

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND
JUDICIAL CIRCUIT, McHENRY COUNTY, ILLINOIS**

PAUL R. DULBERG	)	
Plaintiff,	)	
v.	)	Case No. 2025LA000360
THOMAS W. GOOCH, et al.,	)	
Defendants.	)	

**PLAINTIFF'S MOTION TO RECONSIDER THE RULE 137 LIABILITY
DETERMINATION AND, ALTERNATIVELY, THE WITH-PREJUDICE SCOPE OF
THE FLYNN DISMISSAL, AND TO DEFER THE FEE PETITION**

Plaintiff Paul R. Dulberg, individually and appearing pro se, respectfully moves the Court primarily to reconsider the portion of its August 7, 2026 Memorandum Decision and Order imposing liability under Illinois Supreme Court Rule 137 and, alternatively, to reconsider the with-prejudice scope of the dismissal of Defendant George K. Flynn. Plaintiff also asks the Court to defer Flynn's fee petition until Rule 137 liability is resolved. Plaintiff does not ask the Court on reconsideration to adjudicate the ultimate truth of the civil-conspiracy allegations. The issues are whether the order considered the complete conspiracy and record-integrity allegations and evidence bearing on Flynn's alleged participation, whether dismissal and sanctionability were improperly treated as equivalent, and whether the record was sufficient to adjudicate Plaintiff's prefiling inquiry and purpose. The Court's August 26, 2026 order authorized this motion to be filed by September 4, 2026.

PRELIMINARY STATEMENT

01. This motion does not ask the Court to hold that an adverse attorney may be sued merely for making an argument, filing a brief, or winning a case. Plaintiff accepts that protected litigation communications cannot themselves be repackaged as a tort. The question is whether dismissal with prejudice - and Rule 137 liability - should rest on the premise that a limitations argument was the only specific allegation against Flynn when the Complaint and cited record also placed Flynn's own noncommunicative acts within an alleged coordinated course of conduct concerning the June 25, 2020 Mast deposition, the paper and electronic exhibits, and the later preservation and use of the resulting record. A civil conspiracy is alleged teamwork: each participant need

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not perform every act, and Flynn's conduct therefore cannot be evaluated as though the acts of Williams and the Clinton defendants were legally irrelevant to the inference of agreement.

02. The agreement alleged was not invented from silence. On April 30, 2020, Flynn invoked the Supreme Court's recently adopted remote-deposition procedure; on May 29, Williams replied that, 'given the Supreme Court rules,' it made sense to 'take advantage of the remote deposition option.' (Ex. DJ¹ at 9-10.) That correspondence directly establishes their agreement to use the new remote procedure and their contemporaneous awareness of the governing rule. It does not literally state an agreement to violate the safeguards. But Adcock does not require a recorded confession: an agreement may be explicit or implicit and ordinarily is proved from coordinated acts and the reasonable inferences they support. The pleaded inference therefore depends upon what Flynn and Williams did after reaching their recorded agreement.

03. Before the deposition, Williams transmitted her proposed exhibits to Flynn. During the deposition, Flynn stated contemporaneously: 'I have got hard copies of the majority of the exhibits you sent,' except the larger files, including the insurance policy and portions of deposition transcripts. (Ex. EV² 39:7-16.) The transcript repeatedly shows Mast using paper supplied by Flynn, including when Flynn handed him Exhibit 4 and Mast responded, 'I'll look at the hard copy.' (Id. 33:17-18.) After the connection failed, the paper copies became even more consequential. Flynn's November 4, 2022 recollection that he printed only 'certain' exhibits - 'a few of them,' but 'not all of them' - was not the only evidence and materially narrowed his contemporaneous statement that he possessed hard copies of the majority.

04. The central damage allegation is not that Flynn failed to rely on Exhibit 12. Williams announced a 27-page upload, while Mast stated that he had only 'the one case here' and identified it as Lajato. (Ex. EV² 62:14-24.) The later electronic file duplicated Lajato, included Choi, and omitted Tilschner. Dulberg had supplied Williams two pre-deposition messages containing questions for Mast that depended upon the intended research set. (Ex. DF-13³ at

1 Docket No. 0286

2 Attached

3 Docket No. 0236

8-10; June 23, 2020 email, subject ‘ADDITIONAL QUESTIONS FOR MAST and POINTS ON MCGUIREs LIABILITIES.’) The nonuniform exhibit process deprived Dulberg of the ability to use Tilschner and those prepared questions to examine Mast about his liability analysis, including its relationship to the allegedly concealed October 22, 2013 demand. The injury theory is lost examination and a distorted evidentiary record, whether or not Flynn later relied on Exhibit 12 for his own affirmative argument.

05. Rule 206(h)(2)’s temporary procedure addressed the unprecedented absence of a neutral oath officer in the witness’s room. As Plaintiff argued in 17LA377 in November 2022, the procedure required advance delivery of documentary exhibits to the officer and all parties unless all participants could view the exhibit in real time during the deposition. (Ex. DJ¹ at 1, 9-19.) The record supports an inference that neither safeguard was consistently followed: the reporter lacked Exhibit 12, Mast depended substantially on a lawyer-controlled paper set, the participants did not share uniform access, and the deposition continued. The benefit of hindsight is relevant because the recorded acts and their results show how the agreed remote procedure was actually implemented; they are circumstantial evidence of agreement, not a substitute for evidence.

06. The 2022 proceedings also show that the Rule 206 and record-integrity objections were raised inside 17LA377, not created after this action was filed. On April 27, Talarico raised both the missing Exhibit 12 and questioned court-reporter certification signatures. (Apr. 27, 2022 ROP 31:21-24, 36:19-39:21, 62:15-65:16.) On June 10, in Talarico’s absence, Flynn described the subpoenas as concerning reporter signatures, questioned their relevance, and pressed to close discovery. (June 10, 2022 ROP 2:20-4:15.) On July 11, Talarico’s sensitive-matter presentation focused on Exhibit 12, and Judge Meyer stated that he had thought ‘the deposition was from a companion case.’ (July 11, 2022 ROP 4:1-24:24.) The only case that could have been the referenced companion was 12LA178, the underlying case within the 17LA377 case-within-a-case. Mast’s deposition itself was taken in 17LA377. The sequence permits Plaintiff to argue

¹ Docket No. 0286

that the Exhibit 12 presentation displaced adjudication of the questioned certification evidence; it does not require the Court on this motion to find Talarico joined the conspiracy.

07. These materials do not require the Court to find that a conspiracy existed. They do prevent the Rule 137 question from being reduced to whether Plaintiff disliked a limitations argument. A participant who understands the general objective, accepts it, and agrees explicitly or implicitly to do his part may be liable for a conspiracy; because conspiracies are rarely susceptible of direct proof, the agreement may be inferred from circumstantial evidence and common sense. *Adcock v. Brakegate, Ltd.*, 164 Ill. 2d 54, 64, 66-67 (1994); *McClure v. Owens Corning Fiberglas Corp.*, 188 Ill. 2d 102, 134 (1999). In ordinary language, actions can speak louder than words. Whether the evidence ultimately proves an agreement by clear and convincing evidence is a merits question. Rule 137 asks the different question whether the signed pleading had an objectively reasonable factual and legal basis after inquiry.

08. Plaintiff acknowledges that Flynn's February 20 filing warned that sanctions would be sought and that Flynn's May 7 brief called the claim "frivolous," "sanctionable," and deserving of sanctions. Plaintiff therefore does not contend that he was wholly unaware that Flynn considered the claim sanctionable. The narrower procedural issue is that the May 7 filing was not a Rule 137 motion, did not cite Rule 137, requested dismissal rather than sanctions, and did not identify the particular paper, statement, asserted violation, or resulting fees necessary to permit a focused defense.

09. A separate evidentiary hearing is not invariably required when the existing record already contains the undisputed information necessary for an informed Rule 137 determination. *People v. Stefanski*, 377 Ill. App. 3d 548, 553-55 (2d Dist. 2007). But when the court proceeds on its own initiative and sanctions turn on disputed questions concerning what the signer knew, what inquiry was performed, or why the paper was filed, notice and a meaningful opportunity to present and rebut evidence are required. *In re Marriage of Johnson*, 2011 IL App (1st) 102826, ¶¶ 28-38.

10. Plaintiff recognizes that the dismissal of the 17LA377 appeal left that judgment in force and forecloses a second direct appeal from the same judgment. He does not concede that the

nonmerits appellate dismissal decided the factual truth of the conspiracy allegations, adjudicated whether the Exhibit 12 process complied with Rule 206, or immunized independently actionable conduct merely because it occurred during litigation. The preclusive effect of the prior judgment, the adequacy of the present pleading, and Rule 137 sanctionability remain distinct questions.

RELEVANT PROCEDURAL RECORD

11. Flynn’s May 7, 2026 filing, Docket No. 0475, was titled “Defendant George K. Flynn’s Combined Motion to Dismiss Plaintiff’s Complaint and Motion to Adopt.” It invoked sections 2-615, 2-619(a)(5), and 2-619.1 of the Code. Its conclusion requested “an Order dismissing Plaintiff’s Complaint at Law with prejudice pursuant to 735 ILCS 5/2-615 and for any additional relief this court deems fair and proper.” It did not cite Rule 137 or request sanctions in its prayer for relief.

12. The May 7 motion gave general notice that Flynn regarded the claim as sanctionable, and Plaintiff’s June 10 response addressed Rule 137. It did not identify the specific signed allegation challenged, distinguish Rule 137’s objective factual-and-legal branch from its subjective improper-purpose branch, identify the inquiry allegedly omitted, or identify fees caused by a particular statement. That distinction matters because the August 7 order relied both on an objective conclusion that no good-faith basis existed and on a subjective inference that Plaintiff sued Flynn because Flynn had “best[ed] him” in the prior litigation.

13. Flynn’s February 20, 2026 extension filing, Docket No. 0429, confirms that a distinct sanctions motion was contemplated. It sought additional time so Plaintiff could consider voluntary dismissal or face Flynn’s “planned motion for all available sanctions,” and requested time to file a “motion to dismiss and Motion for Sanctions.” The later fee petition calls the February filing a “safe harbor” warning, but the filing itself promised a later sanctions motion; it was not that motion.

14. Plaintiff’s June 10, 2026 response, Docket No. 0482, did more than deny Flynn’s characterization. It narrowed the theory; disclaimed liability based solely on protected advocacy; identified the Mast deposition, Exhibit 12, Tilschner, the November 4 and November 30, 2022

proceedings, and document-production irregularities; and requested leave to amend to separate protected communications from alleged noncommunicative conduct. It also stated that any sanctions request had to satisfy Rule 137's procedural and substantive requirements.

15. The July 29 matter was noticed and briefed as oral argument on dismissal motions. Plaintiff told the Court that this action concerned later-concealed and suppressed matters, “the puppet show of a deposition they conducted or performed in, and conspiracy with my own attorneys at the time.” He then clarified that 17LA377 did not adjudicate “later concealment, document suppression, Exhibit 12 irregularity, or a conspiracy amongst these defendants for a distorted record.” (July 29, 2026 ROP 13:7-13, 14:21-15:4.) Plaintiff identified the Mast.wav file he had uploaded on July 23, but the Court expressly stated that it was not considering the audio because it was untimely. (Id. 15:1-9.) During the same hearing, the Court stated that Flynn had brought a Rule 137 sanctions request and asked Plaintiff what evidence tied Flynn to the alleged continuing concealment or conspiracy. (Id. 24:12-15.) Plaintiff responded concerning the alleged technical difficulties at the Mast deposition. (Id. 24:18-21.) That exchange gave express notice at the hearing that sanctions were in play and an opportunity to address Flynn's connection to the pleaded sequence. It did not identify whether the asserted Rule 137 violation was factual falsity, inadequate inquiry, legal unwarrantedness, improper purpose, or a combination, and Plaintiff was not directed to present evidence of his prefiling factual inquiry, legal research, or purpose. The August 7 order then determined liability and left only the amount unresolved.

16. On August 24, 2026, Flynn filed a fee petition, Docket No. 0515, seeking \$12,994.46. The August 26 order, Docket No. 0516, permitted Plaintiff to file this motion by September 4, set the motions to reconsider for September 14, 2026 at 10:00 a.m., gave Plaintiff until September 23 to respond to the fee petition, and entered and continued the fee matter. The Rule 137 liability issue is therefore ripe for reconsideration before fee amount.

LEGAL STANDARD

17. Because claims remain pending and the sanctions amount remains undetermined, the August 7 order is interlocutory. A circuit court has inherent authority to review, modify, or vacate an interlocutory order while it retains jurisdiction over the controversy. *Hernandez v. Pritikin*, 2012 IL 113054, ¶ 42. Reconsideration permits correction of errors of law or fact and consideration of a clarified record before final judgment.

18. On a section 2-615 motion, well-pleaded facts and reasonable inferences are construed in the plaintiff's favor, and dismissal is proper only when no set of facts proved under the pleading would entitle the plaintiff to relief. *Fox Valley Families Against Planned Parenthood v. Planned Parenthood of Illinois*, 2018 IL App (2d) 170137, ¶ 12. A section 2-619 motion admits the complaint's legal sufficiency but asserts affirmative matter defeating the claim; a genuine issue of material fact precludes dismissal. *Glasgow v. Associated Banc-Corp.*, 2012 IL App (2d) 111303, ¶¶ 11-12.

19. Leave to amend is not automatic. The factors include whether the proposed amendment would cure the defect, whether other parties would be prejudiced, whether the amendment is timely, and whether prior opportunities to amend existed. *Loyola Academy v. S&S Roof Maintenance, Inc.*, 146 Ill. 2d 263, 273 (1992). A proposed pleading - or at least facts demonstrating the proposed cure - ordinarily is necessary. *Doe I v. Doe I*, 2016 IL App (1st) 153272, ¶¶ 12-17. The amendment question must nevertheless remain distinct from whether the original filing violated Rule 137.

20. A party seeking Rule 137 sanctions bears the burden of proving the violation. A sanctions motion must identify with specificity the offending paper, the statements alleged to be false or legally unwarranted, and the fees caused by the challenged matter so the signer can defend and the court can apportion fees. *Whitmer v. Munson*, 335 Ill. App. 3d 501, 512-13 (1st Dist. 2002); *In re Marriage of Adler*, 271 Ill. App. 3d 469, 476 (1st Dist. 1995). When the court acts on its own initiative, the absence of such a motion does not remove the sanctioned person's right

to notice of the asserted violation and an opportunity to be heard. Johnson, 2011 IL App (1st) 102826, ¶¶ 34-38.

I. THE PLEADED CONSPIRACY RECORD IDENTIFIED FLYNN’S OWN ACTS WITHIN A COORDINATED SEQUENCE, NOT ONLY A LIMITATIONS ARGUMENT.

21. The Complaint did not identify Flynn solely because he advanced a limitations argument.

Paragraphs 134 through 144 alleged a specific sequence of events concerning the remote Mast deposition, the division of physical and electronic exhibit control between Flynn and Williams, the missing or malformed Exhibit 12, the later derivative, deliberately staged technical difficulties during the deposition, and the inability to conduct the planned Tilschner examination. Paragraph 140 incorporated the detailed account in Exhibit DV-1¹, and paragraph 225(6) placed those acts within Count 6’s broader allegation that defendants used complementary roles to conceal and preserve the underlying harm.

22. The Complaint identified a sequence of the following 9 actions:

- 1) July 8, smoking gun October 22, 2013 settlement offer (¶¶ 134, 135)
- 2) Williams informed in writing on 10 different occasions from July 8, 2019 to the Mast deposition of June 20, 2020 of the central importance of Mast using Tilschner v Spangler document Mast provided to Dulberg on November 20, 2013 and the October 22, 2013 settlement offer Popovich and Mast made in Dulberg’s behalf for \$7,500. (¶ 137)
- 3) Williams first created exhibit 12 on June 19, 2020, leaving out key evidence Tilschner v Spangler. (¶ 137)
- 4) Williams was informed 2 more times of the importance of key evidence Tilschner v Spangler and the October 22, 2013 settlement offer after first preparing exhibit 12 on June 19, 2020 with Tilschner v Spangler missing (¶ 137)
- 5) Exhibit 12 preparation conditions as described in this motion ¶¶ 25-29
- 6) Intentionally faked technical difficulties in audio file. (¶ 140) and in this motion ¶ 31.
- 7) Williams never raised Tilschner v Spangler to Mast during the deposition, asking Mast only (p 63, ln 18) ““WILLIAMS: “Were there any applicable cases that stuck out to you one way or the other as to whether the McGuires would be liable? Was there any specific cases that made you think that the McGuires may not be liable given the facts in Paul’s case? HANS MAST: You deal with these -- this issue a lot and I can’t think of one particular

¹ Docket No. 0170

name of a case, but these cases all go along the same line, so there were lots of cases on this one particular issue. It wasn't a complicated issue.'"

8) Williams completely forgot about ever being informed of key evidence Tilschner v Spangler by Dulberg. (¶ 142)

9) November 30, 2022 statement by Flynn (¶ 144)

23. Plaintiff's June 10 response expressly stated that Flynn's November 30, 2022 response and other litigation statements were cited as evidence, "not as independently actionable advocacy." It separately identified the Exhibit 12/Tilschner record and requested leave to cure any ambiguity.

The dismissal and sanctions analysis did not address that narrowed theory or the requested cure.

24. The relevant unit of analysis is the alleged common plan and each participant's contribution to it, not an artificially isolated 'Flynn-specific record.' Flynn's knowledge and intent must still be supported by facts, and mere parallel conduct is not enough. But circumstantial proof may consist of parallel and complementary acts that make sense together even though no single participant performed every step. Here, Plaintiff relied on Williams's creation and electronic presentation of the exhibit set together with Flynn's physical presence, his majority paper set, his control of what Mast handled, his knowledge of the reporter's absence from the room, his intentional faking of technical difficulties during the deposition and the continuation of questioning despite visibly nonuniform access to exhibits.

25. The native June 24, 2020 email corroborates the planned allocation. Plaintiff received Alan Schulte's U.S. Legal invitation, and the produced chain includes Williams's 12:18 p.m. forward of that invitation to Plaintiff. Williams later told the provider, with Plaintiff copied, that the participants included 'George Flynn, who received [his] ID' and 'Hans Mast, the deponent, who is going to be in the same room with George Flynn and thus can log in with him.' (Ex. EY¹ at 5, 20.) No produced message shows Mast receiving the invitation link directly. The arrangement instead placed Mast in Flynn's room and made Flynn the person through whom Mast would connect and receive the paper materials.

¹ Attached

26. The deposition audio is more precise than Flynn’s later recollection. Flynn stated that he had hard copies of ‘the majority’ of Williams’s exhibits, excepting the larger files such as the insurance policy and portions of deposition transcripts because he did not want to waste paper and ink at home. (Ex. EV¹ 39:7-16.) That statement establishes substantial advance possession and printing; it does not establish that Flynn opened and compared every electronic attachment. It nevertheless contradicts any account reducing his role to showing Mast only one or two exhibits during the entire deposition.

27. When Williams said she was uploading a 27-page Exhibit 12, Mast did not describe a three-case research packet. He said, ‘I just have the - the one case here,’ and identified it as Lajato. (Ex. EV² 62:14-24.) The record does not establish whether the paper was the first or duplicated Lajato segment or permit a page-by-page inventory of every sheet in Mast’s room. It does establish the material point: the witness did not have the intended Tilschner-Choi-Lajato set that Williams purported to upload and that Dulberg needed for his prepared questions.

28. At the November 4, 2022 hearing, Flynn recalled printing ‘certain’ or ‘a few’ exhibits and not all of them. That later recollection must be read with, not substituted for, his deposition-day statement that he had hard copies of the majority. The inconsistency is material because Rule 206’s safeguards were designed to prevent a remote witness’s lawyer from becoming the unrecorded selector and custodian of a nonuniform paper exhibit set. Plaintiff need not prove on reconsideration what was written on every page or whether any page contained notes; the absence of neutral control is the evidentiary problem.

29. No produced email visibly identifies Mast as a recipient of the invitation link or shows the link being transmitted directly to him. The initial invitation contains the join link and meeting ID and says that “all parties” were BCC’d, but the produced PDF does not display the BCC identities and does not name Mast as a recipient. Williams separately forwarded the invitation to Plaintiff and to Flynn, Mast’s attorney. Williams’s later participant list is affirmative contemporaneous evidence of the planned arrangement: Flynn had received his ID; Mast would

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be in Flynn's room and log in with Flynn; Williams had an ID; and Plaintiff still needed one. U.S. Legal's reply that anyone with access to the link could join states a condition of access; it does not show a transmission to Mast. No email in the produced chain assigns Mast a separate participant ID, sends him a Mast-specific invitation, or contains a password or the number 075875. The following record map summarizes the visible headers and operative text; the underlying emails control. (Ex. EY¹.)

30. Exhibit EV does not establish that U.S. Legal independently supplied Mast credentials before or during the deposition, and this Motion does not assert that Williams read a password from Alan's email. After the interruption, Mast asked for the meeting code, the court reporter read the meeting ID, and the reporter expressly stated, "I don't have a password." Mast then said he was using an unidentified email and, "Oh, wait. Here it is." The next line is attributed by EV's transcriber to Williams: "there's a meeting password 075875." (Ex. EV² 27:2-28:21.) But EV identifies multiple voices during the same interruption only as "UNKNOWN SPEAKER," and the produced email chain contains neither 075875 nor a U.S. Legal-to-Mast transmittal. Independent voice identification, the source, and the transmission path of the spoken number therefore remain unresolved. That unexplained contradiction supports the reasonableness of investigating the access sequence; it does not prove a mid-deposition credential delivery.

31. The the audio of the Mast deposition and transcript of the audio file contain claims by Flynn, Mast and Williams that are technically impossible, such as:

- 1) "UNKNOWN SPEAKER: His phone and my computer got disconnected at the same time so I think it's the wifi." (p 24, ln 15)

How is it possible to hear Flynn and Mast in the audio if they are both disconnected at the same time?

- 2) "Well I signed on to some meeting and I can see myself. I don't see anybody else." (p 26, ln 3)
- 3) "MAST: I'm on. I'm signed in through my hotspot on my phone.
MR. FLYNN: Oh, so you went around the wifi?
HANS MAST: I did.
MR. FLYNN: Can I use your hotspot?" (p 26, ln 5)

1 Attached

2 Attached

- 4) "HANS MAST: It's asking for a -- it says "please enter your meeting password."" (p 28, ln 10)
There is no such thing as a meeting password.
- 5) Mast: "I'm just going off this email I got sent." (p 28, ln 13)
Hans Mast was not included in the email exchanges.
- 6) Williams: "Oh, here is a -- there's a meeting password 075875." (p 28, ln 17)
There is no meeting password 075875. The number '075875' is a made-up invention by Williams and has no relation whatsoever to the zoom meeting.
- 7) "I might have been using the wrong meeting. Did this work?" (p 29, ln 19)
How did Mast enter the wrong meeting and then enter the correct meeting with a non-existent meeting password 07875?
- 8) "Yeah, our internet is down, that's why I can't bring these up." (p 39, ln 4)
How can Mast's voice appear unbroken on the audio file?
- 9) Flynn: "I got your email and it's -- it's on my phone, but I think the computer is using so much of my wifi through the hotspot that it's running real slow" (p 41, ln 21).
Flynn claims the internet is down and Flynn and Mast are signed into the zoom meeting using Flynn's cell phone hotspot. but Flynn and Mast claimed they signed into the zoom meeting through Mast's cell phone hotspot. this is technically impossible.
- 10) "HANS MAST: I don't have internet.
MR. FLYNN: You don't? Okay.
HANS MAST: For some reason. Let me see if it came back. It comes and goes. Right now it looks like it's gone. Yeah." (p 42, ln 7)
How can Masts voice appear unbroken on the audio file?

32. The paper process therefore cannot accurately be summarized as Flynn merely showing Mast 'one or two' exhibits. His contemporaneous statement was that he possessed hard copies of the majority, and the transcript documents repeated paper use. Plaintiff cannot identify every page, mark, or notation physically present in Mast's room precisely because the neutral officer was remote and the paper set was not retained, indexed, or certified as the uniform exhibit record. That uncertainty is an alleged consequence of disregarding the safeguards, not a reason to presume compliance.

33. The missing component was substantive. Tilschner addressed the section 318 and retained-control issues on which Dulberg had prepared questions for Mast. (Complaint Exs. C6¹ and C9²;

1 Docket No. 0180

2 Docket No. 0177

Ex. DF-13¹ at 8-10.) Its omission prevented Dulberg from confronting Mast's later explanation that the McGuires lacked liability and Gagnon was an independent contractor. The planned questioning also bore on the October 22, 2013 demand: if Dulberg had authorized that \$7,500 demand, why did Mast allegedly need to continue persuading him at the later November 20 meeting to accept the McGuires' \$5,000 counteroffer; if Dulberg learned that the demand was unauthorized, it also bore on when and why he could have replaced counsel. These are proposed merits inferences, not adjudicated facts, but they explain concrete prejudice from the missing exhibit.

34. The November 2, 2022 supplemental expert answers identified the controlled expert's subjects as the Exhibit 12 label and questioned signatures attributed to Erickson, Orton, and Smith, and directed the recipients to an attached report. (Ex. EX² at 7.) Two days later, Flynn acknowledged that a Rule 213(f)(3) opinion had been disclosed "a day or two ago" and accurately described the label opinion. (Ex. C20³, ROP 14:1-15, 19:12-20:9.) This establishes notice of the label issue. Without the November 2 service transmittal and attachment list, Plaintiff does not presently assert that Flynn also received the May 24 signature report itself.

35. The absence from Plaintiff's present files of the outgoing November 2 service transmittal is neither proof that no transmittal existed nor proof of which reports were attached. Talarico's November 29, 2022 engagement agreement incorporated a Statement of Clients' Rights and Responsibilities stating that, after withdrawal or discharge, counsel would turn over original documents and exhibits together with complete copies of all pleadings and discovery within thirty days. (Ex. AZ⁴ at 3-4.) Section 10 separately states that, after the matter or attorney-client relationship ends, the client may obtain file copies by paying the stated photocopying and staff-duplication charges, and that the file will be destroyed after ten years. (Id. at 4-5.) After the relationship ended, Plaintiff requested all case files, work product, communications, and Rule 201(k) communications. On April 12, 2024, attorney Thomas J. Long, engaged to assist Talarico,

1 Docket No. 0236

2 Attached

3 Docket No.0261

4 Docket No. 0206

responded that it was their position Plaintiff already possessed all materials in Talarico's files and stated that handwritten time sheets would be provided later. (Group Ex. 50, pt. 13¹, pp. 8508-11.) That history explains why Plaintiff's present file set may not identify every Talarico-Flynn email or attachment, but it does not by itself establish that AJ12² was transmitted to Flynn.

36. Flynn's November 30 response argued that Plaintiff had not disclosed the specific Mast-Tilschner discussion in closed fact discovery. That argument is privileged and is not itself the alleged tort. Plaintiff cited it because, when considered with Flynn's presence, his advance receipt and printing of hard copies of the majority of Williams's exhibits except the identified larger files, the nonuniform Exhibit 12 versions, and his later notice of the label opinion, it formed part of the circumstantial sequence Plaintiff evaluated before filing.

37. The later native-file examination adds provenance evidence while preserving the limits of proof. Two byte-identical malformed proposed Exhibit 12 files were located in Clinton matter folders named for Ed Clinton; both were created on June 19, 2020 through macOS Preview and contained LaJato twice plus Choi while omitting Tilschner. (Ex. EZ³ at 1-2.) The metadata places the defect inside the Clinton-side exhibit-assembly workflow but does not identify the human operator or, by itself, prove intent. Plaintiff states on information and belief that Clinton used Windows and Williams used a Macintosh; that circumstance may be investigated but is not offered as conclusive operator identification. The material allegation does not depend on naming the keystroke operator: Williams transmitted and presented the malformed proposed exhibit, while Flynn controlled the paper material available to Mast.

38. Adcock recognizes both the required agreement and the permissible method of proof. A defendant must understand the general objective, accept it, and agree explicitly or implicitly to do his part; because a conspiracy is rarely proved by a written deal, the trier of fact may consider circumstantial evidence and reasonable inferences. 164 Ill. 2d at 64, 66-67. Plaintiff's inference rests on a recorded agreement to use the new remote procedure, knowledge of the

1 Docket No. 0332

2 Docket No. 0213

3 Attached

rule, a planned division of access, advance possession of the majority paper set, the nonuniform Exhibit 12, continuation after the access failure, the reporter's missing exhibit, and later use of a post-deposition derivative. The Court may ultimately reject that inference. The absence of words saying 'we agree to violate the rule' does not make the inference sanctionable.

39. Current Second District authority makes Flynn's privilege argument substantial. *American Backflow & Fire Prevention, Inc. v. Hincks*, 2025 IL App (2d) 250023, ¶¶ 23-24, 37, applies absolute privilege to claims based on the same protected communications and construes pertinency broadly. But the opinion was filed on December 8, 2025 - four days after the Complaint - and its actual holding concerned allegedly false communications to quasi-judicial bodies. It strengthens Flynn's present merits position but cannot retroactively establish that Plaintiff's December 4 legal position concerning physical exhibit selection, handling, and reconstruction was sanctionable.

40. Flynn also has a substantial qualified-attorney-privilege argument. An adverse nonclient must plead malice independent of the attorney's desire to protect the client. *Farwell v. Senior Services Associates, Inc.*, 2012 IL App (2d) 110669, ¶ 23. That issue and the underlying-tort, causation, and injury requirements may defeat the present count. They do not erase the pleaded sequence or automatically prove that Plaintiff failed to conduct a reasonable inquiry.

II. THE PRIOR APPEAL'S DISMISSAL LEFT THE 17LA377 JUDGMENT IN FORCE, BUT DID NOT DECIDE THE CONSPIRACY MERITS OR THE RULE 137 QUESTIONS.

41. The August 7 order states that Flynn's limitations arguments were accepted by the circuit court in 17LA377 and became 'law of the case through dismissal of Dulberg's appeal.' The appellate court dismissed the appeal on December 4, 2023 for failure to file an opening brief. That dismissal left the circuit-court judgment in force, but it was not an appellate decision on the merits of Exhibit 12, the deposition certifications, the alleged agreement, or Flynn's participation.

42. Law of the case ordinarily applies to a legal question actually decided in a prior appeal; matters concerning the merits that were not decided do not become appellate law of the case. *Fox Valley Families*, 2018 IL App (2d) 170137, ¶ 9. Separately, an involuntary dismissal attributable

to an appellant leaves the lower-court judgment in full force as an estoppel and bars a successive direct appeal raising the same issue. *Hartney v. Bevis*, 2018 IL App (2d) 170165, ¶¶ 12-16.

43. Plaintiff recognizes that the 17LA377 judgment remains effective and that he cannot obtain a second direct appeal by relabeling an attack on that judgment. He does not seek reconsideration here merely because Flynn prevailed on a limitations argument. The present dispute is whether the Complaint also alleged independently wrongful noncommunicative conduct and an agreement inferred from the participants' acts, and whether naming Flynn on that theory after the documented inquiry was sanctionable. The Court may decide that preclusion or another defense defeats the damages theory without treating the appellate dismissal as a merits adjudication of every underlying fact.

44. The preclusive effect of the judgment may defeat a proposed claim whose injury or causation theory necessarily depends upon proving that judgment wrong. It does not automatically answer whether a fraud affecting the integrity of the record could have supported relief in 17LA377, whether any such avenue remained practically or legally available after the appeal was dismissed, or whether an independently actionable conspiracy count could be amended. Those are procedural and merits questions on which Plaintiff may be wrong; they are not equivalent to proof that he filed without inquiry or for an improper purpose.

45. Reconsideration is warranted to separate four questions that the order treated together: what the prior judgment precludes; whether the Complaint states an independently actionable claim against Flynn; whether amendment could cure the present count; and whether Plaintiff's signing violated Rule 137. Plaintiff recognizes the judgment's continuing force and the substantial defenses to the claim. He contests the conclusion that those defenses establish sanctionable conduct.

III. THE REQUEST TO AMEND DID NOT MAKE LEAVE AUTOMATIC, BUT THE RECORD SHOWED MORE THAN AN INCURABLE LIMITATIONS THEORY.

46. Plaintiff requested leave to cure in his response to Flynn's first dismissal motion and identified the deposition conduct, Exhibit 12, Tilschner, the distinction between communications

and physical acts, and the relevant documentary sequence. Those matters were presented before dismissal and are not a new theory first raised after an adverse ruling.

47. The proffered materials identify Flynn's physical location with Mast, advance receipt and printing of the majority of the exhibit set, delivery and control of paper materials, the connection interruption and disputed access sequence, Mast's statement that he had only one Lajato case when a 27-page Exhibit 12 was announced, the reporter's missing or unreadable file, the materially different post-deposition derivative, and the later litigation position concerning the omitted subject. Adcock recognizes that the agreement and each participant's role often must be inferred from circumstantial evidence and facts within defendants' control. 164 Ill. 2d at 64, 66-67.

48. Those allegations still must be connected to an independently tortious or unlawful act, actual malice sufficient to overcome attorney privilege, causation, and a legally cognizable injury. Williams also stated that she uploaded the intended exhibits through the reporting system, a fact Flynn may cite against intent and causation. Plaintiff's response is that purported upload did not create uniform access: Mast said he had only one case, the reporter lacked the exhibit, and the paper set remained under Flynn's control. These competing inferences require a merits analysis; they do not reduce the pleading to protected advocacy alone.

49. The existing record nevertheless permitted a reasoned Loyola analysis. This was the original Complaint; Plaintiff made a timely first request to amend; the documentary sequence was already identified; and a fixed period to tender a proposed amended count would cause less prejudice than a with-prejudice bar. If the Court concludes the proffer still cannot cure the legal defects, it may leave dismissal in place. It should not characterize the original record as containing only a limitations argument.

50. Most importantly, an inability to cure every pleading defect does not establish a Rule 137 violation. Rule 137 is not a fee-shifting consequence of dismissal, and an insufficient pleading may still rest upon an objectively reasonable factual inquiry and a good-faith legal argument when signed.

IV. THE RULE 137 LIABILITY DETERMINATION SHOULD BE VACATED OR REOPENED.

51. Rule 137 is penal and must be strictly construed. Johnson, 2011 IL App (1st) 102826, ¶ 27. Rule 137(d) requires a written order setting forth with specificity the reasons and basis for a sanction. The rule is designed to discourage frivolous filings, not punish losing arguments, and requires evaluation of the circumstances existing when the challenged paper was signed. Lake Environmental, Inc. v. Arnold, 2015 IL 118110, ¶¶ 13-15.

52. No party-filed Rule 137 motion meeting the specificity requirements preceded the liability ruling. Flynn’s May 7 dismissal motion did not cite Rule 137, identify the offending allegation, explain what reasonable inquiry was omitted, distinguish factual, legal, and improper-purpose grounds, or tie any requested fee to a challenged statement. General adjectives such as “frivolous” and “sanctionable” do not perform the notice and allocation functions described in Whitmer and Adler.

53. If the August 7 determination instead proceeded upon the Court’s own initiative, Rule 137 authorized that route, but it did not authorize adjudication without a meaningful opportunity to address the asserted ground. Johnson holds that a person subjected to a court-initiated sanction must be informed that his own conduct is under adjudication and afforded an opportunity to present evidence and rebut the allegations. 2011 IL App (1st) 102826, ¶¶ 34-38.

54. The distinction is concrete here. The July 29 proceeding was noticed as dismissal argument. During it, the Court stated that Flynn had brought a Rule 137 sanctions request and asked what evidence linked him to the alleged continuing concealment or conspiracy. (July 29, 2026 ROP 24:12-15.) Plaintiff responded regarding the alleged deposition technical difficulties. (Id. 24:18-21.) That was a focused opportunity to address the asserted evidentiary link to Flynn. Plaintiff was not, however, directed to present his source materials documenting the inquiry he conducted before signing, an affidavit or verified statement of that inquiry, the authorities he reviewed, or evidence of his purpose in naming Flynn. The later finding that Plaintiff sued Flynn for the “temerity to best him” was a subjective-purpose determination made without testimony or an evidentiary submission on purpose.

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55. Johnson and Stefanski are consistent. Johnson requires a hearing when the record lacks evidence about what the sanctioned person knew or did and the person lacked a focused opportunity to defend. Stefanski allowed affirmance without remand where the State admitted a “comedy of errors,” did not dispute that its notices were ineffective, repeatedly failed to cure, and the record already contained the necessary information. 377 Ill. App. 3d at 553-55. The present questions of inquiry, knowledge, and purpose were neither admitted nor developed.

56. Before filing, Plaintiff reviewed the April 30 and May 29 remote-deposition correspondence; the June 24 participant email; the Mast deposition and previously obtained audio; the paper-exhibit statements; the reporter’s subpoena production; the versions of Exhibit 12; the two pre-deposition question emails; the underlying William McGuire, Carolyn McGuire, and David Gagnon depositions; the April 27, June 10, July 11, and November 4, 2022 proceedings; Flynn’s November 30 filing; the February 1, 2023 ruling; the Omni document-examination materials; and pleadings and orders in the interrelated 12LA178 and 17LA377 cases. Plaintiff compared those records before alleging that the participants’ complementary acts supported an inference of agreement.

57. Mast testified that he recommended settlement because the chance of recovery was “very slim,” citing the depositions, case law, and a “lack of any evidence” that the McGuires controlled the work or knew what Plaintiff was doing. (Ex. DP¹, embedded Ex. G, Mast Dep. 24:5–25:18, 43:1–8; embedded PDF pp. 211, 216.) The underlying testimony was mixed. Gagnon testified that the McGuires accepted his proposal to remove the two trees and offered him \$15 per hour, but that no preset day or time was established and that the McGuires did not supervise the work or dictate its manner or means. Gagnon further testified that he told the McGuires he had asked Plaintiff to help that day and that they did not object. (Ex. FA-1², embedded Mast Dep. Ex. 21, PDF pp. 79, 83, 91–94, 100–01, 193–95; Gagnon Dep. 78, 82, 90–93, 99–100, 192–94; Bates DULBERG 000622, 000626, 000634–000637, 000643–000644, 000736–000738.) Carolyn McGuire testified that she asked Gagnon to cut down the trees, intended to give him an

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unspecified amount for gas, and supplied the McGuires' chainsaw; she also testified that she did not observe the work beyond brief visits outside. (Ex. FA-3¹, embedded Mast Dep. Ex. 19, PDF pp. 27, 32–33, 40, 51–52; Carolyn McGuire Dep. 26:1–12, 31:14–32:10, 39:1–18, 50:1–51:7; Bates DULBERG 000461, 000466–000467, 000474, 000485–000486.) William McGuire likewise acknowledged that either he or Carolyn asked Gagnon to perform the work and that Carolyn contemplated giving Gagnon something in return, although William did not know the precise arrangement. (Ex. FA-2², embedded Mast Dep. Ex. 17, PDF p. 6; William McGuire Dep. 21:19–22:16; Bates POP 001442.) These facts do not, standing alone, establish vicarious liability; they gave Plaintiff a concrete documentary basis to question Mast's categorical description of the record.

58. The settlement chronology supplied a separate and concrete factual basis to test Mast's explanation. An October 22, 2013 document transmitted a \$7,500 demand bearing Mast's signature. Plaintiff states that he did not authorize that demand. Mast recognized the document and his signature but did not remember the communication; he testified that he was "sure" he would have discussed it with Plaintiff while identifying no present note or email confirming that recollection. (Mast Dep. 27-28.) Whether a fact finder ultimately accepts Plaintiff's account is a merits question. The document, Plaintiff's denial of authority, Mast's lack of recollection, and the lack of any contemporaneous confirmation identified in the cited record supplied a nonfrivolous factual basis for the allegation and for the planned Tilschner inquiry.

59. Plaintiff's inquiry also included the document-examination evidence pleaded in Complaint paragraph 181 and cited as Exhibits AJ1³ through AJ16³. In the May 24, 2022 report filed as Exhibit AJ12⁴, the examiner opined that it was "highly probable" that three questioned Paula Erickson signatures and two questioned Margaret Orton signatures were not written by the same persons who wrote the respective known exemplars. The report examined machine copies

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and reserved examination of originals. Plaintiff does not offer that limited opinion as proof of forgery, authorship, intent, or Flynn's knowledge; its existence bears only on the scope of Plaintiff's documentary inquiry before filing.

60. Exhibit EV was transcribed and certified on April 29, 2026, after this action was filed, and the metadata report Exhibit. EZ¹ was prepared on August 26, 2026. Neither can retroactively supply the inquiry Rule 137 required on December 4, 2025. Their underlying sources, however - the subpoenaed audio and native Clinton case-file collection - preserve evidence concerning the earlier events. EV makes the audio easier to evaluate but does not independently corroborate it or conclusively authenticate every speaker label. Exhibit. EZ¹ verifies file provenance and contents but does not identify the human operator or prove intent. For Rule 137, Plaintiff relies on the records he possessed and the comparisons he made before filing; for reconsideration and proposed amendment, he offers the later technical work as limited corroboration, subject to those stated constraints.

61. Plaintiff did not name Flynn merely because Flynn prevailed, to punish protected advocacy, or to obtain a second appeal. He believed that the recorded agreement to use the new remote procedure and the subsequent noncommunicative exhibit-handling sequence, considered with the complementary acts of Williams and the Clinton defendants and the broader record-integrity evidence, could support the civil-conspiracy count pleaded in Count 6. The Complaint's paragraphs 134 through 144 and 225(6), the June 10 response's disclaimer of liability for protected advocacy and request to amend, and Plaintiff's July 29 statement that the suit concerned 'the puppet show of a deposition' and 'conspiracy with my own attorneys' are consistent with that stated purpose.

62. If this Court concludes that relief aimed at correcting or vacating the 17LA377 judgment had to be pursued by direct review or an available postjudgment procedure in 17LA377 rather than through a separate damages action, that procedural conclusion does not by itself establish a Rule 137 violation. The case had been dismissed with prejudice, and the appeal was

¹ Attached

dismissed after no opening brief was filed. Plaintiff then confronted a closed underlying case while alleging misconduct by opposing counsel and failures by his own successive counsel. Whether section 2-1401 or the court's inherent authority supplied relief inside the closed case, whether professional discipline could address attorney conduct without vacating the judgment or compensating Plaintiff, and whether an independent civil claim remained were legal questions requiring analysis. Filing in an unsuccessful procedural vehicle may justify dismissal; it is not automatically the equivalent of filing in subjective bad faith or without reasonable legal inquiry.

63. Plaintiff supplies the limited section 1-109 certification below concerning his prefiling inquiry and purpose. The Court should vacate the Rule 137 liability determination. Alternatively, it should identify the particular signed paper and asserted violation and permit a focused evidentiary presentation before deciding liability.

V. EVEN IF THE FLYNN DISMISSAL REMAINS, THE STATED REASONS DO NOT AUTOMATICALLY ESTABLISH A RULE 137 VIOLATION.

64. Rule 137 contains distinct grounds. Whether factual and legal contentions were objectively reasonable after inquiry is different from whether a paper was filed for a subjective improper purpose. *Stefanski*, 377 Ill. App. 3d at 551-53. Dismissal may bear upon the objective question, but it is not conclusive and does not establish subjective bad faith.

65. Before filing, Plaintiff possessed records supporting the historical assertions that Flynn received the intended exhibit set, was physically with Mast, printed hard copies of the majority except identified larger files, and passed paper materials to Mast. He also possessed the blank or missing reporter exhibit, the later malformed version omitting Tilschner and duplicating Lajato, and the 2022 proceedings in which the issue was raised. Those materials do not compel a conspiracy finding. They do provide an objective basis for the historical allegations and for examining the resulting inference under the law existing on December 4, 2025.

66. The August 7 order identifies the Complaint, privilege, legal insufficiency, Plaintiff's litigation history, and the Court's view that Plaintiff sued Flynn for having prevailed. Plaintiff therefore does not contend that the order contains no explanation. The remaining problem is that it does not evaluate the recorded remote-procedure agreement, Flynn's deposition-day majority-25LA360 | MOTION TO RECONSIDER THE RULE 137 LIABILITY AND, THE WITH-PREJUDICE SCOPE OF THE FLYNN DISMISSAL, AND TO DEFER THE FEE PETITION

paper statement, Mast's one-case statement, the reporter's lack of Exhibit 12, the November 2022 Rule 206 presentation, or the distinction between complementary conspiracy acts and an isolated limitations argument. Nor does it identify whether the violation was a false factual allegation, inadequate factual inquiry, a legal position lacking a good-faith basis, subjective improper purpose, or some combination.

67. To the extent liability rests on the statement that Plaintiff sued Flynn for the "temerity to best him," it rests on Rule 137's subjective improper-purpose branch. Stefanski requires subjective bad faith for that branch. 377 Ill. App. 3d at 552-53. No testimony or focused evidentiary presentation addressed Plaintiff's actual purpose.

68. Plaintiff's litigation history and any prior sanction may provide background, but they do not independently establish that this paper violated Rule 137. The rule requires examination of the challenged paper, the facts and law available when it was signed, the inquiry then performed, and any improper purpose connected to that filing.

69. The Court may ultimately conclude that the Flynn count was legally insufficient, barred by privilege, unable to establish causation, or not presently curable. The Court may also apply American Backflow as current Second District law. None of those conclusions eliminates the separate requirement to determine whether the Complaint lacked an objectively reasonable factual or legal basis when signed or was filed in subjective bad faith. The Rule 137 liability determination should be vacated or reopened even if dismissal remains.

VI. THE FEE PETITION SHOULD REMAIN DEFERRED UNTIL RULE 137 LIABILITY IS RESOLVED.

70. Flynn's fee request depends entirely on the challenged Rule 137 liability determination. Adjudicating amount before liability would risk unnecessary proceedings and a monetary award based on an interlocutory ruling under active reconsideration. The Court should decide this motion first and continue the fee petition consistently with its August 26 order.

71. Plaintiff will address hours, rate, allocation, causation, costs, and proof in his separately authorized response due September 23 if any fee claim remains. Nothing in this motion waives those objections.

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RELIEF REQUESTED

WHEREFORE, Plaintiff Paul R. Dulberg respectfully requests that this Court:

- A. reconsider and vacate the portion of the August 7, 2026 order imposing liability against Plaintiff under Illinois Supreme Court Rule 137;
- B. reconsider the statement that a limitations argument was the only matter alleged against Flynn and evaluate the complete conspiracy and record-integrity sequence, including Flynn's own noncommunicative contribution together with the complementary acts alleged against the other participants, while determining dismissal separately from Rule 137 sanctionability;
- C. alternatively, reconsider the with-prejudice scope of the Flynn dismissal and permit Plaintiff a fixed period to tender a proposed amended count clarifying the agreement inferred from the remote-procedure correspondence and subsequent acts, the loss of the Tilschner examination, the alleged underlying unlawful acts, causation, injury, and the basis for overcoming privilege;
- D. if the Flynn dismissal remains, decline to treat that dismissal as automatically establishing a Rule 137 violation;
- E. alternatively as to sanctions, identify the particular signed paper, statement, and asserted Rule 137 violation and permit a focused evidentiary presentation concerning Plaintiff's factual inquiry, legal inquiry, knowledge, and purpose when the challenged paper was signed;
- F. continue or defer Flynn's fee petition until Rule 137 liability is resolved, without prejudice to Plaintiff's separately scheduled objections to the amount, allocation, causation, and proof of the requested fees; and
- G. grant such other and further relief as the Court deems just.

Respectfully submitted,

/s/ Paul R. Dulberg

Paul R. Dulberg, Plaintiff pro se

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LIMITED VERIFICATION UNDER 735 ILCS 5/1-109

Under penalties as provided by law pursuant to section 1-109 of the Code of Civil Procedure, the undersigned certifies that the factual statements in Section IV describing his prefiling inquiry, the materials he possessed and reviewed, and his purpose in filing are true and correct, except as to matters stated to be on information and belief and, as to such matters, the undersigned certifies that he verily believes them to be true. This verification does not adopt the truth of statements attributed to other persons; it certifies that the identified records contain those statements and that Plaintiff considered them as described.

/s/ Paul R. Dulberg

Paul R. Dulberg

Date: September 4, 2026

CERTIFICATE OF SERVICE

I certify that on September 4, 2026, I served a true and correct copy of the foregoing document on all counsel and parties of record through eFileIL/EFSP electronic service.

/s/ Paul R. Dulberg

Date: September 4, 2026

Paul R. Dulberg