STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(Filed: July 26, 2012)

FIA CARD	:	
	:	
vs.	:	**C.A. No. PC 2011-2911**
	:	
JAMES PICHETTE	:	

DECISION

VAN COUYGHEN, J. The issue before this Court involves the propriety of ghostwriting. Ghostwriting, in the legal context, occurs when an attorney anonymously prepares pleadings for a self-represented litigant. After review of the facts presented, the arguments of counsel and the appropriate law, this Court finds that ghostwriting is in direct conflict with the Rhode Island Supreme Court Rules of Professional Conduct ("Rules of Professional Conduct") and is in violation of Rule 11 of the Rhode Island Superior Court Rules of Civil Procedure. Jurisdiction is based upon Super. R. Civ. P. 11 and Canon 3D(2) of Article VI of the Code of Judicial Conduct of the Supreme Court Rules.

I

FACTS AND TRAVEL

Plaintiff's complaint is founded in debt collection. Plaintiff alleges that the Defendant James Pichette ("Defendant") owes it $21,447.84 as a result of credit card debt. Defendant is purported to be a self-represented litigant. The matter came to hearing on January 4, 2012 as a result of Plaintiff's motion to dismiss Defendant's counterclaims. The counterclaims in question

allege breach of contract and violation of the Fair Debt Collection Practices Act. 15 U.S.C.A. 41, Subchapter V § 1692.

At the time of the hearing, Defendant represented to this Court that he had filed an objection to Plaintiff's motion and a supporting memorandum. However, he failed to provide bench copies to the Court in compliance with the Administrative Order relative to the Dispositive Motion Calendar. Consequently, the Court did not have the opportunity to review the memorandum prior to the hearing. In addition, the Defendant was unable to articulate the substantive basis for his objection. Also at the hearing, Plaintiff's attorney revealed, and Defendant confirmed, that Attorney Charles M. Vacca had anonymously prepared Defendant's pleadings in the case before the Court. Prior to the hearing, the Court was unaware of Attorney Vacca's involvement in this case.

Defendant's pleadings consisted of an answer, which set forth seven affirmative defenses and two counterclaims,[1] a request for production of documents, and the aforementioned objection to Plaintiff's motion to dismiss counterclaims with supporting memorandum. In response to questioning by the Court, Defendant asserted that he was referred to Attorney Vacca by Morgan Drexen, a debt consolidation company which Plaintiff had engaged.[2] At the time of the hearing, Mr. Vacca was not present and had not entered his appearance on behalf of Defendant, nor had he provided notice to the Court that he, in fact, had prepared the pleadings in question.

[1] The answer was carelessly prepared. For example, it incorrectly refers to the District Court Rules of Civil Procedure and refers to Defendant as a female.

[2] Morgan Drexen is not a party to this lawsuit. Defendant testified that Morgan Drexen is a debt consolidation company which has been automatically deducting funds from his checking account, allegedly to help him resolve outstanding debts. Defendant also testified that he is charged fees by Morgan Drexen on a monthly basis which would be subtracted from the funds withdrawn. Defendant testified that this practice had been occurring since 2009. Morgan Drexen is also apparently coordinating Attorney Vacca's involvement in this case. (Tr. 4/11/12 at 16-18, 21-25).

The Court continued the hearing in order to obtain, and consider, Defendant's written objection to Plaintiff's motion to dismiss, as well as the accompanying memorandum. The matter was also continued to conclusively determine Attorney Vacca's representation of Defendant, and to determine whether or not the anonymous preparation of pleadings violated the procedural and ethical rules applicable to members of the bar of this state.

On February 7, 2012, this Court wrote to Attorney Vacca demanding his presence at the next hearing and notified him that: "The purpose of the hearing is to conclusively determine your representation of Defendant. In addition, the Court will determine whether or not preparation of the pleadings, without formally entering your appearance on behalf of the litigant, is allowed by Rhode Island law; whether or not the Rhode Island Supreme Court Rules of Professional Conduct have been violated; whether or not the Rules of Civil Procedure (Rule 11) have been violated; and whether or not sanctions should be imposed."

Soon thereafter, Attorney Vacca retained counsel. Attorney Vacca's counsel presented a memorandum arguing that the anonymous preparation of pleadings and the limited relationship established between Attorney Vacca and Defendant were authorized by the Rules of Professional Conduct and were not in violation of Rule 11 of the Superior Court Rules of Civil Procedure. Attorney Vacca's arguments will be addressed later in this Decision.

On March 24, 2012, Defendant filed for bankruptcy protection pursuant to Chapter 13 of the U.S. Bankruptcy Code. As a result, the collection proceedings are stayed pursuant to 11 U.S.C.A. § 362.

The matter came to hearing on April 11, 2012, to determine the propriety of Attorney Vacca's anonymous preparation of the pleadings in the case before the Court. Present at the hearing were Attorney Vacca, his attorney, Plaintiff's attorney and Defendant. Attorney Vacca

freely admitted that he had prepared the pleadings for Defendant in the case before the Court. In fact, when asked by the Court, he admitted preparing the pleadings in a similar manner in five other cases which the Court was able to identify through a brief, rudimentary, computer search of the court files.[3] The pleadings in those cases are virtually identical to the pleadings submitted in the case at bar. When asked by the Court, Attorney Vacca was unable to relate how many additional cases he had provided similar services to other self-represented litigants.

Attorney Vacca, through counsel, entered various exhibits which he requested be placed under seal in order to protect Defendant from release of information that may negatively affect the defense of the within lawsuit.[4] The exhibits purport to establish the terms and conditions involving the relationship between Morgan Drexen, Attorney Vacca and Defendant. The exhibits also contain Defendant's pleadings prepared by Attorney Vacca. Two of the exhibits are represented to be letters from Morgan Drexen to Defendant.[5] The letters were purportedly mailed to Defendant by Morgan Drexen with the pleadings prepared by Attorney Vacca. (Tr. 4/11/12 at 32-35). The letters state, "PER YOUR AGREEMENT WITH *MORGAN DREXEN*, YOU ARE REPRESENTING YOURSELF 'PRO SE' AND ANY ADVICE OR DOCUMENTS YOU RECEIVE ARE FOR ADVISORY PURPOSES AND DOES NOT CONSTITUTE THAT ANY INDIVIDUAL IS REPRESENTING YOU." (Emphasis added.) The letter is not signed by Attorney Vacca. In fact, Attorney Vacca's name does not appear in the letter. The letterhead on page 2 of each letter references "Howard | Nassiri A Limited Liability Partnership." No

[3] The cases are PC 2010-3429, Discover Bank v. Milagrosotero and Angel Biez; PC 2010-2143, Beneficial Rhode Island, Inc. v. Lorenzo Hazard and Ruthina Hazard; PC 2010-0368, FIA Card Services v. Roger Berthelette; PC 2010-0336, Discover Bank v. Francis Edward DaDonna; PC 2009-1545, American Express v. Gerald Jones.

[4] Exhibits A, B1, B2, B3, B4, C1, and C2 have been accepted by the Court and were originally placed under seal. The Court is vacating the Order placing the exhibits under seal with this Decision.

[5] See Exhibits C(1) and C(2).

explanation has been provided regarding the involvement of Howard | Nassiri, LLP; however, according to the Rhode Island Secretary of State, Howard | Nassiri, LLP is not an entity that has applied or registered to practice law in this state.[6]

Defendant testified that, subsequent to being sued, he was referred to Attorney Vacca by an attorney named Kimberly Pisinski, whom he described as the "head attorney" for Morgan Drexen. One of the exhibits provided by Attorney Vacca indicates that Attorney Pisinski had a physical address in Enfield, Connecticut and a mailing address in Costa Mesa, California.[7]

The exact nature of Morgan Drexen's relationship with Attorney Pisinski is not clear. Regardless, Attorney Pisinski forwarded the "Limited Scope of Representation Agreement" to Defendant on behalf of Morgan Drexen and referred him to Attorney Vacca.

The "Limited Scope of Representation Agreement" sets forth the terms of the services that were to be provided by Attorney Vacca to Defendant. The heading of the Limited Scope of Representation Agreement states, "Morgan Drexen Integrated Legal Services." It also contains the language that "I, [Defendant], understand that I am part of an attorney-based debt settlement program." The Limited Scope of Representation Agreement is not dated and contains a notation that it was electronically signed. Defendant confirmed that he signed the document

[6] In accordance with Article II, Rule 10 of the Supreme Court Rules for the Admission to Practice Law, in order for a limited liability entity to practice law in the state of Rhode Island, it must apply to the clerk of the Rhode Island Supreme Court and be approved to practice law as a limited liability entity. In re Law Offices of James Sokolove, LLC, 986 A.2d 997, 999-1003 (R.I. 2010). Furthermore, any lawyers of such limited liability entity who practice in Rhode Island must be members of the Rhode Island bar. Id. at 1003. An internet search has revealed a law firm by that name that is located in Anaheim, California. According to the Rhode Island Bar Association, none of the attorneys practicing for Howard | Nassiri, LLP are certified to practice law in Rhode Island.

[7] Exhibit A, presented by Attorney Vacca.

electronically but was unaware of the date.[8] The Agreement is not signed by Attorney Vacca. In fact, there is no signature line for any person or entity other than Defendant.

The "Limited Scope of Representation Agreement" establishes a flat fee schedule for various legal services. For example, preparation of "responsive pleadings to summons/complaint with phone consultation" costs $85. Paragraph 15 of the agreement authorizes "My attorneys to charge up to $500 to my account so that they can provide me with the aforementioned services." Presumably, the account referenced in the "Limited Scope of Representation Agreement" is the Morgan Drexen account funded by automatic monthly withdrawals from Defendant's bank account. If the cost of services exceeds $500, a new agreement is required.

Attorney Vacca testified that Attorney Pisinski becomes involved once litigation is commenced against a Morgan Drexen client. He referred to Attorney Pisinski as the "engagement attorney." After suit is filed, Attorney Pisinski refers the defendant to local counsel. In Rhode Island, Attorney Vacca is the local counsel. Attorney Vacca referred to himself as the "advisory attorney." Defendant testified that his only verbal communication with Attorney Vacca prior to the hearing before this Court was via telephone.

At the hearing, the Court questioned Defendant regarding his knowledge of the substantive basis of the pleadings prepared by Attorney Vacca. The following colloquy occurred:

THE COURT: Mr. Pichette, do you understand what affirmative defenses are?

DEFENDANT: No, your Honor.

THE COURT: Do you know what estoppel is?

DEFENDANT: No.

[8] Attorney Vacca's counsel represented to the Court that he would attempt to obtain the date from Morgan Drexen. The date has not been provided as of the publication of this Decision.

THE COURT: Breach of contract?

DEFENDANT: I think that's breaking a contract.

THE COURT: Laches?

DEFENDANT: No.

THE COURT: Failure of consideration?

DEFENDANT: No.

THE COURT: Are you familiar with the Fair Debt Collection Practices Act?

DEFENDANT: No, your Honor.

THE COURT: Do you know what counterclaims are?

DEFENDANT: That—that's—I'm just guessing that that's—somebody claims and then you counterclaim them.

THE COURT: Your answer references breach of contract. Do you know what the basis for that is?

DEFENDANT: No.

THE COURT: It also references the Fair Debt Collection Practices Act, Count II of the counterclaim. Do you know what the basis for that is?

DEFENDANT: No.

THE COURT: The memorandum in support of your objection to Plaintiff's motion to dismiss, do you have any idea of the content or the meaning of what the memorandum states or contains?

DEFENDANT: To be honest, no. (Tr. 4/11/12, pp. 19-20).

II

ANALYSIS

A

Ghostwriting and the Applicable Rules

In recent years, ghostwriting has become a concern for courts and other entities involved with the management of the practice of law.[9] In 2007, the American Bar Association ("ABA") issued an advisory opinion supporting ghostwriting; however, the opinion has been subject to criticism by many commentators. ABA Comm. On Ethics and Prof'l Responsibility, Formal Op. 07-446 (2007) see supra n.9. The arguments for and against ghostwriting balance the need to monitor attorneys' conduct in order to maintain the integrity of the profession against a litigant's access to legal representation which, in many instances, is unaffordable.

The approach to ghostwriting has varied depending upon the jurisdiction. The federal courts have predominantly prohibited ghostwriting. In re West, 338 B.R. 906, 914, 915 (Bankr. N.D. Okla. 2006). The states are split. Many jurisdictions that allow ghostwriting have formulated specific rules which require that the attorney provide identifying information on all prepared pleadings, as well as an acknowledgement that he or she prepared the pleadings.[10]

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[9] The Ethics of Ghostwriting: The American Bar Association's Formal Opinion 07-446 and its Effect on Ghostwriting Practices in the American Legal Community, 21 Geo. J. Legal Ethics 765 (2008); see "Unbundled Legal Services or Limited Scope Representation," Indiana Supreme Court Disciplinary Commission, 51-JUN Res Gestae 19 (2008) (undisclosed ghostwriting is wrong).

[10] For example, the Supreme Judicial Court for the Commonwealth of Massachusetts has issued an order allowing "limited assistance representation" in accordance with specific procedures. The Court requires that a "qualified attorney" complete an information session on limited assistance representation approved by the Chief Justice of the Trial Court Department in which the attorney seeks to represent a client on a limited basis. The attorney must also file a "Notice of Limited Appearance," which states precisely the court event to which the limited appearance pertains. If the representation involves preparation of pleadings, the attorney must also include notification which states "prepared with assistance of counsel." See Supreme Judicial Court for the Commonwealth of Massachusetts, In Re: Limited Assistance Representation (April 10, 2009) (Order); see also Giving up the Ghost: A Proposal for Dealing With

The propriety of ghostwriting must be analyzed in the context of the Rules of Professional Conduct applicable to attorneys. Primarily, it should be noted that the term "ghostwriting" is not specifically referenced in the Rhode Island Rules of Professional Conduct.[11] However, a review of the Rules of Professional Conduct clearly indicates that ghostwriting is violative of the fundamental tenets embodied in the rules as presently constituted.

The ethical and efficient administration of justice is the quintessence of the rules governing an attorney's ethical conduct and the practice of law. The Rules of Professional Conduct are designed to maintain the integrity and quality of the practice of law. In the matter of Cozzolino, 767 A.2d 71, 74, (R.I. 2001). The linchpin of the Rules of Professional Conduct is accountability. Attorneys must be accountable to the Court, and to the public, in order for the integrity of the profession to be maintained. The rules are also fundamental to the court's ability to manage its caseload by requiring that attorneys exhibit good faith in not pursuing dishonest or frivolous claims or tactics.

A review of the Rules of Professional Conduct applicable to attorneys reveals that they are replete with ethical standards and obligations placed upon attorneys. For example, Rule 3.1 of Article V, Supreme Court Rules of Professional Conduct, entitled "Advocate," places parameters by which an attorney may advocate for his client. Rule 3.1 states: "A lawyer shall not bring or defend a proceeding or assert or controvert an issue therein unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for the

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Attorney "Ghostwriting" of Pro Se Litigants' Court Documents Through Explicit Rules Requiring Disclosure and Allowing Limited Appearances for such Attorneys, 92 Marq. L. Rev. 103 (2008).

[11] The Rhode Island "Supreme Court reserves to itself the ultimate and exclusive authority to determine what does and does not constitute the practice of law within [this] state and to regulate those people qualified to engage in the practice." In re the Town of Little Compton, 37 A. 3d 85, 88 (R.I. 2012). It is within the sole province of the Supreme Court to formulate rules, as it sees fit, associated with the practice of law, including but not limited to the propriety of ghostwriting. Id. R.I. Bar Ass'n v. Automobile Service Ass'n, 55 R.I. 122, 179 A. 139 (1935).

extension, modification or reversal of existing law." In addition, Rule 3.2 of Article V, the Supreme Court Rules of Professional Conduct, mandates that "a lawyer make reasonable efforts to expedite litigation consistent with the interests of his clients." Rule 3.3 of Article V, Supreme Court Rules of Professional Conduct, mandates candor to the tribunal. Furthermore, Rule 8.4(c) of Article V, Supreme Court Rules of Professional Conduct, prohibits attorneys from engaging in "conduct involving dishonesty, fraud, deceit, or misrepresentation."

Conformance with the Rules of Professional Conduct is essential if the integrity of the practice of law is to be maintained. The rules also allow the courts to maintain the integrity of their caseload by demanding conformance with the good faith assertion of valid claims. It is impossible for the Court to monitor an attorney's compliance with the above-referenced rules in the ghostwriting scenario. This is because the ghostwriter stands with impunity in the "shadow of the courthouse" with the ability to anonymously direct the litigation before the court. Ricotta v. State of Cal., 4 F. Supp. 2d 961, 987 (S.D. Cal. 1998). Consequently, the anonymous preparation of pleadings squarely conflicts with the underlying premise of the Rules of Professional Conduct, which is to hold attorneys accountable for the content of their pleadings.

Attorney Vacca argues that ghostwriting is allowed pursuant to Rule 1.2(c) of Article V, Supreme Court Rules of Professional Conduct, which allows for limited representation. Rule 1.2(c) allows limited representation, if the limitation is reasonable. Note seven of the Commentary to Rule 1.2 provides the following example:

> "If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and the client may agree that the lawyer's services will be limited to a brief telephone conversation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely."

The condition of reasonableness is imposed to ensure that the lawyer's representation satisfies the limited needs of the client. The rule is meant to allow attorneys to provide limited legal services that thoroughly serve the client's well-defined limited needs. However, limited representation does not equate to partial representation. The case before the Court clearly involves partial representation. To define Attorney Vacca's involvement in this case as "limited representation" would be to inappropriately dissect the preparation of pleadings and memoranda from the litigation before the Court. See R.I. Bar Ass'n, 55 R.I. at 135, 179 A. at 144 (" . . . the practice of law is not limited to the conduct of cases in courts. [I]t embraces the preparation of pleadings and other papers incident of actions and special proceedings. . . .") Thus, the facts before this Court do not support a determination of "limited representation." This is accentuated by the fact that Defendant revealed a complete lack of understanding regarding the legal and factual basis of the pleadings. Rule 1.2(c) cannot be interpreted in such a way as to allow an attorney to provide his or her client with a small piece of the legal puzzle and then walk away in anonymity. The representation in this case cannot be considered limited, and even if arguendo, it were considered limited, it certainly cannot be considered reasonable.

Rule 11 of the Superior Court Rules of Civil Procedure, which is modeled on Rule 11 of the Federal Rules of Civil Procedure, is also relevant to this analysis. See Pleasant Management, LLC v. Maria Carrasco et al., 918 A.2d 213, 218 (R.I. 2007). This rule mandates that attorneys sign all pleadings. It provides that:

> "The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information and belief formed after reasonable inquiry 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 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." Super. Ct. R. Civ. P. 11.

Rule 11 essentially mirrors the obligations imposed by Rule 3.1 of the Rules of Professional Conduct and is clearly intended to hold attorneys accountable for the content of their pleadings.

Other courts have found that Rule 11 prohibits ghostwriting. "[G]hostwriting has been considered as a deliberate evasion of the responsibilities imposed on counsel by Rule 11, F. R. Civ. P." Johnson v. Board of County Commissioners for the County of Fremont, 868 F. Supp. 1226, 1231 (D. Colo. 1994); see Ellis v. Maine, 448 F.2d 1325, 1328 (1st Cir. 1971) (condemning the practice of ghostwriting, which allows attorneys to escape the obligations of F. R. Civ. P. 11). Moreover, the practice of ghost-writing has been found to exploit the mandate that pleadings of pro se parties be "held to less stringent standards than formal pleadings drafted by lawyers," effectively nullifying the certification requirement of Rule 11. Laremont-Lopez v. Southeastern Tidewater Opportunity Ctr., 968 F. Supp. 1075, 1078 (E.D. Va. 1997); see also In re Mungo, 305 B. R. 762, 769 (Bankr. D.S.C. 2003).

In this case, this Court has serious concerns regarding the good faith assertions of Defendant's counterclaims. The counterclaims, which were the subject of Plaintiff's motion to dismiss, appear to be completely without merit. The first counterclaim is founded in breach of contract.[12] No basis in law or fact has been sufficiently alleged or argued to provide a legitimate basis to support the viability of this counterclaim. The second counterclaim cites the Fair Debt Collection Practices Act, 15 U.S.C.A. 41, Subchapter V, § 1692. The statutory language, legislative history and case law all conclusively establish that the Act is inapplicable to creditors who attempt to collect their own debts. 15 U.S.C.A. 41, Chapter V, Sec. 1692; SOM v. Daniels

[12] The counterclaim incorrectly refers to Defendant as a female.

Law Offices, P.C., 573 F. Supp. 2d 359 (D. Mass. 2008); Chiang v. MDNA, 2007 W.L. *2399185 (D. Mass. 2007). As Plaintiff is a creditor in this case, the counterclaim appears to be inapplicable and completely without merit. When the Court sought an explanation from Defendant regarding his counterclaims, he was unable to articulate a factual or legal argument to support either counterclaim. As referenced above, Defendant showed a complete lack of knowledge concerning the legal and factual basis for those claims. This is particularly troubling in that the five unrelated cases in which Attorney Vacca prepared the pleadings contained nearly identical counterclaims. Those cases, like this one, were all debt collection cases.

Defendant's total lack of understanding of the counterclaims, the fact that the counterclaims appear to be without merit, and the boilerplate commonality which the counterclaims share with the pleadings in the other cases prepared by Attorney Vacca, raise a serious question regarding the good faith assertion of those claims. It appears that the pleadings were prepared without a factual or legal basis and appear to be designed to hinder or delay the litigation rather than expedite it. It is impossible to hold an attorney to the standards set forth in Rule 11 when the attorney authors the pleadings in anonymity. This issue is compounded in this case by the fact that the legal services are being coordinated by a third party, Morgan Drexen, which is not a party to this lawsuit.[13]

There is no way to monitor an attorney's compliance with the aforementioned rules in the ghostwriting scenario. To allow attorneys to author pleadings in anonymity would allow them to circumvent the very rules put in place to maintain the integrity of the profession. The rules

[13] Whether or not Morgan Drexen is illegally practicing law in this state is also of concern to the Court. As stated above, the Limited Scope of Representation Agreement states, "Morgan Drexen Integrated Legal Services." The agreement also states that Defendant "is part of an attorney-based, debt-settlement program." The relationship between Morgan Drexen and the practice of law in Rhode Island appears clouded at best.

imposing responsibility upon attorneys cannot be blindly ignored under the guise of providing litigants with affordable legal representation.

B

Self-Represented Litigants

An additional area of concern in the ghostwriting scenario is the position in which it places the Court, vis-à-vis the litigants. Self-represented litigants receive substantial latitude from the courts. The latitude given to self-represented litigants is often necessary to satisfy the Court's obligation to be faithful to the law pursuant to Article VI, Canon 3(B)(2) of the Rules of Judicial Conduct. The debate arising out of the Court's assistance to self-represented litigants led to the ABA's Joint Committee evaluating Rule 2.2 of the Model Code of Judicial Conduct to update its commentary in February 2007. Rule 2.2 requires that judges maintain fairness and impartiality. The Committee, in its commentary to Rule 2.2, states, "It is not a violation of this Rule for a judge to make reasonable accommodations to ensure [self-represented] litigants the opportunity to have their matters fairly heard." Joint Commission to Evaluate the Model Code of Judicial Conduct R. 2.2 (2007). This is an ABA announcement "enabling judges to assist [self-represented] litigants . . . [and] mak[ing] it clear that judges do not compromise their impartiality when they make reasonable accommodations to [self-represented] litigants who may be completely unfamiliar with the legal system and the litigation process." Id.; see Johnson, 868 F. Supp. at 1226 (D. Colo. 1994). The basis for this approach to self-represented litigants is well founded. However, the accommodation to self-represented litigants may become unjust when a litigant also receives anonymous legal assistance in the form of ghostwriting.

In this case, the ghostwriting was brought to the Court's attention by opposing counsel. However, in many cases, ghostwriting is not revealed, or apparent, to the Court or other litigants.

This is especially true with the advent of access to legal forms through the Internet. In the ghostwriting scenario, the Court and the adversary are falsely under the impression that the litigant has not received the assistance of counsel.

As stated above, this Court was unaware of Attorney Vacca's involvement until Plaintiff's attorney raised the issue on the date of the hearing. In Johnson, the Colorado District Court dismissed the case once it was discovered that there had been undisclosed legal assistance, stating,

> "Undisclosed participation by a lawyer that permits a litigant to falsely appear as being without professional assistance would permeate the proceedings. The pro se litigant would have been granted greater latitude as a matter of judicial discretion in hearings and trials. The entire process would have been skewed to the distinct disadvantage of the nonoffending party." 868 F. Supp. at 123.

Having the defendant deceive the court in this regard was stated as being "far below the level of candor which must be met by members of the bar." Id. at 1232. The Court saw this as a violation of Model Rule 8.4(c) and of the Colorado Rules of Professional Conduct Rule 1.2(d), which states that "A lawyer shall not counsel a client to engage, or assist a client, in conduct that a lawyer knows is criminal or fraudulent." Id. at 1231-32.[14]

In this case, the litigant did not understand the legal or factual basis for the pleadings that were prepared for him. This places the Court in a difficult position of exploring the basis for the

[14] Rule 8.4(c) of the Supreme Court Rules of Professional Conduct reads: "It is professional misconduct for a lawyer to . . . engage in conduct involving dishonesty, fraud, deceit or misrepresentation," and is identical to that of the Colorado Rules of Professional Conduct Rule 8.4(c). Also, Rule 1.2(d) of the Supreme Court Rules of Professional Conduct and the Colorado Rules of Professional Conduct are identical, as both provide that "[a] lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent. . . ."

pleadings while also maintaining impartiality.[15] To allow the self-represented litigant to receive such latitude in addition to the anonymous assistance of counsel creates an uneven playing field in favor of the alleged self-represented litigant. This is an advantage that Morgan Drexen acknowledged, and appears to be exploiting, in its undated correspondence to Defendant by stating that "Judges bend over backwards for parties who appear without an attorney."[16] It is clear that the anonymous involvement of an attorney in this case puts the Court in a difficult position and creates the potential for an unfair, tactical advantage for the alleged self-represented litigant.

III

SANCTIONS

Attorney Vacca asserts that the Rhode Island Superior Court does not have jurisdiction to issue sanctions and that the application and imposition of sanctions is within the purview of the Rhode Island Supreme Court. Attorney Vacca references Canon 3D(2) of Article VI of the Code of Judicial Conduct of the Supreme Court Rules, which provides that when a judge has substantial information or knowledge of an attorney's ethical violations, the judge is required to take appropriate action, which may include "reporting the violation to the appropriate authority or other agency or body." Once the violation is reported, the Disciplinary Board has the "power and duty" to investigate "the conduct of any attorney" and can then recommend that the Supreme Court impose discipline. Disciplinary Procedure for Attorneys, Rules 4(d) and 6(b).

This Court recognizes "the power inherent in [the [Rhode Island Supreme Court] to control and supervise [the] practice of law generally." R.I. Bar Ass'n, 55 R.I. at 129-130, 179 A.

[15] Joint Commission to Evaluate the Model Code of Judicial Conduct R. 2.2 (2007) (citing Commentary 4 following Rule 2.2, "A Judge shall uphold and apply the law and shall perform all duties of judicial office fairly and impartially.").

[16] Letter attached to Exhibit A from Attorney Pisinski.

at 142; see generally, Unauthorized Practice of Law Committee v. State Department of Workers' Compensation, 543 A.2d 662, 664 (R.I. 1988). However, pursuant to Rhode Island Superior Court Rules of Civil Procedure, Rule 11, a trial justice has discretionary authority to formulate what he or she considers to be an appropriate sanction with respect to Rule 11 in accordance with the articulated purpose of the rule which is "to deter repetition of the harm, and to remedy the harm caused." Michalopoulos v. C & D Restaurant, Inc., 847 A.2d 294, 300 (R.I. 2004) (quoting Lett v. Providence Journal Co., 798 A.2d 355, 368 (R.I. 2002)); see Pleasant Management, LLC v. Carrasco, 918 A.2d at 213. Therefore, it is clear that the Rhode Island Superior Court, in the exercise of its discretion, has the authority to impose sanctions pursuant to Rule 11.[17]

This Court finds that, in the matter before it, Attorney Vacca's failure to sign the pleadings prepared for Defendant constitutes a sanctionable violation of Rule 11. See Duran v. Carris, 238 R.3d 1268, 1272-1273 (10th Cir. 2001) (the failure of an attorney to sign documents prepared by him or her for a pro se party is a "misrepresentation to [the] court by the litigant and the attorney" and "must be acknowledged by the signature of the attorney involved"); see also Ellis, 448 F.2d at 1328 (the Court specifically "reserve[d] the right, where a brief gives occasion to believe that the petitioner has had legal assistance, to require such signature if such, indeed is the fact").[18]

[17] In making a determination regarding the imposition of sanctions, "[s]o long as the sanction selected is 'appropriate,' Fed. R. Civ. P. 11, the Civil Rules place virtually no limits on judicial creativity." Anderson v. Beatrice Foods Co., 900 F.2d 388, 394 (1st Cir. 1990).

[18] This Court is also mindful that the counterclaims appear to be without merit and thus appear to constitute a violation of Rule 11. This Court makes no determination on this issue as it is being referred to Disciplinary Counsel for investigation.

IV

CONCLUSION

For the foregoing reasons, Attorney Vacca is hereby ordered to cease and desist the anonymous preparation of pleadings for self-represented litigants. As Attorney Vacca is local counsel for Attorney Pisinski and Morgan Drexen, Attorney Vacca is hereby ordered to provide Ms. Pisinski and Morgan Drexen with a copy of this Decision and notification that failure to abide by this Decision subjects them to contempt of court proceedings. A copy of said notification shall be provided to the Court forthwith.

In addition, this Court hereby orders that Attorney Vacca provide written notice to each and every pending file in the Superior Court in which he has prepared pleadings for self-represented litigants. Notice shall be provided to the opposing party and shall contain his name, address, telephone number, and an acknowledgement that part or all of the pleadings were prepared by him. This order shall be complied with within thirty days, and proof of compliance shall be provided to this Court.

Also, after a thorough review of the exhibits presented by Attorney Vacca and placed under seal, this Court finds that said exhibits do not compromise Defendant's defense or counterclaims and thus the previous court order sealing said exhibits is vacated.

In addition, pursuant to Canon 3D(2) of Article VI of the Code of Judicial Conduct of the Supreme Court Rules, this matter is referred to the Disciplinary Counsel for review consistent with this Decision. The review shall include, but not be limited to, whether or not the counterclaims asserted in this case are without merit and thus frivolous in nature. Lastly, this matter is referred to the Rhode Island Attorney General to determine if Attorney Pisinski, Morgan Drexen and/or Howard | Nassiri, LLP are illegally practicing law in this state.