

NATURE OF THE CASE

This appeal arises in a tort action derived from the in-hospital death of plaintiff's decedent, Joseph Applebaum, in December of 2003. The suit was timely filed by the special administrator of Joseph's estate, plaintiff Michael Applebaum, MD, a duly licensed Illinois attorney (R. 72) in good standing and listed on the Master Roll of Attorneys, on inactive status at the time of filing. Plaintiff, an only child, is sole heir to his father's estate which had no creditors, no other parties in interest and was not opened to probate. (R. 160)

Defendants moved to dismiss the case with prejudice claiming that plaintiff was "unlicensed" (R. 70), and that the nullity rule was applicable to this matter. The trial court denied defendants' motion finding plaintiff "is a lawyer" (R. 200) and the facts did "not raise these concerns," i.e. those contemplated by the nullity rule. R.205. The court granted defendants' request to certify a question pursuant to Ill. Sup. Ct., R 308. R. 269-270. The appellate court granted defendants' petition for leave to appeal, answered the question in the affirmative and reversed. Plaintiff's petition for rehearing was denied without opinion. This Court granted plaintiff's petition for leave to appeal.

ISSUE PRESENTED FOR REVIEW

The question certified by the circuit court under Ill. Sup. Ct., R 308 is:

Whether the nullity rule should be applied in a wrongful death action where the plaintiff is an attorney who has passed the bar and was on inactive status at the time of the filing of the complaint, was the special administrator, sole beneficiary and son of the decedent and prior to the hearing on the motion whose license was reinstated.

STATEMENT OF JURISDICTION

The trial court held in favor of plaintiff that the nullity rule was inapplicable, but on defendants' motion certified a question under Ill. Sup. Ct., R 308. The appellate court granted leave to appeal, and reversed. The Appellate Court for the First District denied plaintiff's petition for rehearing. On March 26, 2008, this Court granted the plaintiff's petition for leave to appeal under Ill. Sup. Ct., R 315.

STATEMENT OF FACTS

This appeal arises in a tort action derived from the death of plaintiff's decedent and father, Joseph Applebaum, in December 2003, while hospitalized at Rush North Shore Medical Center. R. 23-69. The suit was timely filed by the special administrator of Joseph's estate, plaintiff Michael Applebaum, a physician and duly licensed Illinois attorney since 1988, always in good standing and listed on the Master Roll of Attorneys. R. 200. Plaintiff is an only child and sole beneficiary of Joseph Applebaum's estate. R. 202. The estate had no creditors, no other parties in interest and was not opened to probate. R. 160.

At the time of filing the Complaint, Affidavit and Medical Report pursuant to 735 ILCS 5/2-622 (R. 1-22), plaintiff was on inactive status and had been for about 11 months. R. 200.

Before and after initiating this lawsuit, plaintiff communicated with ARDC. R.175-176.

On March 20, 2006, the trial court granted plaintiff's Motion To Initiate Discovery. ¹ A. 13.

On April 04, 2006, a First Amended Complaint was filed. R. 23-69.

On April 25, 2006, the trial court granted defendant's Motion To Initiate Discovery comprising 14 requests to admit. A. 14.

¹ "A." - references to the page number in the Appendix. Slip Op. and "A." page numbers correspond.

Six months after the filing of this action, June 1, 2006, defendants moved to dismiss the case with prejudice claiming that plaintiff was “unlicensed” (R. 70) and that the nullity rule was applicable to this matter.

By court order of June 8, 2006, all other motions to dismiss (pursuant to Sections 2-615, 2-619 and 2-622) are being held in abeyance. A. 15.

The circuit court denied defendant’s motion on August 17, 2008. R. 186. The court cited as the basis for its ruling that the nullity rule was inapplicable to this matter: “The rule prohibiting a person from representing other persons unless admitted to the practice of law is to protect litigants against the mistakes of the ignorant and the schemes of the unscrupulous and to protect the Court itself in the administration of its proceedings from those lacking the requisite skill.’...[H]ere the risks are not present...” R. 205-206. The status of plaintiff’s license was changed to active prior to the hearing on the motion. R. 172, 206. An ARDC investigation, including formal testimony in August, concluded in September 2006 without discipline. *Plaintiff’s Petition For Leave To Appeal* at 5.

In denying “defendants motion to dismiss on the argument that the complaint is a nullity,” (R. 186) the court ordered plaintiff to file a Second Amended Complaint to reflect the change in his licensure from inactive to active status. R. 186, 209.

The court granted defendants’ request to certify a question pursuant to Ill. Sup. Ct., R 308 on September 8, 2006. R. 269-270. The appellate court granted defendants’ petition for leave to appeal on December 18, 2006 and reversed on September 28, 2007. A Petition For Rehearing was submitted on November 20, 2007 and denied on December 5, 2007. *Plaintiff’s Petition For Leave To Appeal* at 2. This Court granted *Plaintiff’s Petition For Leave To Appeal* on March 26, 2008.

ARGUMENT

I. STANDARD OF REVIEW

The standard of review where a question of law has been certified under Supreme Court Rule 308(a) is *de novo*. *Thompson v. Gordon*, 221 Ill.2d 414 (Ill. 2006).

II. APPLICATION OF THE NULLITY RULE IN THIS CASE WOULD BE CONTRARY TO THIS COURT'S MOST RECENT HOLDING ON THE ISSUE AND GENERAL LAW.

This case presents the question whether the “nullity rule” is properly applied to a duly licensed Illinois attorney listed on the Master Roll of Attorneys who was temporarily “not eligible” to practice law due to payment of the lesser “inactive” status fee. Although no court has previously so held, the Appellate Court ruled that the nullity rule applied.

The decision below is squarely contrary to this Court’s holding in *Ford Motor Credit Co. v. Sperry*, 214 Ill.2d 371 (2005). In *Sperry* the nullity rule was invoked to avoid paying attorneys fees to a professional corporation that had neglected to register with the Illinois Supreme Court to do business in this fashion. This Court first noted that “orders should be characterized as void only when no other alternative is possible.” *Sperry*, 214 Ill.2d at 380. And in analyzing whether the nullity rule was appropriately applied, the Court found a controlling distinction between “regulatory provisions [which] assure that only those individuals who are fit and qualified to practice law will be licensed in this state” and those that “do not have as their primary purpose the protection of the public safety.” *Sperry*, 214 Ill.2d at 383-384. The Court concluded that the

registration of the professional corporation was not a regulation for the protection of the public safety. *Sperry*, 214 Ill.2d at 383-384.

As *Sperry* involved a regulation unrelated to the public safety, the Court concluded that the nullity rule was inappropriately applied because the “goals of protecting the public and ensuring the integrity of the court system which underpin the invocation of the nullity rule were not implicated by the facts in the instant cause.” *Sperry*, 214 Ill.2d at 391.

That is the case here. As shall be demonstrated below, the fee differential between active and inactive Illinois attorneys (in this case \$149) is not a regulation designed to “assure that only those individuals who are fit and qualified to practice law will be licensed in this state” and is, instead one that does not have as its “primary purpose the protection of the public safety.” Furthermore, it is clear that the nullity rule was never intended to apply to this situation.

A. The “Inactive” Designation Is Not A Regulation Designed For The Protection Of The Public.

A review of the Court’s Rules reveals a theme and clear intent behind the various fee amounts necessary to maintain a license in this State. New admittees are charged less than those who have been practicing. Ill. Sup. Ct., R 756(a)(1) (2007). The longer one has benefited from the privilege of practicing law, the more one is expected to pay (Ill. Sup. Ct., R 756(a)(1) (2007)) until an age-based limit is reached. Ill. Sup. Ct., R 756(a)(3) (2007). Those unable to pay may have the fees waived. Ill. Sup. Ct., R 756(a)(8) (2007). Those engaged in public service are exempted from the fee. Ill. Sup. Ct., R 756(a)(4) (2007). Not surprisingly, therefore, the Court allows those who are not actively practicing to maintain their license with a lower fee than those making active use of it in their

careers. Ill. Sup. Ct., R 756(a)(5) (2007). These fee calibrations have nothing to do with the regulations regarding character, qualifications, fitness and ethical obligations that are uniform for all admitted attorneys, regardless of the fee paid.

The provisions of the Rules regarding inactive status certainly bear this out. An attorney on inactive status remains listed on the Master Roll of Attorneys. And, upon payment of the fee differential is immediately eligible to practice law. Ill. Sup. Ct., R 756(a)(5) (2007). Even with the new MCLE requirements, which were not yet in effect when this controversy arose, a previously inactive attorney is immediately eligible to practice law upon payment, but must meet continuing education requirements within 24 months. Ill. Sup. Ct., R 791 (2007). If opting for “inactive” status denoted some inherent danger with regard to potential practice by that person, then the Rules would have provided something beyond the mere forwarding of funds to return to active status.

The Court will search in vain for any authority or reasoning by the defendants suggesting the slightest connection between inactive status and the dangers of an “unlicensed person” practicing in the Illinois Courts. The Appellate Court, *sua sponte*, mistakenly supposed that a “petition for reinstatement” was required (A. 9/Slip Op. at 9), but declined to revise its opinion on plaintiff’s *Petition for Rehearing*.

One’s ineligibility to practice law is a condition this Court imposes on those seeking to maintain their licenses at the lower inactive rate. It is not for the protection of the public. It is for the purpose of structuring an equitable fee schedule for Illinois attorney licensing.

B. This Court Has Already Held That The Fee Status Of An Attorney Is Irrelevant To The Protection Of The Courts And Litigants.

In *People v. Brigham*, 151 Ill.2d 58 (1992), this Court held that “...admission to

the bar allows us to assume that he has the training, knowledge, and ability to represent a client who has chosen him, and that he has retained the ability to render effective assistance to defendant at trial, notwithstanding his suspension for failure to pay his registration dues.” *Brigham*, 151 Ill.2d 58 at 70-71.

The defendants view this statement as mere dicta, and argue that the crux of the *Brigham* decision lies in the fact there were no law schools or bar exams when the Constitution was drafted, so that “counsel” in a modern criminal trial also need not be admitted to the bar. *Def.’s Ans. To Pet. To App.* at 15. Plaintiff would certainly argue that the result in *Brigham* would have been much different had the “counsel” been a mere imposter. *See, e.g., People v. Cox* 12 Ill.2d 265, 269-270 (1957) (person never admitted to bar).

However, this Court, contrary to defendants’ interpretation, has already cited *Brigham* as instructive in interpreting the nullity rule. In *Ford Motor Credit Co. v. Sperry*, 214 Ill.2d 371 (2005), upon holding that the nullity rule was inapplicable, the Court cited *Brigham* as supportive by analogy (“Cf. *People v. Brigham*, 151 Ill. 2d 58, 600 N.E.2d 1178, 175 Ill. Dec. 720 (1992),” *Sperry*, 214 Ill.2d at 388), and summarized it as holding that “...counsel's oversight of nonpayment [of his annual registration dues] did not diminish his competency as an attorney.” *Sperry*, 214 Ill.2d at 388; see also *Joseph P. Storto, P.C. v. Becker*, 341 Ill.App.3d 337, 341 (2nd Dist. 2003) (reasoning that failure of a law firm to register as a corporation is analogous to an attorney disqualified by failure to pay bar dues and therefore not requiring the harsh sanction of nullifying its right to fees) (cited at length and with approval in *Sperry*, 214 Ill.2d at 386-387).

In short, as the courts have recognized, both *Brigham* and *Sperry* were concerned with whether the breach of the respective rules implicated the competency of counsel. The nullity rule is imposed “to protect litigants against the mistakes of the ignorant and the schemes of the unscrupulous and to protect the court itself in the administration of its proceedings from those lacking requisite skills.” *Sperry*, 214 Ill.2d at 389-390 (citations omitted). *Brigham* definitively holds that the fee status of an attorney does not have an impact on these concerns.

Finally, it is respectfully submitted that affirming the Appellate Court would place this State in the shocking position of, on the one hand holding that the profound protections due criminal defendants are satisfied by an attorney not privileged to practice because a fee has not been paid, while on the other hand, holding that this same attorney is so dangerous to litigants and the courts in garden variety civil law suits that the nullity rule must be invoked.

C. The Plain Language Of The Court’s Rule And Common Parlance Do Not Render The Plaintiff An “Unlicensed” Person Or A “Non-Attorney” Within The Meaning And Contemplation Of The Nullity Rule.

Defendants, without citation to any authority equate the Rule’s statement that an inactive attorney is “not eligible” to practice law, with “lack of a license to practice.” See e.g., *Def.’s Ans. to Pet. For Leave To App.* at 4, 9. The only Illinois court to consider a similar contention soundly rejected it. *People v. Elvart*, 189 Ill.App.3d 524, 530 (1989) (holding that rule on delinquent fees that stated practice was “unauthorized” and attorney struck from Master Roll was not equivalent to representation by imposters never admitted to practice). In the Rules relating to fees, the Court could easily have stated that practice

under those circumstances would be deemed “unlicensed” within the meaning of § 705 ILCS 205/1 (2007).² It did not do so. That is not to say that attorneys are free to ignore these rules and are not subject to sanctions, contempt or discipline for their practice when “not eligible” or “unauthorized” under the fee rules. Rather the absence of any reference to the “license to practice” suggests that the barring of practice has a different source and different purpose than a ban on practice that protects the public.³

Indeed, this Court made precisely that point in *People v. Brigham*, 151 Ill.2d 58, 67 (1992): “[T]he courts have noted an important distinction between (1) an unlicensed

² “No person shall be permitted to practice as an attorney or counselor at law within this State without having previously obtained a license for that purpose from the Supreme Court of this State.”

³ In *Brigham*, this Court gave weight to a long quotation from *Hill v. State* (Tex. Crim. App. 1965), 393 S.W.2d 901, stating that the Texas court “perceptively” noted:

The status of a delinquent attorney not being a member of the State Bar * * * does not place him in the position of being 'unlicensed to practice law in this state'. [Although he is '*prohibited* from practicing law in this state'] *he only has to pay his dues* (he does not vacate the office of Attorney-at-Law) to resume his status as a 'practicing lawyer'. Such attorney does not have to again show his fitness or qualifications to practice law. He does not have to be re-admitted to the practice. His competency as an attorney has not been diminished. He faces no future disbarment proceedings. He automatically resumes his status as an active member of the State Bar * * *.

(Emphasis in original.) *Brigham*, 151 Ill.2d 58 at 66, quoting *Hill*, 393 S.W.2d at 904.

person (e.g., an imposter or a disbarred attorney), and (2) an attorney admitted to practice but under suspension for nonpayment of State bar dues.” This distinction goes directly to the entire purpose of the rule to protect against “the mistakes of the ignorant,” “those lacking requisite skills” and “the schemes of the unscrupulous.” It is not, as defendants claim, to punish those who “should have known” that they were not eligible to practice. *Def.’s Ans. to Pet. For Leave To App.* at 14. Here the plaintiff was admitted to practice as fit and competent to practice law in this State, and this Court has not found otherwise.

The rule’s historical antecedents trace to “Ill. Rev. Stat. 1983, ch. 13, pars. 1” which became § 705 ILCS 205/1, The Attorney Act. *Janiczek v. Dover Management Co.*, 134 Ill.App.3d 543, 545 (1st Dist. 1985). “[T]he statute is intended to prevent the practice of a profession by one who has not first complied with the licensing requirements rather than an attempt to legislate a standard of conduct.” *Rathke v. Lidisky*, 59 Ill.App.3d 560, 562 (5th Dist. 1978). A duly licensed attorney is a person who has been admitted to the bar and whose license has not been revoked. *People v. Schreiber*, 250 Ill. 345, 348 (Ill. 1911). Plaintiff has “previously obtained a license for that purpose from the Supreme Court of this State.” § 705 ILCS 205/1. Plaintiff’s license has never been revoked. R.143.

In fact, the Court grants that listing on the Master Roll proves licensure and holds out the same to the public. (“The clerk’s office maintains the roll of attorneys licensed to practice in the state...”) (See “*The Official Site of the Illinois Courts*” at: <http://www.state.il.us/court/SupremeCourt/supportstaff.asp> (accessed April 29, 2008)). For the nullity rule to apply, the necessary entry point is “representation by an unlicensed person.” *Ford Motor Credit Co. v. Sperry*, 214 Ill.2d 371, 389-390 (2005).

Defendants have not cited a single case where the nullity rule was invoked in the case of an Illinois attorney admitted to the bar who was ineligible to practice under the Court's rules on fees. *See, e.g., Ratcliffe v. Apantaku*, 318 Ill.App.3d 621 at 626, 627 (1st Dist. 2000) (“lay people,” “not an attorney licensed to practice law”); *Janiczek*, 134 Ill.App.3d at 543, 544, 545, 546 (“one not licensed to practice law,” “disbarred” attorney, “nonattorney agents,” “nonattorney,” “lay agent”); *Pratt-Holdampf v. Trinity Med. Ctr.*, 338 Ill.App.3d 1079, 1083 (3rd Dist. 2003) (“a person not licensed to practice in Illinois”); *Berg v. Mid-America Industrial, Inc.*, 293 Ill.App.3d 731 at 731, 737 (1st Dist. 1997) (“a layperson,” “lay agent”); *Chicago v. Witvoet*, 12 Ill.App.3d 654, 655 (1st Dist. 1973) (“a layman”); *People v. Dunson*, 316 Ill.App.3d 760 at 762, 764, 765 (2nd Dist. 2000) (“one not licensed to practice law,” “nonattorney agents,” a “layperson”); *Blue v. People*, 223 Ill.App.3d 594, 596 (2nd Dist. 1992) (“one not licensed to practice law,” “lay people”) *McEvers v. Stout*, 218 Ill.App.3d 469, 471, (4th Dist. 1991) (foreign attorney, “a person not licensed to practice,” “nonlawyers”). Nor has plaintiff been able to locate any in his research.

Furthermore, *Sperry* was not the first case in Illinois to find the nullity rule inapplicable when its underlying purpose was not served. While the defendants read these cases as creating only a narrow “innocent litigant” exception to an otherwise inflexible nullity rule, each of these cases grounded their opinions, like *Sperry*, in a finding that the purpose of the nullity rule would not be served. *See, e.g. Janiczek*, 134 Ill.App.3d at 546; *Pratt-Holdampf*, 338 Ill.App.3d at 1085; *McEvers* 218 Ill.App.3d at 471. Not one of them stands for the proposition, pressed by defendants here, that a harsh sanction should be imposed where the purpose of the rule would not be served.

Defendants have yet to suggest any way in which this case creates “risks to individual clients and to the integrity of the legal system inherent in representation by an unlicensed person...” *Sperry*, 214 Ill.2d at 389-39. Instead, defendants rely entirely on their unsupported and unreasoned assertion that the plaintiff, and other attorneys in good standing found fit to practice by this Court, are viewed in the law as the equivalent of laypersons, imposters and the disbarred.

D. Plaintiff Is The Real Party In Interest In This Matter, And, As An Equitable Matter, Was Only Representing Himself

The irony of this case is that on the one hand, defendants invoke the nullity rule claiming there is a client separate and apart from the plaintiff, in the form of his father’s estate. Yet, in the same breath, they urge that the nullity rule should be used to sanction the plaintiff, because there is no separately cognizable client who may be harmed by dismissal. Given that plaintiff is his decedent’s sole heir and next of kin and there were no creditors (R. 160), any amount recovered in this action is for his “exclusive benefit” although it must be brought by the personal representative of the decedent, in this case, also the plaintiff. § 740 ILCS 180/2. *See McDavid v. Fiscar*, 342 Ill.App. 673, 678 (3rd Dist. 1951) (“In an action under the Wrongful Death Act ... the real party in interest is the next of kin as beneficiary.”)

Plaintiff does not quibble with the rule that estates must be represented by an attorney. *Ratcliffe v. Apantaku*, 318 Ill.App.3d 621, 627 (1st Dist. 2000) (plaintiff “cannot represent the legal interests of Decedent's estate in a *pro se* capacity because she is not an attorney licensed to practice law.”) Rather, plaintiff submits that the general purpose (though possibly not the letter) of the rule for inactive attorneys was not violated. That is,

plaintiff at no time offered legal services to the public or “practiced law” on behalf of any real party in interest other than himself. R. 175.

It is respectfully submitted that under these circumstances, the purpose of the nullity rule itself is also not served as there was no party in interest to protect from plaintiff’s actions.

III. THE CASE RELIED ON BY THE APPELLATE COURT IS INAPPOSITE

The Appellate Court relies on *Fruin v. Northwestern Medical Faculty Foundation, Inc.*, 194 Ill.App.3d 1061 (1990) (A. 10/Slip Op. at 10). *Fruin* involved a case filed by a Wisconsin attorney. This Court does not control or oversee foreign attorneys and only allows them to practice before our courts if they have fulfilled certain requirements as to competence, experience, licensure, education, character and fitness. *See* Ill. Sup. Ct., Rs 701, 703, 705, 706 and 708 (2007). Moreover, unlike the attorney in *Fruin*, this Court retains its disciplinary power over Illinois attorneys, such as plaintiff.

Thus, though perhaps to a lesser degree, the inherent risks posed by an “unlicensed person,” existed in *Fruin*, the foreign attorney, unlike plaintiff, had not yet proven his fitness and qualification to this Court. Unlike the matter of the fee amount paid by a licensed attorney which is not related to public safety or the integrity of the legal system, these matters of quality, fitness and discipline go to the heart of protecting the public and the court. *Ford Motor Credit Co. v. Sperry*, 214 Ill.2d 371, 383 (2005). (“regulatory rules which govern the admission of lawyers to our state bar, regulate the practice of law and the conduct of lawyers, and prescribe discipline for lawyer misconduct are intended to safeguard the public and assure the integrity of our legal system.”)

Fruin is inapposite to the instant matter.

IV. APPLYING THE NULLITY RULE TO A LICENSED ILLINOIS ATTORNEY HAS FAR-REACHING POLICY IMPLICATIONS

A. The First District's Decision Infringes On This Court's Exclusive And Plenary Jurisdiction Over Attorney Regulation

The nullity rule reaches persons this Court's disciplinary rules and supervision cannot: unlicensed persons. The rule was never designed or intended as a sanction for attorneys admitted to practice by this Court. The sanction for violation of this Court's rules by an attorney is left to the sound discretion of this Court and any court whose dignity is affronted by the violation. Unless also part of a cause of action or causing prejudice, a party has no claim based solely on an attorney's violation. *See Lustig v. Horn*, 315 Ill. App. 3d 319, 325-28 (2000) (denial of attorney fees, imposed solely as a sanction for unprofessional conduct would constitute impermissible infringement on the exclusive power of the Supreme Court, acting through the ARDC, to adjudicate disciplinary matters.)

The automatic imposition of the nullity rule on an attorney listed on the Master Roll removes all discretion from this Court and the trial court to tailor an appropriate sanction for a violation of the Rules. As *Sperry* points out, this Court has "created a comprehensive scheme to regulate attorneys and discipline them for misconduct.... [and] has promulgated detailed rules which prescribe the appropriate discipline when the Rules of Professional Conduct are violated..." *Ford Motor Credit Co. v. Sperry*, 214 Ill.2d 371, 383 (2005). The nullity rule is outside this comprehensive scheme, and the last resort of declaring a proceeding void is unnecessary in the presence of the Court's supervision and disciplinary powers.

B. The First District’s Opinion Renders Illinois Judgments Subject To Collateral Attack.

This Court’s admonition that voiding a proceeding *ab initio* should only be done “when no other alternative is possible” is not an idle consideration. *Ford Motor Credit Co. v. Sperry*, 214 Ill.2d 371, 380 (2005). Announcement by this Court that the failure of a qualified, licensed attorney to pay an appropriate fee results in the applicability of the nullity rule might give new hope to disappointed litigants.⁴ Where criminal defendants and habeas plaintiffs were prevented from obtaining a “get out of jail free” card by our Supreme Court’s holding in *People v. Brigham*, 151 Ill.2d 58 (1992) for attorney lapses not related to their representation or the administration of justice, losing civil defendants would be under no such disability. Since a void judgment may be attacked at any time, cases years or even decades old could be reopened. Indeed, the ARDC may be inundated with requests for fee payment records in the hopes of challenging long-closed large verdicts or successful appeals.

This Court’s holding in *Sperry* that the nullity rule should be not be invoked when the “goals of protecting the public and ensuring the integrity of the court system which

⁴ The Court might take judicial notice that at least one high profile attorney (and Supreme Court nominee) and high stakes litigator, Harriet Meirs, was suspended from the bar for failure to pay her bar fees. *See, e.g., “Senators Assail Miers's Replies, Ask for Details”* *The Washington Post*, October 20, 2005; Page A01 available at <http://www.washingtonpost.com/wp-dyn/content/article/2005/10/19/AR2005101902402.html>.

underpin the invocation of the nullity rule were not implicated by the facts” is well-taken in this case. *Sperry*, 214 Ill.2d at 391.

CONCLUSION

Because the risks contemplated by the nullity rule are not present, its purpose cannot be served and a licensed attorney has been present from the initiation of this matter, plaintiff respectfully requests that the Court find the nullity rule to be inapplicable to this case and answer the certified question in the negative.

Respectfully Submitted,

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RULE 341 (c) CERTIFICATION

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the appendix is 23 pages.

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