

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

In the Matter of:

ANDRES YBARRA

Attorney-Respondent,

Commission No. 2021PR00019

No. 6298009

NOTICE OF FILING

TO: CHI (MICHAEL) ZHANG
COUNSEL FOR ADMINISTRATOR
A.R.D.C.
One Prudential Plaza
130 East Randolph Drive, Suite 1500
Chicago, Illinois 60601-6219
mzhang@iadc.org
ARDCeServices@iadc.org

PLEASE TAKE NOTICE that on May 14, 2021, I will e-file RESPONDENT'S
ANSWER TO COMPLAINT by causing the original copy to be e-filed with the Clerk of the
Attorney Registration and Disciplinary Commission.

Respectfully submitted,

/s/ SAMUEL J. MANELLA
SAMUEL J. MANELLA, ATTORNEY
FOR ATTORNEY-RESPONDENT

SAMUEL J. MANELLA #06190368
Counsel for Attorney-Respondent
77 West Washington Street
Suite 705
Chicago, Illinois 60602
(708) 687-6300
manellalawoffice@aol.com

PROOF OF SERVICE

I, SAMUEL J. MANELLA, on oath state that I served a copy of the Notice of Filing, RESPONDENT'S ANSWER TO COMPLAINT on the individual at the address shown on the foregoing Notice of Filing, sent via e-mail at mzhang@iadc.org, ARDCeService@iadc.org on My 14, 2021 at or before 4:00 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 he verily believes the same to be true.

/s/ Samuel J. Manella

SAMUEL J. MANELLA #06190368
Counsel for Attorney-Respondent
77 West Washington Street
Suite 705
Chicago, Illinois 60602
(708) 687-6300
manellalawoffice@aol.com

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ANSWER TO COMPLAINT

Now comes ANDRES YBARRA, by his attorney, SAMUEL J. MANELLA, and for his Answer to the Complaint, states as follows:

Respondent is licensed to practice law in Illinois in 2008 and is not admitted in any other states. Respondent is admitted to practice in the U.S. District courts for the Northern District of Illinois.

COUNT I

(Neglect, lack of diligence, and making false statements in the Treasa Collins divorce matter)

1. On or about January 23, 2017, Respondent met with Treasa Howard-Collins ("Treasa") for a consultation to discuss the filing of a dissolution of marriage proceeding against her then-husband, John Ernest Collins ("John"). Respondent told Treasa that the cost for his legal services would be a flat fee of \$1,000. Treasa did not retain Respondent's services at that time due to a lack of funds.

ANSWER:

Respondent admits the allegations contained in Paragraph 1 of Count I of the Complaint. Further answering, Respondent states that this was offered as she is the sister-in-law of a good college friend. It was agreed that she would pay filing costs and legal costs. Filing costs were to be paid prior to any filing and it was agreed that Respondent would not file until full payment was received.

2. On or about June 9, 2017, Treasa returned to Respondent's office and entered into a verbal agreement for Respondent to represent her in seeking a dissolution of marriage from John.

ANSWER:

Respondent denies the allegations contained in Paragraph 2 of Count I of the Complaint due to lack of recollection.

3. Between June 9, 2017 and June 11, 2017, per Respondent's request, Treasa sent Respondent information related to her marriage so that Respondent may initiate divorce proceedings in the Circuit Court of Cook County.

ANSWER:

Respondent admits the allegations contained in Paragraph 3 of Count I of the Complaint.

4. On June 12, 2017, Treasa sent Respondent a partial payment of \$700 towards her retainer via Square, an online payment service, which Respondent received. Later that same day, Respondent emailed Treasa a Petition for Dissolution of Marriage and a certification for her review and signatures. Treasa emailed Respondent the signed copies of the Petition and certification later that same day.

ANSWER:

Respondent admits the allegations contained in Paragraph 4 of Count I of the Complaint.

5. Respondent received the signed documents shortly after Treasa sent them.

ANSWER:

Respondent admits the allegations contained in Paragraph 5 of Count I of the Complaint.

6. At no time after accepting Treasa's payment of \$700 and her signed copies of the Petition and certification did Respondent file the Petition with the court.

ANSWER:

Respondent admits the allegations contained in Paragraph 6 of Count I of the Complaint, and further answering, states that he was waiting for full payment to be made before doing so, per their agreement.

7. On December 8, 2017, approximately 6 months after Respondent received the signed petition, Treasa sent Respondent an email and inquired about the status of her matter. Treasa's email stated the following:

Andy,

Have you filed the paperwork because as far as I can tell John has not been served and neither have there been attempts to served him. If you haven't proceeded I would like to withdraw and get a refund. Please forward me any required paperwork via email and I will sign and get it back to you immediately.

ANSWER:

Respondent admits the allegations contained in Paragraph 7 of Count I of the Complaint and further answering, states that there had been other communications, as well, prior to December 8, 2017.

8. On the same day, Respondent replied to Treasa's email and stated the following:

Yes, the petition was filed. That's how you can see that he hasn't been served and there is a case number. With filing fees and preparing the petition, you would not get a refund.

ANSWER:

Respondent admits the allegations contained in Paragraph 8 of Count I of the complaint, Respondent meant to indicate that with filing fees and costs, there would not be a refund. Upon realizing his mistake in indicating that the petition was filed, Respondent so notified Treasa.

9. Respondent's statements in his email to Treasa in paragraph 8, above, were false because he had not filed any petition on behalf of Treasa and there was no case number in any dissolution of marriage proceeding related to Treasa on December 8, 2017.

ANSWER:

Respondent admits the allegations contained in Paragraph 9 of Count I of the Complaint were made in error. Respondent was mistaken and he advised Treasa accordingly right away in the late evening versus business hours.

10. Respondent knew that the statements he made in his December 8, 2018 email to Treasa were false at the time he sent the email.

ANSWER:

Respondent denies the allegations contained in Paragraph 10 of Count I of the Complaint and further answering states he made them mistakenly, he apologizes and learned to not reply to clients emails right away after business hours.

11. On December 14, 2017, having received no further communication from Respondent since his December 8, 2017 email, Treasa terminated Respondent's representation and requested a return of her client files.

ANSWER:

Respondent can neither admit nor deny due to lack of recollection, but does not dispute if this is what Treasa says.

12. At no time did Respondent perform sufficient work or incur sufficient costs which would entitle him to retain the \$700 he received from Ms. Howard-Collins.

ANSWER:

Respondent denies the allegations contained in Paragraph 12 of Count I of the Complaint.

13. As of the date this complaint was filed, Respondent has not refunded any portion of Ms. Howard-Collins' fee.

ANSWER:

Respondent admits the allegation contained in Paragraph 13 of Count I of the Complaint.

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

- a. failure to act with reasonable diligence and promptness in representing a client, by conduct including not filing Treasa's dissolution of marriage petition during the six months Respondent had represented her, in violation of Rule 1.3 of the Illinois Rules of Professional Conduct (2010);
- b. failure to refund an unearned fee, by conduct including failing to refund the unearned portion of the \$700 legal fee he received from Treasa, in violation of Rule 1.16(d) of the Illinois Rules of Professional Conduct (2010); and
- c. engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, by conduct including falsely telling Treasa in his

December 8, 2017 email that he had filed a dissolution marriage petition on her behalf and that there was a case number when he did not file any petition and there was no case number, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010).

ANSWER:

Respondent denies the allegations contained in Paragraph 14 (a) through (c) of Count I of the Complaint.

COUNT II

(Making a false statement in the Brittany Hampton matter)

15. On or about February 25, 2017, Brittany Hampton ("Hampton") and Respondent agreed that Respondent would represent Hampton in a probate matter involving her deceased great-grandfather, Robert McCullough ("McCullough"), who died with no will. Respondent and Hampton agreed on a flat fee of \$1,000, towards which Hampton made a partial payment of \$600 that same day.

ANSWER:

Respondent admits the allegations in the first sentence of Paragraph 15 of Count II of the Complaint, though he is unsure of the date. Respondent admits the allegations contained in the second sentence.

16. Between March 16 and early April of 2017, Hampton attempted to contact Respondent several times, via calls and text messages, to inquire about the status of McCullough's probate matter.

ANSWER:

Respondent denies the allegations contained in Paragraph 16 of Count II of the Complaint.

17. Sometime in early April of 2017, Respondent responded to Hampton and stated to her that court for the probate matter was scheduled for April 25, 2017.

ANSWER:

Respondent denies the allegations contained in Paragraph 17 of Count II of the Complaint.

18. Respondent's statements to Hampton in paragraph 17, above, was false because no estate had been opened for McCullough at the time and there was no court hearing scheduled for April 25, 2017 in any probate matter related to McCullough.

ANSWER:

Respondent denies making the statements set forth in Paragraph 17, and therefore denies the allegations contained in Paragraph 18 of Count II of the Complaint.

19. Respondent knew that the statements he made to Hampton in paragraph 17, above, were false at the time he made them because he had not initiated any probate proceedings on behalf of McCullough and knew that there was no court hearing related to any probate matter related to McCullough scheduled for April 25, 2017.

ANSWER:

Respondent denies making the statements set forth in Paragraph 17, and therefore denies the allegations contained in Paragraph 19 of Count II of the Complaint.

20. Between April 27, 2017 and June 1, 2017, Hampton sent three text messages and placed three calls to Respondent to inquire about the purported hearing on April 25, 2017.

ANSWER:

Respondent neither admits nor denies due to insufficient knowledge. Respondent denies that there was a hearing for April 25, 2017 as alleged in Paragraph 20 of Count II of the Complaint.

21. On or about June 30, 2017, Hampton reached Respondent by telephone, who scheduled a meeting with Hampton for July 7, 2017.

ANSWER:

Respondent admits the allegations contained in Paragraph 21 of Count II of the Complaint.

22. On July 7, 2017, Hampton received a call from Respondent, who informed her that he had a conflict and needed to reschedule the appointment. In that call, Respondent also indicated that he would send Hampton documents that the heirs to McCullough's estate were required to complete.

ANSWER:

Respondent admits the allegations contained in Paragraph 22 of Count II of the Complaint.

23. Between July 7, 2017 and July 10, 2017, Hampton contacted Respondent no less than ten times both by phone and text to request the return of her documents but did not receive a reply.

ANSWER:

Respondent denies the allegations contained in Paragraph 23 of Count II of the Complaint, and further answering, Respondent's calling service indicates one telephone call.

24. At no time after July 7, 2017 did Hampton receive any documents from Respondent regarding McCullough's estate matter.

ANSWER:

Respondent denies the allegations contained in Paragraph 24 of Count II of the Complaint.

25. On July 11, 2017, Hampton appeared at the Will County Courthouse and was informed by court staff that no estate had been opened for McCullough.

ANSWER:

Respondent neither admits nor denies the allegations contained in Paragraph 25 of Count II of the Complaint due to insufficient knowledge.

26. On July 12, 2017, Hampton filed a request for investigation with the Administrator concerning Respondent's conduct described in paragraphs 15 to 25, above.

ANSWER:

Respondent neither admits nor denies the allegations contained in Paragraph 26 of Count II of the Complaint due to insufficient knowledge.

27. On May 10, 2018, an estate was opened for McCullough in the Circuit Court of Will County. The Clerk of the Court docketed the matter as *In the Matter of the*

Estate of Robert McCullough Sr., 18 P 455. The petition was filed by attorney Robert Kramer.

ANSWER:

Respondent neither admits nor denies the allegations contained in Paragraph 27 of Count II of the Complaint due to insufficient knowledge.

28. At no time did Respondent email the documents to Brittany as promised in his phone conversation with her earlier that day.

ANSWER:

Respondent neither admits nor denies the allegations contained in Paragraph 28 of Count II of the Complaint as he does not know what date is referenced in this allegation.

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

- a. failure to keep a client reasonably informed about the status of a matter, by conduct including failing to respond to Hampton's inquiries about the status of McCullough's probate matter, in violation of Rule 1.4(a)(4) of the Illinois Rules of Professional Conduct (2010); and
- b. engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, by conduct including, but not limited to, falsely telling Hampton there was a court date scheduled McCullough's estate matter when no estate had been opened on McCullough's behalf, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010).

ANSWER:

Respondent denies the allegations contained in Paragraph 29 (a) and (b) of Count II of the Complaint.

COUNT III

(Neglect, failure to keep client informed and making false statements in the Ernestina Diaz matter)

30. On or about December 20, 2017, Respondent and Ernestina Diaz ("Diaz") agreed that Respondent would represent Diaz in the eviction of a tenant who had not paid rent for three months. Respondent and Diaz further agreed that Respondent's fixed fee would be \$650. On that same day, Diaz paid Respondent a partial fee of \$400, with the rest due upon Respondent's first court appearance.

ANSWER:

Respondent admits the allegations contained in the first and third sentence of Paragraph 30 of Count III of the Complaint, but denies the allegation contained in the second sentence.

31. Shortly after receiving the \$400, Respondent prepared a "Five Day Notice", a one-page form required by 735 ILCS 5/9-209, to serve upon the tenant. The Five Day Notice contained information pertaining to the tenant's rental address, the amount of outstanding rent, the name of landlord, and a notice of termination of lease if payment is not made within five days of the notice being served upon the tenant.

ANSWER:

Respondent admits the allegations contained in Paragraph 31 of Count III of the Complaint.

32. Between December 20, 2017 and approximately early March of 2018, Diaz called Respondent numerous times to inquire about the status of her eviction matter. Respondent did not return Diaz's calls or otherwise respond to her inquiries. Respondent eventually contacted Diaz by phone on March 6, 2018, and informed Diaz that her eviction matter was up for status on that day.

ANSWER:

Respondent denies the allegations contained in Paragraph 32 of Count III of the Complaint and further answering, states Respondent called her asking her for the five-day notice as she had not indicated whether or not she had served the notice.

33. On the morning of March 6, 2018, while on her way to court for the supposed status hearing, Diaz received a call from Respondent informing her that her tenant had retained an attorney and obtained a continuance on the status hearing. That same day, Diaz was informed by a court clerk that she was not a party to any eviction matter.

ANSWER:

Respondent denies the allegations contained in the first sentence of Paragraph 33 of Count III of the Complaint. Respondent would not have told her there was a case. He told her that she needed to serve the five-day notice to the tenant. Respondent neither admits nor denies the second sentence as he does not know whether she went to Maywood or not that day.

34. Respondent's statements to Diaz in paragraphs 33, above, were false because Respondent had not initiated any eviction matter on Diaz's behalf by March 6, 2018. There was no status hearing scheduled for that day and Diaz's tenant had not obtained counsel.

ANSWER:

Respondent denies making the statements alleged in Paragraph 33, so Respondent denies the allegations contained in Paragraph 34 of Count III of the Complaint.

35. Respondent knew that the statements he made to Diaz on March 6, 2018 and during the phone call referenced in paragraph 33, above, were false at the time he made them.

ANSWER:

Respondent denies making the statements alleged in Paragraph 33, so Respondent denies the allegations contained in Paragraph 35 of Count III of the Complaint.

36. On or about March 9, 2018, Diaz appeared at Respondent's law office and confronted Respondent about his prior statements. Respondent acknowledged that he did not initiate an eviction proceeding on Diaz's behalf. Shortly thereafter, Respondent issued Diaz a full refund.

ANSWER:

Respondent neither admits nor denies that Diaz confronted him about prior statements due to lack of recollection. Respondent admits the balance of allegations contained in Paragraph 36 of Count III of the Complaint.

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

- a. failure to act with reasonable diligence and promptness in representing a client, by conduct including, but not limited to, failing to serve the Five Day Notice to Diaz's tenant and failing to initiate eviction proceedings against the tenant during the three months he represented Diaz, causing Diaz to lose several months in unpaid rent, in violation of Rule 1.3 of the Illinois Rules of Professional Conduct (2010);
- b. failure to promptly comply with reasonably requests for information from a client, by conduct including failing to respond to Diaz's various inquiries about the status of the eviction proceeding, in violation of Rule 1.4(a)(4) of the Illinois Rules of Professional Conduct (2010); and

- c. engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, by conduct including falsely telling Diaz that there was a scheduled court date on March 6, 2018, and that opposing counsel had obtained a continuance in the matter, when no eviction proceeding had been initiated on Diaz's behalf and there was no opposing counsel, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010).

ANSWER:

Respondent denies the allegations contained in Paragraph 37 (a) through (c) of Count III of the Complaint.

COUNT IV

(Failure to keep client informed, making false statements and failure to return an unearned fee in the Lopez matter)

38. On or about March 15, 2017, Eunice Lopez ("Lopez") and the biological father of her children, Trinidad Guzman ("Guzman"), met with Respondent for a consultation. Lopez and Guzman were opposing parties in a pending parentage matter in the Circuit Court of Cook County (*Lopez v. Guzman*, 17 D 379006), and they discussed with Respondent their desire for Guzman to surrender his parental rights and for Lopez's partner, David McLain ("McLain") to adopt their children. On that day, Respondent agreed to represent Lopez in both matters for a fixed fee of \$1,500, towards which Lopez made a partial payment of \$600 that same day.

ANSWER:

Respondent admits that Lopez & Guzman were opposing partners in a pending parentage and further answering states that Respondent met with the parties separately on that day, it was only in regard to the Adoption matter, and during his meeting with Lopez she indicated she was married to McLain. Respondent admits receiving \$600.00 toward his quoted fee of \$1,500.00 for the adoption matter.

39. On March 23, 2017, Respondent received from Guzman an additional \$150 towards Lopez's \$1,500 legal fee.

ANSWER:

Respondent admits the allegation contained in Paragraph 39 of Count IV of the Complaint.

40. Between March 23, 2017 and April 16, 2017, Lopez contacted Respondent by phone numerous times in inquire about the status of her matter, but Respondent did not return her messages or otherwise reply to Lopez's inquiries.

ANSWER:

Respondent denies the allegation contained in Paragraph 40 of Count IV of the Complaint.

41. On April 17, 2017, Lopez left a message for Respondent indicating that she was desperate for information regarding her legal matters and that she would go to the police if she did not hear from Respondent within two days. Respondent returned Lopez's call later that same day and set up a meeting for April 20, 2017.

ANSWER:

Respondent neither admits nor denies the first sentence of Paragraph 41 of Count IV of the Complaint due to insufficient knowledge. Respondent denies the second sentence.

42. On April 20, 2017, Lopez appeared at Respondent's law office where Respondent informed Lopez that the next court date was on May 2, 2017, and that he would contact her with additional information prior to the court date. During that meeting, Respondent also advised Lopez that she and McLain should be married so that McLain can adopt Lopez's two young children.

ANSWER:

Respondent denies the allegations contained in Paragraph 42 of Count IV of the Complaint. Further answering Lopez had always indicated to Respondent that she was married. Respondent actually sternly spoke to her when she would not provide him with a marriage certificate.

43. Respondent's statements to Lopez on April 20, 2017 were false because no court date had been scheduled for May 2, 2017 in matter number 17 D 379006 and no adoption proceeding had been initiated on Lopez's behalf.

ANSWER:

Respondent denies making the alleged statements on April 20, 2017, and denies that he ever represented her in a domestic proceeding as alleged in Paragraph 43 of Count IV of the Complaint. Further answering, Respondent indicated to Lopez that once the adoption went through, the biological father would have no legal obligation to pay support. That is when Lopez indicated she was not married to

McLain. She then began asking Respondent about immigration status. Respondent asked her if McLain was her actual partner or not. She got mad.

44. Respondent knew that the statements he made to Lopez on April 20, 2017 were false at the time he made them.

ANSWER:

Respondent denies making the statements alleged on April 20, 2017, so Respondent denies the allegations contained in Paragraph 44 of Count IV of the Complaint.

45. Lopez and McLain obtained their marriage license on April 21, 2017 and were married the next day, on April 22, 2017.

ANSWER:

Respondent neither admits nor denies the allegations contained in Paragraph 45 of Count IV of the Complaint, due to lack of information.

46. Respondent did not contact Lopez before May 2, 2017, or at any other time since their April 20, 2017 meeting.

ANSWER:

Respondent admits the allegation contained in Paragraph 46 of Count IV of the Complaint.

47. At no time did Respondent file an appearance on behalf of Lopez in matter number 17 D 379006 and at no time did Respondent initiate adoption proceedings.

ANSWER:

Respondent admits the allegations contained in Paragraph 47 of Count IV of the Complaint.

48. At no time did Respondent perform sufficient work or incur any costs related to Lopez's legal matter to warrant his retention of the \$750 he received.

ANSWER:

Respondent denies the allegations contained in Paragraph 48 of Count IV of the Complaint. Respondent prepared the adoption packet and spoke with the

biological father. Lopez never provided marriage proof.

49. At no time did Respondent refund any portion of the \$750 in legal fees paid to him.

ANSWER:

Respondent admits the allegations contained in Paragraph 49 of Count IV of the Complaint.

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

- a. failure to act with reasonable diligence and promptness in representing a client, by conduct including failing to file a petition for adoption on behalf of Lopez and McLain or take any action for Guzman to surrender his parental rights in case number 17 D 379006, in violation of Rule 1.3 of the Illinois Rules of Professional Conduct (2010);
- b. failure to comply with reasonable requests for information from a client, by conduct including failing to respond to Lopez's numerous communications regarding the status of her legal matters, in violation of Rule 1.4(a)(4) of the Illinois Rules of Professional Conduct (2010);
- c. failure to refund an unearned fee by conduct including failing to refund the unearned portion of the \$750 he received from Lopez and Guzman, in violation of Rule 1.16(d) of the Illinois Rules of Professional Conduct (2010); and
- d. engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, by conduct including falsely telling Lopez that there was a scheduled court date on May 2, 2017, when no court date had been scheduled for any of Lopez's legal matter, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010).

ANSWER:

Respondent denies the allegations contained in Paragraph 50 (a) through (d) of Count IV of the Complaint.

COUNT V

(Neglect, failure to communicate and failure to return an unearned fee in the Alvarado matter)

51. On or about November 16, 2016, Respondent and Angeles Alvarado ("Alvarado") agreed that Respondent would represent Alvarado to obtain a U Visa, a

non-immigrant visa for victims of certain crimes who have suffered mental or physical abuse and are helpful to law enforcement officials in the investigation or prosecution of criminal activity. Respondent also agreed to represent Alvarado in a dissolution of marriage proceeding initiated by her then-husband, Juan Galeana ("Galeana"), in the Circuit Court of Cook County, docketed as *Galeana v. Alvarado*, 16 D 331062. Respondent and Alvarado further agreed that Alvarado would pay Respondent a flat fee of \$4,500 for the two matters.

ANSWER:

Respondent denies the allegations contained in Paragraph 51 of Count V of the Complaint and further answering states it was agreed that Respondent would initially represent Ms. Alvarado in the U Visa matter.

52. On April 14, 2017, Respondent filed his appearance on behalf of Alvarado in case number 16 D 331062 and, on that same day, filed a motion requesting an extension to respond to Galeana's petition for dissolution of marriage.

ANSWER:

Respondent admits the allegations contained in Paragraph 52 of Count V of the Complaint.

53. On May 3, 2017, Respondent filed on behalf of Alvarado a two-page answer to Galeana's petition for dissolution of marriage.

ANSWER:

Respondent admits the allegations contained in Paragraph 53 of Count V of the Complaint.

54. On May 17, 2017, Respondent received from Alvarado a cash payment of \$1,000 towards her legal fees.

ANSWER:

Respondent admits the allegations contained in Paragraph 54 of Count V of the Complaint.

55. On June 7, 2017, Respondent received from Alvarado a check for \$1,000 as a second payment towards her legal fees.

ANSWER:

Respondent admits the allegations contained in Paragraph 55 of Count V of the Complaint.

56. Between November 29, 2017 and February 23, 2018, Respondent failed to appear on Alvarado's behalf in case number 16 D 331062 for three scheduled court dates.

ANSWER:

Respondent admits the allegations contained in Paragraph 56 of Count V of the Complaint as he did not appear, but further answering, Respondent states that he has no specific recollection if his appearances were required on these dates, but he believes that they might not have been required.

57. On February 23, 2018, the court entered an order to show cause why Respondent should not be held in contempt of court for his failures to appear on behalf of his client on three scheduled court dates, on November 29, 2017, December 29, 2017, and February 23, 2018. In that same order, the court also directed Respondent to appear at the next scheduled court date, on March 23, 2018.

ANSWER:

Respondent neither admits nor denies the allegations contained in Paragraph 57 of Count V of the Complaint due to insufficient knowledge, and further answering, states that he was never served with a Rule to Show Cause.

58. On March 23, 2018, Respondent appeared in for matter number 16 D 331062 and made an oral motion to withdraw from his representation of Alvarado, which the court granted. The court also gave Alvarado 21 days to file an appearance or retain other counsel.

ANSWER:

Respondent admits the allegations contained in Paragraph 58 of Count V of the Complaint.

59. On May 30, 2018, after a prove-up hearing, the court granted Galeana's petition for dissolution of marriage in case number 16 D 331062 and dissolved the marriage between Galeana and Alvarado. On that day, the Honorable Alfred Levinson also entered an order directing Respondent to return the \$2,000 in legal fees he received to Alvarado *instantly*.

ANSWER:

Respondent neither admits nor denies the allegations contained in Paragraph 59 of Count V of the Complaint due to insufficient knowledge.

60. As of the date this complaint was filed, Respondent has not returned any portion of the \$2,000 he received to Alvarado.

ANSWER:

Respondent admits the allegations contained in Paragraph 60 of Count V of the Complaint.

61. At no time did Respondent perform sufficient work or incur any costs which related to Alvarado's legal matters to warrant his retention of the \$2,000 he received.

ANSWER:

Respondent denies the allegations contained in Paragraph 61 of Count V of the Complaint.

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

- a. failure to act with reasonable diligence and promptness in representing a client, by conduct including failing to appear in court on at least three occasion during his representation of Alvarado resulting in a rule to show cause order to be entered against Alvarado, in violation of Rule 1.3 of the Illinois Rules of Professional Responsibility (2010);
- b. failure to promptly comply with reasonable requests for information from a client, by conduct including failing to respond to Alvarado's inquiries about the status of her legal matters, in violation of Rule 1.4(a)(4) of the Illinois Rules of Professional Conduct (2010); and
- c. failure to refund an unearned fee, by conduct including failing to return the unearned portion of the \$2,000 he received from Alvarado, in violation of a court order, and in violation of Rule 1.16(d) of the Illinois Rules of Professional Conduct (2010).

ANSWER:

Respondent denies the allegations contained in Paragraph 62 (a) through (c) of Count V of the Complaint.

COUNT VI
*(Neglect, failure to communicate and failure to return an
unearned fee in the Early matter)*

63. On or about July 11, 2018, Tiffany Early ("Early") met with Respondent for a consultation about the potential representation of Early's son, E.B., a minor, in a criminal investigation arising out of allegations E.B. made inappropriate sexual contact with a child whom he was babysitting.

ANSWER:

Respondent admits the allegations contained in Paragraph 63 of Count VI of the Complaint.

64. On August 3, 2018, Respondent accompanied E.B to the Cook County Sheriff's Office for questioning. On that same date, Respondent received from Early a check for \$250 for Respondent's services that day. No charges were brought against E.B.

ANSWER:

Respondent denies the allegations contained in Paragraph 64 of Count VI of the Complaint, and further answering states that he received the payment, but his services that day were in excess of \$250.00.

65. On November 14, 2017, the Illinois Department of Children & Family Services ("DCFS") sent a letter to E.B. notifying him that, after investigating a report of child abuse and neglect, DCFS has indicated E.B. for sexual molestation, and that the DCFS's indicated finding will be maintained on the State Central Register for five years or until E.B.'s 23rd birthday. DCFS docket its investigation into E.B. as case number 2018-E-03657 ("the DCFS matter").

ANSWER:

Respondent neither admits nor denies the allegations contained in Paragraph 65 of Count VI of the Complaint due to insufficient knowledge.

66. Early received DCFS's November 14, 2017 letter shortly after it was sent. Per the direction in that letter, Early sent a written request for an administrative appeal to the DCFS and requested a copy of DCFS's investigative file.

ANSWER:

Respondent neither admits nor denies the allegations contained in Paragraph 66 of Count VI of the Complaint due to insufficient knowledge.

67. On or about November 21, 2018, DCFS received E.B's request for appeal and assigned Administrative Law Judge Marko Djursic was assigned to hear E.B.'s appeal.

ANSWER:

Respondent neither admits nor denies the allegations contained in Paragraph 67 of Count VI of the Complaint due to insufficient knowledge.

68. On December 17, 2018, during the first pre-hearing for E.B's DCFS matter, Early refused the first offered Administrative Hearing Date, for January 3, 2019, so that she could obtain representation for E.B. Early then met with Respondent and agreed that Respondent would represent E.B. in the DCFS appeal and that Respondent would charge a flat fee of \$1,500. On that same day, Early made a partial payment of \$500 towards Respondent's legal fees.

ANSWER:

Respondent neither admits nor denies the allegations contained in the first sentence of Paragraph 68 of Count VI of the Complaint due to insufficient knowledge. Respondent admits the second and third sentences.

69. On December 21, 2018, Judge Djurisc entered an order noting that E.B. had refused the first offered hearing date and continued the matter to February 29, 2019.

ANSWER:

Respondent neither admits nor denies the allegations contained in Paragraph 69 of Count VI of the Complaint due to insufficient knowledge.

70. On December 26, 2018, Early contacted Respondent to notify him that she had received the discovery file from DCFS.

ANSWER:

Respondent neither admits nor denies the allegations contained in Paragraph 70 of Count VI of the Complaint due to lack of recollection.

71. On December 29, 2018, Early sent Respondent via email a copy of the hearing notice she received from DCFS.

ANSWER:

Respondent denies the allegations contained in Paragraph 71 of Count VI of the Complaint.

72. Between December 26, 2018 and February 8, 2019, Early attempted to contact Respondent, both by text messages and emails,

ANSWER:

Respondent denies the allegations contained in Paragraph 72 of Count VI of the Complaint.

73. On February 20, 2019, Respondent received from Early another check for \$500 towards E.B.'s legal fees.

ANSWER:

Respondent admits the allegations contained in Paragraph 73 of Count VI of the Complaint.

74. On May 28, 2019, Judge Djurisc entered an order in E.B.'s DCFS matter setting the next pre-hearing for August 19, 2019. Respondent received a copy of that order at the time it was entered.

ANSWER:

Respondent admits the allegations contained in Paragraph 74 of Count VI of the Complaint.

75. Respondent did not appear on E.B. behalf at the pre-hearing conference scheduled for August 19, 2019. Respondent's failure to appear resulted in a default of E.B.'s appeal.

ANSWER:

Respondent admits the allegations contained in Paragraph 75 of Count VI of the Complaint and further answering states he previously explained to Tiffany that the appeal record was only void of the recorded statement of E.B. where he invoked his right to remain silent. The record was not missing anything that would help in an appeal. Respondent explained that a criminal standard is different than a civil or administrative standard. Respondent explained to her that there was nothing to gain from proceeding. Respondent spoke with E.B. and Respondent stated the

same. Respondent recommended to no longer pursue an appeal and E.B. agreed along with Tiffany.

76. On August 20, 2019, Administrative Law Judge Michelle Jackson entered an order dismissing E.B.'s appeal in the DCFS matter, declaring it abandoned because of appellant's failure to appear. Specifically, the order indicated that the Administrative Law Judge called Respondent's number "on more than one occasion and left more than one and[sic] message with a return telephone number with the Attorney's answering service. No return call was received."

ANSWER:

Respondent admits the allegations contained in Paragraph 76 of Count VI of the Complaint, and further answering, states that he spoke with E.B. and Tiffany, indicating that there is nothing from the original hearing that could be added for the record and they agreed to not proceed.

77. Also on August 20, 2019, having been informed by DCFS personnel that Respondent did not appear for the August 19, 2019 pre-hearing, Early contacted Respondent's office and left a message, to which Respondent did not reply.

ANSWER:

Respondent denies the allegations contained in Paragraph 77 of Count VI of the Complaint and further answering states she contacted Respondent and he told her he was no longer in private practice on his own.

78. On November 5, 2019, Early contacted DCFS for an update on E.B.'s appeal and was informed that her son's appeal was closed and marked abandoned, and that a certified letter was sent to Respondent informing him of Judge Jackson's dismissal order, which was received by Respondent's office. Later that same day, Early contacted and retained attorney Kendra Spearman ("Spearman") to represent E.B. and reinstate his DCFS appeal.

ANSWER:

Respondent neither admits nor denies the allegations contained in Paragraph 78 of Count VI of the Complaint due to insufficient knowledge.

79. On November 8, 2019, Early sent an email to Respondent and discharged him from his representation of E.B. In that email, Early also requested that Respondent return of all documents related to E.B. DCFS matter. Respondent did not reply to that email.

ANSWER:

Respondent admits the allegations contained in Paragraph 79 of Count VI of the Complaint, and further answering, states that he replied telephonically indicating there was no documentation to send to her as she had all the discovery.

80. On November 15, 2019, Spearman filed her appearance in case number 2019-E-03657.

ANSWER:

Respondent neither admits nor denies the allegations contained in Paragraph 80 of Count VI of the Complaint due to insufficient knowledge.

81. After she filed her appearance on E.B.'s behalf, Spearman contacted Respondent twice by phone and left messages requesting his file on E.B.'s DCFS matter. Respondent did not return Spearman's calls.

ANSWER:

Respondent neither admits nor denies the allegations contained in Paragraph 81 of Count VI of the Complaint due to lack of recollection.

82. On or about November 19, 2019, Spearman filed on behalf of E.B. a Motion to Reinstate matter number 2018-E-0367.

ANSWER:

Respondent neither admits nor denies the allegations contained in Paragraph 82 of Count VI of the Complaint due to insufficient knowledge.

83. On January 20, 2020, Judge Jackson entered an order setting aside her previous dismissal order dated August 20, 2019.

ANSWER:

Respondent neither admits nor denies the allegations contained in Paragraph 83 of Count VI of the Complaint due to insufficient knowledge.

84. At no time did Respondent perform sufficient work or incur any costs related to E.B.'s DCFS matter to warrant his retention of the \$1,000 in legal fees he received.

ANSWER:

Respondent denies the allegations contained in Paragraph 84 of Count VI of the Complaint.

85. At no time did Respondent refund any portion of the \$1,000 in legal fees he received from Early.

ANSWER:

Respondent admits the allegations contained in Paragraph 85 of Count VI of the Complaint, and further answering states Respondent went to the police interrogation that lasted several hours and it was agreed that the \$1,000 would be for his time on the matter.

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

- a. failure to act with reasonable diligence and promptness in representing a client, by conduct including failing to appear for a pre-hearing conference in E.B.'s appeal, resulting in the abandonment of that matter, in violation of Rule 1.3 of the Illinois Rules of Professional Conduct (2010);
- b. failure to keep a client reasonably informed about the status of a matter, by conduct including failing to inform Early that E.B.'s appeal had been declared abandoned, in violation of Rule 1.4(a)(3) of the Illinois Rules of Professional Conduct (2010);
- c. failure to comply with reasonable requests for information from a client, by conduct including, but not limited to, failing to respond to Early's numerous communications regarding the status of E.B.'s appeal, in violation of Rule 1.4(a)(4) of the Illinois Rules of Professional Conduct (2010); and
- d. failure to refund an unearned fee, by conduct including failing to return the unearned portion of \$1,000 he received from Early for his representation of E.B. in his DCFS appeal, in violation of Rule 1.16(d) of the Illinois Rules of Professional Conduct (2010).

ANSWER:

Respondent denies the allegations contained in Paragraph 86 (a) through (d) of Count VI of the Complaint.

COUNT VII

(Neglect and failure to keep client informed in the Soto matter)

87. On March 3, 2016, Respondent and Silvia Soto ("Silvia") agreed that Respondent would represent her in a divorce proceeding initiated by her then-husband, Jesus Soto ("Jesus"), in the Circuit Court of Cook County, docketed by the Clerk of the Court as *In re: the Marriage of Soto*, 16 D 843. Respondent and Silvia further agreed that Respondent would charge a flat fee of \$1,500, which Silvia paid that same day.

ANSWER:

Respondent admits the first sentence in Paragraph 87 of Count VII of the Complaint and Respondent denies the allegations contained in the second sentence of Paragraph 87 of Count VII of the Complaint.

88. On April 1, 2016, Respondent filed his appearance on behalf of Silvia in case number 16 D 843.

ANSWER:

Respondent admits the allegations contained in Paragraph 88 of Count VII of the Complaint.

89. On June 16, 2016 Respondent filed on behalf of Silvia a three-page response to the dissolution of marriage petition in case number 16 D 843.

ANSWER:

Respondent admits the allegations contained in Paragraph 89 of Count VII of the Complaint.

90. On October 22, 2016, Michael Donis ("Donis"), attorney for petitioner, filed on behalf of Jesus his Financial Affidavit pursuant to Cook County Court Rule 13.3.1.

ANSWER:

Respondent admits the allegations contained in Paragraph 90 of Count VII of the Complaint.

91. On October 24, 2016, Donis filed on behalf of Jesus a Request for Production of Documents Pursuant to Circuit Court Rule 13.3.2 Proof of Income, requesting the production of Silvia's four most recent pay stubs, her Financial Affidavit, and her 2015 individual income tax return. A copy of that request was served upon Respondent by email and to his then-business address, which Respondent received shortly thereafter.

ANSWER:

Respondent admits the allegations contained in Paragraph 91 of Count VII of the Complaint.

92. On November 3, 2016, Donis served Respondent by email, fax, and mail petitioner Request to Produce Cook County 13.3. Financial Affidavit and supporting documents. Respondent received that request shortly thereafter.

ANSWER:

Respondent admits the allegations contained in Paragraph 92 of Count VII of the Complaint.

93. On December 5, 2016, Donis filed on behalf Jesus in case number 16 D 843 Petitioner's Combined Motion for a Finding of Default and/or for a Finding of Indirect Civil Contempt of Court and for Other Relief because of Silvia's failure to tender her Financial Affidavit. Respondent received a copy of that motion shortly after it was filed.

ANSWER:

Respondent admits the allegations contained in Paragraph 93 of Count VII of the Complaint.

94. On February 16, 2017, the court in matter number 16 D 843 issued a rule to show cause why Silvia was not in indirect civil contempt of court for her willful failure to obey a court order by failing to tender her Financial Affidavit. Respondent received a copy of that rule shortly thereafter.

ANSWER:

Respondent admits the allegations contained in Paragraph 94 of Count VII of the Complaint.

95. On March 15, 2017, the court entered an order in matter number 16 D 843 finding Silvia to be in default for her failure to tender her financial affidavit pursuant to prior court order. In that same order, the court set another status hearing for April 19, 2017. Respondent received a copy of that order shortly thereafter.

ANSWER:

Respondent admits the allegations contained in Paragraph 95 of Count VII of the Complaint.

96. Respondent did not appear for the April 19, 2018 status hearing for matter number 16 D 843.

ANSWER:

Respondent admits the allegations contained in Paragraph 96 of Count VII of the Complaint, and further answering, Respondent previously spoke with opposing counsel about obtaining a by agreement date.

97. On May 5, 2017, the court entered an Order on Prove Up in matter number 16 D 843 for May 12, 2017. Donis sent a copy of the court's order to Respondent's office shortly thereafter.

ANSWER:

Respondent admits the allegations contained in the first sentence of Paragraph 97 of Count VII of the Complaint. Respondent neither admits nor denies the allegations contained in the second sentence due to insufficient knowledge and further answering, states that he did not receive a copy of the Order.

98. On May 12, 2017, following a default proceeding, the court entered a judgment for dissolution of marriage in case number 16 D 843 and ordered, *inter alia*, that Silvia quitclaim one-half interest of their home in Blue Island, Illinois, the deed and title for which, at the time, belonged solely to Silvia.

ANSWER:

Respondent neither admits nor denies the allegations contained in Paragraph 98 of Count VII of the Complaint due to insufficient knowledge.

99. Between May 2016 and August 2017, Silvia called Respondent on numerous occasions and left messages inquiring about the status of her divorce matter. Respondent did not return Silvia's calls or otherwise respond to her requests for information. Silvia was not aware that no Financial Affidavit had not been filed; that the court had found her to be in default due to her failure to tender the Financial Affidavit; and that the matter had proceeded to a default proceeding on May 5, 2017.

ANSWER:

Respondent denies the allegations contained in Paragraph 99 of Count VII of the Complaint and further answering states Respondent was calling her and mailing her with no response. Respondent started to get calls from her in August 2017 and

his calling service records shows phone calls from August 1, 2017 through September 21, 2017.

100. On or about August 19, 2017, Silvia received from the court notice for the first time that a judgment had been entered in case number 16 D 843. Shortly after receiving that notice, Silvia appeared at Respondent's law office and left a message with Respondent's assistant asking to speak to Respondent about the judgment in matter number 16 D 843. At no time thereafter did Respondent contact Silvia.

ANSWER:

Respondent neither admits nor denies the allegations contained in the first sentence of Paragraph 100 of Count VII of the Complaint due to insufficient knowledge. Respondent denies the allegations contained in the balance of Paragraph 100 and further answering states he had no assistant in the office, just a calling service.

101. At no time did Respondent perform sufficient work or incur costs which would entitle him to retain the entirety of the \$1,500 he received from Soto.

ANSWER:

Respondent denies the allegations contained in Paragraph 101 of Count VII of the Complaint.

102. As of the date this complaint was filed, Respondent has not refunded any portion of Soto's fee.

ANSWER:

Respondent admits the allegations contained in Paragraph 102 of Count VII of the Complaint.

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

- a. failure to act with reasonable diligence and promptness in representing a client, by conduct including, but not limited to, failing to tender a financial affidavit to petitioner's counsel and failing to appear in court on behalf of Soto in her divorce proceeding leading to a default judgment of dissolution of marriage being entered, in violation of Rule 1.3 of the Illinois Rules of Professional Conduct (2010);

- b. failure to promptly comply with reasonable requests for information from a client, by conduct including failing to respond to Soto's numerous communications inquiring about the status of her divorce matter, in violation of Rule 1.4(a)(4) of the Illinois Rules of Professional Conduct (2010); and
- c. failure to refund an unearned fee, by conduct including failing to refund the unearned portion of the \$1,500 he received from Soto, in violation of Rule 1.16(d) of the Illinois Rules of Professional Responsibility (2010).

ANSWER:

Respondent denies the allegations contained in Paragraph 103 (a) through (c) of Count VII of the Complaint.

WHEREFORE, Attorney-Respondent respectfully requests the complaint be dismissed.

Respectfully submitted,

/s/ SAMUEL J. MANELLA

SAMUEL J. MANELLA

SAMUEL J. MANELLA
ATTORNEY FOR RESPONDENT
77 WEST WASHINGTON STREET
SUITE 705
CHICAGO, ILLINOIS 60602
(708) 687-6300
manellalawoffice@aol.com