

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

In the Matter of:

JOHN STEPHEN XYDAKIS,

Attorney-Respondent,

No. 6258004

Commission No. 2021PR00104

COMPLAINT

Jerome Larkin, Administrator of the Attorney Registration and Disciplinary Commission, by his attorney, Matthew D. Lango, pursuant to Supreme Court Rule 753(b), complains of Respondent, John Stephen Xydakis, who was licensed to practice law in Illinois on May 6, 1999, and alleges that Respondent has engaged in the following conduct which subjects Respondent to discipline pursuant to Supreme Court Rule 770:

COUNT I

*(Filing and maintaining frivolous litigation on behalf of Marshall Spiegel
in the Circuit Court of Cook County)*

Background

1. In or about October 2015, Respondent began representing Marshall Spiegel (“Spiegel”) in litigation in the Circuit Court of Cook County concerning a dispute with his neighbors and his condominium association.

2. In the fall of 2015, the President of the Board of Directors of the 1618 Sheridan Road Condominium Association (“Association”) resigned. At that time, Spiegel was serving as Secretary of the Association’s Board and Valerie Hall (“Hall”) was serving as Treasurer.

Following the President's resignation, Spiegel declared himself acting President over Hall's objections.

3. In October 2015, Spiegel attempted to terminate the Association's existing relationship with its legal counsel, Michael C. Kim and his law firm, Michael Kim & Associates, without convening a meeting of the Board and over Hall's objections. Spiegel also attempted, over Hall's objection, to terminate the services of the Association's existing property management company and engaged the services of another property management company.

Spiegel Litigation

4. On October 22, 2015, Respondent filed a complaint on behalf of the Association, Spiegel, and Chicago Title Trust Company, as trustee of Trust Number 4179 ("Trustee"), which he claimed owned Spiegel's condominium unit, against Hall. The suit sought a temporary restraining order ("TRO") to remove Hall from the Association's Board of Directors, alleging she was not a unit owner and thus, could not be a Board member. The matter was docketed as Cook County case number 2015 CH 15594.

5. At the time he filed case number 2015 CH 15594, and throughout the course of the litigation described below, Respondent knew that he had no factual or legal basis for alleging that Hall was not a unit owner and thus could not be a Board member.

6. On November 2, 2015, Judge Rodolfo Garcia denied the TRO and Respondent voluntarily dismissed case number 2015 CH 15594.

7. On October 26, 2015, Respondent filed a second lawsuit on behalf of the Association, Spiegel, and the Trustee for defamation, invasion of privacy, and breach of contract against Hall. The second lawsuit was docketed as Cook County case number 2015 L 10817. In that

case, Respondent again moved for a TRO to remove Hall from the Association's Board, which the trial court denied.

8. On October 30, 2015, Respondent filed an amended complaint in case number 2015 L 10817 adding another unit owner. At that time, counsel for Hall wrote a letter to Respondent, detailing the false statements and improper legal theories alleged in the complaint and advising Respondent that the filed complaint lacked a basis in law and fact and should be dismissed.

9. On November 2, 2015, Hall answered the complaint in case number 2015 L 10817, denying all material allegations, and provided a copy of the warranty deed that named her as the owner of the trust for her condominium unit. Respondent's receipt of a copy of that warranty deed put Respondent on notice that the claim that Hall could not be a Board member was not grounded in fact.

10. On December 2, 2015, Respondent filed a counter and third-party complaint in case number 2015 L 10817, naming the attorneys for Hall and Michael C. Kim, attorney for the Association, as defendants. On December 3, 2015, Respondent filed the third amended complaint, deleting the Association as a co-plaintiff in the action.

11. On December 29, 2015, Spiegel was removed as a Director of the Association's Board by a vote of 76.2% of the Association's unit owners, exceeding the 2/3 vote required for removal.

12. On December 31, 2015, the Association filed a Verified Complaint for Declaratory and Injunctive Relief against Spiegel, docketed as Cook County case number 2015 CH 18825. The Association's complaint sought declarations from the court that certain members of the Association were unit owners and duly elected members of the board, and that Spiegel acted wrongfully and without authority in seeking to take over the Association's Board after he had been

removed. It also sought to enjoin Spiegel from interfering with the functions of the duly elected Association Board.

13. On January 11, 2016, the Association moved the court for a TRO to restrain Spiegel from continuing to prevent the Board from functioning. Spiegel was served with a copy of the complaint and the TRO motion on the same day. When the trial court heard the TRO motion on January 14, 2016, Respondent was present, but informed the trial court that he was not appearing on behalf of Spiegel in the matter. The trial court granted the Association's TRO, restraining Spiegel from claiming the authority to act as the Board's President and from engaging in any actions with third parties on behalf of the Association.

14. On January 19, 2016, Respondent filed a petition for leave to appeal the TRO order to the Illinois Appellate Court, pursuant to Illinois Supreme Court Rule 307(d). On February 4, 2016, the petition for leave to appeal the TRO was denied.

15. On February 3, 2016, Respondent filed two motions for substitution of judge as a matter of right ("SOJ"), one on behalf of Spiegel and one on behalf of the trustee. On February 11, 2016, Judge Rita M. Novak granted the trustee's SOJ motion and allowed Spiegel to withdraw his motion without prejudice. The case was then transferred to Judge Peter Flynn.

16. As the Spiegel litigation progressed, Respondent continued to file amended complaints on behalf of Spiegel, each of which grew in number of parties, counts, and paragraphs. The second amended complaint filed by Respondent contained 139 paragraphs to support 13 counts. The third amended complaint filed by Respondent contained 160 paragraphs to support 16 counts. The fourth amended complaint filed by Respondent contained 177 paragraphs to support 25 counts.

17. In the fourth amended complaint, filed on February 8, 2016, among other things, Respondent alleged that Spiegel's rights as a condominium owner were violated as a result of:

- placement of empty water bottles in front of Spiegel's doorway;
- messages left on Spiegel's answering machine;
- lawn furniture purchased for common areas;
- Spiegel's neighbors hiding in bushes;
- the Director and Officer's insurance carrier's refusal to fund Spiegel's litigation, and;
- Association bylaws that prohibit Spiegel from having shirtless massages next to the building's pool.

18. On April 8, 2016, after the filing of the fourth amended complaint, Respondent filed an additional lawsuit, raising nearly identical claims to some of the claims in 2015 L 10817. This lawsuit was docketed under Cook County number 2016 L 3564.

19. In case number 2016 L 3564, Respondent brought claims on behalf of Spiegel against his neighbors, Corrine and William McClintic ("the McClintics"). In that case, Respondent alleged that Spiegel suffered "private nuisance" because the McClintics were "seeking to rent" their unit in the building at 1618 Sheridan Road. As of the date of the filing of the complaint, the McClintics had not rented their unit to anyone. As a result of the McClintics allegedly seeking to rent their unit, Respondent claimed, without any factual basis, that Spiegel suffered at least \$50,000 in damages.

20. Respondent subsequently amended the complaint in case number 2016 L 3564 to include a total of 33 counts, most of which were identical to counts already pled in case number 2015 L 10817.

21. On May 27, 2016, the Association, Board, and other residents moved to consolidate the three active Cook County cases. On September 28, 2016, the trial court consolidated cases, 2015 CH 18825 and 2016 L 3564, into case 2015 L 10817. The consolidated cases were assigned to Judge Moira Johnson.

22. On June 14, 2017, Judge Johnson granted the defendants' motion to dismiss all 25 counts of Spiegel's fourth amended complaint in the 2015 L 10817 case, on the basis that none of the claims stated a cause of action, and ordered Respondent to seek leave of the court to replead any amended complaint. Judge Johnson also struck all 33 counts of the first amended complaint in case 2016 L 3564.

23. At the conclusion of the hearing on June 14, 2017, after dismissing all counts of Spiegel's fourth amended complaint, Judge Johnson addressed Respondent as follows:

Right now we have no complaint. Mr. Xydakis has been admonished. He has been forewarned. He has everything that's getting ready to come at him already shown to him before he files this amended complaint. And so we have to see what he does.

24. On July 21, 2017, the consolidated case was administratively reassigned from Judge Johnson to Judge Kathy M. Flanagan. On August 7, 2017, Respondent filed an SOJ motion on behalf of Spiegel, which was granted, and the matter was then transferred to Judge Patrick J. Sherlock.

25. On August 14, 2017, Respondent filed a motion for leave to file a fifth amended complaint against 16 separate defendants, containing 99 counts, 223 pages, and 1,436 paragraphs. Respondent labeled the fifth amended complaint as "First Consolidated Law Division Complaint."

26. At the time Respondent filed the complaints described in this Count on behalf of Spiegel, he knew that he was bringing and defending claims that were frivolous.

27. Respondent filed the complaints described in this Count on behalf of Spiegel knowing that he was doing so with no substantial purpose other than to embarrass, delay, or burden the other parties to the litigation.

28. Subsequently, an SOJ motion was filed on behalf of one of the Association parties, and the consolidated case was reassigned to Judge Margaret Ann Brennan on September 1, 2017.

29. On September 12, 2017, Respondent filed another SOJ motion on behalf of the Trustee. However, on November 14, 2017, Judge Brennan denied this motion, finding that the Trustee had already received an SOJ.

30. On February 8, 2018, Judge Brennan denied Spiegel and the Trustee's motion for leave to replead the complaint. During the hearing on that date, Judge Brennan admonished Respondent for his "baffling" conduct in failing to correct the deficient and frivolous pleadings in the face of clear admonitions by previous judges, and instead, "only piling on more deficiencies." Judge Brennan further found that Spiegel and Respondent's act of restating the same allegations the court had already determined were not good enough to state a cause of action was harassment against the defendants.

31. On February 28, 2018, Respondent filed a petition for recusal or substitution of Judge Brennan for cause, alleging Judge Brennan engaged in multiple *ex parte* communications. The only facts alleged by Respondent were contained in the header ("Court Engaged In *Ex-Parte* Communication") and the first two paragraphs of the motion, which referenced Judge Brennan's statement of "[y]ou've been advised in the fact of these very clear admonitions," when she denied Respondent's motion for leave to file the fifth amended complaint. Respondent alleged that the plaintiffs had only previously received one "vague, incorrect dismissal of a one complaint," thus,

according to Respondent, Judge Brennan's reference to admonitions must have been received through *ex parte* communications.

32. On February 28, 2018, Respondent knew that he had no factual or legal basis for the allegation that Judge Brennan engaged in any unauthorized, *ex parte* communication. Respondent made the allegation of unauthorized, *ex parte* communications by Judge Brennan with reckless disregard to its truth or falsity concerning the integrity of Judge Brennan.

33. On May 8, 2018, Judge Gregory J. Wojkowski denied the petition for recusal or substitution of Judge Brennan for cause. Respondent moved for reconsideration, and that motion was denied on May 14, 2018.

34. On July 6, 2018, Respondent moved the court to reconsider the denial of leave to replead, and the trial court denied the motion to reconsider on July 11, 2018.

35. Between May 9, 2018 and July 27, 2018, the parties filed four separate petitions for sanctions under Illinois Supreme Court Rule 137. Spiegel sought sanctions against Hall and her legal counsel; the Association, various unit owners and their counsel; and attorney, Michael C. Kim, his firm and their counsel. Hall and her counsel sought sanctions against Spiegel and Respondent. The Association also sought sanctions against Spiegel and Respondent. Kim sought sanctions against only Spiegel. On February 6, 2019, Judge Brennan ordered all matters besides the sanction petitions stayed until further order of the court.

36. On August 6, 2018, Respondent filed an additional motion to disqualify Judge Brennan. Subsequently, on August 20, 2018, Respondent filed a supplemental motion to disqualify Judge Brennan. Respondent based these motions, among other things, on Judge Brennan's alleged *ex parte* communications.

37. The briefing schedule entered by the Court on the motions to disqualify stated that no supplements would be filed without leave of court. On August 30, 2018, Respondent filed a motion for leave to file an amended supplement *instanter*. Because the Court did not rule on whether Respondent had leave to file the amended supplement, Respondent filed another motion to disqualify for *ex parte* communications, containing language verbatim to that included in the amended supplement, on September 6, 2018, in the event that the Court did not accept Respondent's previously filed amended supplement.

38. On October 3, 2018, Respondent filed another SOJ motion regarding the pending Rule 137 sanction petitions, arguing that the petitions initiated criminal contempt proceedings against him, and that Respondent could not get a fair and impartial trial by the court.

39. On November 9, 2018, the trial court denied Respondent's SOJ motion, stating that the parties and the court had not initiated criminal contempt proceedings against him. Among other things, the court found that Respondent was attempting to reframe the petitions for Rule 137 sanction as a matter of criminal contempt to obtain a jury trial, seek discovery and petition once more for an SOJ.

40. At the time he filed motion for SOJ on October 3, 2018, Respondent had no legal or factual basis for alleging that he was the subject of criminal contempt proceedings.

41. On November 9, 2018, the court denied Respondent's motion to disqualify Judge Brennan from further proceedings in the matter, or alternatively, from ruling on the Rule 137 sanction petitions and disclosing in open court what was said at nine purported *ex parte* communications. The trial court found no basis for recusal because Respondent failed to attach the requisite affidavit to support an SOJ motion; Spiegel had already sought an SOJ, which was denied; the request was made six months after the alleged statements showing bias or prejudice; and

Spiegel failed to show the requisite actual prejudice to support a motion to disqualify a judge because the alleged *ex parte* communications were merely between opposing counsel and the court's coordinator, but not the court's law clerk, about scheduling matters. On December 10, 2018, Respondent filed a motion to reconsider the disqualification ruling.

42. On November 8, 2018, Respondent filed another SOJ motion, arguing that he was a party to this action because a Rule 137 sanction petition that adds an attorney constituted a new claim filed against a new party. He also argued that he was a party because he filed an appearance on October 3, 2018, in response to Valerie Hall's counterclaim, which named him as a defendant.

43. On December 7, 2018, the trial court denied Respondent's SOJ motion, finding that Hall's counterclaim was withdrawn nearly two years prior on December 14, 2016; an attorney whom sanctions were awarded was a nonparty; Rule 137 provides that a sanction proceeding under the rule does not give rise to a separate civil suit; and Respondent's clients had already exercised their SOJ rights and the court had already made several substantive rulings in this matter.

44. Between February and December 2018, Respondent persisted in his allegations of improper *ex parte* communications by Judge Brennan when he knew that he had no factual basis for doing and made such allegations with reckless disregard as to their truth or falsity concerning the integrity of Judge Brennan.

Sanctions Against Respondent and Spiegel

45. On March 29, 2019, the trial court ruled on the four separate petitions for sanctions. Judge Brennan denied Spiegel's petition for sanctions and granted the Defendants' three petitions for sanctions, totaling \$1,061,623. The trial court ordered Spiegel and Respondent jointly and severally to pay: (1) sanctions of \$360,964 to Hall; (2) sanctions of \$25,000 to her counsel Duane

Morris, LLP; and (3) \$473,442.08 in attorney's fees and \$27,878 for increased insurance costs to the Association. The trial court also ordered Spiegel to pay \$174,388.89 to Michael C. Kim.

46. In the trial court's order granting Hall and Duane Morris LLP's petition for sanctions, Judge Brennan found the following actions by Respondent required an award of attorney's fees and costs under Rule 137:

- Persisting in the argument that Hall was not an owner and lacked the capacity to serve on the Association's board even after clear proof in the form of a Warranty Deed;
- Filing a fourth amended complaint that asserted 25 claims against 10 defendants, in response to Hall's counsel advising that the various complaints violate Rule 137;
- Filing of the duplicative lawsuit in 2016 L 2564, which was filed entirely to harass, increase costs and delay;
- Despite being admonished by Judge Johnson, Judge Novak, and Judge Flynn, Respondent sought leave to file a 99 count, 223 page and 1,436 paragraph fifth amended complaint, which had been mislabeled as a "first amended complaint" and repleaded previously dismissed claims without substantive modification;
- Filing numerous motions to remove judges for cause, seeking SOJ as a claim of right, when those rights were already exhausted as well as the attendant requests for discovery on the "for cause" matters that were unsupported by fact and law;
- Repeated misstatements of law and evidence; and

- Filing at least 385 separate court filings in the case at the time Judge Brennan entered the sanctions order.

47. Following entry of Judge Brennan's orders of March 29, 2019, Spiegel and Respondent appealed the sanctions awards to the Illinois Appellate Court. That appeal was docketed as case numbers: 1-19-0840, 1-19-0915, 1-19-0916 and 1-19-0917 (consolidated). On December 3, 2020, the Illinois Appellate Court entered an order affirming the judgment of the trial court. Thereafter, the Illinois Appellate Court reconsidered its decision and, on August 12, 2021, issued an order vacating its earlier decision. The Appellate Court found that because petitions for additional sanctions against Respondent and Spiegel were still pending in the Circuit Court at the time the appeal was filed, that the Appellate Court lacked jurisdiction over the matter. The Court remanded the case to the Circuit Court for further proceedings on the sanctions awards.

48. As of the date of this complaint, the Spiegel litigation, consolidated as case number 2015 L 10817, remains pending in the Circuit Court of Cook County.

Respondent's Conduct After Sanctions Award

49. Following entry of the March 29, 2019 sanctions awards by Judge Brennan against Spiegel and Respondent, a number of news outlets and online publications ran stories about the litigation and Judge Brennan's orders awarding sanctions against Spiegel and Respondent totaling more than \$1million.

50. On April 3, 2020, Respondent filed a complaint on behalf of The Law Offices of John Xydakis, P.C. and himself, individually, alleging that the Cook County Recorder's reporting of the sanctions award against Respondent on its website was defamatory. The matter was docketed as Cook County case number 2020 L 003878. On May 24, 2021, Respondent voluntarily dismissed the case with leave to refile.

51. On April 6, 2020, Respondent filed a complaint on behalf of The Law Offices of John Xydakis, P.C. and himself, individually, alleging that Law360's reporting of the sanctions award against Respondent on its website was defamatory. The matter was docketed as Cook County case number 2020 L 003944. Respondent did not pursue the matter beyond filing the complaint, and on March 23, 2021, the case was dismissed for want of prosecution.

52. On April 7, 2020, Respondent filed a complaint on behalf of The Law Offices of John Xydakis, P.C. and himself, individually, alleging that the American Bar Association's reporting of the sanctions award against Respondent was defamatory. The matter was docketed as Cook County case number 2020 L 003987. Respondent did not pursue the matter beyond filing the complaint, and on March 19, 2021, the case was dismissed for want of prosecution.

53. On April 7, 2020, Respondent filed a complaint on behalf of The Law Offices of John Xydakis, P.C. and himself, individually, alleging that the Chicago Daily Law Bulletin's reporting of the sanctions award against Respondent was defamatory. The matter was docketed as Cook County case number 2020 L 003990. The Daily Law Bulletin's article quoted attorneys John Schriver and Eugene Murphy, who Respondent also named as defendants in the case.

54. The Defendants in the case number 2020 L 003990 were served with copies of the complaint, and subsequently filed motions to dismiss. On May 18, 2021, Defendants, John Schriver and Duane Morris, LLP's motion to dismiss was granted, and the case was dismissed with prejudice, in its entirety.

55. On April 8, 2020, Respondent filed a complaint on behalf of The Law Offices of John Xydakis, P.C. and himself, individually, alleging that Patch Media's reporting of the sanctions award against Respondent on its website was defamatory. The matter was docketed as

Cook County case number 2020 L 004042. Respondent did not pursue the matter beyond filing the complaint, and on February 23, 2021, the case was dismissed for want of prosecution.

56. On April 10, 2020, Respondent filed a complaint on behalf of The Law Offices of John Xydakis, P.C. and himself, individually, alleging that the Chicago Tribune's reporting of the sanctions award against Respondent was defamatory. The matter was docketed as Cook County case number 2020 L 004105. On March 25, 2021, the case was dismissed for want of prosecution.

57. On April 21, 2020, Respondent filed a complaint on behalf of The Law Offices of John Xydakis, P.C. and himself, individually, against attorney Diana Silverberg and the law firm Kovitz Shifrin Nesbit, alleging that statements made in a story published on the firm's website that referenced the sanctions awards against Respondent were defamatory. The matter was docketed as Cook County case number 2020 L 004440. On April 12, 2021, Respondent voluntarily dismissed the case.

58. On April 30, 2020, Respondent filed a complaint on behalf of The Law Offices of John Xydakis, P.C. and himself, individually, alleging Bloomberg News' reporting of the sanctions award against Respondent was defamatory. The matter was docketed as Cook County case number 2020 L 004785. Respondent did not pursue the matter beyond filing the complaint, and on March 23, 2021, the case was dismissed for want of prosecution.

59. On May 6, 2020, Respondent filed a complaint on behalf of Marshall Spiegel, Chicago Title Trust Co. as Trustee of Trust Number 80023351713, Law Offices of John Xydakis, P.C., and himself, individually, alleging the statements regarding the sanctions award against Spiegel and Respondent made by attorney David Allen in a YouTube video were defamatory. The matter was docketed as Cook County case number 2020 L 004975. On May 21, 2021, Respondent voluntarily dismissed the case with leave to refile.

60. All of the lawsuits filed by Respondent in paragraphs 50 through 59 above were frivolous and lacked a basis in fact or law, which Respondent knew at the time he filed them. Respondent filed these lawsuits for no purpose other than to harass, delay, or burden the parties against whom the cases were filed.

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

- a. bringing or defending a proceeding, or asserting or controverting an issue therein, with no basis for doing so that is not frivolous, by conduct including but not limited to, filing previously dismissed claims against multiple defendants without substantive modification to correct the pleading deficiencies in the Spiegel Litigation, in violation of Rule 3.1 of the Illinois Rules of Professional Conduct (2010);
- b. making statements of material fact or law to a tribunal which the lawyer knows are false, by conduct including but not limited to persisting in the argument that Valerie Hall was not a condominium unit owner and lacked the capacity to serve on the Association's board after receiving clear proof in a warranty deed, and advancing baseless arguments that the court engaged in improper *ex parte* communications, in violation of Rule 3.3(a)(1) of the Illinois Rules of Professional Conduct (2010);
- c. using means in representing a client that have no substantial purpose other than to embarrass, delay, or burden a third person, by filing the lawsuit against the McClintics in 2016 L 2564, in violation of Rule 4.4(a) of the Illinois Rules of Professional Conduct (2010);
- d. engaging in conduct that is prejudicial to the administration of justice, by conduct including filing and attempting to maintain frivolous litigation in the Spiegel Litigation, as well as filing multiple and repetitive pleadings, in violation of Rule 8.4(d) of the Illinois Rules of Professional Conduct (2010);
- e. making statement with reckless disregard as to their truth or falsity concerning the integrity of a judge, including but not

limited to alleging that Judge Brennan engaged in unauthorized, *ex parte* communications when he had no basis in fact or law for making such allegations, in violation of Rule 8.2(a) of the Illinois Rules of Professional Conduct (2010).

- f. bringing or defending a proceeding, or asserting or controverting an issue therein, with no basis for doing so that is not frivolous, by conduct including filing at least 9 lawsuits against various individuals and organizations alleging defamation and false light for reporting on the sanctions awards of March 29, 2019, in violation of Rule 3.1 of the Illinois Rules of Professional Conduct (2010);

COUNT II

(Conduct prejudicial to the administration of justice in the Tressler matter)

62. On October 31, 2014, Respondent filed a declaratory judgment complaint on behalf of Spiegel against the Village of Wilmette (“Wilmette”), related to an ordinance violation citation Spiegel received that required him to install an upgraded fire alarm system in various rental apartment buildings that he owned. The matter was docketed under Cook County case number 2014 CH 17681, and later consolidated with Cook County case number 2015 CH 5403 before Judge Kathleen M. Pantle.

63. During litigation, Respondent added Wilmette’s law firm, Tressler, LLP (“Tressler”) as a defendant, alleging Tressler violated Spiegel’s rights under the equal protection clause of the federal Constitution, and bringing a claim under 43 U.S.C. Section 1983.

64. On September 14, 2017, Tressler filed a motion to dismiss the complaint and seek sanctions pursuant to Supreme Court Rule 137. On September 22, 2017, a briefing schedule was set which required Respondent to file a response on or before October 20, 2017, and Tressler to reply by November 3, 2017.

65. On October 20, 2017, Respondent filed a motion for extension of time, requesting additional time to respond to Tressler's motion to dismiss. The reason given for the requested extension was that Wilmette and Spiegel were set for a pre-trial conference on November 21, 2017 to "resolve this case."

66. Respondent did not include in the motion that Tressler had not agreed to participate in a pre-trial conference in order to resolve any of the claims Spiegel had against Tressler, thus, the pre-trial conference could not resolve the case in its entirety.

67. The motion for extension of time was scheduled to be heard before the court on October 27, 2017, at 9:30 a.m., despite the notice of motion erroneously showing a presentment date of November 27, 2017.

68. On October 25, 2017, counsel for Tressler, Stacy Wilkins ("Wilkins"), and Respondent spoke while at the Dirksen Federal Building. Wilkins informed Respondent that she had not received any notice of any motion, had another matter up at 9:30 a.m. that day, but planned to be present to object to Respondent's motion. Wilkins advised Respondent that Tressler was not a party to the pre-trial conference and that the pre-trial conference would not dispose of Spiegel's case against Tressler.

69. On October 27, 2017, Respondent presented his motion at 9:30 a.m. Wilkins was not present at that time on behalf of Tressler.

70. On October 27, 2017, Respondent knew that Tressler was not participating in the November 21, 2017 pretrial conference.

71. On October 27, 2017, Respondent knew that Wilkins had not received notice of his motion for extension based on their October 25, 2017, conversation at the Dirksen Federal Building.

72. On October 27, 2017, Respondent knew that Wilkins had another matter up at 9:30 a.m., but that Wilkins intended to appear in court to object to Respondent's motion for extension based on their October 25, 2017, conversation at the Dirksen Federal Building.

73. On October 27, 2017, Respondent gave the court no indication that Tressler objected to the motion or that Wilkins had informed him she would appear late. Accordingly, the court granted the motion. Respondent drafted an order indicating that the motion was granted and left court.

74. A few minutes after Respondent left court, Wilkins arrived and asked that the case be recalled. Wilkins informed the court of her objection to the extension of time and indicated she had previously spoken to Respondent and informed him she objected to his motion. The court instructed Wilkins to contact Respondent to have him return to court to resolve the matter. Wilkins called Respondent three times and left a voice message for Respondent, but did not receive a response from Respondent.

75. When the court returned from recess, Wilkins asked to be heard on the motion for extension of time. The court reversed its earlier ruling and denied the extension of time.

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

- a. Engaging in conduct that is prejudicial to the administration of justice, by conduct including, failing to inform the court that opposing counsel objected to Respondent's motion for extension of time and would be late to the hearing, in violation of Rule 8.4(d) of the Illinois Rules of Professional Conduct (2010);
- b. Failing to inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision in an *ex parte* proceeding, whether or not the facts are adverse, by conduct including, failing to inform the court that opposing counsel objected to Respondent's motion for

extension of time and would be late to the hearing, in violation of Rule 3.3(d) of the Illinois Rules of Professional Conduct (2010).

WHEREFORE, the Administrator requests that this matter be assigned to a panel of the Hearing Board, that a hearing be held 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/Matthew D. Lango
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