Loyola University Chicago Law Journal

Volume 20
Issue 4 *Summer 1989 Illinois Judicial Conference Symposium*

Article 9

1989

Attorney Sanctions in Illinois Under Illinois Supreme Court Rule 137

George W. Timberlake Honorable
Assoc. Judge, Circuit Court of Illinois, 2d Judicial Circuit

Nancy Pionk
Assoc., McBride, Baker & Coles, Chicago, IL

Attorney Sanctions in Illinois Under Illinois Supreme Court Rule 137

Honorable George W. Timberlake and Nancy Pionk***

I. INTRODUCTION

This Article will review recent Illinois case law interpreting attorney sanctions under amended section 2-611 of the Illinois Code of Civil Procedure[1] and suggest its continuing relevance under Illinois Supreme Court Rule 137.[2] In 1986, the Illinois General Assembly amended section 2-611 of the Illinois Code of Civil Procedure.[3] The new and expanded section 2-611, patterned after Federal Rule of Civil Procedure 11, was aimed at reducing frivolous litigation in Illinois.[4] Amended section 2-611 required mandatory sanctions on non-complying parties and their attorneys.[5] On June 19, 1989, the Illinois Supreme Court adopted rule 137,[6] which is identical to section 2-611, with three exceptions: 1)

* Associate Judge, Circuit Court of Illinois, 2d Judicial Circuit; B.A., 1970; M.B.A., 1977; J.D., 1977, University of Illinois.

** Associate, McBride, Baker & Coles, Chicago, Illinois; B.A., 1986, Eastern Michigan University; J.D., 1989, Loyola University of Chicago.

1. Ill. Rev. Stat. ch. 110, para. 2-611 (1987).
2. ILL. S. CT. R. 137, ILL. REV. STAT. ch. 110A, para. 137 (1989).
3. *See* ILL. REV. STAT. ch. 110, para. 2-611 (1987).
4. *See* ILL. ANN. STAT. ch. 110, para. 2-611 (Smith-Hurd Supp. 1988) (historical and practice notes).
5. ILL. REV. STAT. ch. 110, para. 2-611 (1987).
6. ILL. S. CT. R. 137, ILL. REV. STAT. ch. 110A, para. 137 (1989). The effective date of rule 137 is August 1, 1989. Rule 137 provides:

> Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign his pleading, motion, or other paper and state his address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person

rule 137 makes the imposition of sanctions discretionary rather than mandatory; 2) rule 137 requires a trial judge to set forth specific reasons for a sanction in an order; and 3) unlike section 2-611, rule 137 has no provisions regarding insurance companies.[7] Because the Illinois Supreme Court controls the rules of procedure in Illinois courts, rule 137 preempts amended section 2-611.[8]

The main focus of this Article will be on the substantial body of case law that has developed under amended section 2-611. Because the substance of rule 137 mirrors section 2-611 and the Illinois Supreme Court has not indicated that cases interpreting section 2-611 are no longer binding, this Article assumes that cases decided under section 2-611 are still good law and can be applied to interpret identical provisions under rule 137. This Article refers to section 2-611 throughout, and notes any changes required under rule 137. Because Illinois courts have turned to federal cases interpreting rule 11 for guidance under section 2-611,[9] this Article will also look to federal case law in the areas that Illinois courts have not yet addressed. Practitioners and judges may want to review case

---

who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney fee. All proceedings under this rule shall be within and part of the civil action in which the pleading, motion or other paper referred to has been filed, and no violation or alleged violation of this rule shall give rise to a separate cause of action, or another cause of action within the civil action in question, by, on behalf of or against any party to the civil action in question, and by, on behalf of or against any attorney involved in the civil action in question.

This rule shall apply to the State of Illinois or any agency of the State in the same manner as any other party. Furthermore, where the litigation involves review of a determination of an administrative agency, the court may include in its award for expenses an amount to compensate a party for costs actually incurred by that party in contesting on the administrative level an allegation or denial made by the State without reasonable cause and found to be untrue.

Where a sanction is imposed under this rule, the judge shall set forth with specificity the reasons and basis of any sanction so imposed either in the judgment order itself or in a separate written order.

Id.

7. *Id.*

8. *See* ILL. CONST. art. VI, § 1 ("The judicial power is vested in a Supreme Court, an Appellate Court and Circuit Courts."). Under the constitution, the Illinois Supreme Court possesses rule-making power to regulate trial procedure. People v. Cox, 82 Ill. 2d 268, 274, 412 N.E.2d 541, 544-45 (1980). While the legislature has the power to create laws governing legal procedure, it cannot create statutes that unduly infringe upon the inherent power of the judiciary. *Id.* Where a statute and a judicially promulgated rule conflict, the rule prevails. *Id.*

9. *See, e.g.*, Frisch Cont. Serv. v. Personnel Protection, 158 Ill. App. 3d 218, 224, 511 N.E.2d 831, 835-36 (2d Dist. 1987).

law under the prior section 2-611 depending on the circumstances of the case. The cases interpreting prior versions of section 2-611 have a general continuing relevance and may be helpful in determining the type of sanctions available or the kinds of hearings that can be held.

Despite the guidance provided by federal case law, Illinois judges have been reluctant to impose sanctions under section 2-611. Until recently, this reluctance may have been the result of the paucity of Illinois decisions interpreting section 2-611. Trial judges may have been confused as to which federal standards under rule 11 apply to Illinois attorney sanctions. Other trial judges may have been unwilling to impose the mandatory sanctions under section 2-611 given the broad duties it imposed on attorneys and their clients. Judges may also be attempting to avoid the satellite litigation that rule 11 has spawned in the federal courts. This Article is designed to provide guidance to judges and practitioners through the substantial body of case law that has developed in the area of attorney sanctions. Such a focus should provide a clearer understanding of Illinois' sanction rules and their breadth.

II. THE EVOLUTION OF RULE 137

Although rule 137 and its predecessors have been altered many times, its purpose has always been to combat frivolous, false, or baseless actions and prevent the harassment and expense that accompanies such actions.[10] Section 2-611's most recent amendments greatly expanded the authority to sanction such misconduct. Prior to 1976, sanctions were allowed only against parties for "untrue allegations and denials," made without reasonable cause and in bad faith.[11] In 1976, the Illinois Legislature dropped the bad faith requirement.[12] In 1977, another amendment made the rule applicable to state agencies and administrative hearings.[13]

10. *See* Ready v. Ready, 33 Ill. App. 2d 145, 178 N.E.2d 650 (1st Dist. 1961). In *Ready*, the court stated:

> Section 41 is an attempt of the legislature to penalize the litigant who pleads frivolous or false matters or brings a suit without any basis in law and thereby puts the burden upon his opponent to expend money for an attorney to make a defense against an untenable suit . . . . One of the purposes of Section 41 is to prevent litigants being subjected to harassment by the bringing of actions against them which in their nature are vexatious, based upon false statements, or brought without any legal foundation.

Id. at 161-62, 178 N.E.2d at 658.

11. ILL. REV. STAT. ch. 110, para. 41 (1955).

12. ILL. REV. STAT. ch. 110, para. 2-611 (1975).

13. ILL. REV. STAT. ch. 110, para. 2-611 (1979).

Rule 137 tracks the newest amendments of section 2-611. Like section 2-611, rule 137 applies to "every pleading, motion, and other paper" and is directed toward attorneys as well as parties.[14] Likewise, a lawyer or unrepresented party must sign every pleading, motion and other paper filed.[15] By this signature, the signer certifies that he or she has read the pleading, motion, or other paper, and that a "reasonable inquiry" into the facts and law was made.[16] In addition, the signer certifies that the pleading, motion, or other paper is "well-grounded in fact," and is "warranted by existing law or a good faith argument for the extension, modification, or a reversal of existing law."[17] Finally, the attorney or party certifies that the pleading, motion or other paper is not "interposed for any improper purpose" such as harassment, unnecessary delay, or increase of the cost of litigation.[18] Courts are authorized to strike a paper that is not signed unless an attorney or party promptly signs it after the omission is pointed out.[19] Courts may also impose an "appropriate sanction" on a signer or a represented party, or both, for violations of these requirements.[20]

In a significant depature from section 2-611 and federal rule 11, rule 137 makes the imposition of sanctions discretionary rather than mandatory.[21] The effect of this change may be to reduce the number of sanctions imposed under rule 137, thereby avoiding satellite litigation. Rule 137 also requires a judge to specify the reason for imposing a sanction in the judgment order or a separate written order.[22] Presumably, this change will provide a party with sufficient notice of the violation and allow more thorough appellate review of the sanction order. In addition, the Illinois Supreme Court excluded provisions concerning sanctions of insurance companies that existed under amended section 2-611.[23]

---

14. ILL. S. CT. R. 137, ILL. REV. STAT. ch. 110A, para. 137 (1989).

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.* Finally, any person signing the paper, represented parties, the state, and its agencies are subject to rule 137. *Id.* If the litigation involves administrative review, courts may include in a sanction award compensation to a party for "costs actually incurred by that party in contesting on the administrative level an allegation or denial made by the State without reasonable cause and found to be untrue." *Id.*

21. *Id.*

22. *Id.*

23. *Id.* Section 2-611 provided that if an attorney, who represents a party on behalf of an insurance company, signed a pleading, and a insurance company had actual knowl-

III. RETROACTIVITY AND TYPES OF PROCEEDINGS

Illinois appellate courts have held that section 2-611 is not retroactive.[24] In *Ignarski v. Heublein*,[25] the Appellate Court for the First District held that amended section 2-611 could not be applied retroactively to conduct which occurred before the amendment's effective date.[26] The court stated that the amendment did not affect a "mere change in an existing procedure or remedy" but rather it created an obligation on the appellant law firm which previously did not exist.[27] Because rule 137 does not change any of the obligations of the parties or their attorneys, it should be retroactive where the events occurred after the most recent amendment of section 2-611.

Courts also have addressed the types of proceedings covered by section 2-611. Courts have found that section 2-611 refers to civil pleadings exclusively,[28] and that it is inapplicable to discovery abuse,[29] an attorney's verified petition for reinstatement,[30] criminal

edge of a violation of 2-611, then the company could also be sanctioned. *Id.* Illinois courts never addressed this provision. Under rule 137, this provision no longer exists.

24. *See* Mucklow v. John Marshall Law School, 176 Ill. App. 3d 886, 897, 531 N.E.2d 941, 948 (1st Dist. 1988); Ignarski v. Heublein, 171 Ill. App. 3d 830, 835, 525 N.E.2d 995, 998 (1st Dist. 1988); Prevendar v. Thon, 166 Ill. App. 3d 30, 37-41, 518 N.E.2d 1374, 1380-82 (2d Dist. 1988). In *Prevendar*, the Appellate Court for the Second District held that the trial court erred in applying amended section 2-611 retroactively against the plaintiff's counsel because the statute imposed a new obligation upon the attorney. *Id.* However, the court found that the obligations of the party were unchanged, and applied amended section 2-611 to the plaintiffs. *Id.*

25. 171 Ill. App. 3d 830, 525 N.E.2d 995 (1st Dist. 1988).

26. *Id.* at 836, 525 N.E.2d at 999. The amendment became effective one day before the entry of summary judgment in the defendant's favor. *Id.* at 833, 525 N.E.2d at 997.

27. *Id.* at 835, 525 N.E.2d at 998 (citing Board of Educ. v. Illinois State Bd. of Educ., 122 Ill App. 3d 471, 474, 461 N.E.2d 567, 570 (1st Dist. 1984)). The *Ignarski* court refused to apply the statute retroactively based on the following reasons: attorney liability did not exist under the prior statute; the conduct giving rise to liability occurred before the amendment's effective date; and the law firm could not have avoided or limited its liability by taking any action after the effective date. *Id.* at 836, 525 N.E.2d at 999. The court also rejected the conclusion that the amendment's purpose would be best served by its retroactive application, noting that the legislation did not intend such an application "as a necessary and unavoidable implication from its express terms despite the absence of any language limiting it to a prospective application." *Id.* at 837, 525 N.E.2d at 999-1000.

28. People v. Hughes, 181 Ill. App. 3d 300, 305, 536 N.E.2d 71, 74 (2d Dist. 1989). *See also In re* Mitan, 119 Ill. 2d 229, 246, 518 N.E.2d 1000, 1008 (1987). In *In re Mitan*, the Illinois Supreme Court stated that the plain language of section 2-611 "affords no basis for its application in actions other than civil lawsuits." *Id.* at 245, 518 N.E.2d at 1007. In so reasoning, the court also pointed out that the term "civil action" was used four times in section 2-611. *Id.*

29. Diamond Mortgage Corp. of Ill. v. Armstrong, 176 Ill. App. 3d 64, 71-72, 530 N.E.2d 1041, 1045 (1st Dist. 1988). In *Armstrong*, the trial court assessed sanctions against an attorney for allegedly obstructing the plaintiff's deposition. *Id.* The appellate

cases,[31] and oral misrepresentations.[32] In *Frisch Contracting Service Co. v. Personnel Protection, Inc.*,[33] the Appellate Court for the Second District held that the term "other papers" in section 2-611 applied to appellate briefs.[34] In addition to adopting rule 137, however, the Illinois Supreme Court also adopted rule 375[35] which concerns the failure to comply with appeals rules, frivolous appeals, and corresponding sanctions. Hence, *Frisch* and other cases interpreting sanctions on appeal are no longer good law.

IV. CONDUCT THAT CAN BE SANCTIONED UNDER SECTION 2-611

A. Reasonable Inquiry into the Facts

Section 2-611 imposes a duty upon the attorney (or unrepresented client) to make a reasonable inquiry into the facts which support a legal claim or defense.[36] In *Chicago Title & Trust Co. v. Anderson*,[37] the Appellate Court for the First District embraced the federal courts' position that a reasonable factual inquiry in-

court held that if the sanction was imposed for discovery abuse, it should have been imposed under discovery provisions such as Supreme Court Rule 219, and not section 2-611. *Id.* In so holding, the court noted that in the federal courts, "Federal Rule 11 was not properly used to sanction conduct where other more specific rules apply." *Id.* (citing Zaldivar v. City of Los Angeles, 780 F.2d 823, 830 (9th Cir. 1986)).

30. *In re* Mitan, 119 Ill. 2d. 229, 246, 518 N.E.2d 1000, 1008 (1987). The court held that section 2-611 neither authorized nor prohibited sanctions for false verified petitions for reinstatement. *Id.* The court reasoned that reinstatement proceedings have a sui generis status (neither civil nor criminal in nature.). *Id.* Despite the court's decision that section 2-611 was expressly inapplicable, the court held that Mitan's attorney had a duty to conduct an "objectively reasonable inquiry into the relevant facts and law supporting the petition not unlike the standard embodied in Federal Rule 11 and section 2-611." *Id.* at 247, 518 N.E.2d at 1008.

31. People v. Hughes, 181 Ill. App. 3d 300, 305, 536 N.E.2d 71, 74 (2d Dist. 1989).

32. International Amphitheater Co. v. Vanguard Underwriters Ins. Co., 177 Ill. App. 3d 555, 573, 532 N.E.2d 493, 504 (1st Dist. 1988), *appeal denied*, 125 Ill. 2d 565, 537 N.E.2d 809 (1989). The court held that the statute "only pertains to writings." *Id.*

33. 158 Ill. App 3d 218, 511 N.E.2d 831 (2d Dist. 1987).

34. *Id.* at 224, 511 N.E.2d at 836. *See also* Ignarski v. Heublein, 171 Ill. App. 3d 830, 837, 525 N.E.2d 995, 998 (1st Dist. 1988). The Second District has indicated that the *Frisch* decision is limited to cases in which sanctions are sought for misstatements of law in an appellate brief, and that it does not authorize sanctions when it is contended that an appeal is frivolous or without merit. *See* Wiley v. Howard, No. 2-88-0562, slip op. (Ill. App. 2d Dist. Mar. 17, 1989); Holcomb State Bank v. Federal Deposit Ins. Corp., No. 2-88-0006, slip op. (Ill. App. 2d Dist. Mar. 22, 1989); Darnall v. City of Monticello, 168 Ill. App. 3d 552, 557, 522 N.E.2d 837, 840-41 (4th Dist. 1988). For further analysis of section 2-611 sanctions at the appellate level, see *infra* notes 156-61 and accompanying text.

35. ILL. S. CT. R. 375, ILL. REV. STAT. ch. 110A, para. 375 (1989). *See infra* notes 156-61 and accompanying text.

36. ILL. REV. STAT. ch. 110, para. 2-611 (1987).

37. 177 Ill. App. 3d 615, 532 N.E.2d 595 (1st Dist. 1988).

volves "an objective standard based upon the circumstances existing at the time the pleading or other legal paper was presented to the court."[38] In applying this standard, the court affirmed sanctions against the defendant and his counsel for failing to make a reasonable inquiry into the defendant's position that he had not defaulted on mortgage payments.[39] The court recognized other factors that should be taken into account including: 1) the amount of time available for investigation; 2) whether the attorney had to rely on a client for information regarding the underlying facts; 3) whether the filing was based on a plausible view of the law; and 4) whether the attorney depended on forwarding counsel or another member of the bar (for his investigation).[40]

Generally, the *Chicago Title* court noted that an attorney cannot rely on the client's verbal statements if the client possesses additional information bearing on the facts, or when the information can be ascertained from third parties.[41] The court stated that an attorney should review objectively the information which a client

38. *Id.* at 623, 532 N.E.2d at 600 (citing Olivieri v. Thompson, 803 F.2d 1265, 1274 (2d Cir. 1986), *cert. denied sub nom.* Suffolk County v. Graseck, 480 U.S. 918 (1987); Golden Eagle Distrib. Corp. v. Burroughs Corp., 801 F.2d 1531, 1536 (9th Cir. 1986)). *See also* Washington v. Allstate Ins. Co., 175 Ill. App. 3d 574, 580, 529 N.E.2d 1086, 1090 (1st Dist. 1988).

39. *Chicago Title*, 177 Ill. App. 3d at 618, 532 N.E.2d at 597. The plaintiff filed for sanctions arguing that the defendant made erroneous factual assertions in his answer to the plaintiff's complaint and improperly opposed the plaintiff's motion for summary judgment. *Id.* at 620, 532 N.E.2d at 590. The defendant denied that he had defaulted on the mortgage payments and expenses. *Id.* at 618, 532 N.E.2d at 597. The appellate court held that neither the defendant nor his attorney had made a reasonable inquiry to support the factual representations in the defendant's answer. *Id.* at 626, 532 N.E.2d at 602. The appellate court dismissed the client's assertion that he properly denied the allegation without providing documentary proof because this proof was in the hands of third parties who were tenants. *Id.* at 625-26, 532 N.E.2d at 601-02. The court noted that there was no indication in the record that it would have been difficult for the defendant to locate these tenants before he filed his answer. *Id.* at 626, 532 N.E.2d at 602. Furthermore, the court affirmed the trial court's conclusion that if the defendant's attorney had objectively assessed his client's inability to produce sufficient documents, the attorney would have realized that the defendant was in default when he filed the response to the plaintiff's discovery request. *Id.*

40. *Id.* at 623, 532 N.E.2d at 600 (citing FED. R. CIV. P. 11, 97 F.R.D. 165, 199 (1983) (advisory committee notes)).

41. *Id.* at 624, 532 N.E.2d at 601. The court relied on several federal cases for these and the following principles. *See, e.g.*, Lebovitz v. Miller, 856 F.2d 902, 905 (7th Cir. 1988); Medical Emergency Serv. Ass'n v. Foulke, 844 F.2d 391, 399-400 (7th Cir. 1988); Kamen v. AT&T Co., 791 F.2d 1006, 1011-12 (2d Cir. 1986); Albright v. Upjohn Co., 788 F.2d 1217, 1220-22 (6th Cir. 1986); Continental Air Lines, Inc. v. Group Sys. Int'l Far East, Ltd., 109 F.R.D. 594, 596-99 (C.D. Cal. 1986); Coburn Optical Indus., Inc. v. Cilco, Inc., 610 F. Supp. 656, 659 (M.D.N.C. 1985); Wold v. Minerals Eng'g Co., 575 F. Supp. 166, 167 (D. Colo. 1983).

submits to determine if the facts support the claim.[42] Attorneys must then investigate any important discrepancies, inconsistencies, or gaps between the information and claim before filing.[43] Also, an attorney should investigate each allegation or denial.[44] Nevertheless, the court recognized that certainty about the facts is not required nor are the attorneys mandated to take steps that are not cost-justified.[45]

In the specific case before it, the court stated that once the attorney realized his client was in default, he had a duty to admit the default in his client's response to summary judgment.[46] The court recognized that when new information is discovered that could render a previous well-grounded pleading unfounded, section 2-611 did not require the counsel to revise the previous pleadings.[47] The court, however, stated that counsel "cannot simply remain silent."[48]

The court held that "once it appears that a prior factual allegation is in error," the information must be brought "forthrightly to the attention of the court and opposing counsel, at least in the next available court filing."[49]

The Appellate Court for the First District also has held that when an attorney must rely almost exclusively on the client for the facts of the case, then the client and not the attorney should be sanctioned.[50] In *Washington v. Allstate Insurance Co.*,[51] the court affirmed the trial court's award of sanctions against the plaintiffs only.[52] The plaintiffs argued that their trial counsel should have

42. *Chicago Title*, 177 Ill. App. 3d at 625, 532 N.E.2d at 601.

43. *Id.*

44. *Id.*

45. *Id.* The court cited authority which indicated that the crucial question was whether the attorney, through his investigation, acquired enough knowledge for him to certify that a paper is well-grounded in fact. *Id.* at 624, 532 N.E.2d at 600-01 (citing Schwarzer, *Sanctions under the New Federal Rule 11 — A Closer Look*, 104 F.R.D. 181, 186-87 (1985)).

46. *Id.* at 626, 532 N.E.2d at 602.

47. *Id.* (citing Pantry Queen Foods, Inc. v. Lifschultz Fast Freight, Inc., 709 F.2d 451, 454 (7th Cir. 1987)).

48. *Id.*

49. *Id.* at 627, 532 N.E.2d at 602. Whether rule 11 imposes a continuing obligation with respect to pleadings previously filed is in dispute in federal courts. *See* ABA Section of Litigation, *Sanctions: Rule 11 & Other Powers*, at 10 (1988).

50. Washington v. Allstate Ins. Co., 175 Ill. App. 3d 574, 580-81, 529 N.E.2d 1086, 1090 (1st Dist. 1988).

51. *Id.*

52. *Id.* In *Washington*, the plaintiffs sued the defendant, Allstate, for breach of contract after Allstate denied their claim on an automobile insurance policy for the theft of an automobile. *Id.* at 576, 529 N.E.2d at 1087. The defendant argued that the allega-

been sanctioned for failure to make a reasonable inquiry into the facts.[53] In addition, the plaintiffs argued that their trial counsel should share the defendant's costs which accrued after an amendment to the complaint had been filed, as plaintiffs counsel had drafted and signed that amendment.[54] The appellate court upheld the trial court and noted that under federal rule 11, when a motion is unsupported by existing law, the attorney, not the client, is sanctioned.[55] Conversely, in *Washington*, the trial court determined the plaintiffs' complaint was unsupported by the facts, which were known exclusively by the client.[56] As such, the court concluded that the clients, rather than the attorney, were the most appropriate parties to sanction.[57]

No Illinois court has established a definite boundary line between a pre-filing inquiry that is sufficient and insufficient. The lawyer must at least examine the documents that are relevant to the factual allegations of the case.[58] In *People v. King*,[59] the Appellate Court for the Fourth District upheld an award of sanctions against an attorney for failure to make a reasonable inquiry into the factual allegations contained in a petition to rescind a driver's license suspension[60]. This petition was the second such petition

---

tions in the plaintiffs' complaint and amendment were made without reasonable cause. *Id.* at 577, 529 N.E.2d at 1088. The allegations alleged to be false included plaintiffs' ownership and acquisition of the automobile, plaintiffs' performance under their insurance policy, and allegations that defendant vexatiously and unreasonably denied their claim. *Id.* at 578-79, 529 N.E.2d at 1089. During the trial, the court granted the defendant's motion *in limine* and would not allow any witness other than the plaintiffs' and the defendant's agent to testify that they had seen or ridden in the vehicle. *Id.* at 578-79, 529 N.E.2d at 1088-89. The trial court subsequently found the plaintiffs' allegations to be untrue and granted sanctions. *Id.* On appeal, the plaintiffs argued that because the court had barred the plaintiffs from presenting evidence of the veracity of the allegations, it was unfair for the court to conclude that there were false allegations of fact. *Id.* The appellate court disagreed with the plaintiffs, reasoning that the trial court order limiting such testimony did not stop plaintiffs from presenting a prima facie case through other evidence. *Id.*

53. *Id.* at 579, 529 N.E.2d at 1089-90.

54. *Id.* The appellate court held that the trial court did not err in assigning sanctions against the plaintiffs only because the amendment in the complaint was only one of several allegations on which defendant based its motion for sanctions. *Id.* at 580, 529 N.E.2d at 1090. The rest of the allegations, the court noted, were filed by former counsel in 1983, when attorneys were not subject to amended section 2-611. *Id.*

55. *Id.* at 580-81, 529 N.E.2d at 1090.

56. *Id.*

57. *Id.*

58. *See, e.g.*, People v. King, 170 Ill. App. 3d 409, 524 N.E.2d 723 (4th Dist. 1988).

59. *Id.*

60. *Id.* at 415-16, 524 N.E.2d at 726-27. The defendant had been charged with driving while under the influence of alcohol and drugs. *Id.* at 410, 524 N.E.2d at 724. The

filed on behalf of the defendant.[61] The defendant alleged that the trial court lacked jurisdiction to suspend his license because he had not been observed on a public way at the time he was arrested for driving under the influence of alcohol.[62] The petition also alleged that the defendant's former counsel had a conflict of interest in representing the defendant and negligently represented him.[63]

In a petition for sanctions, the State argued that in filing the petition for rescission, the defendant's attorney failed to order a transcript of the initial hearing to determine what evidence had been presented about "whether defendant had operated a motor vehicle on a public highway."[64] Furthermore, the sanctioned attorney failed to contact the client's former counsel regarding the prior proceedings or any conflict of interest issues.[65] The appellate court affirmed the trial court's findings that the attorney did not make a reasonable inquiry into the facts of the case and that the petition's allegations were not well grounded in fact nor warranted by existing law.[66]

B. Reasonable Inquiry into the Law

Illinois courts have not established a clear standard for determining when an attorney has undertaken a good faith inquiry into the law and whether an attorney's argument is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law. Nonetheless, Illinois courts have held that sanctions are not appropriate simply because a litigant's argu-

---

defendant's license was suspended after he submitted to a test which disclosed an alcohol concentration of 0.25. *Id.* at 410-11, 524 N.E.2d at 724.

61. *Id.* at 411-12, 524 N.E.2d at 724-25. The client had previously filed a *pro se* petition to rescind the statutory summary suspension. *Id.* At the initial hearing, the defendant was represented by other counsel. *Id.* The defendant was denied rescission at both hearings. *Id.*

62. *Id.* at 412, 524 N.E.2d at 725.

63. *Id.* The petition also alleged that the imposition of such a suspension was improper, that it violated the defendant's constitutional rights, and was contrary to Illinois law. *Id.* Following a hearing at which the attorney presented no evidence, the petition was denied. *Id.*

64. *Id.* At the initial hearing, the arresting officer testified that he observed the defendant driving on a public way. *Id.* The attorney did not order a copy of the transcripts until the day before the hearing on the section 2-611 sanctions. *Id.* at 416, 524 N.E.2d at 727.

65. *Id.* The defendant's former counsel subsequently represented the arresting officer in an unrelated matter after the hearing. *Id.* at 415-16, 524 N.E.2d at 727. If the attorney had consulted prior counsel, he would have learned that the defendant's former counsel had not met, seen, or represented the arresting officer until after the hearing. *Id.*

66. *Id.*

ments are unavailing or unsuccessful.[67] In addition, courts have distinguished misstatements of the law from misapplication of the law and have declined to award sanctions for the latter case.[68]

In Illinois, sanctions are appropriate when an attorney fails to inquire into the essential elements of the claim, such as whether the claim is time-barred by a statute of limitations.[69] In *Wren v. Feeney*,[70] the Appellate Court for the Third District affirmed an award of sanctions against the plaintiff for failure to make a reasonable investigation into the law regarding the statute of limitations, which barred plaintiff's medical malpractice claim.[71] In dissent, Justice Heiple argued that section 2-611 should be narrowly construed to apply only to pleadings, and not to affirmative defenses such as statutes of limitations.[72]

Those cases where Illinois courts have declined to impose sanctions also provide insight into the propriety of section 2-611 sanctions for legal arguments. In *Davis v. Chicago Housing Authority*,[73] the Appellate Court for the First District declined to impose sanctions for failure to make a reasonable inquiry into whether the Tort Immunity Act applied to the Chicago Housing Authority ("CHA").[74] The CHA sought sanctions, arguing that the plaintiff made "wildly untrue misstatements and distortions of law" in its brief "for no other reason than delay, embarrassment and sheer obstinacy."[75] The appellate court held that while plaintiff's arguments were unavailing, they could not be characterized as asser-

67. *See* Davis v. Chicago Hous. Auth., 176 Ill. App. 3d 976, 986, 531 N.E.2d 1018, 1025 (1st Dist. 1988); Prevendar v. Thon, 166 Ill. App. 3d 30, 41, 518 N.E.2d 1374, 1382 (2d Dist. 1988).

68. *See Frisch*, 158 Ill. App. 3d at 225, 511 N.E.2d at 836; International Amphitheater Co. v. Vanguard Underwriters Ins. Co., 177 Ill. App. 3d 555, 573, 532 N.E.2d 493, 505 (1st Dist. 1988).

69. *See* Wren v. Feeney, 176 Ill. App. 3d 364, 531 N.E.2d 155 (3d Dist. 1988).

70. *Id.*

71. *Id.* at 365, 531 N.E.2d at 155-56. The court reasoned that the plaintiff's attorney, after reasonable inquiry, should have determined that any cause of action against the doctor was barred. *Id.* at 365-66, 531 N.E.2d at 155-56.

72. *Id.* at 366-67, 531 N.E.2d at 156. Judge Heiple argued that the statute of limitations is not at issue until raised by the defendant in an answer or motion to dismiss. *Id.* Consequently, he argued, the plaintiff is not required to allege or plead facts which demonstrate that the action was brought within the statute of limitations. *Id.* Therefore, the plaintiff had the right to sue whether or not the statute of limitations had expired. *Id.*

73. 176 Ill. App. 3d 976, 531 N.E.2d 1018 (1st Dist. 1988).

74. *Id.* at 986, 531 N.E.2d at 1025. In *Davis*, a minor plaintiff sued the CHA for injuries that allegedly resulted from the CHA's negligent maintenance of a playground. *Id.* at 978, 531 N.E.2d at 1019. The CHA appealed an order vacating the dismissal of plaintiffs' second amended complaint and granting leave to file a third amended complaint. *Id.*

75. *Id.* at 986, 531 N.E.2d at 1024-25.

tions of law for which there was "absolutely no support or that they are otherwise interposed for an improper purpose."[76]

One Illinois court was unwilling to impose sanctions for failure to make a reasonable inquiry into the law even when the cases cited by counsel did not actually support their client's position or supported a different conclusion than the one advocated.[77] In *Allcare, Inc. v. Bork*,[78] the Appellate Court for the First District declined to impose sanctions against a plaintiff for failure to make a reasonable inquiry into the law surrounding defamation and commercial disparagement.[79] The defendant argued that "even cursory research would have revealed that the case did not involve commercial disparagement, that there was no basis for injunctive relief and that plaintiff could not proceed under the Consumer Fraud Act or the Trade Practices Act."[80] The court stated that the cases plaintiff cited to support its theory that the alleged defamations disparaged its business either did not support the plaintiff or, in fact, supported only the conclusion that those statements constituted defamation.[81] Despite these deficiencies, the appellate court concluded

76. *Id.* at 986, 531 N.E.2d at 1025. The court failed to articulate specific reasons for its holding. *Id.* The court noted that nothing in the cases cited by the plaintiff addressed whether a housing authority may avail itself of section 3-106 immunity or supported plaintiff's argument that the "holdings were based on a conclusion that the housing authorities were engaged in non-governmental, proprietary functions." *Id.* at 980-81, 531 N.E.2d at 1021. The appellate court held that section 3-106 did apply to the CHA and that plaintiff's argument that a housing authority performs merely proprietary, as opposed to essential, governmental functions was incorrect. *Id.* The court also stated that plaintiff's argument "subtly, yet significantly" misconstrued the legislative intent behind section 3-106. *Id.* at 982, 531 N.E.2d at 1022. Plaintiff's assertion that the CHA was a "volunteer" was also meritless. *Id.* at 984-85, 531 N.E.2d at 1023-24.

77. Allcare, Inc. v. Bork, 176 Ill. App. 3d 993, 531 N.E.2d 1033 (1st Dist. 1988).

78. *Id.*

79. *Id.* at 1004, 531 N.E.2d at 1040. *Allcare* involved a medical supply company's suit for injunctive relief, defamation, and deceptive trade practices against a competitor who allegedly made defamatory statements about the plaintiff's president. *Id.* at 995-96, 531 N.E.2d at 1034-35.

80. *Id.* at 1003-04, 531 N.E.2d at 1040.

81. *Id.* at 999-1000, 531 N.E.2d at 1037. The court recognized that the plaintiff ignored the defamation or disparagement tests cited in substantially similar cases. *Id.* Hence, the plaintiff's argument that a statement could constitute both defamation and commercial disparagement was held to be unavailing. *Id.* The defendant also sought to recover costs incurred on appeal. *Id.* at 1004, 531 N.E.2d at 1040. The defendant charged that the plaintiff relied on a stricken count of its complaint, "distorted holdings of cases cited, and wilfully ignored binding and relevant authority." *Id.* On appeal, the court held, among other things, that the plaintiff could not rely on those counts the trial court ordered stricken. *Id.* at 998, 531 N.E.2d at 1036. The defendants had moved to strike portions of plaintiff's brief citing to a count allegedly stricken by the trial court. *Id.* at 997-98, 531 N.E.2d at 1035-36. The court found that the plaintiff ignored the trial record which revealed that the count was indeed struck. *Id.* Because the plaintiff did not appeal that part of the order striking that count, the court held the plaintiff could neither

that plaintiff's arguments were "not so lacking a legal basis that they warrant a finding of bad faith."[82] Therefore, the court denied the motion for sanctions.[83]

C. *Arguments for a Good-Faith Extension of the Law*

No Illinois court has dealt with the issue of whether an attorney must distinguish between arguments based on existing law and those arguments made to extend, modify, or reverse existing law. However, the Seventh Circuit in *Szabo Food Services, Inc. v. Canteen Corp.*,[84] stated that the only way to determine whether a complaint is an attempt to modify the law is to examine counsel's arguments with care.[85] The court noted that "[w]hen counsel represent that something clearly rejected by the Supreme Court is governing law, then it is appropriate to conclude that counsel are not engaged in trying to change the law; counsel either are trying to buffalo the court or have not done their homework."[86] The reasoning of the *Szabo* court supports the *Wren* decision because the statute of limitations argument was well-settled.[87]

Federal courts have held that a litigant is not required to characterize his position as either warranted by existing law or as a good-faith argument for the extension of the law in order to avoid sanctions.[88] This issue has not yet been litigated by the Illinois courts but it is probable that they will follow the federal courts' lead.

D. *Improper Purpose*

Section 2-611 prohibits the filing of a paper that is brought for improper purposes such as to harass, delay, or increase costs unnecessarily.[89] No Illinois court has directly construed the "improper purpose" language of section 2-611. If federal case development is any indication, the "improper purpose" language of

---

rely on those allegations nor the amended count's allegations. *Id.* The court also distinguished or found unavailing many other cases the plaintiff had cited to support its case. *Id.* at 1001-03, 531 N.E.2d at 1038-39.

82. *Id.* at 1004, 531 N.E.2d at 1040.

83. *Id.*

84. 823 F.2d 1073 (7th Cir. 1987), *cert. dismissed*, 108 S. Ct. 1101 (1988).

85. *Id.* at 1082.

86. *Id.*

87. Wren v. Feeney, 176 Ill. App. 3d 364, 531 N.E.2d 155 (3d Dist. 1988).

88. Golden Eagle Distrib. Corp. v. Burroughs Corp., 801 F.2d 1531, 1540-41 (9th Cir. 1986). *But see* Thornton v. Wahl, 787 F.2d 1151, 1154 (7th Cir.), *cert. denied*, 479 U.S. 851 (1986).

89. ILL. REV. STAT. ch. 110, para. 2-611 (1987).

section 2-611 will be used by litigants more frequently in the future.

The federal courts usually apply a standard of objective reasonableness to determine whether a paper is filed for an improper purpose.[90] Under the standard of objective reasonableness, the court can infer the purpose of the filing from the consequences that arise from the pleading.[91] For example, courts may infer an improper purpose where the consequence of the motion is to delay the proceedings.[92] Where reasonable preparation would have avoided these consequences, an attorney can be sanctioned, even though such delay was unintentional and the pleading was in good faith.[93] Parties who file repetitive litigation may also be sanctioned under the reasoning that the conduct showed a "penchant for harassing defendants."[94] Some commentators argue that regardless of the objective standard under rule 11, analysis of a signer's "improper purpose" will necessarily involve analysis of subjective intent because the motive of the signer will have to be determined.[95] It is not clear how Illinois courts will rule on this issue.

V. The Initiation of Sanctions

Section 2-611 does not address what procedure judges or litigants should use to initiate sanctions.[96] Illinois case law suggests several procedural elements a litigant should follow.[97] First, a request for sanctions must be raised by a petition which meets the minimum standards of specificity.[98] The petition must state specifically which statements were falsely made and what fees were in-

90. Zaldivar v. City of Los Angeles, 780 F.2d 823, 831 (9th Cir. 1986).

91. *See* Davis v. Veslan Enters., 765 F.2d 494, 500 (5th Cir. 1985).

92. *Id.*

93. *See* Lieb v. Topstone Indus., Inc., 788 F.2d 151, 157 (3d Cir. 1986).

94. *See* Cannon v. Loyola Univ., 784 F.2d 777, 782 (7th Cir. 1986), *cert. denied*, 479 U.S. 1033 (1987).

95. *See* ABA Section of Litigation, *Rule 11 and Other Powers*, at 10 (1988); G. Joseph, Sanctions, the Federal Law of Litigation Abuse 180-81 (1989) (arguing that this dispute is a matter of semantics because a court can only determine violations of the improper purpose clause by inferring the signers' intent from their objective behavior.)

96. Ill. Rev. Stat. ch. 110, para. 2-611 (1987).

97. *See generally* Diamond Mortgage Corp. of Ill. v. Armstrong, 176 Ill. App. 3d 64, 530 N.E.2d 1041 (1st Dist. 1988); Plainfield Community Consol. School Dist. v. Lindblad Constr. Co., 174 Ill. App. 3d 149, 528 N.E.2d 996 (3d Dist. 1988), *appeal denied*, 124 Ill. 2d 561, 535 N.E.2d 920 (1989); Geneva Hosp. Supply v. Sandberg, 172 Ill. App. 3d 960, 527 N.E.2d 611 (2d Dist. 1988).

98. *Diamond Mortgage*, 176 Ill. App. 3d at 71, 530 N.E.2d at 1045; *Plainfield*, 174 Ill. App. 3d at 154-55, 528 N.E.2d at 999; *Geneva Hosp.*, 172 Ill. App. 3d at 965-66, 527 N.E.2d at 614.

curred as a result of such statements.[99] If a movant argues that a paper is not well-grounded in fact or law, the movant must point to specific circumstances that support the argument.[100]

Specificity insures that the responding party has an opportunity to challenge and defend against the allegations made, and assures that the fees and costs can be fairly apportioned.[101] A judge who initiates sanctions should be required to meet these same standards of specificity. Rule 137 imposes this requirement to a judge's decision to impose sanctions and requires that the court set forth the reasons and bases for the sanctions in the judgment order or a separate written order.[102]

In *Geneva Hospital Supply, Inc. v. Sandberg*,[103] the Appellate Court for the Second District affirmed the trial court's denial of sanctions.[104] In so affirming, the court noted the lack of specificity in the movant's petition.[105] The *Geneva Hospital* court stated that in an appeal of a denial of sanctions based on lack of specificity, the appellant must at least cite the portions of the record that support its claim that the allegations were not well-grounded in fact.[106]

In addition to the specificity requirement, the movant has the burden of proving that fees, costs, or other sanctions are warranted.[107] Generally, the proof is to be made at a separate evidentiary hearing.[108] The movant should be allowed to present testimony or evidence which proves the allegations.[109] In *People v. King*,[110] the State sought sanctions against an attorney who filed a petition to rescind his client's license suspension.[111] The State

99. *Plainfield*, 174 Ill. App. 3d at 155, 528 N.E.2d at 999; *Diamond Mortgage*, 176 Ill. App. 3d at 71, 530 N.E.2d at 1045.

100. *Geneva Hosp.*, 172 Ill. App. 3d at 967, 527 N.E.2d at 615.

101. *Diamond Mortgage*, 176 Ill. App. 3d at 71, 530 N.E.2d at 1045; *Plainfield*, 174 Ill. App. 3d at 154-55, 528 N.E.2d at 999; *Geneva Hosp.*, 172 Ill. App. 3d at 965-66, 527 N.E.2d at 614.

102. ILL. S. CT. R. 137, ILL. REV. STAT. ch. 110A, para. 137 (1989)

103. 172 Ill. App. 3d 960, 527 N.E.2d 611 (2d Dist. 1988).

104. *Id.* at 967, 527 N.E.2d at 615.

105. *Id.*

106. *Id.* The court noted that the appellant in the instant case cited only one portion of the record in its brief and that even if its motion was sufficiently specific, it would not have found that the appellant had established in its brief that the trial court abused its discretion by denying sanctions. *Id.*

107. *Geneva Hosp.*, 172 Ill. App. 3d at 966, 527 N.E.2d at 614; *Diamond Mortgage*, 176 Ill. App. 3d at 71, 530 N.E.2d at 1045.

108. *See* People v. King, 170 Ill. App. 3d 409, 415-16, 524 N.E.2d 723, 727 (4th Dist. 1988).

109. *Id.*

110. *Id.*

111. *Id.* at 412-13, 524 N.E.2d at 725.

based part of its claim on the fact that the attorney had failed to order and read a prior hearing transcript in which the arresting officer's testimony directly contradicted the attorney's allegations in the petition.[112] The State presented testimony from the arresting officer and a court reporter who testified that the attorney did not request a transcript of the prior hearing until the day before the section 2-611 hearing.[113]

Not only must the plaintiff prove the need for sanctions, Illinois decisions also suggest that Illinois courts must comport with the essential elements of due process — including notice and an opportunity to be heard in an orderly proceeding adapted to the nature of the case.[114] There is general agreement that whether a hearing will be required depends on the circumstances of the case.[115] No hearing may be needed where the requirements for sanctions can be proved or rebutted on the basis of pleadings or trial evidence.[116] The gravity of the conduct and the sanction may also mandate a hearing.[117]

Only one Illinois court has dealt with the question of adequate notice under the amended section 2-611. In *Washington v. Allstate*,[118] the plaintiffs claimed that they had a due process right to receive notice of the amount of fees and costs which the defendant sought under section 2-611.[119] The court held that since the defendant had served plaintiffs' trial counsel with notice of the section 2-611 motion four days before the first hearing, and had return receipts that indicated both plaintiffs had received letters apprising them of the second hearing at least one month before the second hearing, the notice was adequate to inform them that the court was considering the question of sanctions.[120]

---

112. *Id.*

113. *Id.* at 415-16, 524 N.E.2d at 727.

114. *See* Grover v. Commonwealth Condominium Ass'n, 76 Ill. App. 3d 500, 512, 349 N.E.2d 1273, 1282 (1st Dist. 1979) (pre-amendment case).

115. *Grover*, 76 Ill. App. 3d at 512, 394 N.E.2d at 1282. *See also* Donaldson v. Clark, 819 F.2d 1551, 1558-61 (11th Cir. 1986) (en banc).

116. *Grover*, 76 Ill. App. 3d at 512, 394 N.E.2d at 1282. *See also* Brown v. National Bd. of Medical Examiners, 800 F.2d 168, 173 (7th Cir. 1986); Rodgers v. Lincoln Towing Serv., Inc., 771 F.2d 194, 205-06 (7th Cir. 1985).

117. *See* Brown v. National Bd. of Medical Examiners, 830 F.2d 1429, 1438 (7th Cir. 1986). *See also Diamond Mortgage*, 176 Ill. App. 3d at 71-72, 530 N.E.2d at 1045. In *Diamond Mortgage*, the court vacated the trial court's award of attorney's fees on the grounds that not only was it a sanction for discovery abuse, but also that the record did not indicate how the fees were determined, no statement of fees was ever submitted, nor was a hearing held as to the reasonableness of the fees. *Id.*

118. 175 Ill. App. 3d 574, 529 N.E.2d 1086 (1st Dist. 1988).

119. *Id.* at 581-82, 529 N.E.2d at 1091.

120. *Id.*

VI. APPROPRIATE SANCTIONS

Illinois courts have held that sanctions must be reasonable.[121] In *Plainfield Community Consolidated School District v. Lindblad Construction Co.*,[122] the court held that sanctions should be apportioned in terms of the sanctioned conduct.[123] Only that portion of fees and costs attributable to the conduct should be assessed against the party or attorney.[124] In *Plainfield*, the trial court awarded attorney's fees to the plaintiffs based upon false statements made in an arbitration proceeding and in subsequent trial court proceedings.[125] The appellate court held that the portion of the award that was given for fees incurred at the arbitration level was improperly granted because section 2-611 did not authorize fees for expenses incurred in an arbitration hearing that was later reviewed by a trial court.[126] Based upon this holding, the trial judge must fit the sanction to the offending conduct and consider the peculiar circumstances of each case.[127]

When imposing sanctions, the court also should impose the least severe sanction adequate to deter sanctioned conduct.[128] While attorney's fees are provided for under the statute,[129] federal courts also have assessed sanctions, such as a public reprimand[130] or a fine.[131] Of course, the court may also strike the pleading or motion if it is not promptly signed.[132]

Although the range of sanctions may vary, they can only be imposed on attorneys and parties. In *Plainfield*, the appellate court reversed an award of sanctions against an individual who was not a party to the proceedings, even though the individual originated the

121. Plainfield Community Consol. School Dist. v. Lindblad Constr. Co., 174 Ill. App. 3d 149, 155, 528 N.E.2d, 996, 999 (3d Dist. 1988), *appeal denied*, 124 Ill. 2d 561, 535 N.E.2d 920 (1989).

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.* at 153, 528 N.E.2d at 997.

126. *Id.* at 154-55, 528 N.E.2d at 999. The appellate court remanded the case back to the trial court to so apportion. *Id.*

127. Federal courts also have considered several equitable factors in assessing the appropriate sanction. Those factors include: The sanctioned person's assets; the insistence of the sanctioned person in maintaining an unreasonable position; and the conduct of the party seeking sanctions in protracting the litigation or "puffing" its fees. Brown v. National Bd. of Medical Examiners, 830 F.2d 1429, 1439 (7th Cir. 1986).

128. *See* Eastway Constr. Corp. v. City of N.Y., 637 F. Supp. 558, 565 (E.D.N.Y. 1986).

129. ILL. REV. STAT. ch. 110, para. 2-611 (1987).

130. *See In re* Curl, 803 F.2d 1004, 1007 (9th Cir. 1986).

131. *See* Donaldson v. Clark, 786 F.2d 1570, 1577 (11th Cir. 1986).

132. ILL. REV. STAT. ch. 110, para. 2-611 (1987).

false statements attributable to the defendant.[133]

Finally, if a party or attorney is sanctioned under some other rule for the same conduct, section 2-611 does not contemplate awarding double damages.[134] In *Boltz v. Estate of Bryant*,[135] the Appellate Court for the First District declined to award attorneys fees under section 2-611 for the wrongful issuance of an injunction, where fees were already awarded under section 11-110 of the Code of Civil Procedure.[136] The court concluded that the recovery would be much the same under either rule.[137]

VII. FINALITY AND APPEALABILITY

Despite the fact that amendments to section 2-611 deleted the requirement that a motion for sanctions had to be made with in thirty days of judgment or dismissal, case law is clear that petitions must still be filed within thirty days.[138] Moreover, section 2-611 petitions have been characterized as "post-trial motions."[139] Therefore, mailing the documents to the opposing party within the time period does constitute filing the motion with the court.[140]

Illinois courts also have concluded that if a "2-611 claim is timely filed, no appeal may be taken from the underlying judgment absent a Rule 304(a) finding until the 2-611 claim is resolved."[141]

---

133. *Plainfield*, 174 Ill. App. 3d at 155, 528 N.E.2d at 999. In *Plainfield*, the president of one of the defendant companies had made false statements at the arbitration hearing. *Id.* The court held that while the president may have been the "exclusive source" of the statements for which attorneys fees were assessed, he was not subject to the fees because he was not a party or attorney of record. *Id.*

134. Boltz v. Estate of Bryant, 175 Ill. App. 3d 1056, 530 N.E.2d 985 (1st Dist. 1988).

135. *Id.*

136. *Id.* at 1067, 530 N.E.2d at 992. Section 11-110 of the Code of Civil Procedure, ILL. REV. STAT. ch. 110, para. 11-110 (1985), provided for recovery of damages for wrongful issuance of an injunction. *Boltz*, 175 Ill. App. 3d at 1061-62, 530 N.E.2d at 988.

137. *Boltz*, 175 Ill. App. 3d at 1061-62, 530 N.E.2d at 988.

138. Herman v. Fitzgerald, No. 2-88-0376, slip op. at 6-10 (Ill. App. 2d Dist. Jan. 23, 1989).

139. *Id.* In *Herman v. Fitzgerald*, the court based its conclusion on section 2-1203 of the Code of Civil Procedure, where a party in a non-jury case may file certain motions within 30 days after judgment is entered. *Id.* One of the motions contemplated by this section is a motion "for other relief." *Id.* In addition, the court cited several cases involving the prior section 2-611 in which such petitions were characterized a post-trial motions. *Id.* Finally, the court noted the long standing rule that "a trial court loses jurisdiction when, after thirty days, no post-trial motion has been filed." *Id.*

140. *Id.*

141. Palmisano v. Connell, 179 Ill. App. 3d 1089, 1095, 534 N.E.2d 1243, 1247 (2d Dist. 1989). *See also* Kousins v. Anderson, No. 2-88-0764, slip op. (Ill. App. 2d Dist. Apr. 12, 1989) (Because the 2-611 claim was timely filed, unresolved, and no rule 304(a)

In *Palmisano v. Connell*,[142] the Appellate Court for the Second District held that 2-611 claims must now be considered part of the civil action which gave rise to the claim and cannot be considered separate actions.[143] In *Palmisano*, the plaintiff appealed an order dismissing a contract action for unpaid medical bills.[144] The plaintiff filed her appeal within thirty days of the denial of her post-trial motion regarding the court's section 2-611 judgment.[145] The defendant contended that plaintiff's appeal was untimely.[146] However, the appellate court agreed with the plaintiff that there was no final judgment until the court disposed of defendants' 2-611 motion (which occurred after the complaint's dismissal).[147] Therefore, the court held that the plaintiff's appeal was timely.[148]

In *Ignarski v. Heublin*,[149] the Appellate Court for the First District addressed whether a law firm has standing to appeal an award of sanctions when it was not a party to the lawsuit.[150] In *Ignarski*, the trial court awarded attorneys fee's against a law firm in a personal injury action.[151] The appellate court held that the law firm had standing because it was evident that the "judgment interest against the appellant directly affected a pecuniary interest and that this interest appears in the record on appeal."[152]

---

finding existed, the plaintiff's appeal regarding her complaint's dismissal was dismissed); Johnson v. Field, No. 2-88-0781, slip op. (Ill. App. 2d Dist. Mar. 27, 1989).

Supreme Court Rule 304(a), ILL. REV. STAT. ch. 110A, para. 304(a) (1987), provides for appeals from final judgments that do not dispose of the entire proceeding. An appeal can only be made in such circumstances where the court makes a special finding that there is no just reason for delaying enforcement of the appeal. *Id.*

142. 179 Ill. App. 3d 1089, 1095, 534 N.E.2d 1243, 1247 (2d Dist. 1989).

143. *Id. But see* People v. King, 170 Ill. App. 3d 409, 416-17, 524 N.E.2d 723, 728 (4th Dist. 1988) (section 2-611 claim was brought as a separate action, thus making initial claim appealable).

144. *Palmisano*, 179 Ill. App. 3d at 1091, 534 N.E.2d at 1244.

145. *Id.* at 1095, 534 N.E.2d at 1247.

146. *Id.*

147. *Id.*

148. *Id.*

149. 171 Ill. App. 3d 830, 525 N.E.2d 995 (1st Dist. 1988).

150. *Id.* at 833, 525 N.E.2d at 997.

151. *Id.* at 832-33, 525 N.E.2d at 996. The case does not disclose why attorney's fees were awarded against the law firm. However, the court declined to retroactively apply amended section 2-611 to the law firm. *Id.* at 836, 525 N.E.2d at 999. *Ignarski* is distinguishable from the facts in *Plainfield*, in which the person sanctioned was neither a party nor an *attorney of record*. For further discussion, see *supra* note 133 and accompanying text.

152. *Ignarski*, 171 Ill. App. 3d at 833, 525 N.E.2d at 997. The court recognized that to bring an appeal, a non-party must have a direct, substantial, and immediate interest which would be prejudiced by judgment or benefitted by reversal. *Id.* In addition, the interest must appear on record or be alleged in the arguments for reversal. *Id.*

VIII. APPELLATE PROCEDURE AND REVIEW

The imposition of sanctions under rule 137 is subject to an abuse of discretion standard.[153] In *Chicago Title & Trust Co. v. Anderson*,[154] the court noted that the federal circuits are in conflict over the proper standard of review, but concluded that because none of the parties argued that the court should adopt a particular federal standard, it would adhere to Illinois precedent.[155] In light of this holding, a litigant may argue for a different standard.

On June 19, 1989, the Illinois Supreme Court also adopted rule 375.[156] Rule 375 is intended to cover those situations where a party, his attorney, or both fail to comply with the appellate rules,

153. *See Allstate*, 175 Ill. App. 3d at 576-77, 529 N.E.2d at 1088; *Geneva Hosp.*, 172 Ill. App. 3d at 966, 527 N.E.2d at 614; *Chicago Title*, 177 Ill. App. 3d at 625, 532 N.E.2d at 601.

154. 177 Ill. App. 3d 615, 532 N.E.2d 595 (1st Dist. 1988).

155. *Id.* at 625, 532 N.E.2d at 601.

156. ILL. S. CT. R. 375, ILL. REV. STAT. ch. 110A, para. 375 (1989). Supreme Court Rule 375 provides as follows:

> (a) Failure to Comply with Appeals Rules. If after reasonable notice and an opportunity to respond, a party or an attorney for a party or parties is determined to have wilfully failed to comply with the appeal rules, appropriate sanctions may be imposed upon such a party or attorney for the failure to comply with these rules. Appropriate sanctions for violations of this section may include an order that a party be barred from presenting a claim or defense relating to any issue to which refusal or failure to comply with the rules relates, or that judgment be entered on that issue as to the other party, or that a dismissal of a party's appeal as to that issue be entered, or that any portion of a party's brief relating to that issue be stricken. Additionally, sanctions involving an order to pay a fine, where appropriate, may also be ordered against any party or attorney for a party or parties.
>
> (b) Appeal Not Taken in Good Faith; Frivolous Appeals. If, after consideration of an appeal, it is determined that the appeal itself is frivolous, or that an appeal was not taken in good faith, for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, or the manner of prosecuting the appeal is for such purpose, an appropriate sanction may be imposed upon any party or the attorney or attorneys of the party or parties. An appeal will be deemed frivolous where it is not reasonably well grounded in fact and not warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law. An appeal will be deemed to have been taken or prosecuted for an improper purpose where the primary purpose of the appeal is to delay, harass, or cause needless expense.
>
> Appropriate sanctions for violation of this section may include an order to pay to the other party or parties damages, the reasonable costs of the appeal, and any other expenses necessarily incurred by the filing of the appeal, including reasonable attorney fees.
>
> A reviewing court may impose a sanction upon a party or an attorney for a party upon the motion of another party or parties, or on the reviewing court's own initiative where the court deems it appropriate. If the reviewing court initiates the sanction, it shall require the party or attorney, or both, to show cause why such a sanction should not be imposed before imposing the sanction.

make a frivolous appeal, or conduct the appeal in a frivolous manner.[157] Under rule 375, an appellate court has the discretion to impose sanctions for any of the above violations.[158] The language regarding frivolous appeals is a modified version of federal rule 11 and is also partially derived from rule 38 of the Federal Rules of Appellate Procedure.[159] Rule 375 may resolve the current Illinois courts' dispute regarding whether appellate courts have jurisdiction and authority to award sanctions.[160] Finally, some federal courts have held that an attorney is obligated to file an appellate brief that complies with rule 11, despite rules specifically governing appellate procedure for sanctions.[161] Rule 375 is unclear as to whether courts can use rule 137 and rule 375 interchangeably.

IX. SUGGESTIONS FOR RESTRAINT

Illinois case law interpreting the substance of rule 137 is growing, along with the number of trial courts that impose sanctions. Many trial judges, however, continue to express a reluctance to impose sanctions, particularly for deficiencies in legal arguments. Some judges fear that attorneys will mount campaigns against

---

Where a sanction is imposed, the reviewing court will set forth the reasons and basis for the sanction in its opinion or in a separate written order.

Id.

157. *Id.* (committee comments).

158. *Id.*

159. *Id.*

160. Prior to rule 375, there was some dispute as to whether an appellate court could entertain section 2-611 motions itself. *See In re* Marriage of Stockton, 169 Ill. App. 3d 318, 328-29, 523 N.E.2d 573, 580-81 (4th Dist. 1988) (court held it did not have the jurisdiction or authority to award attorneys fees absent a supreme court rule granting such authority); Wiley v. Howard, No. 2-88-0562, slip op. (Ill. App. 2d Dist. Mar. 17, 1989) (court has no authority to issue sanctions for frivolous or meritless appeals). *Accord* Darnell v. City of Monticello, 168 Ill. App. 3d 552, 557, 522 N.E.2d 837, 840-41 (4th Dist. 1988); Holcomb State Bank v. Federal Deposit Ins. Corp., No. 2-88-0006, slip op. (Ill. App. 2d Dist. Mar. 22, 1989); *but see Ignarski*, 171 Ill. App. 3d at 837-38, 525 N.E.2d at 1000 (court considered 2-611 motion directly on appeal, holding that appellant had not made assertions of law without support); *In re* County Collector, 175 Ill. App. 3d 985, 988, 530 N.E.2d 598, 600 (2d Dist. 1988) (court considered motion but declined to find that defendant's appeal was a needless extension of a baseless defense because the plaintiff waived the issue in the trial court); *Frisch*, 158 Ill. App. 3d at 224-25, 511 N.E.2d at 836 (court could consider sanctions for misstatements of law in an appellate brief).

161. *See* Thornton v. Wahl, 787 F.2d 1151, 1153 (7th Cir.), *cert. denied*, 479 U.S. 851 (1986). The federal courts utilize Federal Rule of Appellate Procedure 38, which provides for an award of "just damages and single or double costs" if it determines that an appeal is "frivolous." *See* FED. R. APP. P. 38. The court is not limited to rule 38, and may in appropriate circumstances impose sanctions under other authority including Federal Rule of Civil Procedure 11. Practicing Law Institute, *Rule 11 and Other Sanctions, New Issues in Federal Litigation*, at 125-26 (1987) (citing United States v. Carley, 783 F.2d 341, 344 (2d Cir.), *cert.denied*, 476 U.S. 1141 (1986)).

them during retention elections. No proof exists to verify these fears, but they are often repeated at judicial gatherings. On the other hand, the trial bar is critical of baseless actions which require expensive defenses. Clients are especially vexed by legal costs incurred because of unjustified suits or pleadings.

Despite the development of the case law surrounding attorney sanctions, the authors suggest that judges exercise restraint in sanction proceedings. Indeed, by making rule 137 discretionary rather than mandatory, the Illinois Supreme Court seems to have had this same concern in mind. One reason for restraint is intensely personal. Before sanctions are imposed, a judge must find a deficiency in that attorney's competence, diligence, or honesty. Such a characterization can seriously impair the cooperation and trust which allow the courts to function efficiently, particularly in rural portions of the state.

Political realties also dictate caution among Illinois judges when imposing sanctions. Judges who must run for election and retention seriously weigh the consequences to all parties, including the judge, when asked to punish behavior that until recently was regarded as zealous advocacy.

Finally, judges should use caution when imposing sanctions against the young, the elderly, and the truly incompetent. Although individual cases filed by these practitioners may warrant sanctions, the statute is not really aimed at them. Judges should assist the inexperienced attorney whenever possible. Similarly, many of the members of the bench feel a respectful duty to allow some variance from currently accepted standards for older practitioners. For violations by the very young and the very old, the courts should consider sanctions such as continuing legal education or attendance in court to observe standards of good practice.

Truly incompetent lawyers need to be removed from the profession — not repeatedly punished. The incompetent attorney should be referred to the Attorney Registration and Disciplinary Commission. Parties appearing *pro se* should be given greater latitude with respect to sanctions and judges should read their pleadings liberally.[162] Rule 137 should be reserved for dishonest litigants, lazy or careless attorneys, and the dilettantes of trial practice.

162. *See* Rubin, *The Civil Pro Se Litigant v. The Legal System*, 20 LOY. U. CHI. L.J. 999 (1989).

X. CONCLUSION

With the advent of rule 137, the discretion of the trial judge has become central to determining the appropriateness of attorney sanctions. Therefore, judges must exert care and clarity when imposing sanctions. The new requirement that the trial judges make a complete record in rule 137 will ensure more probing appellate review and thereby provide more guidance to the practitioner and the judge. While the case law outlined in this Article provides a starting point for analysis of rule 137, judges should consider not only the legal, but also the practical issues involved in imposing attorney sanctions. By considering both the law and its effect, judges will better effectuate the purposes underlying Illinois attorney sanction rules and improve advocacy.