BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of:

MARK EDWARD McNABOLA,

Attorney-Respondent,

No. 6189613.

Commission No. 2018PR00083

THIRD AMENDED COMPLAINT

Jerome Larkin, Administrator of the Attorney Registration and Disciplinary Commission, by his attorneys, Matthew Lango and Chi (Michael) Zhang, pursuant to Supreme Court Rule 753(b), complains of Respondent, Mark Edward McNabola, who was licensed to practice law in Illinois on May 9, 1985, and alleges that Respondent has engaged in the following conduct which subjects Respondent to discipline pursuant to Supreme Court Rule 770:

ALLEGATIONS COMMON TO COUNTS I-III
The Vandenberg Matter

1. On September 1, 2009, Scot Vandenberg (hereinafter "Scot") chartered a yacht, *Bad Influence II*, (hereinafter "vessel") owned and chartered by RQM LLC and manufactured by Brunswick Boat Group/Brunswick Corporation (hereinafter, "Brunswick") for a cruise beginning at 12:00 p.m. and ending at 5:00 p.m. on Lake Michigan in Chicago.

2. On September 1, 2009, while a passenger on the vessel, Scot was severely injured when he fell from the top deck of the vessel to the bottom deck. As a result of his injuries, Scot became a quadriplegic. Scot was married to Patricia Vandenberg (hereinafter, "Patty") at the time of his injuries.

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3. On September 22, 2009, Scot and Patty Vandenberg (hereinafter, "the Vandenbergs") retained the law firm of Powers Rogers & Smith, P.C. and attorney John B. Kralovec (hereinafter, "Kralovec"), to represent them in claims related to Scot's injuries. On that day, the Vandenbergs and their attorney signed a fee contract which provided that Powers, Rogers & Smith and John Kralovec were to be paid total attorneys' fees of one-third of the gross amount the Vandenbergs received, whether by trial, settlement or otherwise.

4. On March 12, 2010, Powers Rogers & Smith filed a lawsuit on behalf of the Vandenbergs in the Circuit Court of Cook County, County Department, Law Division. The clerk of the court docketed the matter as *Scot and Patricia Vandenberg, plaintiffs, v. RQM LLC, a Delaware Corporation; Brunswick Corporation; and Brunswick Boat Group, a division of Brunswick Corporation; Defendants*, 10L3118 (hereinafter "*Vandenberg v. Brunswick.*")

5. On August 31, 2010, attorneys for RQM caused a complaint to be filed in the United States District Court for the Northern District of Illinois Eastern Division captioned, *In the matter of the Complaint of RQM LLC, Owner of the Motor Yacht Bad Influence II, for Exoneration From or Limitation of Liability,* 10CV5520, (hereinafter "the RQM federal admiralty action.") That matter was assigned to Hon. Amy St. Eve.

6. Under admiralty law, when there is a legal action involving a vessel, which includes a yacht, the vessel owner can file a "Limit of Liability Action," to limit the vessel owner's liability in the legal action to the value of the vessel. Admiralty law requires that all related claims be litigated in the federal action first, and, as a result, any state court actions are stayed until the federal claim is resolved or the state claims are consolidated with the federal action.

7. On September 3, 2010, as a result of RQM's filing the federal admiralty action referenced in paragraph 6 above, Judge Amy St. Eve entered an injunction in the federal admiralty action, enjoining and prohibiting the parties from "instituting or prosecuting any action in any Court or taking any legal proceedings whatsoever other than this [federal one], until the issues in [the federal action] were resolved." On or about September 7, 2010, the injunction was published in the Chicago Daily Law Bulletin, and served by notice by the Federal Court upon all parties asserting claims with respect to the vessel including attorneys.

8. Sometime in September of 2010 but prior to September 21, 2010, Dave Anders (hereinafter, "Anders"), a local attorney, friend, and lawyer for Scot on certain business matters, met with the Vandenbergs about their legal claims resulting from the September 1 incident. Anders knew that the Vandenbergs had discharged the law firm of Powers Rogers & Smith, and referred the Vandenbergs to Respondent's firm.

9. On July 13, 2012, Respondent's law firm's name was changed to McNabola Law Group, P.C.

COUNT I

Unreasonable Fee in the Vandenbergs Matter

10. On September 21, 2010, Respondent and the Vandenbergs agreed that Respondent's law firm, then known as Cogan & McNabola, would represent the Vandenbergs in matters related to the incident which occurred on September 1, 2009, described in paragraphs 1-2, above. On that day, Respondent and the Vandenbergs signed Respondent's fee contract for "Adult-Personal Injury".

11. Pursuant to the terms of the September 21, 2010 fee contract, Respondent agreed to represent the Vandenbergs in the "investigation, settlement, adjustment or prosecution of [the

Vandenbergs'] cause of action against those persons or entities responsible arising out of the occurrence on the day of September 1 [2009] at or near 600 LSD [Lakeshore Drive]."

12. At all times relevant to this complaint, Respondent was the attorney at Cogan and McNabola and McNabola Law Group primarily responsible for handling the Vandenbergs' claims. Respondent had supervisory responsibility over the handling of the matter. No other attorney's name or signature appears on the contract.

13. In Respondent's September 21, 2010 fee contract, Respondent set forth the following terms for fees: "33-1/3% if the case is settled before a lawsuit is filed or 40% if a lawsuit is filed or case is sent to arbitration" and that "[A]ny legal time spent on any appeal and/or post-trial issues will be billed on an hourly basis pursuant to a separate negotiated written agreement."

14. At no time did the Vandenbergs sign a separate negotiated written agreement with Respondent or any of his firms for appellate or post-trial fees.

15. The "Case Expense" provision of the September 21, 2010 fee contract provided that Cogan & McNabola may incur reasonable expenses in connection with the investigation, settlement, adjustment, or prosecution of the Vandenbergs' cause of action, and that Respondent's firm will be reimbursed for actual expenses incurred in the prosecution of said cause, regardless of outcome. The fee contract did not define what constituted as "case expenses", and does not contain a provision providing for payment by the Vandenbergs to any lawyers outside Respondent's firm.

16. Under the September 21, 2010 fee contract, attorneys' fees are not defined as cases expenses, and are therefore not recoverable as case expenses. As a result, if Respondent

retained any outside counsel to assist the Vandenbergs in their causes of action, Respondent was required to pay the fees at his own expense.

17. At no time after September 21, 2010, did the Vandenbergs negotiate with Respondent to modify that fee contract, nor did they execute a written fee contract with any outside counsel other than Respondent.

18. As a result of his attorney-client relationship with the Vandenbergs, Respondent stood in the position of a fiduciary and owed his clients the duty of good faith and fair dealing which required Respondent at all times to place the interests of his clients above his own personal interests, and to avoid exerting undue influence or overreaching the attorney-client relationship.

19. On October 8, 2010, Respondent filed his appearance on behalf of Scot and Patty in the federal admiralty action, **and** filed a stipulation agreeing that the Vandenbergs "concede the ship-owner's right to litigate all issues relating to limitation in the federal limitation proceedings."

20. On October 12, 2010, Respondent filed a motion to dissolve the injunction entered in the federal admiralty action to allow the Vandenbergs to proceed in the state case, *Vandenbergs v. Brunswick*. The motion was briefed by both parties.

21. On January 12, 2011, Judge Amy St. Eve entered an order in the federal admiralty action, denying without prejudice, Respondent's motion to dissolve the injunction. At no time between January 12, 2011 and August 3, 2011, did Judge St. Eve dissolve the federal injunction.

22. On January 4, 2012, SmithAmundson LLC filed a complaint for declaratory judgment on behalf of Westfield Insurance against the Vandenbergs and Rose Paving Company relating to the insurance coverage for Scott's September 1, 2009 accident. The complaint alleged

that Westfield had issued an insurance policy to named insureds, including Rose Paving, that was effective between January 1, 2009 and January 1, 2010, but that Westfield owed neither a duty to defend nor a duty to indemnify Rose Paving because the charter yacht falls outside the scope of risks and liabilities for which the Westfield policy provides insurance.

23. The matter was docketed as *Westfield Insurance Company v. Rose Paving Company and Scott and Patty Vandenberg,* 12CV00040 in the United States District Court for the Northern District of Illinois (hereinafter "the federal declaratory matter.") On January 16, 2012, Peter Morse (hereinafter "Morse") filed his appearance for the defendants the Vandenbergs.

24. On or about August 31, 2012, Respondent filed his appearance in *Vandenbergs v. Brunswick* after the federal admiralty action was resolved the case remanded back to circuit court.

25. Between July 2011 and October 12, 2012, Respondent contacted and engaged four law firms to assist him in prosecuting matters relating to the Vandenbergs' claims, including Seiden, Alder & Matthewman, Peter Morse of Morse, Bolduc & Dinos, Kozacky & Weitzel, and Michael Rathsack. During that time, Respondent paid those four firms the followings fees for the work they performed:

Seiden, Alder & Matthewman	$94,599.01
Morse, Bolduc & Dinos	$35,881.00
Kozacky & Weitzel	$11,730.50
Michael Rathsack	$46,074.02

26. As a result of Respondent's September 21, 2010 fee agreement, Respondent was obligated to perform all legal services related to the Vandenbergs' cause(s) of action for Scot's

September 1 injury without charging them fees above his contingent fee, unless the Vandenbergs gave informed consent to the additional attorneys' fees.

27. In personal injury cases such as the Vandenbergs', the custom and practice of legal community of plaintiffs' personal injury lawyers is to charge contingent fees in the amount of one-third of recovery, regardless of whether a lawsuit a filed or if the case is sent to arbitration.

28. Respondent's contract did not explain that fees would be incurred for outside counsel nor did it include an explanation that fees incurred by retaining outside counsel were considered by Respondent as "case expenses."

29. On October 14, 2012, the federal admiralty action was dismissed based upon a settlement between RQM and the Vandenbergs. Under Respondent's direction, the Vandenbergs settled the federal admiralty action with RQM for the amount of $2,365,000.00. Respondent caused a settlement statement to be prepared itemizing the disbursement of the settlement. That settlement statement provided that the McNabola Law Group was to receive fees one-third of the settlement proceeds for a total amount of $788,333.33 with $300,000 of those fees deferred until the Vandenbergs reached a settlement with Brunswick.

30. Per that settlement statement, Respondent received fees totaling $325,555.56 ($200,000 deferred) and Anders received referral fees totaling $162,777.77 ($100,000 deferred). Respondent's settlement statement also provided that the Vandenbergs were to reimburse the McNabola Law Group for "case expenses" totaling $379,940.21. Almost half of those "case expenses", totaling $188, 284.53, included fees from the outside counsels as follows:

8/12/2011	Seiden & Alder & Matthewman Admiralty consultation	$25,414.80
11/7/2011	Seiden & Alder & Matthewman Admiralty consultation	$11,102.75
12/9/2011	Seiden & Alder & Matthewman Admiralty consultation	$2,814.62
12/21/2011	Seiden & Alder & Matthewman Admiralty consultation	$6,154.33
1/16/2012	Seiden & Alder & Matthewman Admiralty consultation	$715.00
2/17/2012	Morse Bolduc & Dinos Dec action counsel	$4,682.50
2/29/2012	Seiden Alder & McLeod Goodman Admiralty consultation	$15,379.50
3/7/2012	Seiden Alder & McLeod Goodman Admiralty consultation	$14,058.75
4/17/2012	Kozacky & Weitzel, PC Admiralty consultation	$5,000.00
4/23/2012	Seiden Alder & McLeod Goodman Admiralty consultation	$5,559.25
5/2/2012	Morse Bolduc & Dinos Dec action counsel	$2,590.00
5/15/2012	Morse Bolduc & Dinos Dec action counsel	$9,912.50
5/16/2012	Seiden Alder McLeod Goodman Admiralty consultation	$10,489.28
5/30/2012	Kozacky & Weitzel, PC Admiralty consultation	$6,730.50
6/15/2012	Seiden Alder McLeod Goodman Admiralty consultation	$202,98
7/6/2012	Seiden Alder & McLeod Goodman Admiralty consultation	$1,007.25
8/7/2012	Morse Bolduc & Dinos Dec action counsel	$6,428.50
9/12/2012	Morse Bolduc & Dinos Dec action counsel	$7,108.50
9/24/2012	Morse Bolduc & Dinos Dec action counsel	$5,159.00
10/8/2012	Seiden Alder & McLeod Goodman Admiralty consultation	$1,700.50
10/12/2012	Law Offices of Michael W. Rathsack Appellate consultation	$46,074.02

31. At no time between September 21, 2010 and October 28, 2012, did Respondent adequately explain to the Vandenbergs that his contingent fee did not include all attorneys' fees that the Vandenbergs would be charged in the litigation matters, or that the Vandenbergs were entitled to independent counsel before agreeing to pay the outside counsel fees designated after-the fact as "case expenses" totaling $188,284.53, which had been incurred by Respondent.

32. At the time he was incurring the attorneys' fees from outside counsel services, Respondent did not adequately explain to the Vandenbergs that the "case expenses" listed on the RQM settlement statement totaling $188,284.53 were attorneys' fees and not "case expenses," as Respondent indicated on the settlement statement.

33. At the time Respondent provided the Vandenbergs his settlement statement, Respondent did not adequately explain to them that his pecuniary interests in having the Vandenbergs pay the outside counsel fees as "case expenses" were in conflict with the Vandenbergs' interests in having the outside counsel fees deducted from Respondent's contingent fee.

34. Respondent did not obtain the Vandenbergs' informed consent to pay the outside counsel fees in addition to Respondent's contingency fee.

35. Respondent's conduct in engaging other attorneys and agreeing that the Vandenbergs would pay their fees out of the Vandenbergs portion of any settlement or recovery overreached the attorney-client relationship.

36. The attorneys' fees which Respondent deducted from the Vandenberg's RQM settlement of $976,617.86, which included Respondent's fee from his fee contract, Anders' referral fees, and the outside attorneys' fees, were unreasonable, excessive and contrary to the

range of fees provided for in Respondent's fee agreement with the Vandenbergs and above the fees customarily charged in the locality for similar legal services.

37. By reason of the conduct described above, Respondent has engaged in the following misconduct:

> a. charging an unreasonable fee by conduct including charging as "case expenses" fees incurred by outside counsel totaling $188,284.53 in addition to his contingent fee, and deferring $200,000 in case expenses which he intended to later collect, through a "Case Expense" provision in the fee contract that allowed Respondent to shift those fees onto his clients, in violation of Rule 1.5(a) of the Illinois Rules of Professional Conduct (2010);

COUNT II

Unreasonable Fee, Conflict of Interest and Dishonesty

38. The Administrator repeats and re-alleges paragraphs 10-36 of Count I.

39. On August 31, 2011, Respondent caused to be filed a complaint in the Circuit Court of Cook County against RQM and Rose Paving, the booking agent for the chartering of the vessel. The clerk docketed the matter as *Vandenbergs v. RQM*, *Rose Paving, et al.*, 11 L 9119 (hereinafter "*Vandenbergs v. RQM*."). The law firm of Williams and Montgomery represented the defendant Rose Paving.

40. On November 22, 2011, in the federal case, RQM filed a motion to enforce the September 3, 2010 injunction of other proceedings pursuant to the limitations act, alleging that *Vandenbergs v. RQM* was filed in an attempt to "avoid the reach of the federal court injunction." On December 22, 2011, Respondent responded on behalf of the Vandenbergs to the motion to enforce the injunction of the state court proceedings.

41. On January 12, 2012, Judge St Eve entered a written opinion holding that *Vandenbergs v. RQM,* falls "squarely within the injunction's prohibition on instituting or

prosecuting any action in any Court or taking any legal proceedings whatsoever other than this one," and ordered Respondent to "immediately cease any actions in furtherance of their prosecution of any claims arising out of the September 1, 2009 accident."

42. On October 10, 2012, the court entered an order dismissing by agreement the Vandenbergs claims in *Vandenberg v RQM*, 11 L 9119.

43. On October 14, 2012, the federal admiralty action was dismissed pursuant to settlement between RQM and the Vandenbergs.

44. After the federal admiralty action concluded, the court lifted its stay in the state court matter, *Vandenbergs v. Brunswick* which could then proceed. Between December 2012 and August 2015, Respondent continued to consult and seek assistance from the law firm of Morse Bolduc & Dinos on insurance coverage issues. Respondent paid that firm additional fees totaling $244,182.16 relating to the declaratory action, and intended to deduct those fees from the Vandenbergs' portion of recovery as a "case expense", rather than from his own share of proceeds.

45. Sometime on or before August 11, 2015, Respondent asked attorney Barry Montgomery (hereinafter, "Montgomery") of Williams Montgomery & John, formerly "Williams & Montgomery" to perform legal work on issues in *Vandenbergs v. Brunswick*. Montgomery subsequently filed an appearance in that matter.

46. Based on Respondent's position as an attorney and fiduciary to the Vandenbergs, the Vandenbergs agreed to Respondent's recommendation of having Montgomery represent them without being fully informed of the relevant circumstances and of the material and reasonably foreseeable ways that the conflict could have adverse effects on the interest of the Vandenbergs.

47. At no time did the Vandenbergs sign a separate negotiated written fee agreement or give informed consent to pay additional attorneys' fees to Montgomery or his law firm, nor did they consent to paying those attorneys' fees as "case expenses" related to their matter, nor to the joint representation.

48. Between August 11, 2015 and March 1, 2016, Respondent paid attorneys' fees to Williams Montgomery & John totaling $456,995.73 for the work Montgomery performed in matter *Vandenbergs v. Brunswick,* largely in connection with post-settlement issues that arose as a result of Respondent's conduct described in Count III below.

49. At no time did Respondent have the Vandenbergs sign a separate negotiated fee agreement with Morse Bolduc & Dinos, or William Montgomery & John, nor did Respondent obtain the Vandenbergs' informed consent to pay additional attorneys' fees above Respondent's contingent fee to any other lawyer.

50. By reason of the conduct described above, Respondent has engaged in the following misconduct:

a. failure to reasonably consult with the client about the means by which the client's objectives are to be accomplished, by conduct including failing to advise his clients about his decision to consult and retain outside counsel and billing those attorneys' fees he incurred to his clients as "case expenses" without having his clients sign a separate negotiated written fee agreement as required by his own September 21, 2010 fee agreement, in violation of Rule 1.4(a)(2) of the Illinois Rules of Professional Conduct (2010);

b. failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation by conduct including changing the fee agreement to include Montgomery's fees and expenses as case expenses without advising the Vandenbergs to seek advice of independent counsel in

violation of Rule 1.4(b) of the Illinois Rules of Professional Conduct (2010);

COUNT III

Dishonesty to the Court, Material Omissions during Settlement Negotiations, Ex-parte Communications with a Court Official

51. The Administrator repeats and re-alleges paragraphs 1-49, above.

52. After the federal case RQM settlement, the litigation proceeded against Brunswick et al, in the *Vandenbergs v. Brunswick* state court matter.

53. On April 6, 2015, the parties participated in a mediation led by former Cook County Circuit Court Judge Donald P. O'Connell. The day-long mediation culminated in an offer of $3,000,000 by Brunswick's insurer, American International Group (hereinafter, "AIG"), and a demand of $39,000,000 by the Vandenbergs. Charles Patitucci, Senior Complex Director of Excess Casualty Claims of AIG Property Casualty, (hereinafter "Patitucci,") participated in the mediation for AIG, and Respondent participated on behalf of the Vandenbergs. Attorneys for Brunswick were not present and did not participate in the mediation.

54. *Vandenbergs v. Brunswick* did not settle at the mediation and proceeded to trial before the Honorable Elizabeth Budzinski.

55. Between May 10, 2015 and June 9, 2015, the trial proceeded with respect to Brunswick's liability to the Vandenbergs. Although RQM remained a named defendant in the case, the issue of RQM's liability had been resolved and RQM had been released in the federal admiralty action. Respondent and his colleague Ruth Degnan (hereinafter, "Degnan") represented the Vandenbergs. Attorneys John Patton and John Ouska of Patton & Ryan represented Brunswick.

56. The events described in paragraphs 57-101, below, took place on June 9, 2015 in the trial relating to *Vandenbergs v. Brunswick*.

57. On June 9, 2015, the parties presented closing arguments. Respondent requested a verdict in favor of Plaintiffs for $103 million. The court instructed the jury that "[i]f you find for Brunswick on the question of liability, you will have no occasion to consider the question of damages." At 2:30 p.m. jurors began their deliberations.

58. Sometime between 2:45 p.m. and 3:00 p.m., while the jury deliberated, Patitucci extended to Respondent a high-low settlement offer[1] as follows: $41.5 million for the high end and 7.5 million for the low end.

59. Without communicating the high-low settlement offer described in paragraph 66 above to the Vandenbergs, Respondent immediately rejected the offer and told Patitucci "We have nothing to talk about."

60. Immediately after Respondent rejected the high-low settlement offer, Patitucci extended a lump sum settlement offer of $25 million.

61. After receiving the $25 million offer, Respondent met the Vandenbergs on the ground floor of the courthouse, spoke with them briefly, and informed them of the offer. Scot and Patty indicated to Respondent that they were willing to accept the $25 million offer. At that time, Respondent suggested that they all return to his office to discuss Patitucci's offer.

62. Around 3:15 p.m. on June 9, 2015, Respondent and the Vandenbergs arrived at Respondent's office. At about 3:40 p.m., following further discussion with Respondent, the

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[1] A high-low agreement is one whereby plaintiff and defendant both agree that the outcome of the case will be no less than the "low" and no more than the "high". If the verdict is in favor of the plaintiff, it shall not exceed the "high"; if in favor of the defendant, plaintiff still recovers the "low".

Vandenbergs directed Respondent to accept Patitucci's $25 million offer. As of 3:50 that afternoon, Respondent had not accepted the offer.

63. At approximately 3:50 p.m., the jury gave a note with a question to the Sheriff Deputy for Judge Budzinski. The Deputy handed the note to the judge's clerk, Tatiana Agee, (hereinafter "Agee") who gave the note to Judge Budzinski. The jury note asked, in full: "Can we find fault with RQM without finding fault with Brunswick?" After looking at the jury note, Judge Budzinski directed her clerk, Agee, to call both parties' lawyers to come to chambers.

64. At 3:52 p.m., Agee contacted Respondent by telephone. Agee advised Respondent that the jury had a question. In a hushed voice, Agee revealed the contents of the note to Respondent. Respondent told Agee the answer to the question was "no," and to "hold off, don't do anything yet, I'm going to try to settle this."

65. When Agee advised Respondent of the content of the jury's question, Respondent knew or should have known that the jury was contemplating a verdict in favor of Brunswick and that if that verdict was returned, the Vandenbergs would not be awarded any damages against Brunswick.

66. At approximately 3:55 p.m., Respondent called Patton's office looking for Patitucci. Respondent left a message stating only that "the jury is out." At 3:56 p.m., Respondent called Patitucci's cell phone and left another message. Neither message indicated that the Vandenbergs had accepted Brunswick's settlement offer.

67. At 4:01 p.m., Respondent spoke with Agee and told her that he could not reach the person he needed to speak to about the settlement. He asked for further instructions. Agee told Respondent that Judge Budzinski wanted the parties to return to court.

68. At 4:03 p.m., Respondent reached Patitucci by phone. They talked for about five minutes. Respondent told Patitucci that the plaintiffs were willing to accept $30 million. Respondent said, "I know that you have it." Patitucci responded that he did not have that authority and the previous offers were final.

69. Respondent then requested $27.5 million to settle the claim. When Patitucci advised Respondent that his authority was limited to $25 million, and that it would take days or weeks to obtain the authority required to increase Brunswick's settlement offer, Respondent accepted Brunswick's $25 million dollar offer, and abruptly hung-up the phone.

70. At the time that Respondent advised Patitucci that his clients accepted Brunswick's $25 million settlement offer, Patitucci was not aware of the existence of the jury note. Respondent did not inform Patitucci that there was a jury note, or that Respondent was aware of the contents of that note.

71. At 4:11 p.m., Patitucci called Patton, the lead attorney for Brunswick, and informed him of the settlement but not of the fact of the jury note or its contents.

72. Between 4:10 and 4:15 p.m., Respondent talked to Agee, who called him back at Judge Budzinski's request. Respondent asked to speak to Judge Budzinski. Agee transferred Respondent to Judge Budzinski. Respondent also told Judge Budzinski that the case had settled and that neither Respondent nor defense counsel were interested in the contents of the jury's note or anything more about the trial. Respondent told Judge Budzinski that the note was "probably irrelevant now." Judge Budzinski told Respondent that the parties still needed to appear in her chambers.

73. Respondent did not tell Judge Budzinski that Agee had already advised him of the contents of the jury note.

74. Respondent's statements to Judge Budzinski that neither counsel was interested in the content of the note and that the note was "probably irrelevant now" were false and misleading because Respondent omitted to tell her that he did not know the note's content when, in fact, he already knew the content of the note and had not spoken to defense counsel about the note and was not aware whether defense counsel knew of the note or its contents.

75. Respondent knew that his statements to Judge Budzinski described in paragraph 82, above, were false and misleading at the time he made them.

76. Respondent's conduct in *Vandenbergs v. Brunswick* in asking to speak to the judge and telling her that neither counsel was interested in the content of the note and it was probably irrelevant now was an improper ex-parte communication with the judge and resulted in a delay of his client's receipt of their settlement funds

77. After her conversation with Respondent, described in paragraph 82, above, Judge Budzinski instructed Agee to call Patton and advise Patton that the court had been informed of the settlement, but because there was an unpublished jury note, Patton needed to appear in chambers.

78. Between 4:15 p.m. and 4:19 p.m., Respondent called Patton and told him that the case had settled. During that conversation, the attorneys discussed Patton's request to have the jury continue to deliberate. Respondent's objected to that request. At no time during his conversation with Patton did Respondent inquire as to whether Patton knew of the jury note and its content.

79. At 4:19 p.m., Agee called Patton and told him about the jury's note.

80. At 4:40 p.m., attorneys for both parties went to Judge Budzinski's chambers. Judge Budzinski expressed her surprise at the time counsel took to return to court after being

notified of the jury note. The contents of the jury note were then read to both sides. Defense counsel requested that the jury be allowed to deliberate to verdict. Judge Budzinski granted that request over plaintiff's counsel's objections and sent a note to the jury, in which Judge Budzinski answered the jury's question, instructing them to "continue to deliberate."

81. At 4:50 p.m., the judge entered an order dismissing *Vandenberg v. Brunswick* which read as follows: "This matter is dismissed pursuant to the settlement of the parties. The court to retain jurisdiction to enforce the settlement and adjudicate liens." Counsels for both parties were present at the time the order of dismissal was entered.

82. At the time the order of dismissal was entered, neither Judge Budzinski, nor Patitucci, nor counsels for Brunswick knew that Respondent had been aware of the contents of the jury note when he agreed to the $25 million settlement.

83. At 5:00 p.m., the jury returned a verdict in favor of Brunswick.

84. On June 12, 2015, Brunswick filed a motion to vacate the settlement and for entry of a judgment on the jury's verdict on the grounds of fraud and mistake.

85. On June 15, 2015, Judge Budzinski filed a memorandum of the court detailing her understanding and recollection of the events of June 9, 2015.

86. On June 26, 2015, Brunswick filed a motion to vacate the settlement agreement and enter judgment on the jury's verdict. The basis for defendant's motion to vacate was that Brunswick did not know the existence of a jury note, or its contents, at any time before Respondent and Patitucci agreed on a settlement amount, and that Respondent induced the court clerk, Agee, to delay informing Brunswick's counsel of the jury note so that Respondent could negotiate a settlement before Brunswick's counsel learned of the contents of the jury's note.

87. On or about June 26, 2015, Respondent, without consulting his clients or obtaining informed consent, advised the Vandenbergs that Montgomery would represent them in *Vandenbergs v. Brunswick*. Respondent did not explain to the Vandenbergs that issues had arisen in *Vandenbergs v. Brunswick* as a result of Respondent's conduct in reaching the settlement agreement because he was the only lawyer who was aware of the content of the jury's note or that Montgomery had a conflict about which they were unaware. Though he was now a witness in the matter, Respondent did not withdraw from his representation of the Vandenbergs in *Vandenbergs v. Brunswick.*

88. Between June 26, 2015 and February 2016, Montgomery and lawyers at his firm provided legal advice to Respondent and the Vandenbergs regarding the post-settlement issues that arose in *Vandenbergs v. Brunswick*.

89. On February 20, 2016, Scot emailed Respondent and terminated Respondent's representation and requested a statement of finances to date.

90. On February 20, 2016, about an hour and a half after being discharged, Respondent sent an email to Scot advising that current case expenses for which checks have been written was "approximately $900,000." The email continued to state "You owe our firm $200,000 in fees which we deferred from the first settlement. Lastly, pursuant to our written agreement you owe us payment for uncompensated legal work by our legal team for over 5 years either by contingency or by hours dedicated to your case at $450 per hour."

91. As a result of Brunswick's motion to vacate the settlement agreement and enter judgment on the verdict, on July 27, 2015, Judge Budzinski recused herself from the *Vandenbergs v. Brunswick* case. Judge Daniel J. Lynch was assigned to the case.

92. Between October 15, 2015 and October 27, 2015, Judge Lynch held evidentiary hearings on Brunswick's motion to vacate. Respondent, Degnan, Patitucci, Patton, Kearney (maritime counsel for Brunswick,) Agee, Brooke Reynolds (judicial extern for Judge Budzinski) and the Vandenbergs testified at the hearings.

93. On January 19, 2016, Judge Lynch issued an oral opinion in *Vandenbergs v. Brunswick* rescinding the purported settlement agreement.

94. On May 19, 2016, Judge Lynch entered an order in *Vandenbergs v. Brunswick* finding in favor of Brunswick and against the Vandenbergs. Had this order been upheld, the Vandenbergs would have received nothing for their claims for damages against Brunswick.

95. On June 24, 2016, the Vandenbergs through their counsel, Kralovec, Jambois & Schwartz filed a motion to have Judge Lynch recuse himself in the matter or to have him disqualified. The motion cited Judge Lynch's alleged bias against the plaintiffs due to the conduct of their former counsel, Respondent, and the court's failure to ensure they received adequate representation. Judge Lynch recused himself from further proceedings and the case was reassigned to the Honorable James O'Hara.

96. On October 25, 2016, the Vandenbergs filed a motion to vacate the court's January 19, 2016 oral opinion and its May 26, 2016 orders.

97. On December 20, 2016, after briefing and oral argument on the motion to vacate described in paragraph 105 above, Judge O'Hara entered an order vacating the judgment entered in favor of Brunswick and all orders entered after June 9, 2015 that were inconsistent with the court's December 20, 2016 order, and reinstated the settlement agreement.

98. On January 18, 2017, Brunswick filed a motion to vacate the court's order or in the alternative for clarification.

99. On February 15, 2017, the court entered an order denying Brunswick's January 18, 2017 motion. On that day, the court also entered final judgment in favor of the Vandenbergs in *Vandenbergs v. Brunswick.*

100. On March 1, 2017, Brunswick appealed the court's February 15, 2017 order entering judgment for the Vandenbergs referred to in paragraph 108, above.

101. On November 17, 2017, the First District, First Division Appellate Court issued its opinion in the appeal from *Vandenberg v Brunswick* affirming the judgment in favor of the Vandenbergs entered by the Circuit Court and determined that:

> [R]escission of the settlement would do an injustice to plaintiffs… who had 'clean hands' in the jury note matter and formed their intent to accept the settlement offer prior to Agee's 3:52 p.m. call to McNabola. In fact, had McNabola relayed acceptance of Brunswick's offer immediately after plaintiffs informed him of it at 3:40 p.m., the parties would have entered into a valid settlement prior to the court receiving the jury note at approximately 3:50 p.m. with no mistake as grounds for rescission.

102. By reason of the conduct described above, Respondent has engaged in the following misconduct:

a. Communicating *ex parte* with a judicial official, by means prohibited by law without authorization of the court, by conduct including engaging in conversation with Agee whereby Respondent learned the content of the jury note without all parties' present, in violation of Rule 3.5(b) of the Illinois Rules of Professional Conduct (2010);

b. Conduct involving dishonesty, fraud, deceit, or misrepresentation, by the conduct including failing to timely apprise Patitucci, counsels for Brunswick, and the court of his advance notice of the content of the jury note, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010).

COUNT IV

Knowingly Assisting Another to Violate the Rules of Professional Conduct and Conflict of Interest in the Kinnally Matter

103. On March 3, 2003, Carol Kinnally (hereinafter "Kinnally") sustained injuries while working, when the vehicle she was driving collided with another vehicle at the intersection of Addison Street and Normandy Avenue in Chicago. On April 23, 2003, Respondent and Kinnally agreed that Respondent would represent Kinnally in her personal injury claim against the driver of the other vehicle, John Bader (hereinafter "Bader") and in an underinsured motorist claim through Hartford Insurance (hereinafter "Hartford"), her employers' insurance policy. Respondent and Kinnally agreed that Respondent would receive 33 1/3% of any amount recovered as his attorney's fee if the case was settled before a lawsuit was filed or 40% if a lawsuit was filed or the case was sent to arbitration, and that Respondent would be reimbursed for costs he incurred in representing Kinnally in connection with the Bader personal injury litigation.

104. In addition to her personal injury claim and underinsured motorist claim, as a result of the fact that the injuries occurred during the course of her employment, Kinnally also had a workers compensation claim, which Respondent referred to attorney Marc Stookal (hereinafter "Stookal"). Stookal proceeded to pursue a workers' compensation matter on Kinnally's behalf. Stookal and Kinnally entered into a separate fee agreement, governed by the provisions of workers compensation law. The workers compensation case was captioned *Kinnally v. MCL Development* and was assigned case number 04 WC 016966 (hereinafter the workers' compensation matter").

105. On August 18, 2003, Respondent filed a complaint on Kinnally's behalf in the Circuit Court of Cook County against Bader. The matter was captioned *Kinnally v. Bader* and was assigned matter number 03 L 9940 (hereinafter "the personal injury matter").

106. On August 20, 2003, Respondent sent formal notice to Hartford that Kinnally would be seeking compensation from them under an under-insured motorist insurance policy her employer carried with Hartford. The matter proceeded to arbitration and was captioned *Carol Kinnally v. The Hartford*, and was assigned case number 07095AAG (hereinafter the "under-insured matter").

107. By reason of the trust and confidence that Kinnally placed in Respondent pursuant to the attorney-client relationship, Respondent stood in the position of a fiduciary to Kinnally. As such, Respondent owed Kinnally the fiduciary duties attendant to the attorney-client relationship, including the duty to perform the requested services with the highest degree of honesty, fidelity, and good faith, a duty of undivided loyalty, a duty to avoid placing himself in a position where one client's interests would conflict with the interests of another client, and a duty of care.

108. As a result of the attorney-client relationship with Kinnally, Respondent was aware of significant personal information relating to Kinnally, including information relating to her personal finances and that Kinnally was in financial distress.

109. In 2003, during the time Respondent represented Kinnally in the personal injury matter and the under-insured matter, Kinnally sought a litigation loan from a commercial lawsuit lender, with the repayment of that loan being contingent upon a financial recovery in her personal injury lawsuit. Kinnally informed Respondent of her financial distress and need for funds during the pendency of her case, and informed Respondent that she was going to seek a loan from a commercial lawsuit lender.

110. In 2003 after Kinnally conferred with Respondent about her need for funds as described in paragraph 118, above, Respondent recommended that Kinnally call his father, William F. McNabola, M.D., (hereinafter "Dr. McNabola") who would provide her with financial assistance in the form of a loan with a lower interest rate than that offered by the commercial lawsuit lender. Respondent told Kinnally that he was not permitted to loan Kinnally any funds directly, but that his father could loan her the funds. Respondent told Kinnally if she went to his father she would not have to pay an "exorbitant" interest rate. Respondent believed the loan would be advantageous to his father, who could earn a 10% return on his investment. At all times, Kinnally believed that the repayment of any loan from Dr. McNabola was conditioned upon a recovery in her personal injury matter.

111. At no time between 2003 and July 2006, did Respondent explain to Kinnally that his interests in having his father repaid the loans were in conflict with his interests in representing Kinnally with undivided fidelity. At no time between 2003 and July 2006 did Respondent transmit to Kinnally, in writing, information about the transaction with his father, Kinnally's right to seek advice of independent counsel, or obtain her informed consent to that transaction and Respondent's role in the matter.

112. At all times between 2003 and 2006, Dr. McNabola had an office in Respondent's law firm.

113. Between November 2003 and July 2006, Kinnally obtained the following amounts from Dr. McNabola at the following interest rates:

Date	Amount	Interest Rate
11/17/03	$7,500	10% per annum
1/13/04	$2,000	10% per annum
10/19/04	$1,500	10% per annum
4/29/05	$20,000	10% per annum
8/26/05	$10,000	10% per annum
10/7/05	$10,000	10% per annum
12/15/05	$10,000	10% per annum
4/7/06	$10,000	10% per annum
5/5/06	$2,000	10% per annum
7/26/06	$10,000	10% per annum
	Total: $83,000	

114. In each of the loans referenced in paragraph 122 above, Kinnally signed a promissory note drafted and witnessed by employees of Respondent's office, each of which contained the following clause: "The amount outstanding (including accrued interest) shall be due and payable upon the settlement or verdict of the litigation currently pending in the Circuit Court of Cook County, entitled *Carol Kinnally v. Bader,* case no. 03 L 009940."

115. In each of the transactions above, the note drafted by Respondent's firm contained an accelerator clause which provided that in the event of default in whole or in part on the note, an attorney can at any time thereafter appear in court and confess judgment in favor of the holder of the note for such amount as is unpaid, without process in favor of the holder of the note.

116. At no time during the loan transactions did Kinnally meet or deal with Dr. McNabola. All the checks Kinnally received transmitting loan funds referenced in paragraph 122 above, were messengered to Kinnally by employees of Respondent's office including Respondent's secretary, Tracy Battistoni. (hereafter "Battistoni")

117. The loans referenced in paragraph 122, above, constituted financial assistance to a client in connection with pending litigation. Neither, Respondent, nor his father as his alter-ego, can loan money to a client of Respondent's firm.

118. On or about March 16, 2004, Kinnally agreed to settle the personal injury case for the sum of $100,000. On or about May 17, 2004, Kinnally executed a "partial settlement statement" prepared at Respondent's direction. The partial settlement statement indicated that the "total reimbursement of case expense" was "none" and the statement indicated that "case expense to be held over until resolution of under-insured motorist claim resolved." Kinnally received a net distribution of $25,000 from the personal injury matter.

119. On November 30, 2004, the under-insured motorist matter proceeded to arbitration and an arbitration award was entered in favor of Kinnally in the amount of $460,672.00. The Hartford insurance policy contained a provision that an award under that insurance policy would be reduced by sums paid by anyone who was legally responsible, and sums paid under workers' compensation benefits.

120. At the time of the arbitration for the under-insured motorist matter, Kinnally was still receiving medical treatment for her injuries, and her employer continued to cover her medical expenses pursuant to the Workers' Compensation Act.

121. The funds awarded to Kinnally during the arbitration for the under-insured motorist matter referred to in paragraph 128, above, were held by Hartford until Kinnally completed treatment so that Hartford could determine the full amount of the set-off.

122. In September 2011, the workers compensation matter settled for the sum of $215,000. Additionally, from 2003 through 2011, Kinnally received temporary total disability benefits in the amount of approximately $420,000.

123. Thereafter, Hartford declined to pay the amount awarded to Kinnally during the arbitration of the under-insured motorist matter referred to in paragraph 131, above, because the workers' compensation benefits awarded and additional medical expenses paid exceeded the

amount of the arbitration award. Under the insurance policy, Hartford was not responsible for any more payments to Kinnally.

124. At no time did Kinnally pay the $83,000 to Dr. McNabola that he had loaned to her, referred to in paragraph 122, above, nor did she pay him any interest on those funds.

125. On November 9, 2011, Dr. McNabola, through attorney Richard M. Carbonara ("Carbonara"), filed a complaint against Kinnally in the Chancery Division of the Circuit Court of Cook County. The matter was captioned *McNabola v. Kinnally* and was assigned matter number 11 CH 38923 (hereinafter "chancery matter.") Judge Mary Ann Mason presided over the chancery matter. Dr. McNabola's complaint requested that the court order Kinnally to pay back the $83,000 Dr. McNabola had loaned to Kinnally, plus interest.

126. The chancery complaint alleged that Kinnally had secured her indebtedness to Dr. McNabola by pledging the proceeds of her personal injury lawsuit, but that it "subsequently became clear that the cause of action best suited to address her ills" was the workers compensation matter. The complaint further alleged that because Kinnally refused to repay Dr. McNabola's loans and had "dissipated the funds at issue," Dr. McNabola had suffered irreparable injury, had no adequate legal remedy and that an accounting was warranted to determine the extent of Kinnally's "dissipation of the funds intended by the parties to repay Dr. McNabola's generosity."

127. On or about May 30, 2012, Carbonara was granted leave to withdraw from representation of Dr. McNabola in the chancery matter pursuant to a previously filed motion to withdraw.

128. On October 19, 2012, McNabola Law Group, P.C. was granted leave to file its appearance and substitute as attorneys for Dr. McNabola in the chancery matter.

129. At the time the chancery matter was filed, Kinnally was a former client of Respondent's law firm. The chancery matter was substantially related to the matter in which Respondent had formerly represented Kinnally because the case involved repayment of financial assistance advanced to Kinnally in the personal injury matter. Therefore, Kinnally's interests were materially adverse to Dr. McNabola's interests in the chancery matter.

130. At no time did Respondent obtain informed consent from Kinnally to represent Dr. McNabola in the chancery matter against Kinnally.

131. Thereafter, McNabola Law Group, P.C. represented Dr. McNabola against Kinnally, its former client, until the conclusion of the matter on December 27, 2012.

132. On December 27, 2012, Judge Mary Anne Mason held a hearing on cross motions for summary judgment previously filed in the chancery matter. The plaintiff's motion alleged that Dr. McNabola should be paid the sums owing on the notes. The defendant's motion alleged that the notes were "contrary to public policy and unenforceable" because the loans were initiated by Respondent, were implemented and processed by Respondent's employees, and that because Dr. McNabola had an office in Respondent's law firm, and had never met Kinnally, he consequently was an alter-ego of Respondent's.

133. On December 27, 2012, Judge Mason denied the plaintiff's motion for summary judgment and granted defendant's motion for summary judgment holding that the promissory notes were "contrary to public policy and unenforceable." In rendering her ruling, Judge Mason stated that "Lawyers cannot circumvent our ethical obligations by finding some loophole, and I think that if we allow close family members to act as surrogates to give loans to our clients…we are opening a Pandora's Box of problems."

134. By reason of the conduct described above, Respondent has engaged in the following misconduct:

a. representing a client when the representation of that client may be materially limited by his own interests, by conduct including referring Kinnally to his own father to provide litigation loans, and later allowing his firm to take on the representation of Dr. McNabola in his lawsuit against Kinnally for the repayment of those loans, in violation of Rule 1.7(a)(2) of the Illinois Rules of Professional Conduct (2010);

b. providing financial assistance to a client by conduct including, having his employees draft and witness promissory notes for a firm client, and utilizing his father to advance loans to his client where he could not, in violation of Rule 1.8(e) of the Illinois Rules of Professional Conduct (2010);

c. representing another person, Dr. McNabola, in the same or substantially related matter in which those persons' interests are materially adverse to the interests of a former client, Carol Kinnally, without Kinnally's informed consent, in violation of Rule 1.9(a) of the Illinois Rules of Professional Conduct (2010).

COUNT V

Personal Conflict of Interest by Obtaining a 10% Loan for his Father from his Client

135. The Administrator repeats and re-alleges paragraphs 103-133 of Count IV.

136. As a result of Kinnally's failure to repay Dr. McNabola's monies, on September 21, 2011, without talking to his client, Respondent caused a memo to be prepared and sent to Stookal, the attorney handling Kinnally's worker's compensation matter, setting forth expenses owed to the McNabola firm, including the loans totaling $83,000 from Dr. McNabola, and directing Stookal to pay Dr. McNabola those funds from the settlement proceeds Stookal had obtained on Kinnally's behalf.

137. Respondent's personal interests in having his father being repaid the $83,000 in loans from Kinnally's proceeds in the workers' compensation matter were adverse to Kinnally's interests.

138. At no time between November 2003 and July 2006 did Respondent explain to Kinnally that there was a significant risk that the firm's representation of Kinnally would be materially limited by Respondent's responsibilities to his father, and at no time did Respondent obtain informed consent from Kinnally to continue representing her when the conflict between her interests and Respondent's interests in having his father repaid arose.

139. By the conduct set forth above Respondent has engaged in the following misconduct:

a. representing a client if the representation involves a concurrent conflict of interest where there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to a third person without obtaining informed consent by conduct including, directing another lawyer (Stookal) to deduct the monies owned to Respondent's father in the amount of $83,000, from the proceeds of a lawsuit, in violation of Rule 1.7(a) of the Illinois Rules of Professional Conduct (2010);

b. using information acquired in the course of representing a former client to her disadvantage by conduct including, sending a memo to Kinnally's worker's compensation attorney directing the refund of the $83,000 loans paid by Dr. McNabola to Kinnally, Respondent's former client, in violation of Rule 1.9(c) of the Illinois Rules of Professional Conduct (2010);

COUNT VI

Knowingly Assisting Another to Violate the Rules of Professional Conduct by Providing Financial Assistance to Firm Clients

140. Between August 2011 and January 2013, Lauren O'Keefe (hereinafter "O'Keefe") was a paralegal employed by Cogan & McNabola, P.C., and subsequently, after that firm dissolved, McNabola Law Group, P.C.

141. Between August 2011 and January 2013, Respondent would often direct O'Keefe to prepare promissory notes for firm clients to obtain loans from Dr. McNabola, O'Keefe or others. The promissory notes used were prepared by O'Keefe or other employees at the firm, and regularly witnessed by employees of Respondent's law firm.

142. In each of the promissory notes for the loans described in paragraph 150 above, there was a provision, which provided:

> 1.3 ***Required Prepayment***. The Borrower shall prepay, without penalty, in whole but not in part, the outstanding principal plus all accrued interest under this Note prior to the Maturity Date should Borrower elect to change law firms prior to the conclusion or successful conclusion of the Lawsuit. Such payment must be made immediately upon notification to Cogan and McNabola that the Borrower is changing or desires to change law firms.

143. On the following dates, O'Keefe, at Respondent's direction, met with firm clients and made the following loans to clients of Cogan & McNabola P.C. and/or McNabola Law Group, P.C.:

Date	Client	Amount	Interest Rate
12/27/11	Melanie DiMuzio	$2,000	20% per annum
1/25/12	Stephanie Prince	$1,200	20% per annum
3/9/12	Stephanie Prince	$1,287.45	20% per annum
3/19/12	Manuel Cordon	$2,000	20% per annum

144. The payments described in paragraph 152, above, were not court costs or expenses of litigation but were to be used for personal living expenses or other purposes unrelated to litigation costs.

145. As explained further below, in order to fund the loans, in some instances, Respondent gave O'Keefe cash which she deposited into her bank account, from which she wrote checks to the clients. In other instances, Respondent had O'Keefe loan the clients her own money. In those instances, Respondent guaranteed O'Keefe that she would be repaid any monies she personally advanced, and told her that these loans were a good way to make 20% return on her money.

146. Between January 13, 2012 and February 13, 2012, O'Keefe received from Respondent cash totaling $2,080 which she deposited into her checking account to cover monies she loaned to a firm client.

147. On March 20, 2013, Respondent issued a check, number 4076, in the amount of $3079.81, payable to Lauren O'Keefe as refund for her own monies she had used for the financial assistance she advanced to the firm's client, Stephanie Prince, plus 20% interest.

148. The transactions described in paragraphs 141-147, above, were not fair or reasonable since the 20% interest rate was above market rates and the prepayment clause was punitive.

149. Respondent knew that the Illinois Rules of Professional Conduct prohibited him from advancing financial assistance to clients. In an effort to circumvent the rules, Respondent directed O'Keefe to advance financial assistance to each of the clients referred to in paragraph 150, above.

150. By reason of the conduct described above, Respondent has engaged in the following misconduct:

a. providing financial assistance to a client in connection with pending litigation, by conduct including directing his paralegal Lauren O'Keefe to advance financial assistance to clients, in violation of Rule 1.8(e) of the Illinois Rules of Professional Conduct (2010);

b. providing financial assistance to a client in connection with pending or contemplated litigation that were not court costs or litigation expenses, by conduct including having his employees draft and witness promissory notes, and provide loans to firm clients, in violation of Rule 1.8(e) of the Illinois Rules of Professional Conduct (2010); and

c. engaging in conduct involving dishonesty, fraud, deceit or misrepresentation by conduct including purposefully having an employee of his law firm advance financial assistance to a firm client in order to hide his involvement when Respondent knew that financial assistance to clients was prohibited, in violation of Rule 8.4 (c) of the Illinois Rules of Profession Conduct (2010).

COUNT VII

Abuse of Process by Issuing a Subpoena in a Concluded Arbitration Matter

151. In approximately 2011, a dispute regarding profits and revenue arose between Respondent and Michael Cogan (hereinafter "Cogan"), a partner in the law firm then known as Cogan & McNabola, P.C. (hereinafter "Cogan & McNabola")

152. In or about August 2011, the dispute referred to in paragraph 160, above, was submitted to the American Arbitration Association to be resolved through binding arbitration. The matter was entitled *Michael P. Cogan v. Cogan & McNabola, P.C. Mark McNabola and Edward McNabola*, and was captioned number AAA Arbitration #51 194 Y 01022 11 (the "arbitration matter.") On November 16, 2011, the hearing in the arbitration matter commenced and was completed on January 3, 2012. On May 1, 2012, the arbitrator confirmed the matter was

concluded and the arbitration matter was closed. The result of the arbitration was that the parties' 2008 Revenue Allocation Agreement was in effect through 2010, a determination was made regarding how overhead should be split amongst the partners, dissolution of the law firm as a remedy was denied, the parties were ordered to implement a dispute resolution mechanism, and a resolution of what would occur with client fees if any partner left the firm.

153. In or about June 2012, Respondent fired attorney Jon Papin (hereinafter "Papin") from employment with Cogan & McNabola, P.C.

154. On or about July 2, 2012, Cogan & McNabola, P.C. dissolved and Cogan left the firm. Cogan started a new firm with a colleague called Cogan & Power P.C. (hereinafter "Cogan & Power"). Thereafter, in July 2012, Papin began working for Cogan & Power.

155. After July 2, 2012, Respondent grew suspicious that his paralegal, Lauren O'Keefe (hereinafter "O'Keefe") was in communication with Papin, with whom Respondent no longer had a working relationship.

156. Between July 2012 and October 2012, Respondent continually asked O'Keefe, who was still in his employ, to allow Respondent access to her personal Gmail account and text messages so that he could verify whether she was communicating with Papin. O'Keefe refused.

157. On October 12, 2012, Respondent caused a subpoena to be issued to Apple, Inc. in the now-concluded arbitration matter for any typed text messages or iMessages between O'Keefe's personal cell phone number and numbers thought to be associated with Papin.

158. The October 12, 2012 subpoena was issued in the Circuit Court of Cook County and commanded Apple, Inc. to produce the documents referred to in paragraph 166, above.

159. Respondent's conduct in issuing a subpoena on a matter that had already resolved was improper and dishonest, as the arbitration matter had been closed as of May 1, 2012 and was

not an active case. Respondent knew his conduct was improper and dishonest and that he could not issue a subpoena under that closed matter number.

160. Respondent caused the subpoena to issue in order to deceive Apple into producing records that Respondent otherwise would not be able to obtain. Respondent had an ulterior motive for obtaining the records in that he wanted to confirm his suspicions about communications between Papin and O'Keefe.

161. On or about late October 2012, as a result of O'Keefe's accidental receipt of a phone call on her cell phone from AT & T about the subpoena for her cell phone records, O'Keefe became aware of Respondent's attempt to surreptitiously obtain her cell phone records and was able to halt production of the records.

162. By reason of the conduct described above, Respondent has engaged in the following misconduct:

a. engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, by conduct including issuing a subpoena on a matter that was concluded, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010); and

b. engaging in conduct prejudicial to the administration of justice by conduct including improperly using the court system to issue a subpoena and committing the tort of abuse of process by dishonestly issuing a subpoena in a closed matter for ulterior reasons in violation of Rule 8.4(d) of the Illinois Rules of Professional Conduct (2010).

WHEREFORE, the Administrator respectfully requests that this matter be assigned to a panel of the Hearing Board, that a hearing be held pursuant to Supreme Court Rule 753(b), and that the Panel make findings of fact, conclusions of fact and law, and a recommendation for such discipline as is warranted.

Respectfully Submitted

Jerome Larkin, Administrator
Attorney Registration and
Disciplinary Commission

By: /s/ Chi (Michael) Zhang
Chi (Michael) Zhang

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BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of: MARK EDWARD McNABOLA, Attorney-Respondent, No. 6189613.	Commission No. 2018PR00083

NOTICE OF FILING

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PLEASE TAKE NOTICE that on July 10, 2020, an electronic copy of the ADMINISTRATOR'S THIRD AMENDED COMPLAINT, was submitted to the Clerk of the Attorney Registration and Disciplinary Commission for filing. On that same date, a copy was served on Respondent via email to Edward Feldman, Mary Eileen Wells, Diane Klotnia, and Samuel Manella at or before 5:00 p.m.

Respectfully submitted,

Jerome Larkin, Administrator
Attorney Registration and
Disciplinary Commission

By: /s/ Chi (Michael) Zhang
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FILED
7/10/2020 10:10 AM
ARDC Clerk

PROOF OF SERVICE

The undersigned, an attorney, hereby certifies, pursuant to the Illinois Code of Civil Procedure, 735 ILCS 5/109, that the Administrator served a copy of the Notice of Filing and ADMINISTRATOR'S THIRD AMENDED COMPLAINT on Counsel for Respondents, Samuel J. Manella via email manellalawoffice@aol.com, Edward W. Feldman via email efeldman@millershakman.com, Mary Eileen Wells via email mwells@millershakman.com and Diane F. Klotnia dklotnia@millershakman.com on July 10, 2020 at or before 5:00 p.m.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

/s/ Chi (Michael) Zhang
Chi (Michael) Zhang