

2012 IL App (2d) 110918-U
No. 2-11-0918
Order filed January 24, 2013

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

BVM OLENTI, INC. and GFX)	Appeal from the Circuit Court
DYNAMICS, LLC,)	of Lake County.
)	
Plaintiff-Appellants,)	
)	No. 11 L 261
v.)	
)	
CHARLES HUTTINGER, UVE R. JERZY,)	Honorable
individually, THE LAW OFFICES OF UVE)	Jorge L. Ortiz
R. JERZY, P.C., GARY JOHNSON,)	Judge, Presiding
JOHNSON, GOLDBERG & BROWN, LTD.,)	
)	
Defendants-Appellees.)	

JUSTICE BIRKETT delivered the judgment of the court.
Justice Zenoff concurred in the judgment.
Justice McLaren dissented.

ORDER

Held: Trial court properly granted appellees' motions to dismiss complaint on nullity grounds based upon the following circumstances: (1) a licensed Illinois attorney filed complaint which was prepared and signed by an out-of-state attorney, and out-of-state attorney incorrectly asserted in the complaint that he had been admitted to practice *pro hac vice* in this case; (2) out-of-state attorney continued to allege that he was admitted *pro hac vice* in an unsuccessful attempt to file an amended complaint, after being informed by opposing counsel that he had not been so admitted; (3) out-

of-state attorney had been admitted to practice *pro hac vice* in other Illinois cases, and was therefore familiar with Illinois state and local rules regarding admission to practice *pro hac vice*; and (4) litigants could not claim ignorance that attorney was not licensed in Illinois when same attorney had represented them *pro hac vice* in other Illinois cases. Trial court also properly denied out-of-state attorney's request for a subsequently granted motion to appear *pro hac vice* to apply *nunc pro tunc* to the time the original complaint was filed when no clerical error occurred and therefore the *nunc pro tunc* rule did not apply.

¶ 1 The appellants, BVM Olenti, Inc. (“BVM”), and GFX Dynamics, LLC (“Dynamics”) appeal from an order of the trial court dismissing their complaint against the appellees, Charles Huttinger (“Huttinger”), Uve R. Jerzy, individually, and the Law Offices of Uve R. Jerzy, P.C. (collectively, “the lawyers”), Gary Johnson, and Johnson Goldberg & Brown, LTD. (collectively, “the accountants”). The complaint was dismissed based upon the nullity rule because it was not signed by an attorney licensed in Illinois and, therefore, a valid complaint was not filed within a year from a previous voluntary dismissal by BVM and Dynamics. See 735 ILCS 5/13—217 (West 2010). The trial court also held that the claims against the accountants were time-barred under the two-year statute of limitations that applied to accountants. 735 ILCS 5/13—214.2 (West 2010).

¶ 2 I. BACKGROUND

¶ 3 This case involves a commercial dispute among GFX, International, Inc. (“GFX”), BVM and Dynamics over the dissolution of Dynamics, a company co-owned by GFX and BVM. Huttinger is the principal of GFX, an Illinois corporation that produced point of purchase advertising display materials¹. The appellee-accountants are the accountants for GFX, who through GFX did accounting work for Dynamics. The appellee-attorneys are GFX's attorneys, and after forming Dynamics, they did legal work for Dynamics at GFX's request.

¹Huttinger did not file a brief on appeal.

¶ 4 On April 9, 2007, GFX sued BVM and Dynamics to dissolve Dynamics (“the 2007 case”). In response, BVM and Dynamics filed a counterclaim against GFX. BVM also filed a third-party complaint against Huttinger and the attorneys. Some of the many legal theories advanced in the third-party complaint were fraud, conspiracy, breach of fiduciary duty, intentional interference with contractual relations, unfair competition, breach of contract, quantum meruit, unjust enrichment, and misappropriation. BVM and Dynamics also sought an accounting of the revenue and expenses of Dynamics.

¶ 5 On November 6, 2009, BVM filed a second amended counterclaim and named the accountants as defendants for the first time. Although filed in November 2009, the document was entitled, in part, “Second Amended Third Party Complaint Dated August 13, 2009 of BVM Olenti and GFX Dynamics LLC Against Charles Huttinger, Uve R. Jerzy, P.C. and Uve R. Jerzy, Individually, Gary Johnson, and Johnson, Goldberg & Brown Ltd.” The accountants were named along with all the other defendants in a conspiracy count. With regard to the accountants, BVM and Dynamics alleged that GFX and Huttinger devised a common plan to cause the failure and demise of Dynamics and divert business and profits from Dynamics to GFX, and they enlisted the accountants to help them. BVM and Dynamics also alleged that the accountants advised GFX and Huttinger as to accounting tactics to prevent the disclosure of material facts to BVM and Dynamics which might have alerted them to the fraudulent scheme and otherwise assisted GFX and Huttinger in the furtherance of the plan. On March 25, 2010, BVM and Dynamics voluntarily dismissed the third party complaint against Huttinger, the attorneys and the accountants.

¶ 6

II. FACTS

¶ 7 On March 22, 2011, three days before the one year anniversary of the voluntary dismissal in the 2007 case, BVM and Dynamics filed a complaint against Huttinger, the attorneys and the accountants. The complaint was entitled, “Complaint Filed as of Right Following Voluntary Dismissal of Amended Third Party Complaint Dated March 3, 2010 of BVM Oleni and GFX Dynamics, LLC Against Charles Huttinger, Uve R. Jerzy, P.C., and Uve R. Jerzy, Individually, Gary Johnson, Individually and Johnson, Goldberg & Brown Ltd.” In its initial unnumbered paragraph, BVM and Dynamics alleged that they “hereby incorporate by reference all allegations set forth in the prior pleading now being re-filed as a complaint in this new action.” The complaint was signed by Frank Frisoli, a Massachusetts attorney not licensed in Illinois. Following Frisoli’s signature was the statement, “Admitted *Pro Hac Vice*.” An Illinois attorney, Charles Smith, did not sign the complaint. Instead, he signed a certificate of attorney, a Supreme Court Rule 222(b) affidavit (Ill. S. Ct. R. 222(6) (eff. Jan. 1, 2006)), a jury demand, and a “supplemental appearance” listing both his and Frisoli’s addresses.

¶ 8 On April 7, 2011, Peter Sullivan, the accountants’ attorney, e-mailed Frisoli, and told Frisoli that although Frisoli had stated in the complaint that he had been admitted *pro hac vice*, Sullivan was unaware of any such order. Sullivan asked that if there were such an order for Frisoli to provide one. Sullivan also told Frisoli that the fact that he may have been admitted *pro hac vice* in a prior suit was not sufficient. Finally, Sullivan advised Frisoli that it was his position that the complaint, which was not signed by Smith or any other licensed Illinois attorney, was a nullity.

¶ 9 On April 12, 2011, Frisoli and Smith filed a document entitled, “Amended Complaint Filed As of Right Because No Responsive Pleadings Have Been Filed.” In that document, Frisoli again

signed his name above a line that read, “Admitted *Pro Hac Vice*.” That same day, a motion for leave to admit Frisoli *pro hac vice* was filed. In that motion, Frisoli requested that the admission be allowed “*nunc pro tunc*” to March 22, 2011. Frisoli alleged that the granting of the motion would allow him to “continue to represent the plaintiffs in matters before this court which he had been representing these plaintiffs pursuant to admission *pro hac vice* by this court in the prior action.” Frisoli also asserted that he would comply with all local rules of court. However, the motion contained no sworn signature by Frisoli. When Huttinger later filed an objection to the motion to admit Frisoli *pro hac vice*, he alleged that Frisoli failed to comply with Local Rule 21.05 in his motion. See 19th Judicial Cir. Ct. R. 21.05 (Dec. 1, 2006). Frisoli filed a response in which he asserted that the information he previously submitted in his motion “substantially complies with the requirements of Local Rule 21.05.” Nonetheless, Frisoli finally filed an application for admission in conformity with the requirements of Local Rule 21.05 on June 22, 2011. In that application, Frisoli stated that has been granted admission *pro hac vice* in this state on two prior occasions. The first case was a 2005 Cook County lawsuit where he also represented BVM, and the second one was the 2007 case where he represented BVM and Dynamics.

¶ 10 On May 4, 2011, the lawyers filed a response to the complaint pursuant to a special and limited appearance, along with a motion to strike the March 22, 2011 complaint based on the ground that a complaint on behalf of corporate entities that is not signed by an attorney authorized to practice law in Illinois is a nullity, and without a valid complaint the summons should be quashed. Specifically, they alleged that Frank Frisoli was not licensed to practice in the State of Illinois and he was not a party to the litigation. In the motion, the lawyers noted that Frisoli’s sister was Angela Tomlinson, a BVM shareholder. The other defendants also filed motions attacking the March 22,

2011 complaint on the ground of nullity. In addition, the accountants' motion to dismiss alleged that the March 22, 2011 complaint should be dismissed against the accountants because it: (1) failed to state a claim for civil conspiracy; and (2) was barred by the two-year statute of limitations for claims against accountants. See 735 ILCS 5/13—214.2(a) (West 2010).

¶ 11 On July 15, 2011, in response to a demand for a bill of particulars filed by Huttinger, BVM and Dynamics filed objections which were signed by both Smith and Frisoli. At the bottom of the document listing their objections, Smith made the following statement:

“This opposition was prepared by Frank J. Frisoli, Esq, in compliance with the Rules of Court. Local counsel Charles Smith has a very limited personal knowledge of the facts discussed and assertions made herein as Attorney Frisoli has been lead counsel for the four years that the 2007 action has been pending. The role of Attorney Smith in the 2007 action has been limited to assisting Attorney Frisoli in procedural matters and scheduling. Attorney Smith is signing this pleading based on his belief that Attorney Frisoli has accurately stated the facts to this court and properly advanced the position of the Plaintiff with respect to the matters herein addressed.”

¶ 12 All matters were fully briefed, and on August 18, 2011, the trial court ruled on Frisoli's motion to be admitted *pro hac vice, nunc pro tunc* to March 22, 2011. In granting the motion but denying Frisoli's request that it be *nunc pro tunc* to March 22, 2011, the court held:

“With respect to your request to be admitted *pro hac vice nunc pro tunc* to March 22, the court notes that previously, Mr. Frisoli, you had been admitted *pro hac vice*. You are well aware of the law in the State of Illinois regarding admission *pro hac vice*. You're well aware of Lake County Local Court Rule 21.05 which requires leave of court in filing an

affidavit in support of the motion. And, frankly, there's no excuse for your having failed to comply with the law of this State, as well as the local court rules. Again, you're well aware of the procedures.

Furthermore, it would be improper in the court's view to grant your motion *nunc pro tunc* because that would be an inappropriate application of the *nunc pro tunc* doctrine, if you will. There is no clerical error or scribe's error or omission here. This was simply a failure to abide by Illinois law and the local court rule.

And, again, there's no real justification or excuse for it and to rule otherwise would be inappropriate in the court's view. And, therefore, I'm going to grant your motion to appear *pro hac vice* today, but I'm denying your request that this be *nunc pro tunc* to March 22."

No motion was ever filed seeking leave to file an amended complaint, and no argument was presented to the trial court that the pleading entitled "Amended Complaint Filed as of Right Because No Responsive Pleadings Have Been Filed," which Frisoli and Smith filed without leave of court on April 12, 2011, should be permitted to be filed as an amended complaint.

¶ 13 With regard to whether to apply the nullity rule in this case the trial court ruled as follows:

"Well, the court is aware that this [sic] a matter within the discretion of the court. And the court is also very much aware that application of the nullity rule may sometimes result in very harsh consequences.

It is well established that the purpose of the nullity rule is to protect the public and the integrity of the court system from harm presented by representation by unlicensed individuals. And here it's well established that Mr. Frisoli is familiar with the laws of the

State of Illinois governing *pro hac vice* admission. He's well aware of Local Court Rule 21.05 with respect to *pro hac vice* admission in this county.

Really, what is the purpose of all of this? What's the purpose of Local Court Rule 21.05 and the requirements of the State of Illinois with respect to *pro hac vice*? The purpose is to allow the court to consider the qualifications and the character and the fitness of an attorney seeking *pro hac vice* admission. And this is a very important policy factor.

While there's no question that Mr. Frisoli has the requisite qualifications to practice law and the court is admitting him *pro hac vice*, the court finds that his failure to comply with the laws of this State, as well as Local Court Rule 21.05, militate in favor of finding or invoking the nullity rule in this case.

Again, these rules are in place for a purpose, to protect the public and to protect the integrity of the court system. And here the court finds that the integrity of the court system and the integrity of the local court rules, as well as the laws of the State of Illinois, would be compromised if under these circumstances the nullity rule was not invoked. That's because Mr. Frisoli is well aware of these rules and laws. He had done this before. He misrepresented in this amended complaint, the April 12th complaint, that he had been admitted *pro hac vice*. The court — this court, this judge had not had an opportunity to pass upon his credentials. And so to excuse this with a slap on the wrist would undermine the integrity of the court system and of our local court rules and the laws of this state.

One could imagine that under numerous scenarios that if counsel from other states were permitted to file complaints without being admitted *pro hac vice* and then subsequently

sought the court’s imprimatur, that this would certainly undermine the integrity of the court system.

Mr. Frisoli, you are not a novice. You know the rules. You practiced in this county for the last at least four years. You also were involved in a 2005 case in Cook County I believe. So you’re well aware of the policies and the rules and the laws of this state covering *pro hac vice* admission.

Again, this is within the court’s discretion and the court is aware that there may be some harsh consequences here. I’m not unmindful of that, but I believe that the integrity of the court system is paramount here.”

¶ 14 The court then noted that it had reviewed the cases cited by the parties, including *Fruin v. Northwestern Medical Facility Foundation, Inc.*, 194 Ill. App. 3d 1061 (1990) and found them to be “interesting and instructive.” The court then specifically discussed the facts in *Applebaum v. Rush University Center*, 231 Ill. 2d 429 (2008) and found that our supreme court’s ruling in that case was based on the specific facts before it. Finally, the trial court held that the motions filed by the lawyers and the accountants, as well as the lawyers’ motion to quash, were granted, and the case was dismissed as to all defendants. It also granted the accountants’ motion to dismiss the complaint on the ground that it violated the statute of limitations with regard to accountants. See 735 ILCS 5/13—214.2(a) (West 2010).

¶ 15

III. ANALYSIS

¶ 16

A. Dismissal As To All Defendants On Nullity Grounds

¶ 17 On appeal, BVM and Dynamics first argue that the trial court erred in dismissing the complaint on nullity grounds since such a result is too harsh for the following reasons: (1) they were

represented by both in-state and out-of-state counsel from the outset of the action; (2) they took immediate steps to rectify the situation once defendants raised concerns about the fact that the complaint was not signed by in-state counsel; and (3) the result will mean that the complaint is untimely. They also claim that the trial court abused its discretion in invoking the automatic dismissal rule.

¶ 18 In response, both the lawyers and the accountants argue that the trial court did not automatically apply the nullity rule, but instead carefully considered the purpose of the rule and properly applied it after finding that such a ruling was warranted under the facts of this case. In addition, the accountants also argue that BVM and Dynamics have forfeited many of the arguments that they raise in support of their contention that the trial court erred in dismissing the complaint on nullity grounds because they failed to cite to any relevant authority as support for their claims.

¶ 19 Here, the accountants filed motions to dismiss pursuant to section 2-615 and 2-619 of the Code of Civil Procedure (Code). 735 ILCS 5/2-6 15, 619 (West 2010). The lawyers filed a motion to strike the complaint and quash the summons. Although the lawyers did not cite any specific section of the Code in their motion, we can assume that it was made pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2010)). See *Department of Healthcare and Family Services ex rel. Daniels v. Beamon*, 2012 IL App (1st) 110541, ¶ 15 (a section 2-615 motion to strike challenges the legal sufficiency of a pleading by alleging defects on the face of the pleading). In its order, the trial court did not state under which section of the Code it was granting the motions. However, either type of motion is generally reviewed *de novo*. *Nepple v. Murphy*, 316 Ill. App. 3d 581, 584 (2000). This is because such motions typically do not require the trial court to determine credibility or weigh the facts present in the case. *Hapag-Lloyd (America), Inc., v. Home Insurance Company*, 312 Ill.

App. 3d 1087, 1090 (2000). Nevertheless, when a motion in fact urges the trial court to weigh several factors in order to determine whether it is appropriate to proceed, the trial court's order granting such a motion will be reviewed under an abuse of discretion standard. *Id.* at 1091. Here, since the trial court was required to weigh several factors to determine whether the complaint should be considered a nullity, we will review the granting of the accountants' and lawyers' motions under an abuse of discretion standard.

¶ 20 The nullity rule is based upon the fact that there are risks to individual clients and to the integrity of the legal system inherent in representation by an unlicensed person. *Applebaum v. Rush University Medical Center*, 231 Ill. 2d 429, 435 (2008). The purpose of the nullity rule 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 requisite skills.” *Id.* (quoting *Ford Motor Credit Company v. Sperry*, 214 Ill. 2d 371, 389-90 (2005)). Accordingly, our supreme court has held that, “where a person who is not licensed to practice law *in Illinois* attempts to represent another party in legal proceedings, this rule permits dismissal of the cause, thereby treating the particular actions taken by that person as a nullity.” (Emphasis added) *Id.*

¶ 21 Although the nullity rule is well-established in our courts, because the results of its application are harsh it should be invoked only where it fulfills its purposes of protecting both the public and the integrity of the court system from the actions of the unlicensed, and where no other alternative penalty is possible. *Id.*

¶ 22 Here, BVM and Dynamics first argue that the complaint should not have been dismissed on nullity grounds because they retained both in-state and out-of-state counsel who both filed appearances at the time the complaint was filed, in-state counsel physically filed the complaint and

he filed additional documents with the complaint which were executed by in-state counsel. They allege that “at no time were the plaintiffs solely represented by out-of-state counsel” and “the fact that the complaint was signed by an out-of-state counsel, who prepared the complaint, was a complete oversight.” Therefore, they argue, to enforce the nullity rule is a harsh penalty for a mere oversight.

¶ 23 We initially note that BVM and Dynamics have not forfeited this claim simply because they did not cite authority to support their contention that the trial court erred in dismissing the complaint on nullity grounds based on the specific facts of this case. Our review of their briefs indicate that BVM and Dynamics have cited sufficient case law with regard to the nullity doctrine for this court to review their claims on appeal. Therefore, pursuant to Illinois Supreme Court Rule 341(h)(7) (eff. July 1, 2008), BVM and Dynamics have presented sufficient argument on this point.

¶ 24 Before we review BVM and Dynamics’ arguments that the trial court erred in applying the nullity rule here we must first address whether the nullity rule should have been triggered in the first place. Specifically, our supreme court held in *Applebaum* that “where a person who is not licensed to practice law in Illinois *attempts to represent another party in legal proceedings*, this rule permits dismissal of the cause, thereby treating the particular actions taken by that person as a nullity.” (Emphasis added.) *Applebaum*, 231 Ill. 2d at 435.

¶ 25 Here, Frisoli, an attorney not licensed in Illinois, prepared and signed the complaint, which an Illinois attorney filed. Our supreme court has defined the practice of law as “the giving or rendition of any sort of service *** when the giving of such advice or rendition of such service requires the use of any degree of legal knowledge or skill.” *People ex rel. Chicago Bar Association v. Barasch*, 406 Ill. 253, 256 (1950). The court has specifically stated that the practice of law

“embraces the preparation of pleadings and other papers incident to actions and special proceedings.”

People ex rel. Courtney v. Association of Real Estate Taxpayers of Illinois, 354 Ill. 102, 110 (1933).

The signing of a complaint by a person unlicensed to practice law in Illinois constitutes the unauthorized practice of law. See *Marken Real Estate and Management Corp. v. Adams*, 56 Ill. App. 3d 426, 429 (1977) (signing of complaint by non-attorney constituted the unauthorized practice of law). Under *Applebaum*, then, the nullity rule was triggered when Frisoli signed the complaint without previously moving to be admitted *pro hac vice* in this case and having that request granted..

¶ 26 The dissent claims that the rule against the unauthorized practice of law was not violated because Smith, an attorney licensed in Illinois, filed the complaint. However, Smith’s action of filing the complaint is irrelevant to the issue at hand – that is, whether Frisoli engaged in the unauthorized practice of law when he signed the complaint without requesting and being granted *pro hac vice* status before the complaint was filed. Although the dissent claims that “the nullity rule has essentially been formulated to require that a licensed Illinois attorney *initiate* the litigation” it cites no authority for its proposition that if an Illinois attorney “initiates litigation” by the simple act of filing a pleading then the fact that the pleading is not prepared or signed by an Illinois attorney the nullity rule does not apply. Further, such a rule would be in contravention to the supreme court’s rule in *Applebaum* that when a person who is not licensed to practice law in Illinois attempts to represent a party in legal proceedings the nullity rule may be applied. See *Applebaum*, 231 Ill. 2d at 435.

¶ 27 The dissent claims that “the analysis of the actions of Mr. Frisoli, for purposes of applying the nullity rule, is a red herring.” On the contrary, however, the role of Smith, as a licensed Illinois attorney who simply filed but did not prepare or sign the complaint, is the red herring in this case.

It is undisputed that Smith did not sign the complaint in this action. Further, Smith's failure to do so was not a mere oversight. The record is quite clear here that Smith's involvement in this case was extremely limited. Specifically, Smith stated in an objection to Huttinger's bill of particulars that he had "very limited personal knowledge of the facts discussed and assertions made" by Frisoli in this case, and that his role was limited to assisting Frisoli "in procedural matters and scheduling." The dissent states that the majority "fails to explain what skills Mr. Smith is lacking." Again, the focus here is not on Smith's skills as an attorney; obviously, if Smith had signed the complaint in this case the defendants would not have moved to strike the complaint on nullity grounds and this issue would not be before this court. Unfortunately, however, not only did Smith *not* sign the complaint, he admitted to the court in a written objection more than three months after the complaint had been filed that he had no knowledge of the substantive legal issues raised in the complaint. Therefore, Smith *could not have signed the complaint* without being in violation of Illinois Supreme Court Rule 137. See Ill. S. Ct. R. 137 (eff. Feb. 1, 1994) (the signature of an attorney constitutes a certificate by him that he has read the pleading and that to the best of his knowledge and belief formed after reasonable inquiry that 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 is not interposed for any improper purpose). Although the fact that an Illinois attorney *filed* the complaint may be a factor to consider when determining whether the trial court abused its discretion in *applying* the nullity rule, it is irrelevant when determining whether the nullity rule should have been triggered in the first place.

¶ 28 The dissent also complains that the fact that Frisoli signed the complaint is not, *ipso facto*, sufficient to declare the signature a nullity "without some showing that he did not have the authority

to sign the document.” First, it is undisputed by the parties that Frisoli did not have authority to sign the complaint here because he did so without requesting and receiving permission from the trial court to proceed *pro hac vice* in this case. Second, we are not holding today that if an out-of-state attorney signs a complaint that fact, standing alone, is sufficient to declare the signature a nullity.² Instead, we are holding that, pursuant to *Applebaum*, these facts are sufficient to *permit* the application of the nullity rule. See *Applebaum*, 231 Ill. 2d at 435. Accordingly, we now turn to the issue of whether the trial court abused its discretion in finding that, under the specific facts of this case, the nullity rule was properly applied.

¶ 29 We are not persuaded by BVM and Dynamics’ arguments that the nullity rule should not have been applied because at all times they were represented by both in-state and out-of-state counsel. Again, our review of the record indicates that on July 15, 2011, in response to a demand for a bill of particulars filed by Huttinger, BVM and Dynamics filed objections which both Smith and Frisoli signed. At the bottom of the document listing their objections, Smith made the following statement:

“This opposition was prepared by Frank J. Frisoli, Esq, in compliance with the Rules of Court. Local counsel Charles Smith has a very limited personal knowledge of the facts discussed and assertions made herein as Attorney Frisoli has been lead counsel for the four years that the 2007 action has been pending. The role of Attorney Smith in the 2007 action has been limited to assisting Attorney Frisoli in procedural matters and scheduling. Attorney

² We will assume, for purposes of argument, that the dissent means that such a circumstance would make the *complaint* a nullity, not merely the signature.

Smith is signing this pleading based on his belief that Attorney Frisoli has accurately stated the facts to this court and properly advanced the position of the Plaintiff with respect to the matters herein addressed.”

¶ 30 Illinois Supreme Court Rule 137 provides, in pertinent part:

¶ 31 “Every pleading, motion and other papers 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. *** The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact ***. 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.” Ill. S. Ct. R. 137 (eff. Feb. 1. 1994).

¶ 32 In *Bachmann v. Kent*, 293 Ill. App. 3d 1078 (1998), the appellate court upheld the trial court’s order striking the defendant’s rejection of an arbitration award and entering judgment on that award because it was not signed by an attorney. *Id.* at 1088. In so doing, the *Bachman* court cited to *Pavelic & LeFlore v. Marvel Entertainment Group*, 493 U.S. 120 (1989), which dealt with Federal Rule of Civil Procedure 11 (Fed. R. Civ. P. 11):

¶ 33 “The signing attorney cannot leave it to some trusted subordinate, or to one of his partners, to satisfy himself that the filed paper is factually and legally responsible; by signing he represents not merely the fact that it is so; but also the fact that he personally has applied his own judgment.” *Bachman*, 293 Ill. App. 3d at 1086 (quoting *Pavelic & LeFlore*, 493 U.S. at 125).

¶ 34 Here, Smith's written response to Huttinger's bill of particulars makes it very clear that BVM and Dynamics were *not* represented by in-state and out-of-state counsel at all times. Nevertheless, the dissent would allow the complaint to go forward despite a clear violation of Rule 137 (Ill. S. C. R. 137 (eff. Feb. 1, 1994) had the amended complaint, filed by both Smith and Frisoli, actually been properly filed (which it was not because neither Smith nor Frisoli ever requested leave of court to file it). The dissent says that we have ignored the fact that Smith, a properly licensed Illinois attorney, filed the complaint. Again, it is the *preparation and signing of the complaint*, and not its filing, that is at issue here. Smith was in no position to satisfy the requirements of Supreme Court Rule 137 because he was not an active participant in the preparation of the complaint. See Ill. S. C. R. 137 (eff. Feb. 1, 1994).

¶ 35 Finally, even if we were to find that the litigants' rights here were always protected, and we do not, that theory completely ignores the second reason why the nullity rule exists, that is, "to protect the court itself in the administration of its proceedings from those lacking requisite skills." *Applebaum*, 231 Ill. 2d at 435 (quoting *Ford Motor Credit Company v. Sperry*, 214 Ill. 2d 371, 389-90 (2005)). Here, as the trial court noted, it was not given the opportunity to review Frisoli's qualifications in order to determine whether it would admit him *pro hac vice* in these proceedings before he filed the complaint in this action.

¶ 36 We are likewise not convinced that the signing of the complaint by Frisoli "was a complete oversight." If that were the case, how can Frisoli possibly explain the fact that he *again* signed his name along with "admitted *pro hac vice*" on the amended complaint? We are in agreement with the trial court that the act of signing his name along with "admitted *pro hac vice*" on April 12, 2011, was an intentional misrepresentation on Frisoli's part.

¶ 37 Next, BVM and Dynamics argue that the complaint should not have been stricken because when they were advised by the accountants that they considered the complaint to be a nullity they took immediate actions to rectify the situation by: (1) filing an amended complaint signed by in-state counsel on April 12, 2011; and (2) the amended complaint was filed before any responsive pleadings were filed by any of the defendants. In addition, they argue, Frisoli also filed a motion for admission *pro hac vice* on that same day. BVM and Dynamics claim that the filing of the amended complaint should relate back to the filing of the original complaint. As support for this contention, they cite to *Borchers v. Franciscan Tertiary of the Sacred Heart, Inc.*, 2011 IL App (2d) 101257. Finally, they claim that although the trial court granted Frisoli's motion to be admitted *pro hac vice*, it erred by refusing to grant the motion *nunc pro tunc*.

¶ 38 Section 2—616(a) of the Code of Civil Procedure applies to amendments to pleadings. 735 ILCS 5/2—616(a) (West 2010). In order to file an amended complaint under that section, the plaintiff must seek and obtain the court's permission. *Moyer v. Southern Illinois Hospital Service Corporation*, 327 Ill. App. 3d 889, 895 (2002). A trial court has discretion to grant leave to amend. *Clemons v. Mechanical Devices Company*, 202 Ill. 2d 344, 351 (2002). Without having obtained leave of court, an amended complaint is a nullity which should be stricken. *Moyer* at 895.

¶ 39 Here, BVM and Dynamics' arguments fail. First, the *Borchers* case does not support their proposition that "the filing of the amended complaint executed by both in-state and out-of-state counsel should have related back to the filing of the original complaint" because that case did not deal with that particular issue. Instead, *Borchers* addressed the issue of adding new parties to a lawsuit through an amended pleading. See *Borchers v. Franciscan Tertiary of the Sacred Heart, Inc.*, 2011 IL App (2d) 101257. Moreover, since BVM and Dynamics never requested leave of court

to file an amended complaint, that document is considered a nullity. *Moyer* at 895. The fact that on appeal BVM and Dynamics' counsel is supporting their relation back argument by noting that they filed the amended complaint before any of the defendants filed a responsive pleading, along with the title of the amended complaint which indicates that they were entitled to file it "as of right" for the same reason, is indicative of their counsel's lack of understanding of Illinois law, since, in this state, no such rule exists.³ Therefore, we need not reach the issue of relation back. Also, as we have previously noted, even if BVM and Dynamics properly moved to amend the complaint, such a request was granted, *and* the amended complaint related back to the date the original complaint was filed, Smith's signature on amended complaint would have constituted a violation of Supreme Court Rule 137 based on his written admissions contained in the objections to Huttinger's bill of particulars. See Ill. S. Ct. R. 137 (eff. February 1, 1994).

¶ 40 With regard to their argument that the trial court erred in refusing to grant Frisoli's motion for admission *pro hac vice nunc pro tunc* to March 22, 2011, BVM and Dynamics argue that the trial court should have granted the motion *nunc pro tunc* because it was simply a clerical error that Smith, the in-state attorney, did not execute the complaint. In the alternative, they argue that the *nunc pro tunc* request was not even necessary where the complaint nor the amended complaint was a nullity.

¶ 41 The use of *nunc pro tunc* orders is limited to incorporating into the record something which was actually previously done by the court but inadvertently omitted by clerical error. *People v.*

³Frisoli, BVM and Dynamics' out-of-state attorney, is also representing them in this appeal.

Melchor, 226 Ill. 2d 24, 32-33 (2007). A *nunc pro tunc* order reflects the reality of what actually occurred. *Jayko v. Fraczek*, 2012 IL App (1st) 103665, ¶29.

¶ 42 This argument too must fail. Here, the focus is not on whether *a party* made a clerical error in failing to have an in-state attorney sign the complaint before it was filed. Instead, a *nunc pro tunc* order can only be granted to correct *the court's clerical error* to reflect what actually occurred in the trial court but simply was not made part of the record correctly. *Id.* We agree with the trial court that the *nunc pro tunc* motion could not have been granted because there was no clerical error or omission here. Instead, there was simply a failure to abide by Illinois law and the local court rule on the part of BVM and Dynamics. As to BVM's alternative argument, we have already found that the amended complaint was a nullity because they did not request leave to file it pursuant to Illinois law. Therefore, we turn to their remaining claim, that whether, based on the facts of this case as a whole, the trial court erred in striking the March 22, 2011 complaint on nullity grounds.

¶ 43 BVM and Dynamics argue that the trial court abused its discretion in invoking the "automatic dismissal rule." Specifically, they argue that the trial court erred in relying on *Fruin v. Northwestern Medical Faculty Foundation*, 194 Ill. App. 3d 1061 (1990) since *Fruin* is over 20 years old, case law on this issue is divided, and the nullity rule has recently evolved from a mandatory dismissal, as in *Fruin*, to permissive dismissals depending upon the circumstances. In fact, they claim that in 2008 our supreme court "sharply limited the application of the nullity rule" in *Applebaum v. Rush University Medical Center*, 231 Ill.2d 419, 435 (1088). As support for this contention, BVM and Dynamics rely on *Ford Motor Credit Company v. Sperry*, 214 Ill. 2d 371, 390 (2005), *McEvers v. Stout*, 218 Ill. App. 3d 469, 472 (1991), and *Moushon v. Moushon*, 147 Ill. App. 3d 140, 147 (1986).

¶ 44 We have reviewed our supreme court’s opinion in *Applebaum* and do not agree with BVM and Dynamics that the court “sharply limited the application of the nullity rule” in that case. On the contrary, the supreme court in *Applebaum* made it very clear that in that case it is was reviewing “the specific question of whether it is proper to apply the nullity rule to void a complaint filed by a licensed attorney who, at the time of filing, was on ‘inactive attorney status’ with the ARDC, and who is representing the estate of his deceased father, is the estate’s special administrator, and is the sole beneficiary of the decedent.” *Applebaum*, 231 Ill. 2d at 436. The *Applebaum* court held that an attorney on inactive status is not the same thing as being unlicensed to practice law in Illinois. The court emphasized that someone who had graduated from law school, satisfied the Illinois Supreme Court’s character and fitness requirements, passed the bar examination, and obtained a license to practice in Illinois does not become unlicensed simply by choosing to change his ARDC registration from active to inactive. *Id.* at 438. The court then again reiterated, “[a]s discussed, *in light of the specific facts in this case*, we hold that the purposes served by applying the nullity rule—the protection of the public and the integrity of the court system from the harm presented by representation by unlicensed individuals—are not present here. Accordingly, the appellate court erred in concluding that the nullity rule should be imposed in this case.” (Emphasis added) *Id.*

¶ 45 The facts of the instant case are completely different than those in *Applebaum*. Here, Frisoli did *not* satisfy the Illinois Supreme Court’s Character and Fitness requirement or pass the Illinois bar examination. Again, simply because other Illinois courts had reviewed Frisoli’s qualifications and admitted him to practice *pro hac vice* in other cases does not mean that he can now ignore Illinois state and local law and practice law in this state at his will without obtaining leave of court.

¶ 46 In *Fruin*, an out-of-state attorney signed and filed a complaint which had been prepared by an Illinois attorney four days before the statute of limitations ran without complying with *pro hac vice* procedures. *Fruin v. Northwestern Medical Faculty Foundation*, 194 Ill. App. 3d 1061 (1990). On appeal from the dismissal of her complaint, the plaintiff argued that she was unaware that the attorney who filed and signed the complaint was not licensed in Illinois, that the defendant suffered no prejudice, and that out-of-state counsel made reasonable efforts to get Illinois counsel, and did so after the complaint was filed. *Id.* at 1063. The *Fruin* court held that absent an out-of-state attorney obtaining leave pursuant to Illinois Supreme Court Rule 707 (eff. Oct. 2, 2006), that attorney may not practice law in Illinois, even when subsequent court appearances are made by a duly licensed attorney. *Id.* The court specifically held that a plaintiff's failure to ensure that her attorney obtained the necessary authorization to practice in Illinois cannot justify a deviation from Illinois law. *Id.* at 1064.

¶ 47 We must initially note that BVM and Dynamics incorrectly imply that the trial court relied upon *Fruin* in making its ruling. A review of the record is very clear that although the trial court referred to the case as "interesting," the only case that the trial court discussed in detail on the record was *Applebaum*. Furthermore, the record is also clear that the trial court was aware that it had the discretion to dismiss the complaint on nullity grounds, and it referred to this discretion several times. Therefore, the *Fruin* case does not aid us in our analysis.

¶ 48 Along with *Applebaum*, other cases wherein the court declined to apply the nullity rule are distinguishable from the instant case and do not persuade us that the trial court erred in dismissing the March 22, 2011, case on this ground. See *Ford Motor Credit Company v. Sperry*, 214 Ill. 2d 371, 390 (2005) (judgment not void under nullity rule when a licensed Illinois attorney practiced as

part of corporate law practice but corporate employer was not a registered corporation, but court reaffirmed that the nullity rule is a well established rule in Illinois courts); *McEvers v. Stout*, 218 Ill. App. 3d 469, 472 (1991) (nullity rule would punish the litigant rather than the offending attorney when it could not be assumed that the litigants were aware of the rules relating to the practice of law, especially since defense counsel did not recognize the problem for more than six months after the complaint was filed); *Moushon v. Moushon*, 147 Ill. App. 3d 140, 147 (1986) (judgment of foreclosure not void when president of corporation, a non-attorney, signed complaint for foreclosure, when in the complaint the corporation recited that it “comes by its attorney” and the record reflected that corporation was represented by a licensed attorney at every stage of the proceedings); *Janiczek v. Dover Management Co.*, 134 Ill. App. 3d 543, 547 (1985) (dismissal improper where client had originally hired Illinois attorney before he was disbarred and client was not aware of subsequent discipline).

¶ 49 Here, *Sperry* and *Moushon* contain completely different facts than presented in the instant case. Further, as opposed to the facts in *McEvers*, in this case *all* defendants immediately attacked the March 22, 2011, pleading as not being signed by an attorney licensed to practice law in Illinois. Moreover, unlike the *Janiczek* case, BVM and Dynamics cannot claim that they were unaware that Mr. Frisoli was not licensed to practice law in Illinois since: (1) he was the brother of one of BVM’s shareholders; (2) he had been admitted *pro hac vice* to represent BVM in a 2005 Cook County case; and (3) he was admitted *pro hac vice* to represent BVM and Dynamics in the 2007 case.

¶ 50 During the pendency of this appeal, our Supreme Court issued another decision involving the nullity rule. In *Downtown Disposal Services, Inc. v. City of Chicago*, 2012 IL 112040, a corporation appeared through its president, initially in administrative proceedings brought by the

City of Chicago for dumpster ordinance violations, and then in an attempt by a non-attorney to obtain administrative review. The trial court applied the nullity rule under the belief that it was required to do so, despite being reluctant to impose the rule based on the following circumstances: (1) the underlying proceedings allowed corporate representation by its president; (2) the administrative law officer told the *pro se* litigant more than once that he had the right to file an appeal without informing him that an attorney would be required; (3) the *pro se* litigant filed the form complaint in a timely fashion; and (4) the city made no issue of the lack of an attorney until six months later when an attorney for the corporation sought to file an amended complaint. *Id.* at 835-36. The appellate court reversed, and held that under the specific procedural facts of that case the trial court erred in finding that the complaint was a nullity. *Downtown Disposal Services, Inc. v. City of Chicago*, 407 Ill. App. 3d 822, 836 (2011). In affirming the judgment of the appellate court, our supreme court again reiterated the rule that there is no automatic nullity rule. *Downtown Disposal Services, Inc.*, 2012 IL 112040, ¶ 31. Specifically, the court held that in determining whether a dismissal on nullity grounds is proper the trial court should consider, *inter alia*, the following factors: (1) whether the offending party's conduct is done without knowledge that the action was improper; (2) whether the corporation acted diligently in correcting the mistake by obtaining counsel; (3) whether the offending party's participation was minimal; and (4) whether the participation results in prejudice to the opposing party. *Id.*

¶ 51 The dissent points out several times that in *Downtown Disposal* our supreme court framed the issue as whether the complaint for administrative review was a nullity because the corporation's president, a non-attorney, *filed* the complaint. *Id.* ¶ 1, 13, 18, 19. However, as the dissent also points out, in that case the non-attorney not only filed the complaint, but signed and filled it out, also.

It is clear from a reading of *Downtown Disposal* that the supreme court was not simply focusing on only the act of filing the complaint when determining whether the nullity rule applied. Moreover, the *Downtown Disposal* court was not confronted with the fact pattern that we are presented with today, that is, an attorney who was not licensed in Illinois prepared and signed a complaint and simply had an Illinois attorney with no substantive knowledge of the case file the complaint.

¶ 52 Although *Downtown Disposal* involved a non-attorney rather than an out-of-state attorney, the same factors are useful in determining whether the trial court abused its discretion in ruling that the original complaint was a nullity in this case. In reviewing the applicable factors we come to the same conclusion – that is, that the trial court did not abuse its discretion in striking the complaint on nullity grounds. First, with regard to whether Frisoli’s conduct was done without him knowing that the action was improper, it is abundantly clear that Frisoli knew that he had to request permission from the trial court to proceed *pro hac vice* because he had done so several times in the past in this State, including his admittance to practice *pro hac vice* in 2007 when he represented BVM and Dynamics in the previous litigation. Even if he could claim ignorance here, which he could not, Frisoli, as a Massachusetts attorney, should be aware that similar regulations exist in his home state for the practice of law by attorneys licensed in foreign jurisdictions. See Massachusetts Rules of Prof’l Conduct R. 5.5 (2007).

¶ 53 The next factor, whether the corporation acted diligently in correcting the mistake by obtaining counsel, also does not aid BVM and Dynamics. Although it could be said that BVM and Dynamics acted diligently in attempting to file an amended complaint on April 12, 2001, five days after the accountants’ attorney pointed out to Frisoli that he had not been admitted to practice *pro hac vice* in this case, the failed attempt to file the amended complaint was signed *again* by Frisoli

“*pro hac vice*” and Smith, who, although a licensed Illinois attorney, had no substantive knowledge about the case. With regard to whether the offender’s participation was minimal, this factor also does not favor BVM and Dynamics. It is clear from the record that Frisoli was the main attorney in this lawsuit with Smith only being responsible for scheduling and procedural matters. With regard to Smith’s lack of involvement in this case the dissent states:

“The majority would suggest that if local counsel files a complaint, the complaint is subject to dismissal as a nullity if the client knows that an attorney licensed in a different state prepared the complaint and gave it to a licensed attorney to file and then acted as local counsel. Apparently, local counsel acts incompetently by acting as an ignorant surrogate; not only is local counsel committing a presumptive malpractice, he is damning the suit he files to dismissal for nullity. I am aware of no precedent in which a licensed attorney was deemed an incompetent surrogate based upon any fact pattern.” See *infra* ¶ 79.

¶ 54 Before we address the dissent’s hypothetical we must point out again that the trial court did not strike the complaint as a nullity based upon Smith’s actions or inactions; instead, it properly focused on Frisoli’s conduct in signing the complaint when applying the nullity rule.

¶ 55 Contrary to the dissent’s position, local counsel *does* act incompetently *if* he files and signs a complaint that has been prepared by an attorney licensed in a different state and he has **no** substantive knowledge of the contents of the complaint that he has signed. Such an action would be a violation of the Illinois Rules of Professional Conduct. See Illinois Rules of Professional Conduct 1.1 (eff. January 1, 2010) (a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and *preparation reasonably necessary for the representation.*) Under such circumstances local counsel is not an

“ignorant surrogate.” Although not relevant to a determination of the issues before us in this case, we note that even if Smith had properly moved to have the amended complaint filed, and he did not, Smith would not have been able to “cure” Frisoli’s defective signature with his own without violating the Illinois Rules of Professional Conduct if he had no substantive knowledge of the case. See Illinois Rules of Professional Conduct 1.1 (eff. January 1, 2010).

¶ 56 Finally, we look to whether Mr. Frisoli’s participation resulted in prejudice to the opposing party. In reviewing the nullity rule in Illinois, the seventh circuit has said that Illinois courts are “staunch defenders of the nullity rule.” *In re IFC Credit Corporation*, 663 F. 3d 315, 320 (7th Cir. 2011). However, sanctions for its violation should be proportioned to the gravity of the violation. *Id.* at 321. Here, the opposing parties were prejudiced because if the nullity rule were not to be applied, Mr. Frisoli, an out-of-state attorney, would be able to do an end-run around the statute of limitations by preparing and signing a complaint, thereby engaging in the unauthorized practice of law in Illinois, and simply having a licensed Illinois attorney with very minimal involvement in this case file the pleading three days before the expiration of the statute of limitations.

¶ 57 In this case, the trial court did not consider the application of the nullity rule to be mandatory. Instead, it carefully considered the specific circumstances before it and determined that imposing the nullity rule was necessary to uphold the integrity of Illinois state and local law. Further, given the fact that Frisoli misrepresented his *pro hac vice* status to the court again when he attempted to file the amended complaint, we hold that no alternative penalty would be appropriate. The dissent disagrees, and states that “punishing the client for the misrepresentations regarding *pro hac vice* is an abuse of discretion unless it can be established that the client was aware of the representations and that Mr. Frisoli was no longer admitted to practice *pro hac vice*.” See *infra*, ¶ 73. We disagree that

the client must know about the misrepresentations of its attorney in order for the nullity rule to be invoked. This is not a case where the clients were unaware that their attorney was not licensed to practice in Illinois and unwittingly allowed him to represent them. Instead, Frisoli was a relative of one of BVM's shareholders. Further, BVM and Dynamics had chosen Frisoli to represent them in 2007 even though he was not a licensed Illinois attorney.

¶ 58 The dissent alleges that we are imputing an awareness of Frisoli's misrepresentations to the clients by noting Frisoli's relationship to one of BVM's shareholders and the fact that BVM and Dynamics had chosen Frisoli to represent them in 2007 even though he was not a licensed Illinois attorney. The dissent is incorrect. We are simply using the facts in this case, that: (1) Frisoli is a relative of one of BVM's shareholders; and (2) Frisoli has represented BVM and Dynamics in the past – to draw the reasonable inference that BVM and Dynamics knew that Frisoli was not a licensed Illinois attorney when they hired him to represent them in this case. That inference, along with several other factors in this case, supports our determination that the trial court did not abuse its discretion in applying the nullity rule here. See Ill. S. Ct. R. 366 (a)(4) (eff. Feb. 1, 1994) (in all appeals the reviewing court may, in its discretion, draw reasonable inferences of fact). Contrary to the dissent's contention, such an inference is not "ridiculous." See *infra*, ¶ 74.

¶ 59 To hold that a client can never be punished for the actions of its attorney, under any circumstances, would violate the well-settled rule that "where a person who is not licensed to practice law in Illinois attempts to represent another party in legal proceedings, this rule *permits dismissal* of the cause, thereby treating the particular actions taken by that person as a nullity." (Emphasis added.) *Ford Motor Credit Company v. Sperry*, 214 Ill. 2d 371, 289-90 (2005). As previously noted, we are not holding today that every time an out-of-state attorney signs a complaint and causes it to be filed

without first having been granted authority to proceed *pro hac vice* the nullity rule properly applies. In fact, there may be situations where the nullity rule should not be applied (see *Torrey v. Leesburg Regional Medical Center*, 769 So. 2d 1040 (Fla. 2000) (defect subject to correction when out-of-state attorney improperly filed medical malpractice case and the unauthorized practice concerns were more appropriately dealt with through other mechanisms)). However, given the unique circumstances of this case, we cannot say that the trial court's decision to apply the nullity rule was an abuse of discretion.

¶ 60 The dissent notes that we review the grant of a motion to dismiss under sections 2-615 or 2-619 of the Code *de novo*, and claims that the majority erroneously applies the abuse of discretion standard of review in this case. See *infra*, ¶ 71. Again, the dissent is incorrect. As we have stated, either type of motion is generally reviewed *de novo*. *Nepple v. Murphy*, 316 Ill. App. 3d 581, 584 (2000). See *supra*, ¶ 19. We also stated, however, that when a motion in fact urges the trial court to weigh several factors in order to determine whether it is appropriate to proceed, the trial court's order granting such a motion will be reviewed under an abuse of discretion standard. *Hapag-Lloyd (America), Inc., v. Home Insurance Company*, 312 Ill. App. 3d 1087, 1091 (2000). See *supra*, ¶ 19. Again, since the trial court was required to weigh several factors to determine whether the complaint should be considered a nullity, we have reviewed the granting of the accountants' and lawyers' motions under an abuse of discretion standard. See *supra*, ¶ 19. The cases that the dissent cites do not persuade us otherwise. First, *Patrick Engineering, Inc. v. City of Naperville*, 2012 IL 113148, is not a case that involved the nullity rule; it simply reiterated the general rule that our review of a dismissal under section 2-615 or 2-619 of the Code is reviewed *de novo*. *Id.* ¶ 32. Second, the dissent cites the first district's opinion in *Downtown Disposal* when it argues for a *de novo* review. See

Downtown Disposal Services, Inc. 407 Ill. App. 3d at 828. However, it is well-settled law that one district of the appellate court is not bound to follow the decisions of the other districts and that such decisions only have persuasive value. *In re May 1991 Will County Grand Jury*, 152 Ill. 2d 381, 398 (1992). The first district's decision in *Downtown Disposal* simply reiterated the general rule that a motion brought pursuant to section 2-619 of the Code is reviewed *de novo* without any further analysis as to whether the factors that the trial court had to weigh in order to determine whether the nullity rule applied affected the standard of review. See *Downtown Disposal Services, Inc.*, 407 Ill. App. 3d at 828. On appeal from that decision, our supreme court did not address the standard of review at all. Based on the case law before us, we hold that the abuse of discretion standard is the more appropriate standard of review to be applied in this case. Nevertheless, even if we were to apply a *de novo* standard of review here, all the factors that we have relied upon in this case make it clear that the end result would be the same.

¶ 61 The dissent argues that the proper standard of review is *de novo* based on the rule that where the trial court makes no findings of fact and instead relies on oral argument and the record, the rationale underlying a deferential standard of review is inapplicable, citing to *Dowling v. Chicago Options Associates, Inc.*, 226 Ill. 2d 277, 285 (2007). However, our supreme court made it clear just last year that the trial court should consider several factors when determining whether the nullity rule should apply. *Downtown Disposal Services, Inc. v. City of Chicago*, 2012 IL 112040, ¶ 31. Since our supreme court has held that a trial court *may* invoke the rule after considering specific factors, it would be impossible for the trial court to consider such factors without using its discretion. If such a ruling is a matter of the trial court's discretion, and it clearly is, such a ruling is only reviewable for an abuse of that discretion. See *In re D.T.*, 212 Ill. 2d 347, 356 (2007).

¶ 62 In *In re D.T.*, our supreme court explained that the abuse of discretion standard is the most deferential standard of review and is therefore traditionally reserved for decisions made by a trial judge in overseeing his or her courtroom or in maintaining the progress of a trial. *Id.* The supreme court then went on to give several examples of when a trial judge's decision is reviewed for an abuse of discretion: *Swick v. Liautaud*, 169 Ill. 2d 504, 521 (1996) (whether to allow or exclude evidence); *People v. Williams*, 209 Ill. 2d 227, 234 (2004) (whether to limit discovery); *Sullivan v. Edward Hospital*, 209 Ill. 2d 100, 110-11 (2004) (whether to impose a sanction for discovery violation); *People v. Ortega*, 209 Ill. 2d 354, 360 (2004) (whether to disqualify counsel).

¶ 63 Here, the trial court was using its discretion when it determined whether the nullity rule should be invoked; such a decision falls squarely within its right to oversee its courtroom. Accordingly, the proper standard of review here is abuse of discretion. However, as we have previously said, *even if we were to apply a de novo standard of review here, all the factors that we have relied upon in this case make it clear that the end result would be the same.* Accordingly, we reject BVM and Dynamics' claim that the trial court erred in striking the March 22, 2011, complaint on nullity grounds.

¶ 64 B. Dismissal of Accountants on Statute of Limitations Grounds

¶ 65 Since the trial court's order striking the March 22, 2011 complaint applied to all defendants, we need not address BVM and Dynamics' contention that the trial court also erred in granting the accountants' motion to dismiss on statute of limitations grounds.

¶ 66 IV. CONCLUSION

¶ 67 Based on the record before us, we find that the trial court properly dismissed BVM and Dynamics' complaint on nullity grounds. We also hold that the *nunc pro tunc* doctrine did not apply

in this case, and the trial court properly refused to apply Frisoli's admission to proceed *pro hac vice nunc pro tunc* to the date of the filing of the original complaint.

¶ 68 Accordingly, the judgment of the circuit court of Lake County is affirmed.

¶ 69 Affirmed.

¶ 70 JUSTICE McLAREN, dissenting.

¶ 71 I respectfully dissent. I believe that the majority focuses on immaterial facts and disregards the material facts in order to determine that the nullification was not an abuse of discretion. I first note that the motions to dismiss were brought by the accountants pursuant to sections 2-615(a), 2-619(a)(5), and 2-619.1 of the Code by Huttinger pursuant to sections 2-615 and 2-619,⁴ and by the attorneys pursuant to section 2-301 of the Code (735 ILCS 5/2-301 (West 2010)) (motion to strike complaint and quash summons).⁵ We review the granting of a motion to dismiss under any of these sections *de novo*. *Patrick Engineering, Inc. v. City of Naperville*, 2012 IL 113148, ¶ 32. Generally, we apply the *de novo* standard of review because such motions do not require the trial court to weigh facts or determine credibility. *Hapag-Lloyd (America), Inc.*, 312 Ill. App. 3d at 1091; see also *Downtown Disposal Services, Inc.*, 407 Ill. App. 3d at 828, regarding *de novo* review in a nullity rule case. Where, as here, the trial court hears no testimony and makes no findings of fact, relying instead

⁴However, the attorney and Huttinger motions do not specify a code section as the basis for dismissal under the nullity rule.

⁵Such objections “raise questions of law, which we consider *de novo*”; where no disputed facts are at issue, our review is the same as a section 2-619 motion to dismiss, and we may consider affidavits and counteraffidavits. *Burns v. Department of Employment Security*, 342 Ill. App. 3d 780, 786 (2003).

on oral argument and the record, the rationale underlying a deferential standard of review is inapplicable; a reviewing court will then make an independent decision on the facts and review the matter *de novo*. See *Dowling v. Chicago Options Associates, Inc.*, 226 Ill. 2d 277, 285 (2007); *Northwest Diversified, Inc. v. Mauer*, 341 Ill. App. 3d 27, 33 (2003). The majority dismisses the *de novo* standard of review raised in *Downtown Disposal* because that disposition issued in another appellate district and because, in affirming that decision, “our supreme court did not address the standard of review at all.” See *supra*, ¶ 60. I first note that the *de novo* standard of review for dismissals pursuant to section 2-619 is not a First District creation; see, e.g., *Alvarez v. Pappas*, 229 Ill. 2d 217, 220 (2008); *Ferguson v. City of Chicago*, 213 Ill. 2d 94, 99 (2004); *Paszkowski v. Metropolitan Water Reclamation District of Greater Chicago*, 213 Ill. 2d 1, 6 (2004). Neither is the *de novo* review of a dismissal pursuant to section 2-615. See *Khan v. Deutsche Bank AG*, 2012 IL 112219, ¶ 47; *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006). Citation to caselaw for the proposition that this court is bound to follow supreme court precedent seems unnecessary.⁶ I also find it interesting that the majority would imply that our supreme court did not consider the standard of review because it did not address it specifically. “It is crucial, at the outset, to identify the applicable standards of review, for they often determine the results on appeal—indeed, a reviewing court does not even have the means of deciding an issue until it first identifies the standard of review.” *Provena Covenant Medical Center v. Department of Revenue*, 384 Ill. App. 3d 734, 737 (2008). The reasonable inference to be drawn from the lack of comment by the supreme court on the appellate court’s assertion that a *de novo* standard of review was applicable is that the supreme court

⁶ Nevertheless, see *People v. Fish*, 381 Ill. App. 3d 911, 917 (2008).

considered the assertion unremarkable and in conformity with established precedent, not that it either ignored the citation or declined to comment on an incorrect standard.

¶ 72 The majority relies on *Hapag-Lloyd* for its claim that “when a motion in fact urges the trial court to weigh several factors in order to determine whether it is appropriate to proceed, the trial court’s order granting such a motion will be reviewed under an abuse of discretion standard.” See *supra*, ¶¶ 19, 60. However, *Hapag-Lloyd* specifically involved a motion to dismiss brought pursuant to section 2-619(a)(3) (735 ILCS 5/2-619(a)(3) (West 2010)) alleging that there was another action pending between the same parties for the same cause. A review of the cases upon which *Hapag-Lloyd* relied (and those that cite to *Hapag-Lloyd* for this proposition) also shows a limited application to cases involving other pending actions, especially where section 2-619(a)(3) is invoked. See *Kellerman v. MCI Telecommunications Corp.*, 112 Ill. 2d 428 (1986); *Katherine M. v. Ryder*, 254 Ill. App. 3d 479 (1993); *Overnite Transport v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO*, 332 Ill. App. 3d 69 (2002). *Hapag-Lloyd* noted that it is “the burden of every section 2-619(a)(3) movant to demonstrate through clear and convincing evidence that the two actions involve the same parties and the same cause” and then explicitly set out the four factors that “in its discretion, the trial court should consider” in such a case. *Hapag-Lloyd (America), Inc.*, 312 Ill. App. 3d at 1091. The majority here fails to explain why such a specific ruling regarding a different cause for dismissal should be applied in this case.

¶ 73 As the majority does acknowledge, the nullity rule “should be invoked only where it fulfills its purposes of protecting both the public and the integrity of the court system from the actions of the unlicensed, and where no other alternative penalty is possible. [*Ford Motor Credit Company*, 214 Ill. 2d at 389-90].” (Emphasis added.) See *supra*, ¶ 21. Thus, as a matter of law, a case should be

dismissed as a nullity only where a party is represented only by a person unlicensed to practice law and no other alternative penalty is possible. In this case, while plaintiffs employed an out-of-state attorney who was not currently licensed to practice in Illinois, they were also represented by a licensed Illinois attorney. Further, even if plaintiffs' representation were found to be improper, a clear alternative penalty to dismissal as a nullity existed in this case. Thus, whether reviewed (properly) *de novo* or under the majority's framework of abuse of discretion (for which no citation to applicable authority is provided), the trial court erred in dismissing this case as a nullity.

¶ 74 I begin by noting that the trial court's ruling contained in the majority draft is directed at Mr. Frisoli, and it fails to contain any reference to Mr. Smith, the licensed attorney who filed the pleading. The trial court applied the nullity rule citing only to Mr. Frisoli's indiscretions and failed to mention that Mr. Smith, a properly licensed Illinois attorney, was the attorney who filed the pleadings and appeared to prosecute the pleadings until the cause was dismissed. The trial court closed with this statement:

“Again, this is within the court's discretion and the court is aware that there may be some harsh consequences here. I'm not unmindful of that, but I believe that the integrity of the court system is paramount here.”

I submit that the integrity of the court system requires that cases filed by a properly licensed attorney should *not* be nullified. The nullity rule was not applied in more severe cases, such as *Applebaum*, where the Illinois attorney was on inactive status, and *Janiczek*, where the attorney was disbarred just before the filing of the suit.

¶ 71 It would seem that the trial court and the majority have focused on Frisoli instead of Smith, who was the properly licensed attorney that filed the cause. The majority does not even attempt to

blame Smith for the actions of Frisoli. The majority cites to authority without recognizing that the rule against the unauthorized practice of law was not violated. That is not to say that Mr. Frisoli may have been less than forthright and truthful in his claims or statements. However, such indignities do not relate to the nullity rule. The nullity rule has essentially been formulated to require that a licensed Illinois attorney initiate litigation in this state. Simply put, that was done in this case. An action is commenced by the filing of a complaint. 735 ILCS 5/2-201(a) (West 2010). Our supreme court's recent decision in *Downtown Disposal Services, Inc.*, 2012 IL 112040, is also instructive. In *Downtown Disposal*, a corporate president filed out, signed, and filed complaints for administrative review. Our supreme court presented the issue of the case thusly:

“In this case, we must determine whether a complaint for administrative review *filed* by a corporation's president, on behalf of the corporation, is a nullity because the president is not an attorney.” (Emphasis added.) *Downtown Disposal Services, Inc.*, 2012 IL 112040, ¶ 1.

And:

“We must first determine whether [nonattorney president] Tholen engaged in the unauthorized practice of law *when he filed the complaints* for administrative review on behalf of plaintiff corporation.” (Emphasis added.) *Downtown Disposal Services, Inc.*, 2012 IL 112040, ¶ 13.

And:

“*The filing of the complaint* affects the substantial legal rights of the party seeking administrative review, in this case, *Downtown Disposal*.” (Emphasis added.) *Downtown Disposal Services, Inc.*, 2012 IL 112040, ¶ 18.

And:

“Accordingly, when Van Tholen *filed the complaints* for administrative review, he engaged in the unauthorized practice of law.” (Emphasis added.) *Downtown Disposal Services, Inc.*, 2012 IL 112040, ¶ 19.

Mr. Smith, a licensed Illinois attorney, did, in fact, initiate the proceedings as any other properly licensed attorney would do. The fact that someone other than the attorney may have prepared the pleadings does not make the licensed attorney’s actions less competent, unless one conclusively presumes that Mr. Smith was guilty of some failures or deficiencies. It is difficult to discern what those might be, as the trial court and the majority treat him as a nonentity. The means to question the adoption of the pleadings as his own by the licensed attorney prior to the filing of the pleading is not through the nullity rule but through other sanctions directed at the attorney for malpractice, frivolity, or possibly a violation of the canons of ethics. The pleading filed was filed by a properly-licensed attorney. The analysis of the actions of Mr. Frisoli, for purposes of applying the nullity rule, is a red herring. The “issue at hand” is not merely “whether Frisoli engaged in the unauthorized practice of law” (*supra* ¶ 26) but the entire legal representation of plaintiffs. If Mr. Frisoli was guilty of the unauthorized practice of law, then *he* should be punished, not his client.⁷ The application of the nullity rule “results in an improper placement” of the penalty on the client. *McEvers v. Stout*, 218 Ill. App. 3d 469, 472 (1991).

⁷Punishment for the unauthorized practice of law is through punishment for contempt against the unauthorized practitioner. See *People ex rel. Illinois State Bar Ass’n v. People’s Stock Yards State Bank*, 344 Ill. 462, 474-75, 479-80 (1931).

¶ 72 The policy behind the rule has been stated on more than one occasion. “That rule is intended 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 skills.” *Janiczek*, 134 Ill. App. 3d at 546. However, the majority fails to cite, as did the trial court, what skills Mr. Smith was lacking. The trial court focused only on Mr. Frisoli and “his failure to comply with the laws of this State, as well as local Court Rule 21.05”; it never dealt with Mr. Smith and his newly-determined incompetency other than to mention that Mr. Frisoli “had local counsel and *** had local counsel for years.” The majority, too focuses on Mr. Frisoli, rather than actually gauging how the system was subverted, perverted or otherwise “verted” by the properly-licensed Mr. Smith. Instead of focusing on the participation of Mr. Smith, whose status as a licensed attorney should be the status against which application of the nullity rule should be judged, the majority adopts the punitive attitude that Mr. Frisoli should be punished for his unauthorized acts and misrepresentations and then punishes Mr. Smith’s client by applying the nullity rule despite the fact that a properly-licensed attorney represented the castigated client from the inception of the lawsuit through the nullification.

¶ 73 The majority emphasizes the fact that Mr. Frisoli signed the complaint. This fact is not, *ipso facto*, sufficient to declare the signature a nullity without some showing that he did not have the authority to sign the document. If the majority is correct in its holding that Frisoli’s signature is a nullity, then the signature of any attorney-in-fact, guardian, conservator, or other individual who has the authority to act on behalf of the principal, ward or other individual must also be a nullity. The signature of Mr. Frisoli on the complaint was authorized for purposes of determining if an authorized party executed the document. The extraneous information regarding misrepresentations regarding Mr. Frisoli’s authority to represent the client have nothing to do with the fact that a licensed attorney

did what was necessary to initiate the proceedings—file the complaint. Punishing the client for the misrepresentations regarding *pro hac vice* is improper and an abuse of discretion unless it can be established that the client was aware of the misrepresentations and that Mr. Frisoli was no longer admitted to practice *pro hac vice*. The majority disagrees (*supra*, ¶ 57) without citation to any authority and in the face of caselaw (*Janiczek*) in which the nullity rule was not imposed when, “*unknownst to the client*,” the attorney was disbarred before he filed the complaint. (Emphasis added.) 134 Ill. App. 3d at 546. Ironically, had Mr. Frisoli, himself, filed a motion to vacate and reinstate the voluntarily-dismissed pleadings at the time the new pleading was filed, he would have had authority to act *pro hac vice*.

¶ 74 The majority imputes to plaintiffs such awareness of Mr. Frisoli’s misrepresentations by noting that “Frisoli was a relative of one of BVM’s shareholders” and that plaintiffs “had chosen Frisoli to represent them in 2007 even though he was not a licensed Illinois attorney.” *Supra*, ¶ 57. These claims are ridiculous. Frisoli had properly represented BVM in Illinois courts twice before, including the lawsuit that had been dismissed less than one year prior, involving the same parties. We are aware of no study or findings that demonstrate that siblings of attorneys are particularly cognizant of court rules regarding *pro hac vice* status. The majority claims that it is only using those facts “to draw the reasonable inference that BVM and Dynamics knew that Frisoli was not a licensed Illinois attorney when they hired him to represent them in this case.” *Supra*, ¶ 58. This is a non-sequitur. While Mr. Frisoli was not a licensed Illinois attorney, he was *not involved in the unauthorized practice of law in his prior representations*. He had been permitted to practice before the court pursuant to Supreme Court Rules. There is no reasonable inference to be drawn that plaintiffs were aware that Mr. Frisoli was misrepresenting his current *pro hac vice* status. The format

of Mr. Frisoli's actions minimizes the reason and the need to punish the client via the nullification of the filing. The reasonable inference to be drawn was that the participation of the licensed attorney was sufficient to preclude the imposition of the nullity rule and that the unlicensed attorney would seek admittance *pro hac vice* if necessary; the majority's inference is not reasonably drawn when the trial court never made any such findings regarding the client's scienter. In fact, the court made the opposite conclusion regarding Mr. Frisoli's noncompliance, stating, "I did not say it was intentional but nonetheless it was a failure to comply."

¶ 75 The majority also finds that the issue of "whether the corporation acted diligently in correcting the mistake by obtaining counsel, also does not aid BVM and Dynamics." *Supra*, ¶ 53. I fail to see what else plaintiffs could have done. They already had a licensed attorney who filed the pleadings at issue and who also signed and filed the April 12 amended complaint. Smith may have had "a very limited personal knowledge of the facts," as he put it in the response to the demand for a bill of particulars. However, there was no finding ever made that his knowledge was insufficient to sign a complaint. Huttinger's attorney clearly did not think such was the case, as he stated to the court during argument on the motion to dismiss, "If Mr. Smith had signed the original complaint, I don't think anyone here would be arguing that that complaint was a nullity." The trial court never addressed Mr. Smith or his knowledge of the case, and we cannot, as the majority does, find a lack of knowledge that would have disqualified Mr. Smith. See *supra*, ¶ 34. Query: what should plaintiffs have done? Hired *another* licensed attorney that had no prior experience with the case to sign and file an amended complaint? Our supreme court has said that amending a complaint "to add counsel's signature" is a "clear alternative remedy to dismissal." *Downtown Disposal Services, Inc*, 2012 IL 112040, ¶ 34. This "clear alternative remedy" was already attempted in this case and was improperly

rejected. The application of a “clear alternative remedy” that is endorsed by our supreme court is not merely “an end-run around the statute of limitations” (*supra*, ¶ 56).

¶ 76 A review of the syllabus of the majority’s holdings is indicative of the majority’s emphasis of Mr. Frisoli’s actions and misrepresentations and its failure to focus on the requirement of how a complaint should be filed by a licensed Illinois attorney. The majority set forth at the beginning of this Order:

“Held: Trial court properly granted appellees’ motions to dismiss complaint on nullity grounds based upon the following circumstances: (1) a licensed Illinois attorney filed complaint which was prepared and signed by an out-of-state attorney, and out-of-state attorney incorrectly asserted in the complaint that he had been admitted to practice *pro hac vice* in this case; (2) out-of-state attorney continued to allege that he was admitted *pro hac vice* in an unsuccessful attempt to file an amended complaint, after being informed by opposing counsel that he had not been so admitted; (3) out-of-state attorney had been admitted to practice *pro hac vice* in other Illinois cases, and was therefore familiar with Illinois state and local rules regarding admission to practice *pro hac vice*; and (4) litigants could not claim ignorance that attorney was not licensed in Illinois when same attorney had represented them *pro hac vice* in other Illinois cases. Trial court also properly denied out-of-state attorney’s request for a subsequently granted motion to appear *pro hac vice* to apply *nunc pro tunc* to the time the original complaint was filed when no clerical error occurred and therefore the *nunc pro tunc* rule did not apply.”

¶ 77 The majority fails to cite to any authority relating to the emphasized portion of the holding. The majority determines that the individual signing the pleading must be an attorney licensed to practice law in this state in order to preclude application of the nullity rule. However, there is no case law, statutory law, or supreme court rule that so states. The majority cites to Illinois Supreme Court Rule 756(b) but fails to indicate wherein the rule establishes the proposition that signing the complaint is practicing law rather than merely executing a document that one is authorized to execute. In fact, there is nothing in the rule that references the execution of documents. Further, even if the individual signing the pleading must be an attorney licensed to practice law in this state, our supreme court has found the “amendment of the complaints to add counsel’s signature” to be a “clear alternative remedy to dismissal.” *Downtown Disposal Services, Inc*, 2012 IL 112040, ¶ 34.

¶ 78 I submit that the only facts that are relevant and material are the following, as set forth by the majority:

“An Illinois attorney, Charles Smith, did not sign the complaint. Instead, he signed a certificate of attorney, a Supreme Court Rule 222(b) affidavit (Ill. S. Ct. R. 222(6) (eff. Jan. 1, 2006)), a jury demand, and a “supplemental appearance” listing both his and Frisoli’s addresses.” *Supra* ¶ 7.

¶ 79 The majority fails to cite to any authority that determines that Mr. Frisoli improperly signed the complaint. The majority has not cited to authority that concludes that a person who is authorized to sign a pleading under the authority granted constitutes a nullity in and of itself. The majority seems to ignore the fact that an in-state, properly-licensed attorney filed the cause of action. Put another way, the majority has failed to explain how Mr. Smith’s representation from the inception of the lawsuit is somehow subjecting the court to “those lacking requisite skills.” The majority would suggest that

if local counsel files a complaint, the complaint is subject to dismissal as a nullity if the client knows that an attorney licensed in a different state prepared the complaint and gave it to a licensed attorney to file and then act as local counsel. Apparently, local counsel acts incompetently by acting as an ignorant surrogate; not only is local counsel committing presumptive malpractice, he is damning the suit he files to dismissal for nullity. I am aware of no precedent in which a licensed attorney was deemed an incompetent surrogate based upon any fact pattern. The majority concludes that Mr. Smith was incompetent and in violation of the Illinois Rules of Professional Conduct. See ¶ 54 (“Contrary to Justice McLaren’s position, local counsel *does* act incompetently if he files a complaint that has been prepared by an attorney licensed in a different state and if local counsel has no substantive knowledge of the contents of the complaint that he files. Such an action is a violation of the Illinois Rules of Professional Conduct.”). Aside from being mere speculation and bootstrapping, I submit that the majority’s conclusion is also a counterfactual conditional, as it assumes a fact that was neither found by the trial court nor is supported by the record. If the majority truly believes its supposition, it should report Mr. Smith to the A.R.D.C. The trial court made no such findings; the majority has made these findings on its own and uses these “findings” only to bolster its own conclusions. The majority declines to entertain *de novo* review but makes new factual determinations such that it has entertained a *de novo* hearing.

¶ 80 The majority holds that the nullity rule should be invoked here “to protect the court itself in the administration of its proceedings from those lacking requisite skills.” Again, the majority is focusing on Mr. Frisoli rather than Mr. Smith, whose name was on the master list of attorneys licensed to practice law in this state per Rule 756 (b). The majority, while referencing *Applebaum*, fails to comprehend its holding. The holding in *Applebaum* was that, since a lawyer on inactive status

does not forget the law upon becoming inactive, he is no less competent, and, thus, the nullity rule should not apply. If the Illinois supreme court has determined that an attorney on inactive status is capable of retaining the requisite skills, then the majority has failed to explain how an *active* attorney is lacking in those skills. If Mr. Smith is no less lacking in those skills, then why is it that the court itself must be protected from Mr. Smith? The majority emphasizes the fact that Mr. Frisoli's signing of the complaint is the unauthorized practice of law, which would allow the nullity rule to be invoked. However, the majority fails to cite to any authority that says that an attorney in fact or law, or a guardian, conservator, or authorized agent is practicing law to the extent that the nullity rule must be applied when it is the only defect on the face of the pleadings. To the contrary, the appellate court in *Downtown Disposal Services, Inc. v. City of Chicago* said:

“Contrary to prior case law using mandatory language, *Applebaum* states that the nullity rule ‘permits,’ rather than requires, dismissal where an unlicensed person engages in the practice of law. *Applebaum*, 231 Ill. 2d at 435. In addition, *Applebaum* clearly states that the rule ‘should be invoked only where it fulfills its purposes.’ *Applebaum*, 231 Ill.2d at 435-36. In light of the foregoing, we find that application of the nullity rule is neither automatic nor the mandatory result where the unauthorized practice of law occurs. Rather, courts must consider whether under the specific facts presented, application of the rule would serve its purposes. See also *Elustra v. Mineo*, 595 F.3d 699, 705 (7th Cir. 2010) (finding that pursuant to Illinois State case law, including *Applebaum*, Illinois courts will not dismiss a nonparty's filing out of hand but, rather, ‘would distinguish between a filing that merely allows the party to go forward and more general prosecution of the lawsuit’); *Prime Location Properties, LLC v. Illinois Environmental Protection Agency*, Ill. Pollution Control Bd. Op. 09-67, slip op. at 1,

3-9 (Aug. 20, 2009) (holding that pursuant to *Applebaum*, the application of the nullity rule was not automatic and applying the rule would not fulfill its purposes where a nonattorney timely filed the original complaint and an attorney subsequently filed an amended complaint after the statute of limitations had passed).” *Downtown Disposal Services, Inc. v. City of Chicago*, 407 Ill. App. 3d 822, 834-35 (2011).

The court went on to say:

“We also find that the lack of an attorney’s signature on the complaints can be easily cured. If the nullity rule is not applied, then the original complaints are not ‘void’ but would remain timely filed complaints. DD should be permitted to file amended complaints, bearing the signature of its attorney, which relate back to the original complaints. See *Pratt-Holdampf*, 338 Ill. App. 3d at 1087.” *Downtown Disposal Services, Inc.*, 407 Ill. App. 3d at 836.

Accordingly, it would seem that the lack of an appropriate signature, if necessary, can be easily cured. Our supreme court agreed in affirming the appellate court, concluding that applying the nullity rule would have been a harsh consequence where an alternative remedy—“allowing amendment of the complaints to add counsel’s signature”—was clearly available. *Downtown Disposal Services, Inc.*, 2012 IL 112040, ¶ 34.

¶ 81 Furthermore, as in *Applebaum*, Mr. Frisoli, as a licensed attorney who had been in the past and, subsequent to signing the complaint here, was again admitted *pro hac vice*, should retain at least the same knowledge of the law that he had when he was granted status to proceed in the original cause of action. Additionally, had he sought to reinstate the cause rather than file a new complaint in a new case, he would not have “lost his authority to practice” in this cause, and he surely would not have retained fewer requisite skills than *Applebaum* did when he went on inactive status. I believe that

there is nothing to be served by dismissing the cause as a nullity and that dismissal was improper as a matter of law. I believe that the majority has effectively held that signatures on the complaint are the *sine qua non* of a valid pleading and that, without the signature of a properly licensed attorney, the cause is a nullity. There is no authority cited for such a declaration, and it conflicts with what the court in *Downtown Disposal Services, Inc.*, considered the signatures on the pleading to be. I submit that such never was the rule and, considering the reason behind the rule, should never be the rule.

¶ 82 As the majority acknowledges, the nullity rule “should be invoked only where it fulfills its purposes of protecting both the public and the integrity of the court system from the actions of the unlicensed, and where no other alternative penalty is possible. [*Ford Motor Credit Company*, 214 Ill. 2d at 389-90].” (Emphasis added.) *Supra*, ¶ 21. Our supreme court recently reaffirmed this view in *Downtown Disposal Services, Inc.* See 2012 IL 112040, ¶ 30. I submit that an appropriate alternative penalty existed such that the application of the nullity rule in this case was both improper as a matter of law and as an abuse of discretion. I submit that the appropriate action by the trial court would have been to deny both the motion to dismiss and Mr. Frisoli’s motion to be admitted *pro hac vice*, thus barring Mr. Frisoli from representing the clients in the subsequently-filed proceedings and, possibly, revoking leave to appear in the original suit as well.⁸ However, to declare the pleading a nullity is not consistent with any prior precedent and is an unreasonable sanction against the client

⁸The imposition of such a penalty also is more logical than admitting an attorney to represent a client in a case that is that same morning being dismissed as a nullity because the attorney was not authorized to practice law. It would have the added effect of requiring Mr. Smith to either obtain additional co-counsel or read the complaint in order to “*competently*” represent his client.

in an incorrect interpretation and application of the nullity rule.⁹ Neither the trial court nor the majority applied the law of a lesser-possible penalty as the majority claims (“In this case, the trial court did not consider the application of the nullity rule to be mandatory. Instead, it carefully considered the specific circumstances before it and determined that imposing the nullity rule was necessary to uphold the integrity of Illinois state and local law.”). *Supra*, ¶ 57. Alternative penalties were available, and neither the trial court nor the majority has correctly determined that the alternative remedies of refusing to admit Mr. Frisoli *pro hac vice* and to allow amendment of the complaints to add Smith’s signature were consistent with supreme court and appellate court decisions in *Downtown Disposal*, both of which suggest that nullity was too extreme.

⁹Because the majority does not address the claim of error regarding the statute of limitations, I do not believe that it would be appropriate for me to opine either. However, I believe that the majority should have reversed the trial court’s order of nullification and also addressed the merits of the claim of error regarding the statute of limitations.