Pro Se Litigants: Application of a Single Objective Standard Under FRCP 11 to Reduce Frivolous Litigation

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When Rule 11 of the Federal Rules of Civil Procedure was amended in 1983, the Advisory Committee on Civil Rules sought to remedy the failure of the previous rule to effectively deter abuses of pleadings and other papers. The text of Rule 11 was therefore changed from requiring a subjective inquiry of the signer's "good faith" to an objective test focusing on the reasonableness of the inquiry behind the pleading or other paper. While the previous rule did not address the application

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2. The following constitutes a compilation of the old language and the revised language of Rule 11. The portions of Rule 11 that were deleted are in bold type and the additions to Rule 11 are underlined.

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 rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is abolished. 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 there is a good ground to support it; and that it is not interposed for delay 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, or is signed with intent to defeat the purpose of this rule; it may be stricken as sham and false and the action may proceed as though the pleading had not been served. For a willful violation of this rule an attorney may be subjected to appropriate disciplinary action. Similar action may be taken if scandalous or indecent matter is inserted. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to

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of Rule 11 to pro se litigants, the Advisory Committee included specific language in the amended rule making pro se litigants subject to Rule 11 sanctions.3

Cases brought by pro se litigants make up a significant portion of the dockets of Federal District Courts.4 The vast majority of pro se cases arise from pro se inmate claims, pro se tax cases against the Internal Revenue Service, and pro se civil rights plaintiffs.5 However, difficulties exist when a court is faced with applying Rule 11 to such pro se litigants because pro

the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

Amendments to Rules, 97 F.R.D. 165 (1983). This is the text of Rule 11 at the time of publication. Proposed amendments to Rule 11 were prepared by the Advisory Committee, approved by the Federal Judiciary Committee, and are currently before Congress and the Supreme Court for approval.

3. Prior to 1983, Rule 11 addressed pro se litigants in that it provided: "A party who is not represented by an attorney shall sign his pleading . . . ." See supra note 2. However, old Rule 11 applied a certification requirement only to attorneys and did not provide for the sanctioning of pro se litigants. See supra note 2. As stated in 5A CHARLES A. WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1334 (2d Ed. 1990):

The purpose of requiring unrepresented parties to sign their pleadings was not to place them under an obligation to investigate as thoroughly as would an attorney whether there was reasonable grounds for the action. Rather, it was to make certain that those named as parties in an action in which there was no lawyer actually had assented to the filing of the action on their behalf.

In contrast, Rule 11 as amended in 1983 applies to pro se litigants because the language of the rule provides as follows: "A party who is not represented by an attorney shall sign the party's pleading, motion, or other paper and state the party's address." FED. R. CIV. P. 11. Thus, a pro se litigant is now subject to the certification requirement because Rule 11 provides that "[t]he signature of an attorney or party constitutes a certificate by him that he has read the pleading, or motion, or other paper . . . ." Id. (emphasis added).

4. It is estimated that approximately 340 pro se lawsuits were filed in U.S. District Court for the District of Columbia in 1990. Catherine Toups, Sue-'em-all Strategy Keeps Courts Busy, WASH. TIMES, Dec. 18, 1991, at A1. Of those 340 lawsuits, none were resolved in favor of the pro se plaintiff. Further, in 1988, pro se lawsuits comprised approximately 16% of the dockets of the Federal District Courts in New York State. Committee on Federal Courts of the New York State Bar Association, Pro Se Litigation in the Second Circuit, 62 ST. JOHN'S L. REV. 571, 572 (1988) [hereinafter Committee on Federal Courts]. The court in Elmore v. McCammon, 640 F.Supp. 905, 911 (S.D. Tex. 1986), noted that there were over 200 pro se cases on that court's docket in 1986. The court stated that "[m]ore and more of this Court's time is being consumed by coping with frivolous pro se lawsuits." Id.

For a comprehensive study of the problems associated with pro se litigation, see Michael J. Mueller, Abusive Pro Se Plaintiffs In the Federal Courts: Proposals For Judicial Control, 18 UNIV. MICH. J.L. REF. 93 (1984) (discussing the problems arising in federal courts as a result of "career" pro se plaintiffs).

5. Committee on Federal Courts, supra note 4, at 572.
se litigants have no formal legal training.6

Sometimes courts are faced with cases where a pro se litigant has filed a claim where the law is well-settled against the pro se litigant.7 In some instances, the pro se litigant may have researched the legal basis of the claim, but not grasped that the claim is frivolous.8 In other cases, the litigator files the claim knowing that there is no basis in law.9 And in the most obvious cases, the pro se litigant has filed the same claim more than once10 or has filed several frivolous lawsuits that were previously dismissed by the court.11 Courts may confront any or all of these situations when presented with claims filed by pro se litigants.

Discrepancies exist, however, in how courts apply Rule 11 to pro se litigants.12 Under a strict reading of the language,

6. One commentator argues that pro se litigants “lack the ability to determine by means of precedent whether their claims are frivolous,” and, therefore, cannot be held to the same standard as attorneys when determining whether Rule 11 has been violated. Eric J.R. Nichols, Preserving Pro Se Representation in an Age of Rule 11 Sanctions, 67 Tex. L. Rev. 351, 373 (1988). Thus, in terms of the language of Rule 11, a pro se litigant, according to Nichols, is unable to determine if a claim is “warranted by existing law.” See Fed. R. Civ. P. 11.

7. See, e.g., Snyder v. I.R.S., 596 F. Supp. 240 (N.D. Ind. 1984) (holding that it is clearly established that wages are taxable income); Kadan v. Williams, No. 89 Civ. 3379 (SWK), 1990 U.S. Dist. LEXIS 5541 (S.D.N.Y. Apr. 11, 1990) (finding that the law is well-settled that judges are not liable in civil actions for their judicial acts); Vizvary v. Vignati, 134 F.R.D. 28 (D.R.I. 1990) (establishing law that federal courts have no jurisdiction over probate matters).

8. In King v. U.S. Dept. of Housing, No. 87 C 10487, 1988 U.S. Dist. LEXIS 5693 (N.D. Ill. June 15, 1988), the court found that the plaintiff’s unsigned complaint was “totally incoherent” and that there was no claim “vaguely indicating that plaintiff might be entitled to relief . . .” Id. at *1. Nevertheless, the court did not impose sanctions because the plaintiff had conducted some research and put forth his “best efforts.” See also Cheek v. Doe, 828 F.2d 395 (7th Cir. 1987) (upholding sanctions for frivolous lawsuit but reducing amount of sanction); Posner v. Minnesota Mining & Mfg. Co., 713 F. Supp. 562 (E.D.N.Y. 1989) (dismissing amended complaint, but not imposing Rule 11 sanctions because plaintiff made a reasonable investigation).

9. The court in Dysan v. Sposeep, 637 F. Supp. 616, 622-23 (N.D. Ind. 1986), upheld Rule 11 sanctions against a pro se plaintiff because his claim was completely frivolous and because plaintiff was aware of the doctrine of judicial immunity that barred his claim.

10. In Carroll v. Philadelphia, Nos. 87-0592, 87-6258, 88-1239, 1989 U.S. Dist. LEXIS 11652 (E.D. Pa. Sept. 28, 1989), the court granted sanctions and dismissed the plaintiff’s civil rights complaint that was identical to a lawsuit filed by the same plaintiff, and dismissed by the same judge, a year earlier.

11. Id. “Frivolous” lawsuits refer to those that are not well-grounded in law or fact. See Fed. R. Civ. P. 11 Advisory Committee Note (amended 1983).

12. In Saul M. Kassin, An Empirical Study of Rule 11 Sanctions 41-3 (Federal Judiciary Center 1985), the author reported a study of how federal district court judges apply Rule 11 to pro se litigants. The judges consistently applied Rule 11 less stringently to pro se litigants than to attorneys based on the same set of facts.
Rule 11 should apply equally to all parties including attorneys, represented parties, and pro se litigants. In looking at cases where Rule 11 sanctions have been sought against pro se litigants, however, there are inconsistencies in how the rule is applied. Some courts still look for evidence of subjective bad faith,\textsuperscript{13} even though the Advisory Committee Notes and United States Supreme Court have stated that Rule 11 involves an objective test.\textsuperscript{14} Other courts purport to apply an objective test, but they consider pro se litigants' status and special circumstances when determining whether Rule 11 has been violated.\textsuperscript{15} Still other courts apply an objective test, but they do

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This study, however, was not based on actual decisions. Rather, a panel of judges was presented with a hypothetical factual scenario (based upon the facts of an actual case), and the judges were asked whether they would impose Rule 11 sanctions.

Nevertheless, as noted in this Comment, the actual cases involving the application of Rule 11 to pro se litigants demonstrate that there are discrepancies in the standards applied by federal judges. See infra part II.

13. See Cook v. Peter Kiewit Sons Co., 775 F.2d 1030 (9th Cir. 1985) (finding bad faith and upholding sanctions because plaintiff repeatedly filed the same claim); Bell v. Clancy, Civil No. 86-1350-GT(M) (S.D. Cal. Dec. 22, 1986) (refusing to impose Rule 11 sanctions against pro se plaintiff because there was insufficient evidence of bad faith); Ballentine v. Taco Bell Corp., 135 F.R.D. 117 (E.D.N.C. 1990) (concluding that Rule 11 has a subjective element, as well as objective elements, that must be considered when determining reasonableness); Cooper v. Adair, No. CV-88-2272, 1989 U.S. Dist. LEXIS 5089 (E.D.N.Y. May 1, 1989) (requiring malice to be proven in order to find Rule 11 sanctions against pro se plaintiff).

14. See Business Guides v. Chromatic Communications Enterprises, 111 S. Ct. 922 (1991); FED. R. CIV. P. 11 Advisory Committee Note (amended 1983). The Advisory Committee states that "[t]he standard is one of reasonableness under the circumstances," and that the standard is "more stringent than the original good-faith formula . . ." Id. This Comment asserts that the standard of "reasonableness under the circumstances" is not meant to include a lower standard for pro se litigants because of a lack of formal legal training.

15. See, e.g., Booker v. Buckley, 810 F.2d 199 (6th Cir. 1986) (stating that pro se status and lack of attorney advice are appropriate special circumstances in determining if Rule 11 has been violated); Harris v. Heinrich, 919 F.2d 1515 (11th Cir. 1990) (stating that pro se status must be considered to determine if pro se inmate's filing was reasonable); Blume v. Leake, 618 F. Supp. 95 (D.C. Idaho 1985) (stating that pro se litigants are given the "benefit of the doubt"); Reinert v. O'Brien, No. 92-C-5601, 1992 U.S. Dist. LEXIS 16002, at *7-8 (N.D. Ill. Oct. 16, 1992) (refusing to sanction plaintiff for a frivolous lawsuit because of plaintiff's pro se status and further stating that "pro se parties shall be sanctioned under Rule 11 only after successive attempts to press a wholly frivolous claim"); Lindsey v. Jansante, No. 92-CV-75459-DT, 1992 U.S. Dist. LEXIS 17644 (E.D. Mich. Nov. 17, 1992) (refusing to impose Rule 11 sanctions because plaintiff appeared pro se); Loss v. Kipp, No. 1:91-CV-157, 1991 U.S. Dist. LEXIS 8195 (W.D. Mich. June 11, 1991) (declining to impose Rule 11 sanctions because of plaintiff's pro se status, even though plaintiff had filed seven lawsuits in the previous two years); Kadan v. Williams, No. 89 Civ. 3379 (SWK), 1990 U.S. Dist. LEXIS 5541 (S.D.N.Y. Apr. 11, 1990) (requiring pro se status to be considered when determining whether it was objectively reasonable to sign pleading); Vizvary v. Vagnati, 134 F.R.D. 28 (D.R.I. 1990) (holding plaintiff to standard of the "reasonable pro se litigant").
not consider the status of a pro se litigant when determining if Rule 11 has been violated. Rather, these courts treat all parties alike and only consider a pro se litigant's status when determining an appropriate sanction, not when determining whether to sanction.\textsuperscript{16}

There are several problems inherent in the lack of a clear standard for the application of Rule 11 to pro se litigants. First, pro se litigants cannot be certain of the conduct to which they are expected to conform when courts use different standards. For instance, courts that look for subjective bad faith or that consider pro se litigants' special circumstances when determining if Rule 11 was violated generally treat pro se litigants more leniently.\textsuperscript{17} Second, judges have no clear standard for evaluating the conduct of pro se litigants, which leads to inconsistent application of Rule 11 sanctions. Third, party opponents of pro se litigants cannot be certain of when it is appropriate to pursue Rule 11 sanctions.

In addition, several policy concerns are raised with respect to the application of Rule 11 to pro se litigants. First, there is the concern of protecting the interests of parties who must face pro se litigants and incur the time and expense of defending potentially frivolous and vexatious claims.\textsuperscript{18} A second, but related, concern is the cost in time and resources incurred by the judicial system in adjudicating pro se litigants' claims.\textsuperscript{19} The final concern is the application of Rule 11 in a manner that will not have a chilling effect on pro se litigation and that

\textsuperscript{16} See Zegula v. U.S., No. 91-35134, 1992 U.S. App. LEXIS 2685, at *5 (9th Cir. Feb. 10, 1992) (stating that "the pro se status of a litigant is relevant to the choice of an appropriate sanction"); Manuel v. East Palo Alto, Nos. 89-15896, 89-15897, 89-15963, 1991 U.S. App. LEXIS 11156, at *5 (9th Cir. May 24, 1991) (stating that when determining an appropriate sanction, the trial court may consider the fact that plaintiff proceeded without counsel); Pawlowske v. Chrysler Corp., 623 F. Supp. 569, 572 n.3 (N.D. Ill. 1985) (stating that discretion regarding the special circumstances of pro se litigants is "exercised in determining what to award, not whether").

\textsuperscript{17} The court in King v. U.S. Dept. of Housing & Urban Dev., No. 87 C 10487, 1988 U.S. Dist. LEXIS 5693 (N.D. Ill. June 15, 1988), stated that "we are not inclined to impose Rule 11 sanctions where, as here, it appears that the plaintiff simply lacks the capacity to understand and conform to federal pleading requirements." Id. at *4.

\textsuperscript{18} In response to a frivolous lawsuit filed by a pro se litigant, the court in Elmore v. McCammon, 640 F. Supp. 905 (S.D. Tex. 1986), acknowledged the interests of the defendants to be protected. Accordingly, the court stated: "The defendants in these suits, many of whom are of modest means or indigent themselves, have a right not to be harassed and burdened by frivolous litigation, and the Court has a duty to protect them." Id. at 911.

\textsuperscript{19} In Elmore, the court noted that "the problem of frivolous filings by pro se litigants is not a minor one." Id.
does not inhibit pro se litigants' meaningful access to the court system.

This Comment addresses the application of Rule 11 sanctions to pro se litigants and argues that based on the language of Rule 11, the concerns expressed in the Advisory Committee Note to Rule 11, and the primary goal of Rule 11 to deter abusive pleadings, a single objective standard should be applied to all parties—attorneys, represented parties, and pro se litigants—to determine whether Rule 11 has been violated. Under this single objective standard, a pro se litigant's lack of legal representation should be considered only in determining the severity of the sanction, not in determining whether Rule 11 has been violated.

Section I of this Comment evaluates the language of Rule 11 as amended in 1983 and the accompanying Advisory Committee Note. In Section II, the varying approaches that courts have taken to the application of Rule 11 to pro se litigants are examined through specific Rule 11 cases. Section III discusses the rationale and arguments supporting the application of a single objective test to pro se litigants. Finally, Section IV examines how a single test should be applied to pro se litigants and the proper standards that may factor into the adjudication of a motion for Rule 11 sanctions against a pro se litigant.

I. RULE 11 OF THE FEDERAL RULES OF CIVIL PROCEDURE AND THE ADVISORY COMMITTEE NOTES

Rule 11\textsuperscript{20} was amended in 1983\textsuperscript{21} because experience with

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\item[20.] See supra note 2 for full text of Rule 11.

There are three major changes to Rule 11 in the Proposed Amendments. First, the word "may" has been substituted for the word "shall," thus giving district court judges the discretion whether to impose sanctions for Rule 11 violations. The proposed amendments by the advisory committee retained the word "shall" from the 1983 amendments. See Proposed Amendments, 137 F.R.D. at 76. However, the Federal Judicial Committee approved the change to "may" in June 1992. Randall Samborn, Key Panel Votes Shift in Rule 11, NAT'L L.J., July 6, 1992, at 13.

Second, the proposed amendments specify that district court judges may consider
the original version indicated that it was not deterring abusive practices of pleadings and other motions.\textsuperscript{22} In fact, a study of litigation activity between 1938 and 1976 revealed that Rule 11 motions were filed in only nineteen cases and that violations were found in only eleven of those cases.\textsuperscript{23}

Also considered by the Advisory Committee were several areas of confusion. First, there was confusion as to the circumstances that would trigger disciplinary action under Rule 11.\textsuperscript{24} Second, there was confusion as to the standard of conduct expected of those parties signing pleadings and motions.\textsuperscript{25} Finally, there was confusion as to the range of available and appropriate sanctions.\textsuperscript{26}

In addressing these areas of confusion, the Advisory Committee sought to accomplish a number of goals. The primary goal was to cure the abuses that were apparent under the

nonmonetary sanctions, in addition to the possibility of monetary sanctions, for Rule 11 violations. PROPOSED AMENDMENTS, 137 F.R.D. at 77.

Third, the proposed amendments include a "safe harbor" provision under which a party seeking Rule 11 sanctions must serve the alleged offending party with a motion for sanctions and describe the specific conduct alleged to violate Rule 11. The offending party then has a 21 day "safe harbor" in which to withdraw the "challenged claim, defense, request, demand, objection, contention, or argument." Id. at 76.

According to the Advisory Committee, these proposed amendments are "intended to remedy the problems that have arisen in the interpretation and application of the 1983 revision of [Rule 11]." Id. at 77. Nevertheless, "[t]he rule retains the principle that attorneys and pro se litigants have an obligation to the court to refrain from conduct that frustrates the aims of [FRCP] 1." Id. at 78 (emphasis added). Moreover, the Advisory Committee continues to recognize that the proposed amendments "restate the provisions requiring attorneys and pro se litigants to conduct a reasonable inquiry into the law and facts before signing pleadings, written motions, and other documents, and mandating sanctions for violations of these obligations." Id. (emphasis added).

The proposed amendments to Rule 11, however, do not affect the basic premises of Rule 11 that the signer must have made a reasonable inquiry into the law and facts and that a pleading or other paper is not submitted for an improper purpose. Accordingly, the arguments presented in this Comment will focus on the basic standard set forth in the 1983 version of Rule 11 that is retained in the PROPOSED AMENDMENTS.

\textsuperscript{22} Rule 11 was amended in 1983 along with FEDERAL RULES OF CIVIL PROCEDURE 7, 16, and 26 "in response to widespread concern about frivolous litigation and pretrial abuses that were perceived as contributing to the overburdening of the federal judicial system." 5A WRIGHT & MILLER, supra note 3, § 1331. Thus, the amendment of Rule 11 reflected a "deliberate effort to reduce delay and expense and to 'dam the flood of litigation that [threatened] . . . to inundate the courts.'" Id.


\textsuperscript{24} FED. R. CIV. P. 11 Advisory Committee Note (amended 1983).

\textsuperscript{25} Id.

\textsuperscript{26} Id.
application, or lack thereof, of the original Rule 11.\textsuperscript{27} However, the Advisory Committee also sought to reduce the demonstrated reluctance of courts to apply Rule 11 by emphasizing the responsibilities imposed on those persons signing pleadings and other motions.\textsuperscript{28} By creating an objective inquiry, the Advisory Committee hoped to create more concrete standards.\textsuperscript{29} Additionally, by stressing individual responsibility and increasing the applicability of sanctions to a broader set of circumstances, the Advisory Committee sought to streamline the litigation process and to reduce the number of frivolous claims.\textsuperscript{30}

To accomplish these goals, the amended rule places an affirmative duty on the person signing the pleading or other paper. Whereas the original version of Rule 11 focused on the subjective intent of the signer,\textsuperscript{31} the amended rule focuses on

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\textsuperscript{27} The Advisory Committee Note to Rule 11 states that "[g]reater attention by the district courts to pleading and motion abuses and the imposition of sanctions when appropriate, should discourage dilatory or abusive tactics and help to streamline the litigation process by lessening frivolous claims or defenses." \textit{Id.}

\textsuperscript{28} The Advisory Committee states:

Authority to [impose Rule 11 sanctions] has been made explicit in order to overcome the traditional reluctance of courts to intervene unless requested by one of the parties. The detection and punishment of a violation of the signing requirement, encouraged by the amended rule, is part of the court's responsibility for securing the system's effective operation.

\textit{Id.}

\textsuperscript{29} A problem found in the original Rule 11, indeterminacy of standards, is still prevalent in the amended rule and is one reason for the proposed amendments to Rule 11. The Committee on Rules of Practice and Procedure of the Judicial Conference of the United States describes this problem as follows:

The conduct of lawyers and litigants is less likely to be influenced by a rule that is unpredictable in application. There may also be a greater injustice associated with a relatively indeterminate rule that gives rise to punitive consequences. Indeterminacy can also increase occasional injustice, as where sanctions reflect a bad relationship between the court and attorney or litigant.


\textsuperscript{30} The Advisory Committee states that "[t]he new language is intended to reduce the reluctance of courts to impose sanctions by emphasizing the responsibilities of the attorney and reinforcing those obligations by the imposition of sanctions." \textit{Fed. R. Civ. P. 11 Advisory Committee Note (amended 1983) (citation omitted).} By focusing on pleading and motion abuses, the Advisory Committee sought to "discourage dilatory or abusive tactics and help to streamline the litigation process by lessening frivolous claims or defenses." \textit{Id.}

\textsuperscript{31} In the original language of Rule 11 the focus was on the signer's "intent to defeat the purpose" of Rule 11, and courts looked for "wilful violation[s]." See supra note 2 for text of the original Rule 11.
the reasonableness of the signers pre-filing inquiry. Therefore, Rule 11 imposes a two-part certification requirement on the signer of a pleading: (1) the signer must make a reasonable pre-filing inquiry, and (2) the signer must not submit the pleading or motion for an improper purpose.

The reasonable inquiry requirement is broken down into two aspects: facts and law. Under amended Rule 11, a party’s complaint must be “well-grounded in fact” and “warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law . . . .” This inquiry is an objective consideration of “reasonableness under the circumstances.”

The improper purpose prong of the Rule 11 inquiry appears, on the surface, to require a subjective evaluation of the signer’s intent in filing a pleading or motion. However, the improper purpose prong is properly evaluated under an objective test and may be proven by evidence of successive filings and/or harassment. The Advisory Committee intended these objective tests to be more stringent than the original subjective intent inquiry. The Advisory Committee also believed that an objective standard would provide more definite criteria to determine when Rule 11 is violated and it would allow a greater range of circumstances to result in Rule 11 violations. Finally, the Advisory Committee believed that the amended rule would provide a stronger deterrent to the filing of improper and abusive pleadings.

II. RULE 11 IN APPLICATION

Courts have interpreted Rule 11 and its application to pro

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32. FED. R. CIV. P. 11 Advisory Committee Note (amended 1983).
34. FED. R. CIV. P. 11.
37. The Advisory Committee states that “[t]his standard is more stringent than the original good-faith formula and thus it is expected that a greater range of circumstances will trigger its violation.” FED. R. CIV. P. 11 Advisory Committee Note (amended 1983).
38. Id.
se litigants differently. As illustrated below, these differing approaches have led to inconsistent results.

A. Courts That Look For Subjective Bad Faith

In determining whether a pro se litigant has violated Rule 11, a small number of courts continue to look for evidence of subjective bad faith.\(^{39}\) For instance, the United States District Court for the Eastern District of New York applied such a standard in \textit{Cooper v. Adair}.\(^{40}\) The plaintiff in \textit{Cooper} had made a request of the defendant, Associated Universities, to use their facilities and valuable research equipment to conduct experiments to prove that certain Nobel Prize-winning speed-of-light physics experiments performed in 1955 were actually based on fraudulent information.\(^{41}\) Associated Universities sent a letter to the plaintiff denying his request.\(^{42}\) The plaintiff filed an action alleging that Associated Universities made defamatory comments in the letter rejecting his request.\(^{43}\)

The plaintiff's defamation claim was dismissed for failing to state a claim on which relief could be granted.\(^{44}\) The plaintiff subsequently filed an "omnibus motion" seeking the following relief: amendment of the district court's judgment; a new trial; relief from the prior judgment; and, leave to file an amended complaint to allege a claim for tortious interference.\(^{45}\) In response, the defendants sought Rule 11 sanctions for this motion.\(^{46}\) The district court denied all of plaintiff's motions, including the motion to amend. The court found that there were insufficient facts to support a claim for tortious interference and that such a claim was essentially identical to the plaintiff's initial claim.\(^{47}\)

\(^{39}\) In \textit{Ballantine v. Taco Bell Corp.}, 135 F.R.D. 117 (E.D.N.C. 1990), the court held that Rule 11 requires an inquiry into the objective component of whether a party made a reasonable inquiry into the law and facts, as well as a subjective element of improper purpose. \textit{Id.} at 121-22. The court then found that the plaintiff had made a reasonable inquiry, but had acted in bad faith in filing his complaints. \textit{Id. See also} Bell v. Clancy, Civ. No. 86-1350-GT(M) (S.D. Cal. Dec. 22, 1987) (finding that pro se plaintiffs had attempted to avoid income tax liability for several years, but because they proceeded pro se, Rule 11 sanctions were not applied where there was no evidence of bad faith).


\(^{41}\) \textit{Id.} at *1.

\(^{42}\) \textit{Id.}

\(^{43}\) \textit{Id.}

\(^{44}\) \textit{Id.} at *2.


\(^{46}\) \textit{Id.}

\(^{47}\) \textit{Id.} at *5.
The court, however, also denied defendants' motion for Rule 11 sanctions. In denying the motion, the court recognized that it is permissible to sanction pro se litigants under Rule 11, but the court stated that "such an application of the rule requires a showing of malice." Thus, although the Advisory Committee and Supreme Court have indicated that Rule 11 was amended to provide more concrete objective criteria for evaluating Rule 11 motions, Cooper illustrates that some courts nevertheless continue to apply a subjective standard to pro se litigants.

B. Courts That Consider a Pro Se Litigant's Special Circumstances in the Reasonableness Determination

The majority of cases demonstrate that courts consider pro se litigants' special circumstances to determine the reasonableness of the inquiry into the law and facts. This approach is premised on the Advisory Committee's statement in its note to amended Rule 11 that the courts have "sufficient discretion to take account of the special circumstances that often arise in pro se situations," as well as the considerations identified by the Supreme Court in Haines v. Kerner. Therefore, courts that follow this approach consider such factors as a pro se litigant's lack of legal training or legal advice when determining if Rule 11 has been violated.

The United States District Court for the Western District of Michigan applied this standard in Loss v. Kipp. The plaintiff in Loss brought an action in federal court for fraud arising from a land contract with the defendant. This federal action was filed after the defendant successfully brought a state court foreclosure action against the plaintiff for failing to make

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48. Id. at *6-7.
49. Id. at *7 (citing Auen v. Sweeney, 109 F.R.D. 678, 680 (N.D.N.Y. 1986)).
50. FED. R. CIV. P. 11 Advisory Committee Note (amended 1983).
52. See Booker v. Buckley, 810 F.2d 199, 199 (6th Cir. 1986) ("Plaintiff's pro se status and absence of legal advice are appropriate factors as special circumstances to be considered when determining if Rule 11 has been violated"); Harris v. Heinrich, 919 F.2d 1515 (11th Cir. 1990) (requiring consideration of pro se status when determining whether the filing was reasonable); Thomas v. Evans, 880 F.2d 1235 (11th Cir. 1989) (requiring courts to take into account plaintiff's pro se status when determining whether the filing was reasonable); Otis v. Colorado Springs Cablevision, No. 91-M-1376, 1992 U.S. Dist. LEXIS 17178 (D. Colo. Aug. 31, 1992) (holding that pro se status must be considered when determining if Rule 11 sanctions are appropriate).
timely monthly payments. In the federal action, the plaintiff alleged Fourth Amendment violations. The defendant moved for summary judgment and sought Rule 11 sanctions, alleging that plaintiff was merely attempting to relitigate the state court foreclosure action.

The district court agreed with the defendant and found that the plaintiff was attempting to relitigate a claim that had been fully adjudicated in state court. The defendant’s motion for summary judgment was granted, but the court denied the defendant’s motion for Rule 11 sanctions. The court recognized that the plaintiff’s complaint and subsequent pleadings were objectively frivolous and that he was “not a stranger to the ‘pro se bar’” because he had filed seven cases in the previous two years. Nevertheless, the court refused to sanction the plaintiff because it recognized that “a pro se litigant plaintiff is given more leeway under Rule 11 that [sic] an attorney normally enjoys. However, even pro se litigants may be sanctioned if they continue to file frivolous lawsuits raising the same or similar claims.”

Thus, by considering special circumstances, such as a lack of legal training, in the determination of reasonableness, courts apply a lower standard to pro se litigants than is applied to attorneys or represented parties.

C. Courts That Apply a Single Objective Test

Under a single test, courts do in fact consider the special circumstances.

54. Id. at *2.
55. Id. at *1.
56. Id. at *3.
57. Id. at *7.
59. Id. at *8-9.
60. Id. at *8. “Pro se bar” is a term used by courts to refer to pro se litigants who have obtained vast practical experience with the court system through numerous pro se complaints.
61. Id.
62. Id.
circumstances intertwined with the application of Rule 11 to pro se litigants. Courts that apply a single test, however, do not consider these special circumstances when determining whether Rule 11 has been violated. Rather, a pro se litigant's status is considered only when determining an appropriate sanction once it is determined that Rule 11 has been violated.64

The Ninth Circuit recently applied a single objective test and found Rule 11 sanctions against a pro se litigant in Manuel v. East Palo Alto.65 The plaintiff in Manuel was the majority stockholder in a corporation that owned buildings on a parcel of land in East Palo Alto.66 The buildings were condemned to be demolished by the City. The plaintiff filed an action in the United States District Court for the Northern District of California seeking a temporary restraining order, damages, and an injunction against the City.67 The plaintiff's motion for the temporary restraining order was denied and the buildings were destroyed.68 Subsequently, the plaintiff recorded lis pendens69 on the property of certain government officials named as defendants in the complaint.

The plaintiff in Manuel then filed a second complaint for inverse condemnation in the Eastern District of California on the same piece of property.70 This case was transferred to the Northern District and was consolidated with plaintiff's initial complaint.71 The City brought a motion to dismiss both complaints, a motion to dismiss the lis pendens, and a motion for

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66. Id. at *3.

67. Id. at *1.

68. Id.

69. Lis pendens is "[j]urisdiction, power, or control which courts acquire over property in suit pending action and until final judgment." BLACK'S LAW DICTIONARY 840 (5th ed. 1979). Further, a notice of lis pendens is "a notice filed on public records for the purpose of warning all persons that the title to certain property is in litigation, and that they are in danger of being bound by an adverse judgment." Id.


71. Id.
Rule 11 sanctions. The court dismissed the actions because the plaintiff did not have standing, but denied defendant's motion for Rule 11 sanctions.

The Ninth Circuit reversed the district court and held that Rule 11 sanctions were appropriate. The court recognized that the standard under Rule 11 is objective and that "sanctions are . . . appropriate against a pro se plaintiff when he violates Rule 11 by signing and submitting a pleading that is not warranted by existing law, or a good faith argument for modification thereof." The plaintiff failed to assert any reasonable argument to support his standing to sue as an individual or on behalf of his corporation. The court applied a single objective test to determine that Rule 11 was violated, and then it stated that plaintiff's pro se status is an appropriate consideration in fashioning a sanction.

Thus, under a single objective standard, the subjective characteristics such as the extent of one's legal training, legal knowledge, or legal advice, are only considered in determining an appropriate sanction under Rule 11 after a violation has been found using an objective standard.

Despite the differing standards applied by courts, sanctions have been applied or upheld in numerous cases brought against pro se litigants. However, while a "proper" result may be reached under a different standard, there is, nevertheless, a need for uniform application. One of the primary goals of the

72. Id.
73. The court found that the corporate powers of Barca Corp., the corporation of which the plaintiff was the majority stockholder, had been suspended under both Delaware and California law prior to the commencement of both of the plaintiff's complaints. Therefore, the court stated that "[t]he law is clear that a shareholder does not have standing to redress an injury to the corporation." Id. at *3.
74. Id.
76. Id. at *4-5.
77. Id. at *5.
78. Id. at *6.
79. See Kadan v. Williams, No. 89 Civ. 3379 (SWK), 1990 U.S. Dist. LEXIS 5541 (S.D.N.Y. Apr. 11, 1990) (upholding sanctions considering pro se litigant's special circumstances for claims against judge where the law is well-settled that judges have absolute immunity); Carroll v. Philadelphia, Civil Actions Nos. 87-0592, 87-6258, 88-1239, 1989 U.S. Dist. LEXIS 11652 (E.D. Pa. Sept. 28, 1989) (recognizing that pro se litigants are held to lower standard, but upholding sanctions because pro se litigant abused process by filing several frivolous lawsuits); Johnson v. United States, 607 F. Supp. 347 (D.C. Pa. 1985) (recognizing that pro se status must be taken into account when determining reasonableness, but upholding sanctions because claim was not warranted by the law).
Advisory Committee, as previously discussed, was to establish more concrete standards under which Rule 11 motions are to be analyzed. This goal is not accomplished when Rule 11 is interpreted and applied inconsistently. To promote consistent application and to establish standards recognizable by pro se litigants and the courts, a single objective test should be used.

III. RATIONALE FOR APPLYING A SINGLE OBJECTIVE TEST

Under Rule 11 there are three requirements placed on a litigant. First, there must be a reasonable inquiry into the facts underlying the pleading. Second, there must be a reasonable inquiry into the law supporting the pleading. Third, the pleading must not be filed for an improper purpose.80

The difficulty with holding a pro se litigant to a single objective standard arises only as to one of these requirements. Specifically, a pro se litigant is only held to a "higher standard" under a single objective test with respect to the reasonable inquiry into the law requirement. The first requirement of a reasonable inquiry into the underlying facts does not require examination of the pro se litigant's legal knowledge. Rather, the consideration is only whether the litigant obtained all factual information reasonably available prior to filing. Similarly, the improper purpose analysis under the third requirement does not focus on the pro se litigant's legal knowledge. This factor is an objective consideration of whether the pleading was vexatious or filed for purposes of harassment or delay. Because, however, all of these factors are clearly objective considerations, no difficulty should arise in applying them equally to pro se litigants and attorneys. The following arguments are therefore advanced in favor of a single objective test applied to all parties and to all three requirements of Rule 11.

A. Rule 11 and Pro Se Litigants

The first argument derives from the explicit language of Rule 11 and from a proper interpretation of the Advisory Committee Note. Rule 11 is applicable to pro se litigants because the language specifically states that "[a] party who is not represented by an attorney shall sign the party's pleading, motion, or other paper and state the party's address."81 The rule then

81. Id.
provides that "[t]he signature of an attorney or a party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper." This provision subjects any party signing a pleading to the certification requirements regarding reasonable inquiry into the factual and legal bases of the claim.

Problems with the application of Rule 11 to pro se litigants arise from the Advisory Committee Note. The Advisory Committee states that "[a]lthough the standard is the same for unrepresented parties, who are obliged themselves to sign the pleadings, the court has sufficient discretion to take account of the special circumstances that often arise in pro se situations." The Advisory Committee then cites Haines v. Ker ner as support for consideration of these special circumstances. Many courts, therefore, have used this statement by the Advisory Committee in conjunction with Haines as support for factoring a pro se litigant's lack of legal training, the "special circumstances," into the determination of reasonableness.

82. Id. (emphasis added).
84. Id.
85. 404 U.S. 519 (1972). In Haines, an inmate in the Illinois State Penitentiary filed an action, pursuant to 42 U.S.C. § 1983, against the governor of Illinois and various prison officials alleging that he had been subjected to cruel and unusual punishment. The district court hearing the case granted the defendant's motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). The court of appeals affirmed. The Supreme Court reversed. The Court stated that "[w]hatever may be the limits on the scope of inquiry of courts into the internal administration of prisons, allegations such as those asserted by petitioner, however inartfully pleaded, are sufficient to call for the opportunity to offer supporting evidence." Haines, 404 U.S. at 520.

Haines has subsequently been interpreted to support the proposition that pro se litigants' complaints are to be liberally construed when faced with a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). See Dyson v. Sposeep, 637 F. Supp. 616, 619-20 (N.D. Ind. 1986) ("When such a complaint [drafted by a pro se litigant] is challenged by a motion to dismiss under Rule 12(b)(6), the complaint's allegations must be judged by a standard less stringent than those of a complaint drafted by counsel"); Hoover v. Gershman Investment Corp., No. 91-10851-S, 1991 U.S. Dist. LEXIS 13533, at *9 (D. Mass. Sept. 17, 1991) ("a less stringent standard is generally applied to pleadings drafted by pro se litigants when a Rule 12(b)(6) motion is at issue"); Kadan v. Williams, No. 89 Civ. 3379 (SWK), 1990 U.S. Dist. LEXIS 5541, at *3 (S.D.N.Y. Apr. 11, 1990) (citing Haines, the court stated that "the standard is even stricter for dismissal of a pro se complaint").

86. See Harris v. Trans World Airlines, No. C89-2097 TEH, 1990 U.S. Dist. LEXIS 7700, at *7 (N.D. Cal. May 14, 1990) (holding that "courts may 'take account of the special circumstances that often arise in pro se situations'"); Pawlowske v. Chrysler Corp., 623 F. Supp. 569, 572 (N.D. Ill. 1985) ("pro se litigants are subject to Rule 11,
It is therefore the consideration of a pro se litigant's special circumstances that raises the central problem in the application of Rule 11 to pro se litigants. As previously noted, Rule 11 involves three requirements: (1) reasonable inquiry into the facts, (2) reasonable inquiry into the law, and (3) no improper purpose. Evaluation of the pro se litigant's special circumstances is not required when determining if there was a reasonable inquiry into the facts or whether there was an improper purpose. These factors are purely objective considerations and do not require an inquiry into the pro se litigant's legal knowledge or training. Accordingly, as to these two prongs of Rule 11, an objective standard is appropriate. The difficulty arises when evaluating the litigant's legal knowledge.

The litigant's legal knowledge is relevant when determining whether a reasonable inquiry into the law was made. The problem, however, is whether a pro se litigant's status, as a litigant who has not received any legal training, is a factor to be considered when determining the reasonableness of the certification requirement of Rule 11. Courts that consider a pro se litigant's lack of formal legal training at this stage generally hold pro se litigants to a lower standard of conduct than is required of attorneys under Rule 11. However, the language of Rule 11 and the Advisory Committee Note support an interpretation which provides that pro se litigants are subject to the same standard as any party, attorney or otherwise, who signs a pleading, motion or other paper.

Thus, Rule 11 can be interpreted as requiring a single objective standard for three reasons. First, a strict reading of Rule 11 does not reveal any distinctions drawn between attorneys, represented parties, and pro se litigants. Rather, Rule 11 states that "[t]he signature of an attorney or party constitutes a certificate by the signer," and subjects the signer to the certification requirements of Rule 11. Further, with respect to sanctions, Rule 11 provides that the court "shall impose on the

though the concerns of Haines v. Kerner,[citation omitted], must be taken into account in evaluating pro se papers"); Carroll v. Philadelphia, Nos. 87-0592, 87-6258, 88-1239, 1989 U.S. Dist. LEXIS 11652, at *8 (E.D.P. Sept. 28, 1989) ("pro se litigants are held 'to less stringent standards' than lawyers"); Vizvary v. Vignati, 134 F.R.D. 28 (D.R.I. June 15, 1990) (citing the Advisory Committee Note and stating that appropriate standard is the reasonable pro se litigant). See also cases cited supra note 52.

87. See supra note 52 for cases holding that pro se status should be a factor that is considered when determining reasonableness.
88. See supra note 8.
person who signed it [the pleading, motion, or other paper], a represented party, or both, an appropriate sanction, . . . .”

The rule explicitly recognizes the different categories of persons to whom the rule applies—attorneys, represented parties, and pro se litigants—but it does not state that one is to be held to a different standard than the other.

Second, the amended rule was intended to act as a deterrent to the abuse of pleadings and other papers. To accomplish this purpose, the Advisory Committee recognized that “this standard is more stringent than the original good-faith formula and thus it is expected that a greater range of circumstances will trigger its violation.” Holding pro se litigants to a lower standard than attorneys and represented parties would restrict the application of Rule 11 because a more flagrant violation by a pro se litigant would be required to incur sanctions. Therefore, a more liberal interpretation of Rule 11 may not deter the filing of abusive and frivolous pleadings by pro se litigants.

Finally, the Advisory Committee Note indicates that the special circumstances of a pro se litigant should only be considered once a violation of Rule 11 has been found using a single objective test. As previously noted, the Advisory Committee Note recognizes that the same standard applies to attorneys and to pro se litigants and that “the court has sufficient discretion to take account of the special circumstances that often arise in pro se situations.” However, the Advisory Committee further states that

in considering the nature and severity of the sanctions to be imposed, the court should take account of the state of the attorney’s or party’s actual or presumed knowledge when the pleading or other paper was signed. Thus, for example, when a party is not represented by counsel, the absence of legal advice is an appropriate factor to consider.

The language of Rule 11 and the Advisory Committee Note therefore support the conclusion that a single objective standard should be applied to pro se litigants, attorneys, and represented parties, and that a pro se litigant’s special circum-

90. Id. (emphasis added).
91. FED. R. CIV. P. 11 Advisory Committee Note (amended 1983).
92. Id.
93. Id.
94. Id. (emphasis added).
stances should be considered only when determining an appropriate sanction for violation of Rule 11, but not when determining if the rule has been violated.

B. Implications of Business Guides v. Chromatic Communications Enterprises on the Application of Rule 11 to Pro Se Litigants

Recent decisions by the United States Supreme Court further support a conclusion that Rule 11 requires the application of a single objective test. The Supreme Court has not decided a case specifically dealing with the application of Rule 11 to pro se litigants. The Court has, however, decided several cases that affect the application of Rule 11 to pro se litigants. For instance, in Pavelic LeFlore v. Marvel Entertainment Group,\(^95\) the Court ruled that the Federal Rules of Civil Procedure are given their "plain meaning," and "when we find the terms... unambiguous, judicial inquiry is complete."\(^96\) Thus, in determining how to apply Rule 11 to pro se litigants, the Court's language indicates that Rule 11 must be strictly interpreted.

Next, in Cooter & Gell v. Hartmax Corp.,\(^97\) the Court recognized that the central purpose of Rule 11 is to curb abuse of the judicial system. Further, Rule 11 is meant to "deter baseless filings in District Court, and, thus, consistent with the Rules Enabling Act's grant of authority, streamline the administration and procedure of the federal courts."\(^98\) Therefore, "any interpretation [of Rule 11] must give effect to the rule's central goal of deterrence."\(^99\)

Finally, in Business Guides v. Chromatic Communications Enterprises,\(^100\) the Court addressed the Rule 11 certification

\(^{95}\) 110 S. Ct. 456 (1989).

\(^{96}\) Id. at 458. In Pavelic, the Court dealt with the issue of whether an attorney may be sanctioned individually under Rule 11 or whether a district court can sanction the attorney's firm on whose behalf the attorney signed the pleading. The Court held that under the strict language of Rule 11, only the individual attorney, and not the law firm represented, may be sanctioned. Id. at 458-59.

\(^{97}\) 110 S. Ct. 2447 (1990). Cooter & Gell addressed the issue of the certification requirements of attorneys under Rule 11. The Court again strictly interpreted the language of Rule 11 to affirm the imposition of sanctions against an attorney because of "grossly inadequate" pre-filing inquiries. Id. at 2452.

\(^{98}\) Id. at 2454.

\(^{99}\) Id.

requirements. The basic issue in Business Guides was whether a represented party is subject to Rule 11 sanctions. The plaintiff, Business Guides, published business directories for specialized areas of retail trade. In order to prevent copying by other publishers, Business Guides planted "seeds" in their directories. A seed is a minor alteration in an otherwise accurate listing. Business Guides considered the presence of seeds in competitors' directories to indicate copyright infringement.

In October 1986, Business Guides, through its counsel, filed an action in United States District Court for the Northern District of California seeking a temporary restraining order (TRO) against Chromatic for copyright infringement and unfair competition. Business Guides alleged that it had found ten seeds in a directory published by Chromatic. The TRO application was signed by Business Guides' counsel and by the president of Business Guides. Additionally, Business Guides submitted sealed affidavits in support of the TRO application.

Prior to the hearing on the TRO in November 1986, the judge's law clerk spent one hour calling the alleged seeded listings. The law clerk discovered that nine of the ten allegedly seeded listings in fact contained correct information. Thus, only one of the listings alleged by Business Guides to be copied in fact contained false information.

Based on this finding, the district court judge denied the TRO application and referred the case to a magistrate to determine whether Rule 11 sanctions should be imposed. The magistrate conducted evidentiary hearings where Business Guides explained that the claim for ten allegedly copied listings was the result of inaccurate research. Nevertheless, the

101. A represented party under Rule 11 is one that is represented by counsel during the course of litigation, as opposed to an unrepresented party (a pro se litigant) or an attorney.
103. Id.
104. Id.
105. Id.
106. Id.
108. Id.
109. Id.
110. Id.
111. Id. at 926.
112. Business Guides, 111 S. Ct. at 926.
magistrate concluded that Business Guides "failed to conduct a proper inquiry, resulting in the presentation of unreasonable and false information to the court." Therefore, the magistrate recommended that Rule 11 sanctions be imposed on both Business Guides and its counsel.

The district court agreed with this recommendation and stated that "[t]he standard of conduct under Rule 11 is one of objective reasonableness. Applying this standard to the circumstances of this case, it is clear that both Business Guides and Finley Kumble [counsel] have violated the Rule." The Court of Appeals for the Ninth Circuit affirmed, and Business Guides appealed to the Supreme Court.

The Supreme Court also affirmed the imposition of sanctions against Business Guides. Business Guides argued that Rule 11 only applies to attorneys and pro se litigants, not to represented parties. The Court disagreed. The Court recognized that the Federal Rules of Civil Procedure are given their plain meaning and that Rule 11 is "aimed at curbing abuses of the judicial system." The Court therefore determined that limiting the application of Rule 11 to attorneys and unrepresented parties would be an unnatural reading of the rule. Further, the Court stated that "[h]ad the Advisory Committee intended to limit the application of the certification standard to parties proceeding pro se, they would surely have said so. Elsewhere in the text, the Committee demonstrated its ability to distinguish between represented and unrepresented parties." Thus, under a strict reading, the Court interpreted Rule 11 as

113. Id.
114. Id.
115. Id.
116. The 9th Circuit stated:
[T]he rule draws no distinction between the state of mind of attorneys and parties. There is nothing in the rule to suggest that a represented party may only be sanctioned for bad faith. On the contrary, the rule, by requiring any "signer" of a paper (attorney or party) to conduct a "reasonable inquiry," would appear to prescribe similar standards for attorneys and parties.

118. Id. at 929-30.
119. Id. at 928.
120. Id. at 929.
121. Id. at 930.
applicable to attorneys, pro se litigants, and represented parties.

The Court then addressed the certification requirement of Rule 11. The Court looked at the purpose of Rule 11 and the fact that “[t]he essence of Rule 11 is that signing [a pleading or other paper] is no longer a meaningless act; it denotes merit. A signature sends a message to the district court that this document is to be taken seriously.”122 Moreover, the Court, like the Ninth Circuit, indicated that the language of the rule “draws no distinction between the state of mind of attorneys and parties” and “states unambiguously that any signer must conduct a reasonable inquiry or face sanctions.”123 The Court explicitly rejected holding a represented party to a lesser standard than attorneys and pro se litigants. Rather, the Court stated:

Giving the text [of Rule 11] its plain meaning, we hold that it imposes on any party who signs a pleading, motion or other paper . . . an affirmative duty to conduct a reasonable inquiry into the facts and the law before filing, and the applicable standard is one of reasonableness under the circumstances.124

The Supreme Court's decision in Business Guides supports an interpretation that Rule 11 imposes a single objective standard in all contexts for several reasons. First, the Court emphasized in Business Guides that Rule 11 is strictly interpreted and is given its plain meaning. As the Court pointed out, the language of Rule 11 does not distinguish between attorneys, represented parties, and pro se litigants. If the Advisory Committee intended Rule 11 to apply different standards to different persons, it did not specify so in the language of the rule. Under a strict reading, Rule 11 applies equally to “all parties signing a pleading, motion, or other paper.”125

Second, the Business Guides Court determined that there is a single objective test of “reasonableness under the circumstances” applicable to all parties. In fact, the Court explicitly rejected the argument posed by Business Guides that a less stringent subjective test should be applied to represented parties.126 As the Court noted, the language of Rule 11 is clear

123. Id. at 932.
124. Id. at 933 (emphasis added).
125. FED. R. CIV. P. 11.
126. Business Guides, 111 S. Ct. at 933.
and does not distinguish between parties signing pleadings.\textsuperscript{127}

Consideration of pro se litigants' status and special circumstances creates a subjective test. Instead of focusing on the reasonableness of the pro se litigant's inquiry, a court would be forced to consider the extent of the pro se litigant's legal knowledge, expertise, and abilities. Consideration of these factors would require the judge to use more discretion in determining whether Rule 11 was violated and would reduce the judge's reliance on more objective criteria. Further, because subjective bad faith is difficult to prove, Rule 11 would be utilized less frequently in pro se litigation. This application is contrary to the goal of the Advisory Committee to increase the use and effectiveness of Rule 11 as a deterrent to abusive and frivolous litigation.

The Court specifically rejected a subjective test under Rule 11 in \textit{Business Guides}. The Court held that the application of subjective standards to some parties does not promote the purposes and rationales behind the 1983 amendment to Rule 11.\textsuperscript{128} The primary goal of Rule 11 is to prevent abuse of the judicial system through the filing of frivolous and abusive pleadings.\textsuperscript{129} With this goal in mind, the Advisory Committee amended Rule 11 to impose a certification requirement on any person signing a pleading or other paper. Given the Court's application of Rule 11 to represented parties in \textit{Business Guides}, the Court's refusal to apply a lesser standard to represented parties, and the Court's recognition of a single objective standard, it is reasonable to conclude that under a single objective standard, consideration of a pro se litigant's special circumstances would not factor into the determination of whether Rule 11 has been violated.

Thus, the Supreme Court interprets the Federal Rules of Civil Procedure literally so as to give the rules their "plain meaning," and, in \textit{Business Guides}, the Court interpreted Rule 11 as imposing a single objective standard. The Court's application of Rule 11 to represented parties in \textit{Business Guides} suggests that Rule 11 should be applied consistently to all parties and that distinctions are not to be drawn between attorneys, represented parties, and pro se litigants.

\textsuperscript{127} \textit{Id.} at 932.
\textsuperscript{128} \textit{Id.} at 928-31.
\textsuperscript{129} \textit{FED. R. CIV. P.} 11 Advisory Committee Note (amended 1983).
C. Further Arguments in Favor of a Single Objective Test Under Rule 11

A pro se litigant is held to a higher standard only when determining if a reasonable inquiry was made into the law. Under a single objective test, the special circumstances of a pro se litigant, namely the lack of formal legal training, are considered only to determine an appropriate sanction after a violation of Rule 11 has been found. As previously discussed, the language of Rule 11, the Advisory Committee Note, and the Supreme Court’s decision in Business Guides support the conclusion that Rule 11 imposes a single objective test. There are several additional arguments in favor of a single objective test which demonstrate that a single standard can be applied without imposing undue hardship or fundamental unfairness on pro se litigants.

1. Analogies to Other Areas of Law

Several areas of the law recognize that an individual may be held to a higher level of conduct than is ordinarily expected. For instance, in the substantive law of torts, many courts recognize that children may be held to a higher standard in negligence actions. Ordinarily, a child is held to the same standard as other children of “like age, intelligence and experience.” However, a majority of jurisdictions now recognize that when children undertake certain activities that are normally for adults only, such as driving a car or flying an airplane, a child will not be held to the normal standard. Rather, the child will be held to the heightened standard of an adult because of the nature of the activity and the potential danger to others.

130. W. PAGE KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS § 32 (5th ed. 1984). RESTATEMENT (SECOND) OF TORTS § 283A (1984) defines the standard of conduct as follows: “If the actor is a child, the standard of conduct to which he must conform to avoid being negligent is that of a reasonable person of like age, intelligence, and experience under like circumstances.”

131. RESTATEMENT (SECOND) OF TORTS § 283A (1984) recognizes that a child is not held to the usual standard of conduct when that child undertakes activities requiring adult qualifications. For application of this exception, see Prichard v. Veterans Cab Co., 480 P.2d 360 (Cal. 1965); Robinson v. Lindsay, 92 Wash. 2d 410, 598 P.2d 392 (1979); Fishel v. Givens, 362 N.E.2d 97 (III. App. 1977).

132. KEETON ET AL., supra note 130, at 181. The rationale for this exception is that because the activity undertaken requires adult qualifications, no allowance will be made for the child’s immaturity. RESTATEMENT (SECOND) OF TORTS § 283A (1984). The Restatement analyzes this exception for children to the standard of conduct required of an individual undertaking professional activity. According to the Restatement, “one who undertakes to render services in the practice of a profession or
A similar standard is found in the law of corporations as to a corporate director's fiduciary duty of care. Once a person accepts a position as a director of a corporation he or she is generally held to the standard of an "ordinarily prudent director."133 This duty requires a director to undertake certain activities such as attending board meetings, keeping informed with corporate matters, and becoming familiar with the corporations financial statements.134 These duties are required regardless of one's business knowledge or background, and the duty imposes on a director the duty to obtain the requisite knowledge and information necessary to fulfill the duty of care.135

These examples demonstrate how certain areas of the law recognize that a person may be held to a higher standard under specific circumstances. With regard to pro se litigants, the fact that a pro se litigant possesses no formal legal training should not be a factor in determining whether Rule 11 was violated. As with a corporate director, a pro se litigant has the responsibility to research the basis for a lawsuit as part of the privilege and right to have a lawsuit heard in federal court. With respect to Rule 11, this higher standard is reflected in the duty to reasonably investigate the law underlying a pleading or motion. Under a single objective test, a pro se litigant is required to exercise the skill and knowledge normally possessed by members of that profession or trade in good standing in similar communities." Id. § 299A. Similarly, pro se litigants should be held to a higher level of conduct under Rule 11 because of the responsibilities inherent in representing oneself in a court of law.


134. HENN & ALEXANDER, supra note 133, § 234, at 621-623.

135. For instance, in Francis v. United Jersey Bank, 432 A.2d 814 (N.J. Super. 1981), the wife of the chief executive officer of a corporation was named a director of that corporation. The wife was found to have subsequently breached her duty of care in exercising her duties as a corporate director. The trial court stated the following regarding the fact that the wife had no formal business training or knowledge: "The problem is not that Mrs. Pritchard was a simple housewife. The problem is that she was a person who took a job which necessarily entailed certain responsibilities and she then failed to make any effort whatever to discharge those responsibilities." Francis v. United Jersey Bank, 392 A.2d 1233, 1241 (N.J. Super. Ct. Law Div. 1978).
required to make such an inquiry to determine whether there is a sound legal basis, regardless of the litigant's lack of legal knowledge.

Further, just as in the law of torts and corporations, there are several policy considerations that favor holding pro se litigants to a higher standard. First, much time and many resources are wasted when courts must hear frivolous cases. The courts' time and resources are spent on claims without merit to the detriment to those litigants with valid complaints. Second, defendants are also forced to expend time and resources to defend against these lawsuits. Presumably, their time and money could be expended toward more productive pursuits in the absence of frivolous litigation. Therefore, in light of these concerns, pro se status should not be an excuse for failing to follow procedural and substantive requirements or for filing frivolous claims.

2. A Single Test Can Preserve Pro Se Litigants' Access to Courts and Uphold the Goals of the Advisory Committee

A single standard can be applied to pro se litigants without restricting their constitutionally guaranteed right of access to the courts.136 A concern frequently expressed against application of a single standard is that pro se litigants will be unable to meet this "heightened standard" and will either be prevented access or be deterred from filing claims.137 However, in

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136. An individual's constitutional right of access to the courts is derived from the First Amendment of the United States Constitution. See In re Halkin, 598 F.2d 176 (D.C. Cir. 1979) (holding that litigation is a form of expression protected by the First Amendment); McCoy v. Goldin, 598 F. Supp. 310 (D.C.N.Y. 1984) (stating that the right of access to the courts derives from the First Amendment and the Due Process Clause of the Fourteenth Amendment); Sutton v. County Court of Racine County, Wisconsin, 353 F. Supp. 716 (D. Wis. 1973).

The First Amendment provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. CONST. amend I. The court in Elmore v. McCammon, 640 F. Supp. 905 (S.D. Tex. 1986), recognized that "the right to file a lawsuit pro se is one of the most important rights under the constitution and laws." Id. at 911.

Additionally, an individual has a statutory right to self-representation in federal court. This statutory right is guaranteed as follows: "In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein." 28 U.S.C. ANN. § 1654 (West 1966).

137. See Nichols, supra note 6, at 380 (asserting that application of Rule 11
light of the Supreme Court's decision in *Haines v. Kerner*, pro se litigants' access to the courts will not be hindered by a single standard.

In *Haines*, the Court held that pro se litigants' pleadings are to be liberally construed and are to be held to a less stringent standard at the Federal Rule of Civil Procedure 12(b)(6) stage than are pleadings drafted by lawyers. Therefore, pro se litigants are given the benefit of the doubt at the initial stage of proceedings and have effectively "gotten in the door." At the 12(b)(6) stage, Rule 11, under either a single test or a test that considers pro se litigants' special circumstances, will not prevent pro se litigants from having their complaints heard because of the leniency given to pro se litigants.

Thus, applying a single objective standard to pro se litigants will not deny access to the courts because the Supreme Court's decision in *Haines* effectively lets pro se litigants in by liberally construing their pleadings. The Court recognized that at the 12(b)(6) stage, a court must consider the fact that a pro se litigant does not have the formal legal training and knowledge of an attorney. Rule 11 is therefore merely a tool to monitor pro se litigants' conduct once they are past the initial proceedings.

3. Rule 11 as a Monitoring Device of Pro Se Conduct

Rule 11 is needed as a monitoring device of pro se litigants' conduct. Attorneys are subject to many certification requirements and doctrines that monitor their conduct in federal district courts. For instance, in order to practice law an attorney generally must have a law degree from a certified law school and must have passed a state bar examination to certify legal competence. Moreover, an attorney is subject to Rule 11

sanctions to pro se litigants may discourage that individual from filing future lawsuits, thereby discouraging an individual from exercising his or her right to access the courts.

139. Id. at 520.
140. Id.
141. Washington State, for instance, requires the following: [A] person shall not appear as an attorney or counsel in any of the courts of the State of Washington, or practice law in this state, unless that person has passed the Washington State bar examination, has complied with the other requirements of these rules, and is an active member of the Washington State Bar Association.

WASHINGTON ADMISSION TO PRACTICE RULES (APR) 1(b) (1993). Additionally, in
sanctions, malpractice claims from clients, and more importantly, Codes of Professional Responsibility.\(^{142}\)

On the other hand, pro se litigants have no certification requirement, nor are they subject to codes of professional conduct against which their actions are judged. Pro se status should not be an excuse for failing to follow procedural requirements or for failing to meet the certification requirements of Rule 11 when filing pleadings or motions.\(^{143}\) Rule 11, therefore, is one of the few means available to monitor and regulate pro se litigants' conduct regarding pleadings and motions.\(^{144}\)

Thus, recognizing the concerns expressed in *Haines*, the application of a single objective standard can be interpreted as applying a stricter standard on pro se litigants once past the 12(b)(6) stage.\(^{145}\) Courts should liberally construe a pro se liti-

order to qualify to sit for the Washington State bar examination, an individual must first provide proof of the following:

(i) graduation from a law school approved by the Board of Governors, or (ii) completion of the law clerk program prescribed by these rules, or (iii) admission to the practice of law by examination, together with current good standing, in any state or territory of the United States or the District of Columbia, and active legal experience for at least 3 of the 5 years immediately preceding the filing of the application.

APR 3(b) (1993).

Furthermore, once an individual has passed the bar examination and has been admitted to the bar association, each individual must complete 45 credit hours of continuing legal education every three years. APR 11.2 (1993).

142. See, e.g., *Washington State Rules of Professional Conduct* (1993). These rules establish the "minimum level of conduct below which no lawyer can fall without being subject to disciplinary action." Preliminary Statement to the *Washington State Rules of Professional Conduct*. Pursuant to Rule 3.1, "[a] lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law." *Washington State Rules of Professional Conduct* Rule 3.1 (1993) (emphasis added). Note that this language from Rule 3.1 mirrors the language of Fed. R. Civ. P. 11.

143. Elmore v. McCammon, 640 F. Supp. 905, 910 (S.D.Tex. 1986). In *Elmore* the court stated that "[t]he right of self-representation is not a license to abuse the dignity of the courtroom. Neither is it a license not to comply with relevant rules of procedural and substantive law." *Id.* (citing *Faretta v. California*, 422 U.S. 806, 835 n. 46 (1975)).


145. Note that this application does not necessarily foreclose the possibility of imposing sanctions on a pro se litigant at the 12(b)(6) stage. Sanctions may be appropriate if there is clearly an improper purpose. It is also important to note that a violation of Rule 11 may be found if any of these factors are not met. However, in terms of inquiry into the law, Rule 11 is especially applicable after the 12(b)(6) stage
gant's complaint at the early stages of the proceedings because of the inherent discrepancies that may exist between pro se litigants and attorneys. However, once past the 12(b)(6) stage, pro se litigants must be held to a higher level of conduct under a single objective standard.

4. A Single Objective Test is Needed to Prevent Abusive and Frivolous Pleadings

Proponents of holding pro se litigants to a lesser standard in light of "special circumstances" believe that a lower standard is required because pro se litigants have no formal legal training and because pro se litigants are incapable of understanding precedent. However, in light of those cases where Rule 11 sanctions have been sought against pro se litigants, such an assumption is not entirely valid. While pro se litigants may not have formal legal training, many have acquired legal knowledge and ability through filing multiple complaints. Many courts recognize the existence of a "pro se bar"147 and that pro se litigants are not ignorant of the law based on prior filings.148

Pro se litigants' practical knowledge is often evident in litigation involving inmate civil rights actions.149 Many inmates

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146. Nichols, supra 6, at 370-74. Nichols argues that Rule 11 sanctions do not deter frivolous filings by pro se litigants because pro se litigants are incapable and "generally incompetent to evaluate precedent." Id. at 371.

147. See supra note 60 defining "pro se bar."

148. In Woolum v. Seabold, 902 F.2d 1570 (6th Cir. 1990), the Sixth Circuit found that the pro se plaintiffs were experienced litigants because the claim before the court had been previously dismissed twice as frivolous. Similarly, in Carroll v. Philadelphia, Nos. 87-0592, 87-6258, 88-1239, 1989 U.S. Dist. LEXIS 11652 (E.D. Pa. Sept. 28, 1989), the court upheld sanctions and stated that the pro se plaintiff was "neophyte to the justice system" because the same judge had previously dismissed an almost identical civil rights lawsuit filed by plaintiff a year earlier. Id. at *11. See also Loss v. Kipp, No. 1:91-CV-157, 1991 U.S. Dist. LEXIS 8195, at *8 (W.D. Mich. June 11, 1991) (finding that plaintiff was "not a stranger to the pro se bar" based on 7 previous filings); Kadan v. Williams, No. 89 Civ. 3379 (SWK), 1990 U.S. Dist. LEXIS 5541, at *8 (S.D.N.Y. Apr. 11, 1990) (finding that plaintiff was "no stranger to the legal system" based on 12 pending pro se actions in various state courts).

149. In Woolum v. Seabold, 902 F.2d 1570 (6th Cir. 1990), the court upheld Rule 11 sanctions against an inmate proceeding pro se. The court upheld sanctions because the plaintiff had brought an identical cause of action on two previous occasions. A jury verdict for defendant was returned in the first action, and summary judgment for the defendant was granted in the second action. The court also found that the plaintiff was an "experienced litigant" based on his previous lawsuits. See also Procup v. Strickland, 792 F.2d 1069 (11th Cir. 1986) (pro se inmate filed 176 civil rights actions);
gain a significant level of competence through researching and filing many claims under 42 U.S.C. § 1983 and from fellow inmates who have become well-versed in the prison context of civil rights litigation. Concededly, this level of knowledge cannot be assumed to be held by all pro se litigants. However, the number of cases involving pro se litigants who have filed multiple complaints refutes the assumption that pro se litigants are ignorant and incapable of understanding legal concepts.150

In addition, a principal reason for applying a single objective test is to prevent abusive use of pleadings and other motions.151 As previously noted, the prevention of abusive pleadings and the deterrence of frivolous lawsuits were two of the primary goals of the Advisory Committee.152 Abuse of pleadings is readily apparent in pro se litigation through the number of lawsuits filed that are dismissed as being frivolous.153 An extreme example is an inmate in Florida who, prior to June 1983, filed one hundred seventy-six civil rights lawsuits.154 None of the cases reached trial on the merits and most were dismissed as being frivolous.155

While the volume of complaints in the Florida case is exceptional, there are many instances where pro se plaintiffs have filed the same frivolous action repeatedly or have filed multiple actions that are eventually dismissed as without merit.156 These multiple filings of frivolous and vexatious claims are the sort of conduct that the Advisory Committee


150. See cases cited infra note 156.

151. FED. R. CIV. P. 11 Advisory Committee Note (amended 1983).

152. Id. See supra part I.

153. See supra notes 8-11.


155. Id. at 1070.

156. See Tarlowski v. County of Lake, 775 F.2d 173 (7th Cir. 1985) (stating that the pro se plaintiff had brought eight frivolous lawsuits); Crooker v. United States Marshals Serv., 641 F. Supp. 1141 (D.D.C. 1986) (finding that the pro se plaintiff filed approximately 60 suits under the Freedom of Information Act over an eight-year period); Sparrow v. Reynolds, 646 F. Supp. 834 (D.D.C. 1986) (finding that the pro se plaintiff filed eighteen complaints for discrimination, all of which were dismissed as frivolous); Harrell v. U.S., No. 91-3040, 1991 U.S. Dist. LEXIS 6773, *1 (C.D. Ill. Apr. 9, 1991) (stating that the pro se plaintiff "darkens our doorstep once again" and filed the same claim that was dismissed previously by the same court); Ford v. U.S., No. SH-C-90-50, 1990 U.S. Dist. LEXIS 10952 (W.D.N.C. Aug. 8, 1990) (finding that the pro se plaintiff had repeatedly used courts to relitigate the same issue as to whether wages and pensions are income); Brock v. Hunsicker, Civ. No. 88-6468, 1988 U.S. Dist. LEXIS 12546 (E.D. Pa. Nov. 8, 1988) (finding that pro se plaintiff had filed eight complaints for racial and gender discrimination).
sought to eliminate through the stricter objective criteria of amended Rule 11.\(^{157}\) Pro se status should not be seen as a shield or an excuse for this type of behavior. As one court has stated: "The right to self-representation is not a license to abuse the dignity of the courtroom. Neither is it a license not to comply with the relevant rules or procedural and substantive law."\(^{158}\) Application of a single objective test is necessary to deter pro se litigants from filing frivolous lawsuits and abusing the judicial process. A standard that takes the special circumstances of pro se representation into consideration will simply allow abuses of the court system to continue.

Many pro se complaints are dismissed as frivolous because the law relating to a plaintiff’s claim is "well-settled."\(^{159}\) Courts that consider a pro se litigant’s special circumstances may deny a motion for sanctions in cases where the pro se plaintiff failed to recognize that the law was well-settled and did not support the claim.\(^{160}\) However, a pro se litigant’s lack of legal training should not be an excuse for failing to perform a reasonable inquiry into the law. The standard under Rule 11 is not that of a reasonable attorney. Neither the language of

\(^{157}\) See discussion supra part I.

\(^{158}\) Elmore v. McCammon, 640 F. Supp. 905, 910 (S.D. Tex. 1986) (citing Faretta v. California, 422 U.S. 806, 835 n.46 (1975)). In Elmore, the court dismissed a pro se plaintiff’s complaint for alleged improperities in a foreclosure sale as being “utterly frivolous and without merit.” Id. at 910. In dictum, the court then stated that there is a major problem with the filing of frivolous actions by pro se litigants. The court noted that there must be stricter application of Rule 11 sanctions in order to “protect them [pro se litigants] from themselves.” Id. at 911.

\(^{159}\) See Fanning v. Bear Stearns & Comp., No. 91-C-1461, 1991 U.S. Dist. LEXIS 11891 (N.D. Ill. Aug. 22, 1991) (finding that pro se status is not a shield to excuse frivolous use of federal courts and dismissing complaint as barred by well-settled law); Sloan v. U.S., 621 F. Supp. 1072, 1075 (D.C. Ind. 1985) (holding that the Internal Revenue Service statute in question was clear to anyone who read the statute and that “such irresponsible use of the courts to harass the government and delay the orderly administration of the IRS laws will not be tolerated”); Hoover v. Gershman Inv. Corp., No. 91-10851-S, 1991 U.S. Dist. LEXIS 13533 (D. Mass. Sept. 17, 1991) (upholding sanctions against pro se plaintiff whose complaint was clearly barred by lack of subject matter and personal jurisdiction).

\(^{160}\) See Harrel v. U.S., 754 F. Supp. 1567 (C.D. Ill. 1991) (holding that the pro se plaintiff’s claim was barred by res judicata, but refusing to sanction because of pro se status); Silvey v. I.R.S., No. 88-4229-R, 1989 U.S. Dist. LEXIS 8916 (D. Kan. Feb. 3, 1989) (finding that the pro se plaintiff’s claim was barred by sovereign immunity, but not imposing sanctions even though claim appeared frivolous and vexatious); Connor v. Merit Sys. Protection Bd., No. 87-3054, 1988 U.S. Dist. LEXIS 3105 (E.D. Pa. Apr. 13, 1988); Vizvary v. Vignati, 134 F.R.D. 28 (D.R.I. 1990) (finding that the pro se plaintiff attempted to frame a probate matter under the guise of constitutional violations, but refusing to sanction because a pro se litigant could not be expected to know that federal courts lack subject matter jurisdiction over probate matters).
Rule 11 nor the Advisory Committee Note supports such an interpretation. Rather, the standard is reasonableness under the circumstances.

Therefore, under a single objective test, a pro se litigant must make a reasonable inquiry into the law underlying the pleading or motion. Expecting a pro se litigant to make an investigation to determine that the law is well-settled may require that individual to undertake responsibilities for which he or she has not received formal training. Nevertheless, as one court has stated, along with the right of access to the courts comes certain responsibilities.\textsuperscript{161} Placing this requirement on pro se litigants is necessary to protect the interests of adverse parties and the courts that hear pro se cases.

It is often asserted that leniency should be given to pro se litigants in applying Rule 11 because of the inherent discrepancies between attorneys and pro se litigants.\textsuperscript{162} However, in looking out for the interests of the pro se litigants, the concerns of the parties who defend against pro se litigants are often overlooked. In particular, when pro se litigants are given special consideration, the adverse parties must suffer the time and cost of defending against often frivolous claims.\textsuperscript{163} In addressing this concern, one court stated the following:

The defendants in these suits, many of whom are of modest means or indigent themselves, have a right not to be harassed and burdened by frivolous litigation, and the Court has a duty to protect them. The Court also has a duty to see that justice is not delayed to other litigants with legitimate complaints.\textsuperscript{164}

Additionally, courts are burdened with hearing these cases and judicial resources may be expended to the detriment of other litigants seeking redress in the courts.\textsuperscript{165}

Applying a single objective test under Rule 11 would allow


\textsuperscript{162} \textit{See} Nichols, \textit{supra} note 6. Nichols asserts that pro se litigants should be treated differently than attorneys under Rule 11 because pro se litigants are incapable of comprehending precedent, and are, therefore, incapable of determining whether a claim has merit. \textit{id.} at 371.


\textsuperscript{164} \textit{Id.} at 911

\textsuperscript{165} In upholding sanctions against a pro se inmate, the court in \textit{Dominguez v. Figel}, 626 F. Supp. 368 (M.D. Ga. 1986), noted that "a single hour spent by a federal judge on a case costs the government Six Hundred Dollars ($600.00)." \textit{Id.} at 374. The
courts to address these concerns by imposing on pro se litigants the duty to investigate the law and facts of their claims. A single standard can both promote the goals of the Advisory Committee and protect pro se litigants' right to access the courts.

IV. APPLYING RULE 11 TO PRO SE LITIGANTS

In applying a single objective test, all parties who sign pleadings, motions or other papers must be treated alike. Under this approach, there should be no consideration of the signer's knowledge when determining if there was a reasonable inquiry or improper purpose under the circumstances. Rather, the court should evaluate the following factors to determine if sanctions are appropriate.

First, courts should consider the amount of time that was available to investigate the law and/or facts underlying the claim. Second, courts should consider the extent to which a pre-filing investigation of facts was feasible. This factor includes consideration of the extent to which facts were available at the time of filing. For instance, in some cases critical facts and information are in the possession of the opposing party or a third party and will only be obtained by the plaintiff through the discovery process. Third, courts should consider the complexity of the legal issues in question. Fourth, courts should consider the clarity or ambiguity of the law. Fifth, courts should consider whether the pleading, motion, or other paper was filed for an improper purpose. Such an improper purpose may be shown by successive filings or pleadings that are filed to harass, even though they may be well-grounded in

court calculated that plaintiff's "factually baseless" lawsuit, therefore, cost $3,450.00. Id.

Further, the Seventh Circuit has expressed frustration resulting from the burdens imposed on the courts by taxpayer lawsuits. The court has stated:

[W]e can no longer tolerate abuse of the judicial review process by irresponsible taxpayers who press stale and frivolous arguments, without hope of success on the merits, in order to delay or harass the collection of public revenues or for other nonworthy purposes. . . . Abusers of the tax system have no license to make irresponsible demands on the courts of appeals to consider fanciful arguments put forward in bad faith.

Granzow v. Commissioner of Internal Revenue, 739 F.2d 265, 269-70 (7th Cir. 1984).

167. Id. at 114.
168. Id.
169. Id. at 116.
170. Id.
171. Id. at 121.
law and fact. Finally, courts should consider whether the litigant was the plaintiff or defendant.172 This is an important factor in that most abusive litigation deals with filings by plaintiff to harass defendants. Thus, if sanctions are sought against a defendant, the fact that the defendant did not initiate the lawsuit and force another party into court is an important consideration.

This is not an inclusive list of factors to be considered, but it represents the critical considerations that should be evaluated when applying Rule 11 to pro se litigants.173 It is also important to note that all of the factors do not have to be fulfilled in order to find a Rule 11 violation. For instance, a pleading may be well-grounded in law or fact, but sanctions may nevertheless be premised on a finding that the pleading was filed for an improper purpose to harass the adverse party.174 This is equally true in the realm of pro se pleadings; however, the cases suggest that where an improper purpose is found, generally the underlying complaint was either factually or legally frivolous.175

Additionally, these factors do not eliminate the distinction inherent in the determination of "reasonableness under the circumstances" as to attorneys and pro se litigants.176 This distinction is grounded in the nature of the attorney-client relationship. An attorney is largely dependent on the client for providing critical factual information that is necessary to the pleading or motion. Further, the amount of time that an attorney has to research and prepare a pleading may sometimes

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172. For instance, in Lagermax Lagerhaus v. Boroff, 115 F.R.D. 278 (S.D.N.Y. 1987), the court refused to sanction a pro se defendant for improperly signing a pleading where the defendant failed to properly admit citizenship in her answer to plaintiff's complaint.

173. The Advisory Committee recognizes in its comments to the Proposed Amendments that Rule 11 "does not attempt to enumerate the factors a court should consider in deciding whether to order a sanction or what sanctions would be appropriate in the circumstances; . . . " PROPOSED AMENDMENTS, 137 F.R.D. 53, 79 (1991).


175. Id.

176. The ABA STANDARDS AND GUIDELINES, 121 F.R.D. 101, 115 (1988), recognize that an attorney's ability to gather reasonable facts is dependent on the client. Therefore, there are certain factors that will be considered to determine the reasonableness of an attorney's inquiry that are not relevant to a pro se litigant, who is not dependent on receiving information from a client.
depend on when the client sought the attorney's assistance. For instance, an attorney's ability to research a claim may be restricted when a client retains an attorney two days before the relevant statute of limitations runs. These considerations are unique to the attorney. A pro se litigant is not dependent on a client or another attorney for sources of information that may effect the reasonableness of an inquiry.

Thus, such factors naturally make the evaluation of Rule 11 sanctions for attorneys inherently different from that of pro se litigants. However, the critical consideration in the application of a single objective test under Rule 11 is that the inquiry of reasonableness and improper purpose does not focus on the subjective element of legal knowledge of the signer. This is necessary to promote the application of an objective test.

One of the goals of the Advisory Committee was to establish a rule that set forth an objective test in order to deter abuse and to streamline the litigation process. Consideration of an individual's legal knowledge does not further this goal. The extent of one's legal knowledge is a subjective consideration that will vary with each pro se litigant. If this factor is considered, the test under Rule 11 shifts from examining the reasonableness of the signer's inquiry to evaluating the signer's knowledge and what the signer "should have known." The same analysis would also have to be applied to attorneys. Thus, there would not be a single "reasonable attorney" standard. Rather, there would be an inquiry into how much experience or knowledge an attorney has in a particular area (e.g., a business attorney with thirty years of experience in corporate law who tries a divorce case for the first time) to determine if that attorney's actions were reasonable. The evaluation of the extent of the signer's knowledge, for both attorneys and pro se litigants, results in a sliding scale for determining if Rule 11 has been violated. This is exactly what the Advisory Committee sought to avoid when Rule 11 was amended. Rather than creating more objective criteria and establishing clear notions of acceptable conduct, the consideration of a pro se litigant's legal knowledge creates a subjective test with less certain criteria for judging pro se litigants' conduct.

Therefore, the extent of a pro se litigant's legal knowledge is a proper consideration when determining an appropriate

177. See discussion supra part I.
178. Id.
Rule 11 sanction. Such an interpretation of Rule 11 is consistent with the goals of the Advisory Committee as expressed in the note to Rule 11179 and the decisions of the Supreme Court.180

Some argue that the application of a single standard to pro se litigants is nonsensical because while a violation may be found, no sanctions may apply after considering his or her special circumstances.181 Therefore, the argument goes, the special circumstances should be considered initially when determining if Rule 11 was violated. However, application of a single standard furthers an important goal of the Advisory Committee by establishing standards to which pro se litigants must conform. When a violation of Rule 11 has been found, the pro se litigant is essentially on notice that his or her conduct was inappropriate and will not be tolerated again. Even though the judge may apply a nominal sanction because the party was pro se, a standard nevertheless has been set.182 If a pro se litigant's lack of knowledge is considered at the outset, however, a violation of Rule 11 may not be found where appropriate, and Rule 11 will not serve its intended deterrent effect.

Thus, in order to promote the goals of the Advisory Committee and to protect the interests of parties defending against pro se actions, a single objective test should be applied to anyone singing a pleading, including a pro se litigant, when determining if Rule 11 has been violated.

V. CONCLUSION

There are several alternative means of dealing with the abusive conduct of pro se litigants. Obviously, one means is to draft a rule that specifically applies to pro se litigants. This

179. See discussion supra part III.A.
180. See discussion supra part III.B.
181. See Nichols, supra note 6.
182. Under the Proposed Amendments, the guiding principle for determining an appropriate sanction is that "[a] sanction imposed for violation of this rule shall be limited to what is sufficient to deter comparable conduct by persons similarly situated." PROPOSED AMENDMENT, 137 F.R.D. 53, 77 (1991) (emphasis added). Monetary sanctions would still be appropriate under the Proposed Amendments, but the Advisory Committee also recognizes that courts may utilize other sanctions "such as striking the offending paper; issuing an admonition, reprimand, or censure; requiring participation in seminars or other educational programs; ordering a fine payable to the court; [or] referring the matter to disciplinary authorities." Advisory Committee Notes, PROPOSED AMENDMENTS, 137 F.R.D. at 79. Thus, under the Proposed Amendments, a court may utilize admonitions or reprimands in lieu of monetary sanctions to notify a pro se litigant that his or her conduct violates Rule 11.
alternative is necessary if the Advisory Committee did in fact intend for Rule 11 to be applied differently to pro se litigants than to attorneys. However, as stated above, a reading of Rule 11 and the Advisory Committee Note does not support this conclusion.183

Other alternatives that have been posed include requiring an adverse party to give the litigant notice that Rule 11 sanctions will be pursued.184 The litigant is then given a "safe harbor" in that the complaint or pleading may be voluntarily dismissed or withdrawn without sanctions being applied.

A more feasible alternative utilized by many federal district courts today is to establish a special filing system for pro se complaints. Under this system, the court invests time researching the legal basis of the pro se litigant's complaint when it is filed in order to avoid frivolous lawsuits. Service is then ordered only if the pro se complaint is determined to be well-grounded in law. This process works well in conjunction with Rule 11. By initially evaluating the legal basis of the complaint, the potential issues of the reasonableness of the inquiry into the law underlying the complaint are resolved. The application of Rule 11 when applied would then focus on the factual basis of the claim and the improper purpose, which both require much less inquiry into the extent of a pro se litigant's legal knowledge.

Rule 11 can, however, be applied to pro se litigants. The Supreme Court gives the Federal Rules of Civil Procedure a plain meaning. From a plain reading of Rule 11 and the Advisory Committee Note, it is evident that a single objective test

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183. The Proposed Amendments do not include any language differentiating pro se litigants from attorneys or represented parties. See PROPOSED AMENDMENTS, 137 F.R.D. 53 (1991). In fact, the Advisory Committee recognizes that the proposed Rule 11 "restate[s] the provisions requiring attorneys and pro se litigants to conduct a reasonable inquiry into the law and facts before signing pleadings, written motions, and other documents, and mandating sanctions for violation of these obligations." Id. at 78.

184. The Proposed Amendments expressly incorporate the "safe harbor" notion by requiring the following:
A motion for sanctions under this rule shall be served separately from other motions or requests, and shall describe the specific conduct alleged to violate subdivision (b). It shall not be filed with, or presented to, the court unless the challenged claim, defense, request, demand, objection, contention, or argument is not withdrawn or corrected within 21 days . . . after service of the motion.

PROPOSED AMENDMENTS, 137 F.R.D. 53, 76 (1991). Such a safe harbor provision may be an effective means to notify a pro se litigant that his or her conduct may violate Rule 11 and that continuing the alleged conduct may result in Rule 11 sanctions.
should be applied to all parties. A single objective test is the best means of establishing clear objective criteria to guide and to judge a pro se litigant's conduct and is consistent with the goal of deterring abusive and frivolous lawsuits. A single objective test is also needed to protect the interests of parties opposing pro se litigants. The interests of adverse parties in terms of financial cost and time expended are often overlooked in order to protect pro se litigants because of their "special circumstances." A single objective test, however, can promote these interests while not infringing on a pro se litigant's access to the courts.

Pro se status should not be an excuse for failing to conform to procedural requirements or for filing frivolous and vexatious claims. Application of a single objective test under Rule 11 will guarantee pro se litigants' access to courts, promote the interests of opposing parties, and protect the integrity of the judicial system as a means of resolving meaningful disputes.