2010) (concluding a lawyer who was "functionally local counsel" should not be sanctioned for relying on the investigation and factual information provided by another lawyer who played a leading role in the case).

216. *Gabriel Techs. Corp.*, 2013 WL 410103, at *12; *see* Schottenstein v. Schottenstein, 230 F.R.D. 355, 361–62 (S.D.N.Y. 2005) (discussing the Rule 11(b) reasonable inquiry requirement); JOSEPH, *supra* note 7, § 8(A)(8) ("Courts . . . do not insist that local counsel replicate work lead counsel has already done. They do require, however, that all counsel act reasonably in the circumstances.").

question lead counsel to the extent required to satisfy themselves that a pleading, motion, or other paper complies with Rule 11(b); and, in appropriate circumstances, require edits to papers or insist on additional factual investigation or legal research (whether performed personally or by lead counsel) as a condition of signing the papers. Local counsel should not sign pleadings, motions, or other papers prepared by lead counsel unless they honestly believe that, on their face, the documents are factually and legally warranted, and they are not being presented for any improper purpose.[217] Nor should lawyers serving as local counsel authorize or allow lead counsel to file documents bearing their electronic signatures without their explicit consent. If these recommendations seem excessive or undue, *Val-Land*, *Cedar Lane*, and *Williams* demonstrate they are not.[218]

217. *See* Long v. Quantex Res., Inc., 108 F.R.D. 416, 417 (S.D.N.Y. 1985) ("It therefore seems to me that at the very least, a local counsel that signs the papers of foreign counsel must read the papers, and from that have a basis for a good faith belief that the papers on their face appear to be warranted by the facts asserted and the legal arguments made, and are not interposed for any improper purpose.").

218. *See* Val-Land Farms, Inc. v. Third Nat'l Bank, 937 F.2d 1110, 1118 (6th Cir. 1991); Cedar Lane Techs. Inc., v. Blackmagic Design Inc., No. 20-cv-01302-VC, 2020 WL 6789711, at *4–5 (N.D. Cal. Nov. 19, 2020); Williams v. The Ests. LLC, 663 F. Supp. 3d 466, 478 (M.D.N.C. 2023); *see also* Niazi Licensing Corp. v. St. Jude Med. S.C., Inc., No. 17-cv-5096 (WMW/BRT), 2021 WL 5371159, at *1 (D. Minn. Nov. 18, 2021) (rejecting Niazi Licensing Corp.'s (NLC) argument that its local counsel should not be sanctioned due to "the narrow scope of their responsibilities" because local counsel participated in prosecuting NLC's case, and to the extent that they did not help prepare the sanctionable filings submitted by NLC's lead counsel, their detachment "demonstrate[d] an intentional or reckless disregard of [their] duties to the [c]ourt"); Ideal Instruments, Inc. v. Rivard Instruments, Inc., 243 F.R.D. 322, 348 (N.D. Iowa 2007) (sanctioning the defendant's local counsel as well as its lead counsel under Rule 11 for pursuing a frivolous motion for a preliminary injunction that was brought for an improper purpose); Pannonia Farms, Inc. v. USA Cable, No. 03 Civ. 7841(NRB), 2006 WL 2872566, at *5, *7 n.21 (S.D.N.Y. Oct. 5, 2006) (rejecting the local counsel's defense that while he signed the papers, he did so in total reliance on the facts supplied by his client's CEO and lead counsel's legal analysis); *Coburn Optical*, 610 F. Supp. at 660 ("[L]ocal counsel must share liability for attorney's fees and costs imposed on defendant and its lead counsel. . . . Local counsel's signature is solely affixed to this motion. Local counsel seemed blindly to follow the commands of [lead counsel] who in all probability prepared most, if not all, of the motion. What Rule 11 requires is that the lawyer who elects to sign a paper take responsibility for it, even if that responsibility is shared. It is difficult for a lawyer to disclaim all responsibility for a paper bearing his name.").

B. *Limited Scope Representations*

In addition to accepting local counsel assignments, lawyers may limit the scope of their representations of clients in other ways.[219] To use a common example, a trial lawyer may involve an experienced appellate lawyer in a case to ensure that the trial lawyer preserves issues for appeal. The scope of the appellate lawyer's representation is limited to providing related advice and perhaps preparing briefs, motions, and jury instructions. If the appellate lawyer signs any papers that are filed with the trial court though, the limited scope of her representation will not spare her from compliance with Rule 11 or from possible sanctions for its violation.[220]

1. *Alan Dershowitz in the Desert*

Lake v. Fontes is a recent case applying Rule 11(b) to a lawyer in a limited scope representation.[221] The lawyer facing sanctions for violating Rule 11(b), despite claiming to play only a limited role in the litigation, was prominent Harvard law professor emeritus Alan Dershowitz.[222]

The plaintiffs in *Fontes* sued various Arizona election officials in an effort to overturn the results of the 2022 midterm election in Arizona.[223] The defendants successfully moved to dismiss the case.[224] Thereafter, a group of defendants—members of the Maricopa County Board of Supervisors (the Maricopa County Defendants)—moved for sanctions against the plaintiffs and their lawyers.[225] The Maricopa County Defendants asserted their opponents "made false allegations about Arizona elections in violation of Rule 11(b)(3)" and filed the lawsuit "for

219. *See, e.g.*, Davis v. Kaiser Found. Hosps., No. 19-cv-05866-HSG, 2020 WL 5653152, at *2 (N.D. Cal. Sept. 23, 2020) (allowing the lawyer to withdraw from the case where she limited her representation of the plaintiff to appearing at an initial case management conference); *see generally* MODEL RULES OF PRO. CONDUCT r. 1.2(c) (AM. BAR ASS'N 1983) ("A lawyer may limit the scope of [a client's] representation if the limitation is reasonable under the circumstances and the client gives informed consent.").

220. Even if lawyers providing limited scope representations do not sign pleadings, motions, or other papers filed with the court, they still may be sanctioned if they present papers to the court by other means, such as by advocating them. FED. R. CIV. P. 11(b).

221. No. CV-22-00677-PHX-JJT, 2023 WL 4548357 (D. Ariz. July 14, 2023), *appeal docketed*, Lake v. Gates, No. 23-16023 (9th Cir. July 24, 2023).

222. *See id.* at *3 (describing Dershowitz as a "nationally-known attorney and professor of law emeritus at Harvard Law School").

223. *See id.* at *1.

224. Lake v. Hobbs, 623 F. Supp. 3d 1015, 1026–32 (D. Ariz. 2022), *aff'd on other grounds*, 83 F.4th 1199 (9th Cir. 2023).

225. *Fontes*, 2023 WL 4548357, at *1.

the improper purpose of 'sow[ing] doubts about the reliability and trustworthiness of elections for their own financial and political benefit' in violation of Rule 11(b)(1)."[226] The Maricopa County Defendants also argued that the plaintiffs' lawyers "violated Rules 11(b)(2) and (3) . . . by pursuing frivolous constitutional claims and untimely injunctive relief."[227]

The plaintiffs filed a response to the Maricopa County Defendants' motion.[228] The cover page of the plaintiffs' response listed Andrew Parker, Kurt Olsen, Dershowitz, and two lawyers in Parker's law firm collectively "as 'Attorneys for Plaintiffs.'"[229] The last page of the plaintiffs' response bore electronic signatures from Parker, Olsen, and Dershowitz.[230]

Dershowitz previously signed pleadings filed with the court.[231] His signature block appeared on the plaintiffs' original complaint alongside Parker's and Olsen's.[232] Dershowitz "signed the [c]omplaint with an electronic signature under 'Alan Dershowitz Consulting LLC,'" and "was listed as 'Of Counsel for Plaintiffs,' while . . . Parker and Olsen were listed as 'Counsel.'"[233] When the plaintiffs filed a first amended complaint (FAC) two weeks later, Dershowitz's signature block again appeared on the pleading.[234] He was again identified as "of counsel" for plaintiffs.[235] Dershowitz and Parker acknowledged that Dershowitz authorized his electronic signatures on these pleadings "as 'of counsel'" for plaintiffs.[236]

While Dershowitz's "of counsel" designation appeared on the complaint and the FAC, it was omitted from subsequent filings, including the plaintiffs' motion for a preliminary injunction (MPI) and related submissions, and responses to the defendants' motions to dismiss.[237] These papers identified Parker, Olsen, and Dershowitz equally as "Counsel for Plaintiffs."[238] Although Parker claimed the omission of the word "of" from Dershowitz's title in these filings was merely a

226. *Id.* (alternation in original).
227. *Id.*
228. *Id.* at *2.
229. *Id.*
230. *Id.*
231. *Id.* at *3.
232. *Id.*
233. *Id.*
234. *Id.*
235. *Id.*
236. *Id.*
237. *Id.* at *4.
238. *Id.* (internal quotations omitted).

clerical error, Dershowitz never sought to correct the filings and even suggested he had not reviewed them.[239] Parker disputed Dershowitz's claimed ignorance, telling the court that Dershowitz had, in fact, authorized his signature on the filings, although only as "of counsel."[240] Along those lines, Parker testified in an evidentiary hearing on the Maricopa County Defendants' motion for sanctions that he affixed Dershowitz's electronic signatures to filings only after Dershowitz sent emails "saying, 'Very Good.' 'Excellent work.' 'Yes, let's go,' [sic] and [Parker] had assumed [Dershowitz] reviewed all of the filings . . . sent to him."[241]

In addition, Dershowitz applied for admission to practice in the court pro hac vice and the court granted his motion.[242] Dershowitz said that he moved for admission pro hac vice reluctantly and only because Parker requested it.[243] Parker testified that he told Dershowitz he needed to be admitted pro hac vice because he was going to be "on the pleadings" and that pro hac vice admission was an aspect of his retention.[244] Dershowitz eventually complied with the directive.[245]

Tangentially, plaintiff Kari Lake and ubiquitous election denier Mike Lindell were publicly lauding Dershowitz's involvement in the case.[246] Lindell went so far as to describe him as one of the plaintiffs' lead lawyers.[247] Dershowitz denied any contemporaneous knowledge of these announcements.[248]

The court granted the Maricopa County Defendants' motion for sanctions.[249] The court determined the plaintiffs' lawyers should be required to pay the Maricopa County Defendants' attorneys' fees.[250] The court deferred its determination of the specific fee award until after the parties had the chance to file related submissions.[251] It was then that Dershowitz asked the court to order the

239. *Id.*

240. *Id.*

241. *Id.*

242. *Id.* at *4–5.

243. *Id.* at *4.

244. *Id.* at *4–5.

245. *Id.* at *5.

246. *Id.* at *4.

247. *Id.*

248. *Id.*

249. Lake v. Hobbs, 643 F. Supp. 3d 989, 1012–13 (D. Ariz. 2022), *aff'd on other grounds*, 83 F.4th 1199 (9th Cir. 2023) (concluding plaintiffs' counsel should be sanctioned under Rule 11 and 28 U.S.C. § 1927 and granting the Maricopa County Defendants' motion for sanctions).

250. *Id.* at 1012.

251. *Fontes*, No. CV-22-00677-PHX-JJT, 2023 WL 4548357, at *2 (D. Ariz. July 14, 2023), *appeal docketed*, Lake v. Gates, No. 23-16023 (9th Cir. July 24, 2023).

Maricopa County Defendants to show cause as to why he or his consulting firm should be sanctioned.[252] He argued against sanctions based on his limited participation in the litigation and his lack of any involvement in preparing the offending pleadings, motions, and other papers.[253] In opposing sanctions, Dershowitz submitted declarations describing his involvement in the case and a declaration from Parker to the same effect, and both he and Parker testified at the aforementioned evidentiary hearing.[254]

Dershowitz insisted that he could not be sanctioned because his designation as "of counsel" signaled his limited role in the litigation "and effectively exempted him from the Rule 11 requirements imposed on Plaintiffs' 'counsel.'"[255] In his view, serving as an "of counsel" legal consultant excused him from evaluating his clients' factual allegations.[256] He acknowledged that he had no legal authority "supporting this use of the 'of counsel' designation, but noted he and [other lawyers] ha[d] used it on 'many, many briefs' before."[257] He added that he never familiarized himself with the use of "of counsel" in practice or how the term traditionally was employed.[258] Rather, he simply did here what he had done for a decade or longer in other cases in the sincere belief that it was the most forthright way of indicating the role he was playing in the case.[259] As he recounted for the court:

> [H]e first used the "of counsel" designation in a 1973 federal case in which he had a limited retainer agreement. He recalled discussing the issue with both the lead attorney in that case, United States Attorney Robert Fiske, and legal ethics scholar Monroe Freedman, who agreed the "designation 'of counsel' seemed most appropriate under the circumstances." He [said] he ha[d] since used the designation when he ha[d] "played a limited and discrete role in researching and writing a pleading, without having done the full investigation required of lead counsel, counsel of record, or counsel."[260]

In analyzing Dershowitz's arguments, the court noted that while "Rule 11(a) only requires one attorney of record to sign a filing," Rule 11 nowhere "limits [a] court's authority to sanction multiple attorneys if each of them voluntarily signed

252. *Id.*
253. *Id.*
254. *Id.*
255. *Id.* at *9.
256. *Id.* at *5.
257. *Id.* (citations omitted).
258. *Id.*
259. *Id.*
260. *Id.* at *6 (quoting Dershowitz).

an inadequate filing or is otherwise responsible for [a Rule 11(b)] violation."[261] Nor does Rule 11 "qualify the import of a signature" based on the signer's chosen designation.[262] "The act of signing thus lies at the heart of Rule 11."[263]

The *Fontes* court observed that several circuit courts of appeals had upheld sanctions against lawyers who had signed pleadings that violated Rule 11 despite their limited roles in preparing the pleadings or investigating the underlying facts.[264] Indeed, the court observed that in *King v. Whitmer*, discussed earlier, the Sixth Circuit had affirmed sanctions against disgraced Georgia lawyer Lin Wood, who was listed as "of counsel" on a complaint he did not sign.[265] In short, Dershowitz's argument was doomed to failure based on the text of Rule 11, applicable caselaw, and the facts.[266]

> Plaintiffs' FAC and MPI lacked an adequate basis in law and fact. Whether Mr. Dershowitz signed, or intended to sign, those filings as "counsel" or "attorney" or "of counsel," he signed them. And he effectively conceded that he authorized his signature on these filings without investigating whether they were legally and factually sound. If there was any doubt this brought him within the ambit of Rule 11, the evidence . . . demonstrates that all parties involved understood the value of his signature. It was an agreed-upon part of his retention. It led opposing counsel and the public to believe he represented Plaintiffs in this matter . . . . Mr. Dershowitz did not do anything to dispel this notion until after the Maricopa County Defendants moved for sanctions. Further, he participated in at least one telephonic conference with opposing counsel; his telephonic presence was announced at the one hearing on the merits; and, according to Mr. Parker, he reviewed and provided feedback on at least the FAC.[267]

261. *Id.* at *9.

262. *Id.*

263. *Id.* at *10.

264. *Id.* at *11 (discussing, first, Jenkins v. Methodist Hosps. of Dall., Inc., 478 F.3d 255, 264–66 (5th Cir. 2007); then discussing Val-Land Farms, Inc. v. Third Nat'l Bank, 937 F.2d 1110, 1118 (6th Cir. 1991)).

265. *Id.* (discussing King v. Whitmer, 71 F.4th 511 (6th Cir. 2023)); *see also supra* notes 82–93 and accompanying text.

266. *Fontes*, 2023 WL 4548357, at *12.

267. *Id.*

Furthermore, Dershowitz appeared pro hac vice on the plaintiffs' behalf.[268] He had to apply for pro hac vice admission to sign filings in the case.[269] Because the filings he signed violated Rule 11, he was subject to sanctions.[270]

Retreating, Dershowitz asserted that he never intended to endorse the plaintiffs' claims and that, at most, authorizing the placement of his signature on filings was an "honest mistake."[271] This argument failed because his subjective intent was irrelevant to the court's analysis.[272] As the court pointed out, a lawyer's compliance with Rule 11 is evaluated objectively.[273]

Lastly, Dershowitz argued that, as a matter of policy, Rule 11 should not apply, or should apply less rigorously, to lawyers who sign papers as "of counsel" to signal their limited involvement in a case.[274] The court conceded there was some merit to this argument, and recognized that there is value to clients in engaging with lawyers who have special expertise but who cannot conduct the reasonable prefiling inquiry Rule 11 requires.[275] But lawyers in this situation may contribute their talents without signing pleadings or other papers filed with the court.[276] Once lawyers opt to sign filings, their duties under Rule 11 are clear and courts must enforce them.[277] Plus, adoption of such a policy could diminish the significance of lawyers' signatures and cause courts to doubt their reliability; would immunize lawyers who list themselves "of counsel" no matter how frivolous their filings; and eventually erode Rule 11's essential purposes.[278]

At the same time, when weighing responsibility for monetary sanctions, the *Fontes* court viewed Dershowitz's situation somewhat sympathetically.[279] His participation in the litigation truly was "limited and he made an effort—albeit a misguided one—to communicate his limited role."[280] He apparently chose the "of

268. *Id.*
269. *Id.*
270. *Id.*
271. *Id.* at *13 (internal quotation marks omitted).
272. *Id.*
273. *Id.* (citing Smith v. Ricks, 31 F.3d 1478, 1488 (9th Cir. 1994)).
274. *Id.*
275. *Id.*
276. *Id.*
277. *Id.* (citing Bus. Guides, Inc. v. Chromatic Commc'ns Enters., Inc., 498 U.S. 533, 549 (1991)).
278. *Id.* (citing Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 393 (1990); Pavelic & LeFlore v. Marvel Ent. Grp., 493 U.S. 120, 126 (1989)).
279. *See id.* at *15.
280. *Id.*

counsel" designation after discussing that approach with other lawyers and a legal ethics scholar.[281] The court therefore credited his claim that he simply made an "honest mistake."[282] He apologized for his error and vowed not to repeat it.[283] The court also accepted his claim that he did not know at the time that Lake and Lindell were touting him as a prominent figure in the case, which diminished the need for the deterrence embodied in Rule 11.[284] Additionally, the court reasoned any sanction should not be so substantial that it might dissuade other legal experts from participating in litigation for fear of sanctions, so long as they adhere to Rule 11.[285]

In the end, the *Fontes* court held the plaintiffs' lawyers jointly and severally liable for $122,200 in attorneys' fees.[286] With respect to Dershowitz, however, the court limited his sanction to $12,200, or 10 percent of the total fee award.[287] That was a drop in the bucket for Dershowitz given his reported wealth.[288]

The plaintiffs' lawyers have appealed the sanctions against them, and it is possible the Ninth Circuit will reverse Dershowitz's sanction.[289] But Dershowitz faces an uphill battle. The district court thoroughly analyzed Dershowitz's situation and there is no obvious basis for the Ninth Circuit to conclude that the district judge abused his discretion in imposing the relatively modest monetary sanction he chose.[290]

281. *Id.*

282. *Id.* (quoting Dershowitz).

283. *Id.*

284. *Id.*

285. *Id.*

286. *Id.*

287. *Id.*

288. *See* Joshua Holt, *A Dozen of the Richest Practicing Lawyers in the World*, BIGLAW INVESTOR, https://www.biglawinvestor.com/richest-lawyers [https://perma.cc/VW93-5WEK] (May 28, 2022) (reporting Dershowitz's net worth as $25 million); *see also Alan Dershowitz Net Worth $20 Million*, CELEBRITY NET WORTH, https://www.celebritynetworth.com/richest-businessmen/lawyers/alan-dershowitz-net-worth [https://perma.cc/5M3J-YB97].

289. *Fontes*, 2023 WL 4548357, *appeal docketed*, Lake v. Gates, No. 23-16022 (9th Cir. July 24, 2023).

290. *See* Foreman v. Wadsworth, 844 F.3d 620, 627 (7th Cir. 2016) ("Rule 11 sanctions are left to the sound discretion of the district court."); Mercury Air Grp., Inc. v. Mansour, 237 F.3d 542, 548 (5th Cir. 2001) ("This Court reviews Rule 11 sanctions for abuse of discretion . . . . Moreover, the imposition of sanctions is often a fact-intensive inquiry, for which the trial court is given wide discretion."); Air Separation, Inc. v. Underwriters at Lloyd's of London, 45 F.3d 288, 291 (9th Cir. 1995) ("All aspects of a district court's Rule 11 determination are reviewed for abuse of discretion.").

More generally, Dershowitz's belief that identifying himself as an "of counsel" member of the plaintiffs' legal team excused him from complying with Rule 11 was unjustified. First, his 50-year-old chat with Robert Fiske (then a federal prosecutor in New York) and the late Monroe Freedman (then a law professor specializing in legal ethics) about using the designation to signal his limited involvement, in what must have been a criminal case, had everything to do with clarifying the scope of his representation for the court in that case and nothing to do with Rule 11.[291] So, anything he gleaned from that ancient conversation provided no foundation for his belief that Rule 11 did not apply to him in *Fontes*. Second, Rule 11 plainly treats all lawyers who sign or otherwise present filings equally—there is no limited scope carveout.[292] Third, and related to the second point, courts have long held that lawyers may not avoid Rule 11 sanctions by claiming they relied on other lawyers to verify that pleadings or motions were legally warranted and factually supported.[293] Fourth, the Maricopa County Defendants sent Dershowitz a copy of their Rule 11 safe harbor letter, but he apparently ignored or overlooked it.[294] Assuming that Dershowitz believed Rule 11 did not apply to him, the safe harbor letter should have alerted him to defense counsel's misunderstanding of his role in the litigation and prompted him to at least speak with Parker about clarifying for all concerned the limited scope of his engagement.[295]

291. *See Fontes*, 2023 WL 4548357, at *6.

292. *See id.* at *9 ("Nor does the text of the rule qualify the import of a signature based on the designation used by the signer.").

293. *See, e.g.*, *In re* Kunstler, 914 F.2d 505, 513–14 (4th Cir. 1990) (sanctioning the late civil rights lawyer, William Kunstler, who wholly relied on his cocounsel to prepare and file the complaint).

294. *See Fontes*, 2023 WL 4548357, at *5 (discussing the Maricopa County Defendants' Rule 11 safe harbor letter and Dershowitz's related recollections).

295. In the hearing on the defendants' motion for sanctions, the court questioned Dershowitz about his knowledge of Rule 11, his role in reviewing the plaintiffs' filings, whether he had read the local roles on pro hac vice admission, and his recollection of the conference call with defense counsel. *See* Bob Christie, *Famed Lawyer Alan Dershowitz Fights Sanctions in Lake-Finchem Case*, ARIZ. DAILY STAR, https://tucson.com/news/election/famed-lawyer-alan-dershowitz-fights-sanctions-in-lake-finchem-case/article_a0eeb0c0-fb0f-11ed-a22e-5fe22377ecf0.html [https://perma.cc/8FQT-WK7L] (June 29, 2024). Dershowitz reportedly testified that he did not recall details about reading court filings or participating in the phone call with defense counsel. "'The court will have to excuse me—I'm almost 85 years old, I've had four strokes, and my memory is not what it was when I was 25 years old,' he said." *Id.* Given that admission, it is perhaps worth asking whether he should have participated in the case.

2. *Summary*

Rule 11 contains no exception for lawyers in limited scope representations, just as it contains no exceptions for local counsel (who are themselves engaged in a form of limited scope representation).[296] Lawyers in limited scope representations who sign filings must comply with Rule 11 just like the lawyers with broad responsibility for the litigation.[297] Lawyers who wish to limit the scope of their representation and who do not want to assume responsibility for complying with Rule 11 should not sign or otherwise present pleadings, motions, or other papers to the court. They can perform their responsibilities and earn their fees without entering their appearances.

IV. GHOSTWRITING

While we have so far discussed Rule 11 violations based on lawyers signing pleadings, motions, and other papers filed with courts, lawyers may also expose themselves to sanctions and professional discipline by ghostwriting filings for ostensibly pro se litigants.[298] Federal courts generally condemn ghostwriting.[299] Courts frequently criticize ghostwriting by lawyers as dishonest, unethical, and an improper means of evading responsibility for their actions.[300] Nor does a lawyer

296. *See* FED. R. CIV. P. 11(b).

297. *See supra* Part III.

298. *See* DOUGLAS R. RICHMOND ET AL., PROFESSIONAL RESPONSIBILITY IN LITIGATION 336–44 (3d ed. 2021) (discussing the professional responsibility implications of ghostwriting); *see, e.g.*, *In re* Ellingson, 230 B.R. 426, 435 n.12 (Bankr. D. Mont. 1999) (stating that ghostwriting by lawyers violates Rule 11 as well as ethics rules).

299. *See* Senatus v. Lopez, No. 20-60818-CV-SMITH, 2021 WL 5310591, at *3 (S.D. Fla. Aug. 9, 2021) (agreeing that "ghostwriting is universally condemned" by courts); Metron Nutraceuticals, LLC v. Cook, 550 F. Supp. 3d 484, 486 (N.D. Ohio 2021) ("Drafting legal documents for a *pro se* litigant is often called 'ghostwriting'—a practice the federal courts almost universally condemn."); Evangelist v. Green Tree Servicing, LLC, No. 12–15687, 2013 WL 2393142, at *3 n.6 (E.D. Mich. May 21, 2013) ("The federal courts have almost universally condemned ghostwriting."). *But see In re* Fengling Liu, 664 F.3d 367, 369–73 (2d Cir. 2011) (finding a lawyer who engaged in ghostwriting did not thereby commit misconduct).

300. *See, e.g.*, Barnett v. LeMaster, 12 F. App'x 774, 778 (10th Cir. 2001) (explaining a lawyer's failure to identify himself by signing a pleading, written motion, or brief "constitute[d] a misrepresentation to [the] court by both the litigant and attorney"); Duran v. Carris, 238 F.3d 1268, 1271–72 (10th Cir. 2001) ("Mr. Snow's actions in providing substantial legal assistance to Mr. Duran without entering an appearance in this case not only affords Mr. Duran the benefit of this court's liberal construction of pro se pleadings, but also inappropriately shields Mr. Snow from responsibility and accountability for his actions . . . ."); Gordon v. Kartri Sales Co., No. 3:17-CV-00320, 2018 WL 1251965, at *2 n.3 (M.D. Pa. Mar. 12, 2018) ("[G]hostwriting . . . is

who ghostwrites pleadings or other filings for an ostensibly pro se litigant necessarily do the litigant any favors, since the litigant will face sanctions if the papers are held to violate Rule 11(b).[301]

One of courts' principal concerns about ghostwriting is the advantage it unfairly affords supposedly pro se litigants by giving them the benefit of the general rule that courts should liberally construe pro se pleadings when, in fact,

generally disfavored by Federal Courts. The practice serves as a means of misrepresentation to the [c]ourt, gives *pro se* [p]laintiffs an unfair advantage, as they are already entitled to special leniency, and violates an attorney's duty of candor to the [c]ourt."); Auto Parts Mfg. Miss. Inc. v. King Constr. of Hous., LLC, No. 1:11-CV-00251-GHD-SAA, 2014 WL 1217766, at *7 (N.D. Miss. Mar. 24, 2014) (cautioning that an attorney who ghostwrites filings "is acting unethically and is subject to sanctions"); Anderson v. Kohl's Corp., No. 2:12-cv-00822, 2013 WL 1874812, at *2 n.4 (W.D. Pa. May 3, 2013) (stating bluntly that "'ghostwriting' is not permitted"); Falconer v. Lehigh Hanson, Inc., No. 4:11-CV-373, 2013 WL 3480382, at *6 n.2 (S.D. Tex. July 9, 2013) (cautioning that ghostwriting is "misconduct" that "exposes both litigants and counsel to the possibility of sanctions, including fines, contempt, and professional discipline"); Makreas v. Moore Law Grp., A.P.C., No. C-11-2406 MMC, 2012 WL 1458191, at *3 (N.D. Cal. Apr. 26, 2012) (criticizing ghostwriting in connection with an attempt to recover attorney's fees); Nationwide Tr. Servs., Inc. v. Rivera, No. 3:11-cv-528-RJC-DSC, 2012 WL 1394916, at *2 n.2 (W.D.N.C. Apr. 23, 2012) (admonishing a lawyer that the court "condemn[ed] the ghostwriting of pleadings for parties purporting to appear pro se"); Davis v. Bacigalupi, 711 F. Supp. 2d 609, 626 (E.D. Va. 2010) (stating that ghostwriting "is strongly disapproved as unethical and as a deliberate evasion of the responsibilities imposed on attorneys"); Gordon v. Dadante, No. 1:05-CV-2726, 2009 WL 1850309, at *27 (N.D. Ohio June 26, 2009) (criticizing ghostwriting, stating the court would continue to strike ghostwritten pleadings, and threatening parties who submit ghostwritten pleadings with contempt); Bittle v. Elec. Ry. Improvement Co., 576 F. Supp. 2d 744, 755 n.9 (M.D.N.C. 2008) ("This court condemns the ghostwriting of pleadings for parties purporting to appear pro se."); Anderson v. Duke Energy Corp., No. 3:06cv399, 2007 WL 4284904, at *1 n.1 (W.D.N.C. Dec. 4, 2007) (expressing "a dim view" of ghostwriting); *In re* Dreamplay, Inc., 534 B.R. 106, 120 (Bankr. D. Md. 2015) (stating that ghostwriting "violates an attorney's duty of candor and circumvents [the Rule] which ensures that submissions of court documents are made in good faith with the responsible party's signature," and that "[a]ttorneys who engage in ghostwriting for *pro se* litigants may be subject to sanctions, suspension or disbarment"); *In re* Smith, Nos. 12-11603, 12-11857, 2013 WL 1092059, at *22 (Bankr. E.D. Tenn. Jan. 20, 2013) (concluding ghostwriting violated the lawyer's duty of candor and was a misrepresentation within the meaning of Rule 8.4(c) of the Tennessee Rules of Professional Conduct); *In re* Brown, 354 B.R. 535, 545–46 (Bankr. N.D. Okla. 2006) (concluding that ghostwriting was intolerable); *In re* Mungo, 305 B.R. 762, 767–70 (Bankr. D.S.C. 2003) (offering reasons for prohibiting ghostwriting).

301. *See, e.g.*, Mejía v. Robinson, No. 1:16-cv-9706-GHW, 2018 WL 3821625, at *4 (S.D.N.Y. Aug. 10, 2018) ("When an attorney ghostwrites a plaintiff's opposition memorandum, it is the plaintiff, and not the attorney, who is subject to Rule 11's obligations in connection with that memorandum.").

they are not entitled to such lenience.[302] At the same time, and as already suggested, ghostwriting allows lawyers assisting ostensibly pro se litigants to avoid responsibility for complying with Rule 11(b) and evade accountability for violating the rule.[303]

Not all assistance of pro se litigants is prohibited. For instance, pro se litigants who visit legal clinics or attend legal workshops and, in the process, receive legal assistance or guidance in preparing their pleadings do not necessarily forfeit the leniency that courts traditionally show pro se litigants.[304] Nor do lawyers engage in misconduct by lending limited assistance to clients, family members, friends, or others who plan to represent themselves.[305] Lawyers cross the line, however, when they anonymously prepare pleadings, motions, or other papers knowing that the parties for whom they labor for will present their work product to the court as if it were the parties' own.[306]

As much as courts dislike ghostwriting, courts are also unwilling to speculate about whether a pro se litigant's papers were prepared with a lawyer's secret

302. *See* Krasil v. Betze, No. 22-6914 (MAS) (RLS), 2023 WL 1997697, at *2 (D.N.J. Feb. 14, 2023) ("The Court also recognizes the well-established obligation to liberally construe a pro se litigant's pleadings. The Court notes, however, that filing with an undisclosed ghostwriter presents an unfair advantage to pro se litigants under these less stringent standards."); *Senatus*, 2021 WL 5310591, at *2 ("An attorney ghostwriting for a pro se litigant is improper because it affords the litigant the benefit of the court's liberal construction of pro se pleadings . . . ."); Bardfield v. Chisholm Props. Cir. Events, LLC, No. 3:09cv232/MCR/EMT, 2010 WL 2278461, at *4 n.4 (N.D. Fla. May 4, 2010) (explaining that if a defendant submitted pleadings as though he were pro se but the pleadings actually were drafted by a lawyer, he would receive an unfair advantage in that his pleadings would be construed liberally while those filed by the plaintiffs "would be held to a higher level of scrutiny"—an "advantage [that] could affect other aspects of the litigation as well").

303. *See Senatus*, 2021 WL 5310591, at *2 (stating that ghostwriting shields lawyers from responsibility for their guidance); *see also Bardfield*, 2010 WL 2278461, at *4 n.4 (stating that ghostwriting by lawyers "has been deemed a deliberate evasion of the responsibilities imposed on counsel by Federal Rule of Civil Procedure 11 and, as such, has been widely condemned as unethical").

304. *See, e.g.*, Zemaitiene v. Corp. of the Church of Latter-Day Saints, No. 2:16-cv-01271-RJS-EJF, 2019 WL 3097854, at *3 (D. Utah June 14, 2019) (involving a pro se plaintiff who sought advice from lawyers at legal clinics and who admitted to attending legal workshops where she received legal assistance).

305. *See* Ricotta v. California, 4 F. Supp. 2d 961, 987 (S.D. Cal. 1998), *aff'd*, 173 F.3d 861 (9th Cir. 1999).

306. *See id.* (stating the lawyer's knowledge of the litigant's intent to present the lawyer's work as its own may be either actual or constructive).

assistance.[307] Pro se litigants' admirable diction and grammar are not alone evidence of ghostwriting nor are well-pleaded complaints;[308] after all, pro se litigants may be smart, or perhaps they reviewed pleadings in other cases or consulted formbooks at a local law library.[309] Courts also tend to accept pro se litigants' declarations that they have not received assistance from lawyers absent evidence to the contrary.[310]

Although courts may, in their discretion, require pro se litigants to file affidavits clarifying responsibility for suspicious filings, courts rarely take any remedial action absent substantial evidence of ghostwriting, such as an admission from the litigant or an acknowledgement from the responsible lawyer.[311] *Metron Neutraceuticals, LLC v. Cook* is a case where the court had sufficient evidence to act on allegations of ghostwriting.[312]

There, pro se defendant Clayton Thomas filed a brief opposing the plaintiff's motion for sanctions that appeared to have been written by someone with legal training.[313] Around the same time, G. Kline Preston entered his appearance as counsel for a codefendant, Root Wellness, LLC, which apparently had some connection to Thomas.[314] The court held a hearing on pending motions, including the sanctions motion.[315] Before hearing the parties' arguments, the court asked Thomas whether he wrote the brief opposing the plaintiff's motion for sanctions.[316]

307. *See* Bastian v. Jaramillo, No. 21-350 WJ/JFR, 2023 WL 5401116, at *3 (D.N.M. Aug. 22, 2023); *see also Senatus*, 2021 WL 5310591, at *3; Somerset Pharms., Inc. v. Kimball, 168 F.R.D. 69, 71–73 (M.D. Fla. 1996).

308. *Senatus*, 2021 WL 5310591, at *2–3.

309. *See Somerset Pharms., Inc.*, 168 F.R.D. at 73 ("[A]ttorneys do not have a monopoly on verbosity.").

310. *See, e.g.*, *Bastian*, 2023 WL 5401116, at *3; Gans v. Century III Kia, No. 23-1616, 2023 WL 7386565, at *1 n.1 (W.D. Pa. Nov. 8, 2023); Shahroki v. Harter, No. 2:21-cv-01126-RFB-NJK, 2021 WL 4981069, at *1 (D. Nev. Oct. 26, 2021).

311. *Senatus*, 2021 WL 5310591, at *2 ("While courts may exercise their discretion to order a party to submit a clarifying affidavit on the issue of ghostwriting, it is unusual for a court to take any action absent concrete evidence of ghostwriting, such as an admission from the pro se litigant or ghostwriting attorney."); *see* Saint Vil v. Perimeter Mortg. Funding Corp., No. 1:14-cv-01428-MHC-RGV, 2016 WL 10567193, at *3 (N.D. Ga. Dec. 15, 2016) ("Plaintiffs appeared before the Court . . . and . . . confirmed on the record that [a lawyer] has conducted legal research and assisted in drafting all pleadings, motions, responses, and briefs that have been filed in this case bearing the signatures of the plaintiffs.").

312. 550 F. Supp. 3d 484, 487 (N.D. Ohio 2021).

313. *Id.* at 486.

314. *Id.*

315. *Id.*

316. *Id.*

Thomas initially said that he wrote the brief, but then waffled and said that he either had help from someone with legal training in his office or from lawyers, but he could not recall their names.[317] Dissatisfied with his answers, the court ordered him to file a sworn declaration identifying who helped him prepare the brief and stating the extent of their legal training and assistance.[318]

In response to the court's order, Thomas grudgingly admitted that he relied on a paralegal "as a resource" in drafting the brief in question.[319] The paralegal Thomas identified worked at Preston's law firm.[320] The court was displeased.[321]

The *Metron* court began its analysis by noting that federal courts had universally condemned ghostwriting.[322] Although parties may proceed pro se, their rights to undisclosed assistance in litigating their cases is limited by procedural rules and rules of professional conduct.[323] These limits exist regardless of whether the ghostwriter is a lawyer, someone with legal training, or even a layman.[324]

In this case, Thomas admitted he received assistance from a paralegal in drafting his brief opposing the plaintiff's sanctions motion.[325] The court accordingly admonished Thomas that receiving legal assistance in drafting filings while appearing pro se violated his duty of candor to the court.[326] The court announced its intent to sanction him for his misconduct after further proceedings,[327] but the court did not stop there.

Because the paralegal who assisted Thomas was employed by Preston's law firm, the court suspected Preston may have had a hand in ghostwriting the offending brief.[328] The court's suspicion rested on Ohio authority to the effect that a paralegal can only provide legal assistance under a lawyer's direction and control.[329] Consequently, the court ordered Preston "to show cause why he ha[d]

317. *Id.*
318. *Id.*
319. *Id.* (internal quotations omitted).
320. *Id.*
321. *See id.*
322. *Id.*
323. *Id.*
324. *Id.*
325. *Id.* at 487–88.
326. *Id.* at 487.
327. *Id.*
328. *Id.*
329. *Id.* at 487–88 (citing Cleveland Metro. Bar Ass'n v. Davie, 977 N.E.2d 606, 611 (Ohio 2012)).

not violated Rule 11(b) or should not otherwise be sanctioned under the Court's inherent authority."[330]

V. CONCLUSION

Under Rule 11, a lawyer who signs pleadings, motions, or other papers that are filed with a court certifies to the court that: (1) the documents are not presented for any improper purpose; (2) the claims or defenses therein are "warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law"; (3) the factual contentions "have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery"; and (4) any factual denials "are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information."[331] In addition, the Rule 11 signature requirement implicates a number of other issues that may affect a signing lawyer and the lawyer's clients. In fact, the seemingly rote act of signing a pleading or other paper is a significantly consequential act by a lawyer.[332] Certainly, signing a federal court filing is anything but mechanical. The requirement that lawyers sign the pleadings, motions, or other papers they file with courts lies at the heart of Rule 11.

330. *Id.* at 488.

331. FED. R. CIV. P. 11(b).

332. *See* Christian v. Mattel, Inc., 286 F.3d 1118, 1127 (9th Cir. 2002).