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 March 26, 2021, the attached **ANSWER TO AMENDED THIRD AMENDED COMPLAINT** was filed electronically with the Clerk of the Attorney Registration and Disciplinary Commission.

Dated: March 26, 2021

Respectfully submitted,

MARK McNABOLA, Respondent

By: */s/Mary Eileen C. Wells*
One of his attorneys

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ARDC Clerk

CERTIFICATE OF SERVICE

The undersigned, one of the attorneys for Respondent Mark McNabola, hereby certifies that on March 26, 2021, she caused a copy of the foregoing **NOTICE OF FILING** and attached **ANSWER TO AMENDED THIRD AMENDED COMPLAINT** to be served upon the following via email:

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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 the foregoing Certificate of Service are true and correct, except as to matters therein stated to be upon information and belief and as to such matters the undersigned certifies that she verily believes the same to be true.

Dated: March 26, 2021 */s/Mary Eileen C. Wells*

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ANSWER TO AMENDED THIRD AMENDED COMPLAINT

Respondent, Mark Edward McNabola ("**McNabola**"), by his undersigned counsel, answers the amended Third Amended Complaint ("**Complaint**") of the Administrator of the Attorney Registration and Disciplinary Commission ("**Administrator**), which dismissed Counts I and II of his former Third Amended Complaint, as follows:

ANSWER TO COUNT III

Alleged Dishonesty to the Court, Material Omissions during Settlement Negotiations, Ex-parte Communications with a Court Official in the Vandenberg Matter [1]

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.

ANSWER: Admitted.

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

[1] McNabola has included the headings and subheadings set forth in the amended Third Amended Complaint for convenience only. The non-sequential paragraph numbers reflect that the Administrator withdrew paragraphs of the Third Amended Complaint as part of dismissing Counts I and II but did not renumber the remaining paragraphs.

injuries, Scot became a quadriplegic. Scot was married to Patricia Vandenberg (hereinafter, "Patty") at the time of his injuries.

ANSWER: Admitted.

3. On September 22, 2009, Scot and Patty Vandenberg (hereinafter, "the Vandenbergs") retained the law firm of Powers *[sic]* Rogers & Smith, P.C. and attorney John B. Kralovec (hereinafter, "Kralovec"), to represent them in claims related to Scot's injuries.

ANSWER: McNabola has no knowledge sufficient to form a belief as to the allegations of paragraph 3, except he admits, upon information and belief, that the Vandenbergs retained the law firm of Power Rogers & Smith and attorney John Kralovec in 2009 after Scot's accident.

4. On March 12, 2010, Powers [*sic*] 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.*")

ANSWER: Admitted.

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.

ANSWER: Admitted.

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.

ANSWER: Paragraph 6 states legal conclusions to which no answer is required. If and to the extent an answer is required, the legal conclusions are denied to the extent they misstate the applicable law. Answering further, McNabola states that these and certain other allegations in this amended Third Amended Complaint are relics from prior complaints filed in this matter, as to which no charges are being alleged. McNabola denies that all such allegations are relevant to this proceeding.

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.

ANSWER: Admitted, upon information and belief. Answering further, McNabola states that these and certain other allegations in this amended Third Amended Complaint are relics from prior complaints filed in this matter, as to which no charges are being alleged. McNabola denies that all such allegations are relevant to this proceeding.

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.

ANSWER: McNabola has no knowledge sufficient to form a belief regarding the allegations set forth in paragraph 8 of the amended Third Amended Complaint, including meetings the Vandenbergs had with Anders before September 2010, whether the Vandenbergs had discharged Power Rogers & Smith prior to their meetings, or the state of Anders' knowledge, except

McNabola admits that Anders referred the Vandenbergs to McNabola and his firm and denies, on information and belief, that the Vandenbergs did not discharge Power Rogers & Smith until September 2010.

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

ANSWER: Admitted.

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".

ANSWER: Denied, except McNabola admits that he, as authorized agent of the firm then known as Cogan & McNabola, P.C. (now known as McNabola Law Group, P.C. ("**MLG**")) and the Vandenbergs entered into an engagement agreement dated September 21, 2010 and titled "Adult-Personal Injury" relating to the occurrence on September 1, 2009 ("**Engagement Agreement**"). The Hearing Board is respectfully referred to the Engagement Agreement for the contents thereof.

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]."

ANSWER: McNabola admits that MLG was engaged to represent the Vandenbergs and that the quoted language appears in the Engagement Agreement, and the Hearing Board is respectfully referred to the agreement for the entire contents thereof. McNabola denies the remainder of

paragraph 11, including any implication that the quoted language represents the complete terms of the Engagement Agreement.

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.

ANSWER: Denied, except McNabola admits that (i) he was the only attorney who signed the Engagement Agreement on behalf of MLG (then Cogan & McNabola, P.C.), (ii) he had supervisory responsibility over the handling of the matter, and (iii) MLG represented the Vandenbergs from September 2010 to February 2016.

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."

ANSWER: Admitted. Answering further, McNabola states that these and certain other allegations in this amended Third Amended Complaint are relics from prior complaints filed in this matter, as to which no charges are being alleged. McNabola denies that all such allegations are relevant to this proceeding.

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

ANSWER: Admitted.

29. [1] On October 14, 2012, the federal admiralty action was dismissed based upon a settlement between RQM and the Vandenbergs. [2] Under Respondent's direction, the Vandenbergs settled the federal admiralty action with RQM for the amount of $2,365,000.00. [3] Respondent caused a settlement statement to be prepared itemizing the disbursement of the settlement.

ANSWER: Sentences [1] and [3] are admitted. Sentence [2] is admitted, except that McNabola denies that it accurately states the consideration for the settlement, and further denies that the Vandenbergs settled the RQM matter "at his direction." Further answering, McNabola affirmatively states that (i) the matter settled after a day-long mediation with a retired judge, who recommended the settlement (which exceeded the limits of available insurance coverage), (ii) McNabola and coverage counsel Peter Morse and other members of the team also recommended the settlement to Scot and Patricia Vandenberg, and (iii) both Vandenbergs, Peter Morse, Mark McNabola and other members of the team, and all counsel and parties for the Defendants, were physically present at MLG offices for the mediation. The Vandenbergs ultimately made the decision to settle the case, and confirmed their agreement in writing.

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

ANSWER: Admitted.

44. After the federal admiralty action concluded, the court lifted its stay in the state court matter, *Vandenbergs v. Brunswick* which could then proceed.

ANSWER: Admitted. Answering further, McNabola states that these and certain other allegations in this amended Third Amended Complaint are relics from prior complaints filed in this matter, as to which no charges are being alleged. McNabola denies that all such allegations are relevant to this proceeding.

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

ANSWER: Admitted.

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.

ANSWER: Denied, except McNabola admits that Judge O'Connell conducted a mediation on April 6, 2015, in which McNabola, the Vandenbergs, Patitucci, and a number of others participated, and in which a demand of $39 million and offer of $3 million were made. Answering further, McNabola affirmatively states that (i) the offer of $3,000,000 was the self-insured retention from Brunswick; accordingly, AIG, Brunswick's excess carrier, made a smaller lump-sum cash contribution, and (ii) Patitucci announced and mandated that he alone would negotiate on behalf of Brunswick from that point forward and that plaintiffs should not engage in any settlement discussions with any of the attorneys for Brunswick.

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

ANSWER: Admitted. Answering further, McNabola affirmatively states that MLG and its trial team expended enormous effort and costs to prepare the case for jury trial, and Patitucci and McNabola (on behalf of the Vandenbergs) agreed that settlement discussions would remain open.

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.

ANSWER: The first sentence is admitted. The second sentence is denied. The third sentence is admitted, except McNabola denies any implication that the named attorneys were the only attorneys participating in the trial, and affirmatively states that McNabola and Degnan were assisted by Attorneys Terry Nofsinger and Ted Jennings, as well as MLG paralegals and other staff. The fourth sentence is admitted, except McNabola denies that Patton and Ouska were the only lawyers representing Brunswick and affirmatively states that those lawyers were assisted by a team of lawyers from Patton and Ryan as well as Kimberly Kearney, an admiralty specialist from Clausen Miller, and Kelly Kaiser, corporate counsel for Brunswick. Answering further, McNabola affirmatively states that (i) Brunswick also employed a team of six to eight mock jurors who were present in the gallery and took notes each day of trial, and (ii) RQM was not a named defendant after October 10, 2012, but due to the application of maritime law, its relative fault would be an issue for the jury to assess.

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

ANSWER: McNabola incorporates his answers to paragraphs 57 to 101 below as to whether the events took place as alleged or the allegations are relevant to the pending charges.

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.

ANSWER: Admitted. Answering further, McNabola affirmatively states that (i) the court gave the jury detailed instructions on all of the legal issues and did not highlight the instruction quoted in paragraph 57 over any other instruction, and (ii) the quoted instruction is based on a pattern instruction given in every such case.

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[2] as follows: $41.5 million for the high end and 7.5 million for the low end.

ANSWER: Denied, except McNabola admits that at approximately 3:00 p.m., outside the elevators of the 21st floor of the Daley Center, Patitucci approached McNabola and substantially increased Brunswick's last settlement offer to $25 million and added the alternative high-low option at the amounts alleged. McNabola also admits the general accuracy of the definition of a high-low structure as alleged in the footnote.

59. Without communicating the high-low settlement offer described in paragraph 58, above, to the Vandenbergs, Respondent immediately rejected the offer and told Patitucci "We have nothing to talk about."

ANSWER: Denied. Further answering, McNabola affirmatively states that he told Patitucci that he would discuss the offers with the Vandenbergs and that he subsequently did so. Moreover, this is immaterial because the Appellate Court held that the settlement was valid as of June 9, 2015, and the Vandenbergs have been paid approximately $20 million. Answering further, McNabola states that these and certain other allegations in this amended Third Amended Complaint are relics from prior complaints filed in this matter, as to which no charges are being alleged. McNabola denies that all such allegations are relevant to this proceeding.

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

[2] 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." Also, all rights to appeal are waived.

ANSWER: Denied, except McNabola admits that Patitucci extended the lump sum settlement offer of $25 million at the same time he extended the high-low alternative offer (as he did with prior offers during the preceding four days), and that McNabola did not immediately accept or reject either offer. Answering further, McNabola affirmatively states that (i) McNabola told Patitucci that he would discuss the alternative offer with his clients and subsequently did so, (ii) Patitucci told McNabola that he could be reached at the offices of Patton and Ryan, (iii) McNabola did not accept or reject any offer at that time because he had no authority to do so, (iv) the last offer was a result of the exhaustive and excellent trial work of MLG and its trial team, and its five years of investment in the case, (v) AIG had increased the settlement proposal by a factor of eight over the preceding four days, increasing Brunswick's $3 million offer at the April mediation to, successively, $7.5 million and $12.5 million, culminating in an offer of $25 million or a high-low offer of $41.5 million for the high end and $7.5 million for the low end, and (vi) McNabola promptly discussed each offer with the Vandenbergs and the response to each offer was authorized by the Vandenbergs. Moreover, this allegation is immaterial because the Appellate Court held that the settlement was valid as of June 9, 2015, and the Vandenbergs have been paid approximately $20 million. Answering further, McNabola states that these and certain other allegations in this amended Third Amended Complaint are relics from prior complaints filed in this matter, as to which no charges are being alleged. McNabola denies that all such allegations are relevant to this proceeding.

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.

ANSWER: Denied, including the allegation that the Vandenbergs in any way indicated to Respondent that they were willing to accept the $25 million offer at or outside the courthouse, except McNabola admits that directly after receiving the offers from Patitucci, he met the Vandenbergs, as planned, outside the courthouse near the corner of Randolph and Dearborn, informed them that there had been a serious offer of $25 million and an alternative high-low offer, and recommended that they return directly to his office to discuss the offers. Moreover, this allegation is immaterial because the Appellate Court held that the settlement was valid as of June 9, 2015, and the Vandenbergs have been paid approximately $20 million. Answering further, McNabola states that these and certain other allegations in this amended Third Amended Complaint are relics from prior complaints filed in this matter, as to which no charges are being alleged. McNabola denies that all such allegations are relevant to this proceeding.

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

ANSWER: Denied, except that McNabola admits that (i) he and the Vandenbergs arrived at MLG's offices at or later than 3:15 p.m. on June 9, 2015, (ii) McNabola discussed the offers with the Vandenbergs, (iii) the Vandenbergs, at or about 3:50 p.m. authorized McNabola to accept Patitucci's $25 million offer that he made on behalf of Brunswick, and (iv) McNabola had not yet conveyed the Vandenberg's acceptance of the offer at 3:50 p.m. because he had only just received their authorization to do so. Answering further, McNabola affirmatively states as follows: (i) after arriving at MLG's offices at or about 3:15 p.m., Patricia Vandenberg left the office to buy a soft drink for Scot at Scot's request; (ii) while waiting for Patricia Vandenberg's return, McNabola discussed Brunswick's new alternative offers for several minutes with his co-counsel

to obtain their input and recommendation, (iii) his co-counsel agreed with McNabola's conclusion to recommend acceptance of the $25 million offer to the Vandenbergs and rejection of the high-low alternative; (iv) McNabola met with the Vandenbergs to discuss the new terms relayed by Patitucci (including the high-low option) and other aspects of the structure, including consideration of the potential $103 million verdict which would result in a potential loss to the Vandenbergs of $78 million as compared with the $25 million offer, but unequivocally advised the Vandenbergs to give him authority to accept the $25 million lump-sum option that was offered; (v) at or near 3:50, after their discussions with McNabola, the Vandenbergs, for the first time, agreed with McNabola's recommendation to grant him authority to reject the high-low offer, to explore Patitucci's authority to settle between $25-$30 Million and to accept the $25 million offer if there was no additional settlement authority from AIG; and (vi) as of 3:50 p.m. McNabola had not relayed the Vandenberg's acceptance to Brunswick because he had only just finally received the authority to do so. McNabola further specifically denies any implication or suggestion that he failed to follow his clients' directions regarding settlement or delayed in relaying their acceptance or was distracted by any other matters, and notes that such charges are not alleged in the amended Third Amended Complaint. McNabola further states affirmatively that the entire time between receiving Patitucci's new alternative offers in the hallway, meeting the Vandenbergs on the street, returning to the MLG office, discussing the offer with his colleagues, discussing the offer with the Vandenbergs and obtaining their agreement with his professional recommendation to accept, took no more than approximately fifty minutes, all without any knowledge of a jury question or its content. Moreover, except for the last sentence of the allegation, this allegation is immaterial because the Appellate Court held that the settlement was valid as of June 9, 2015, and the Vandenbergs have been paid approximately $20 million. Answering further, McNabola states

that these and certain other allegations in this amended Third Amended Complaint are relics from prior complaints filed in this matter, as to which no charges are being alleged. McNabola denies that all such allegations are relevant to this proceeding.

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.

ANSWER: Admitted, upon information and belief, except McNabola denies that Judge Budzinski looked at the jury note before directing Agee to call both parties' lawyers. Judge Budzinski testified in this matter that she did not look at the note until after concluding a phone conversation with another judge and some time before the lawyers returned 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."

ANSWER: Denied, including the alleged "hushed voice," except McNabola admits that Agee contacted McNabola by telephone at 3:52 p.m., said that the jury had a question, and told him the jury's question. Answering further, McNabola affirmatively states that he asked Agee to inform the Judge that the parties were about to settle the case and asked her to ask the Judge if they could hold off on coming over to court for a few minutes, after which McNabola was on hold for a few seconds and Agee returned to the phone and replied that his request was approved by the Judge. McNabola further affirmatively states that his description of events is consistent with the account provided by Brooke Reynolds: that the Court's answer to Agee regarding McNabola's request for some time was "that's fine" as long as Mr. Patton is aware. McNabola further affirmatively

states that Judge Budzinski testified that she authorized and directed Agee to separately call counsel about the jury note and that she agreed to the request to allow the attorneys a short period of time to try to settle the case. Answering further, McNabola states that Judge Budzinski had instructed counsel for both sides that if there was a jury question, Agee would separately call counsel, and, therefore, McNabola had no reason to believe and did not believe that Agee's call was unauthorized by the Judge or that Agee was not calling defense counsel and relaying the same information either shortly before or shortly after calling McNabola.

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.

ANSWER: Denied. Answering further, McNabola states that, like him, all Brunswick counsel knew the content of the jury question when they appeared in chambers and reaffirmed Brunswick's intent to settle the case, which they would not have done if they believed that the jury was contemplating a verdict in favor of 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.

ANSWER: Denied, except McNabola admits that he called Patton's office at approximately 3:55 looking for Patitucci as instructed by Patitucci, and his messages did not relay the Vandenbergs' acceptance on voicemail or to the receptionist at Patton's office.

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.

ANSWER: Denied, except McNabola admits that he asked Agee to inform the Judge that he could not reach Patitucci and to ask the Judge for further instructions.

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.

ANSWER: Denied, except that McNabola admits that (i) he reached Patitucci by phone at 4:03 p.m., (ii) with the Vandenbergs' full knowledge and authority, and without rejecting the prior offers, he explored whether AIG would pay $30 million and then $27.5 million, and (iii) when Patitucci confirmed that he did not have authority above $25 million, McNabola conveyed the Vandenbergs' acceptance of the $25 million settlement offer.

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.

ANSWER: Denied, except that McNabola admits that (i) he reached Patitucci by phone at 4:03 p.m., (ii) with the Vandenbergs' full knowledge and authority, and without rejecting the offer, he explored whether AIG would pay $30 million and then $27.5 million, and (iii) Patitucci confirmed that he did not have authority above $25 million and that the person with authority would not be available until July 11, 2015. As instructed by the Vandenbergs, McNabola promptly conveyed the Vandenbergs' acceptance of the $25 million settlement offer. Further answering, McNabola affirmatively states that (i) he did not abruptly hang up after accepting the offer or thereafter, (ii) the portion of the four-plus minute phone call that discussed higher amounts likely lasted less

than a minute, (iii) after accepting the $25 million offer, McNabola and Patitucci discussed other structural terms of the settlement and other pleasantries, (iv) the Circuit Court of Cook County and a unanimous panel of the Illinois Appellate Court held that McNabola's acceptance created a binding and enforceable settlement agreement as of June 9, 2015 that ultimately resulted in the net payment of nearly $20 million to the Vandenbergs. Moreover, this allegation is immaterial because the Appellate Court held that the settlement was valid as of June 9, 2015, the Vandenbergs have been paid approximately $20 million, and no charge is based on this allegation.

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.

ANSWER: McNabola has no knowledge sufficient to form a belief as to the allegations of paragraph 70, except McNabola admits that he did not inform Patitucci that there was a jury note or he was aware of the contents of that note. McNabola further denies any implication that he knew that Patitucci was unaware of the existence or content of the jury note or that he had any duty to inform Patitucci of the existence or content of the jury note. Further answering, McNabola affirmatively states that the Illinois Appellate Court held that he had no duty to inform Brunswick (his opponent) of the jury question. McNabola had and fulfilled a clear duty to his clients to relay their acceptance of Brunswick's offer. McNabola further denies any implication or suggestion that the existence or content of the jury note was material to the settlement, an implication belied by the conduct of the parties and the holdings of the Circuit and Appellate Courts. Further answering, McNabola affirmatively asserts the following facts:

a. After closing arguments, at about 3 p.m., before there was any jury question, Brunswick made an unconditional offer to settle the case for $25 million.

b. After closing arguments, at approximately 3:50 p.m., before there was any jury question, the Vandenbergs authorized McNabola to accept Brunswick's unconditional $25 million offer.

c. After learning the jury's question, at about 3:55 p.m., McNabola contacted Brunswick to relay the Vandenberg's acceptance of the unconditional $25 million offer, and conveyed the acceptance at about 4:03 p.m.

d. After learning the jury's question at about 4:30 to 4:40 p.m., analyzing the question and discussing it among at least three attorneys for Brunswick, Patitucci and his out-of-state superiors, Brunswick still chose to settle the case for $25 million and formally consented on the record to the settlement and to the dismissal of the case pursuant to the settlement. The settlement order was signed and entered by Judge Budzinski.

Further answering, McNabola affirmatively states, in summary, that both parties chose to settle when (a) they did not know what the jury question said, and (b) they did know what the question said. Thus, the question was immaterial to the parties' decision to settle, as the Illinois Circuit and unanimous Appellate Courts held.

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.

ANSWER: McNabola has no knowledge sufficient to form a belief as to the allegation of paragraph 71.

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.

ANSWER: Denied, including the allegation that McNabola said that "neither side" was interested in the content of the question, except that McNabola admits that (i) he spoke with Agee between approximately 4:10 and 4:15 when she had called him back, (ii) he asked to speak to Judge Budzinski, who consented to and authorized doing so, and directly informed the Judge that the case had settled, and the Judge expressed her pleasure about the settlement, (iii) when the Judge said that she wanted counsel to come to court to discuss the question, McNabola responded to her by stating words to the effect that responding to the note did not matter in light of the settlement, and (iv) the Judge nevertheless said she wanted counsel for the parties to return to chambers. McNabola asked permission to send his trial partner and the Judge consented.

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

ANSWER: Admitted. Further answering, McNabola affirmatively states he had no reason to believe that Brunswick had not been provided with the same information he had received from the Court, had no duty to inform her, he was not asked about the content of his discussion with Agee, including whether Agee had told him the content of the jury note, and he neither told the Judge that Agee had told him the jury question nor said or implied anything to the contrary.

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.

ANSWER: Denied. Answering further, McNabola affirmatively states that (i) he did not say that "neither counsel was interested in the content of the note," (ii) he had no reason to believe that Brunswick had not been provided with the same information he had received from the Court, and (iii) he said nothing to imply that he did not know the note's content. Answering further, McNabola believes that the phrase "omitted to tell her that he did not know the note's content" contains a typographical error in that the word "not" was likely unintended. If that is correct, McNabola denies the full allegation of that sentence, as amended.

75. Respondent knew that his statements to Judge Budzinski described in paragraph 74, above, were false and misleading at the time he made them.

ANSWER: Denied, including any implication that he made all the statements attributed to him in paragraph 74 or that paragraph 74 accurately describes his statements.

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.

ANSWER: Denied, including any implication that paragraph 76 accurately describes his communications with the Judge or her clerk.

77. After her conversation with Respondent, described in paragraph 76, 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.

ANSWER: McNabola has no knowledge sufficient to form a belief as to the allegations of paragraph 77, except he denies that paragraph 76 accurately describes the conversation between McNabola and the Judge.

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 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.

ANSWER: Denied, except McNabola admits that (i) he returned a missed call from Patton at approximately 4:18, (ii) the jury note was not discussed, (iii) he and Patton discussed Patton's request to have the jury continue to deliberate, and (iv) McNabola objected to Patton's request. McNabola denies any implication that he deliberately did not inquire as to the content of the note or that he had any duty to inquire. Answering further, McNabola affirmatively states that he had no reason to believe that Brunswick had not been provided with the same information he had received from the Court. Further, the jury question was immaterial to the settlement, as the parties' conduct and court holdings confirm.

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

ANSWER: McNabola has no knowledge sufficient to form a belief as to the allegations of paragraph 79.

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."

ANSWER: Admitted upon information and belief, except McNabola denies that the conference began at 4:40 p.m. Further answering, McNabola affirmatively states that (i) all counsel had gathered in chambers by approximately 4:30 p.m., (ii) cell phone records confirm that

Degnan called McNabola from chambers at approximately 4:35 p.m., (iii) the call took place on a speaker phone with the permission of the Court, in the presence of the Judge and all counsel, (iv) the purpose of the call was to inform the Court that Patton had falsely asserted to Judge Budzinski (during their phone call and relayed in person through Ouska) that McNabola had agreed to allow the jury to continue deliberating despite the settlement, and (v) McNabola and Degnan (who had heard the conversation with Patton on McNabola's speaker from the MLG office) confirmed, on the record, that they had not agreed to Patton's request and that the Vandenbergs objected to the jury continuing deliberations in light of the settlement agreement.

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.

ANSWER: Admitted, except, upon information and belief, (i) the settlement was recorded orally on the record at 4:50 p.m. with a court reporter in Judge Budzinski's chambers in the presence of the Judge and all counsel, and (ii) the written order, quoted above, was entered several minutes later than 4:50 p.m., after the Judge conferred with the jury and informed the jury of the settlement and dismissal of the case.

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.

ANSWER: McNabola has no knowledge sufficient to form a belief as to the state of knowledge of Judge Budzinski or Brunswick's counsel, and denies that he agreed to the $25 million settlement, as he was not a party to the agreement and relayed the Vandenbergs' agreement. Further answering, as stated above, McNabola affirmatively states that (i) he recommended to the

Vandenbergs that they accept the $25 million offer and they authorized him to do so, without any knowledge of a jury question or its content, (ii) he relayed that acceptance at 4:03 p.m. pursuant to his clients' instructions, (iii) he did not supervise or monitor the Court's or Agee's performance of their jobs and had no reason to believe that the Court or Agee would not do their jobs in a timely manner, (iv) McNabola did not (and had no reason to) ask Judge Budzinski or Brunswick's counsel whether Agee had revealed the content of the note to Brunswick, (v) he did not state or imply to the Judge or counsel for Brunswick that Agee had not revealed to him the content of the note before he relayed the Vandenbergs' acceptance to Brunswick, (vi) he had no reason to believe that Brunswick had not been provided with the same information he had received from the Court. Answering further, McNabola denies (i) any implication that he knew or believed that Agee or the Court had not made a similar to call to Brunswick's counsel immediately before or after calling him, (ii) that he had a duty to perform due diligence on whether Agee or the Court was performing their jobs adequately by calling both sides, or (iii) that he had a duty to discuss with Brunswick the content of Agee's unsolicited call to him. The Illinois Appellate Court confirmed that he had no such duty.

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

ANSWER: Denied. Answering further, McNabola affirmatively states that the case had been dismissed pursuant to the parties' settlement and no case was pending in which a "verdict" was or could be rendered or entered. Answering further, McNabola affirmatively states, upon information and belief, that (i) Judge Budzinski and Agee entered the jury room and informed the jury of the settlement and the dismissal of the case and, without polling the jury, dismissed the jurors without accepting any verdict, (ii) the Court also failed to take possession of the verdict form signed by the jurors, (iii) John Patton, counsel for Brunswick, without the knowledge or

consent of the Court or MLG, removed the original verdict form from the courthouse. Answering further, McNabola affirmatively states that MLG learned that Brunswick's counsel had taken possession of the original verdict form approximately a week later when the Court asked counsel for Brunswick to return the original form to the Court after she read about counsel's possession of the verdict form in the Chicago Daily Law Bulletin.

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.

ANSWER: Admitted that such a motion was filed. Further answering, McNabola affirmatively states that (i) the motion did not have merit and was not filed in good faith, (ii) the grounds of the motion were ultimately rejected by Judge O'Hara, which ruling was affirmed unanimously by the Appellate Court, (iii) there was never a jury verdict, and (iv) there was no fraud or mistake. Answering further, McNabola affirmatively states that, by its motion, Brunswick was attempting to renege on the settlement in light of the fictional "verdict," and because the only basis for vacating the settlement under Illinois law would be to prove fraud or mistake, Brunswick was hoping through this motion to build such a claim.

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.

ANSWER: Admitted that such a memorandum was filed, but McNabola denies that the memorandum is either accurate or admissible. Further, McNabola affirmatively states, upon information and belief, that the memorandum was created six days after the events described therein based on memory and without any contemporaneous notes, which were not prepared, and Judge Budzinski has testified that she did not intend this memo be evidence in a case.

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.

ANSWER: McNabola admits that on June 26, 2015, Brunswick filed a Motion to Vacate the Order of Dismissal Pursuant to 735 ILCS 5/2-1301(e), but denies that that Motion (as opposed to the June 12, 2015 motion, described in paragraph 84 and the answer to paragraph 84 above) sought to vacate the settlement agreement and enter judgment on the jury's verdict. Further answering, McNabola affirmatively states that (i) the Motion did not have merit and was not filed in good faith, (ii) McNabola did not induce Agee in any way to delay informing Brunswick's counsel of the jury note, (iii) specifically, and contrary to the claims and relief sought in Brunswick's motion to vacate, both Brunswick's attorneys and Patitucci were fully aware of the jury note and its contents before they agreed to the settlement on the record and before they agreed to dismiss the case pursuant to the settlement, (iv) the settlement amount was based upon an unconditional offer of $25 million made by Brunswick and agreed to by the Vandenbergs (with instructions to McNabola to accept) before the jury question existed.

87. On or about June 26, 2015, Respondent advised the Vandenbergs that Montgomery would represent them in *Vandenbergs v. Brunswick*. Though he was now a witness in the matter, Respondent did not withdraw from his representation of the Vandenbergs in *Vandenbergs v. Brunswick.*

ANSWER: Denied, including any implication that the IRPC required McNabola to withdraw from his representation of the Vandenbergs (which the Administrator does not and could not in good faith charge), except that McNabola admits that he fully informed the Vandenbergs of his recommendation to engage Montgomery and his team as additional counsel for them, that he fully

explained to them the reasons for his recommendation, that they consented to the engagement, and that he did not withdraw from his representation of the Vandenbergs (but denies any suggestion that he had a duty to withdraw at that time). Answering further, McNabola states that these and certain other allegations in this amended Third Amended Complaint are relics from prior complaints filed in this matter, as to which no charges are being alleged. McNabola denies that all such allegations are relevant to this proceeding.

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

ANSWER: Admitted.

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

ANSWER: Admitted. Further answering, McNabola affirmatively states that email stated as follows:

> Mark,
>
> This is definitely the hardest thing I've had to do in the last six and Half years. I am turning the case over to somebody new. Can you please prepare a statement of finances to date. And can I send somebody in your office to get a copy of my file?
>
> Scot Vandenberg

Answering further, McNabola affirmatively states that (i) he had informed Scot in late January 2016 that Scot should obtain substitute counsel, (ii) McNabola and Anders flew to Naples, Florida on or about February 2, 2016 to meet with Scot, at his home, to discuss potential substitute counsel, and (iii) McNabola interviewed candidates for successor counsel.

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.

ANSWER: McNabola admits that Judge Budzinski recused herself and that Judge Daniel Lynch was assigned to the case. McNabola has no knowledge sufficient to form a belief as to the reasons for Judge Budzinski's recusal, except he states on information and belief that she did so because she might be called as a witness to testify if an evidentiary hearing was to be held.

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.

ANSWER: Admitted. Further answering, McNabola affirmatively states that an additional witness, Michael Castro, also testified at the hearing.

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

ANSWER: McNabola admits that on January 19, 2016, Judge Lynch issued an oral opinion (but entered no order that day) that made erroneous factual findings and unsupported legal conclusions, but denies the Administrator's characterization of the vacated opinion to the extent it is inconsistent with the vacated opinion itself. Further answering, McNabola affirmatively states that (i) Judge Lynch did not enter any order with respect to his oral opinion until May 26, 2016, (ii) his order of May 26, 2016 and related oral factual findings and legal conclusions were later vacated by Judge O'Hara's order of December 20, 2016, and are therefore, nullities, and (iii) the First District Appellate Court affirmed Judge O'Hara's December 20, 2016 Order, holding, among other things, that the content of the jury question was immaterial to the settlement and that the parties had reached an enforceable settlement agreement as of June 9, 2015.

94. On May 19, 2016, Judge Lynch entered an order in *Vandenbergs v. Brunswick* finding in favor of Brunswick and against the Vandenbergs.

ANSWER: Admitted, except McNabola states that the order was entered May 26, 2016. Further answering, McNabola affirmatively states that (i) Judge Lynch's ruling was erroneous and was later vacated by Judge O'Hara's final Order of December 20, 2016, (ii) the First District Appellate Court unanimously affirmed Judge O'Hara's December 20, 2016 Order, and (iii) this part of the Vandenberg case ultimately settled for $29.4 million, consisting of the $25 million settlement negotiated by McNabola on June 9, 2015, plus interest accruing after June 9, 2015.

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. Judge Lynch recused himself from further proceedings without stating his basis and the case was reassigned to the Honorable James O'Hara.

ANSWER: Admitted. Further answering, McNabola states that the recusal motion correctly stated that Judge Lynch was biased against McNabola, who had been excluded from the evidentiary hearing along with his trial team, barred from reviewing transcripts, unrepresented by counsel, and denied leave to intervene. Further answering, McNabola affirmatively states that (i) the recusal motion contained inaccurate assertions as well, including that the Vandenbergs had not been adequately represented, (ii) Judge Lynch denied the recusal motion but suddenly recused himself anyway from any further involvement in the case without explanation, and (iii) the case was reassigned to Judge 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.

ANSWER: Denied. Further answering, McNabola affirmatively states that (i) on October 21, 2016, the Vandenbergs filed a motion to vacate the court's January 19, 2016 oral opinion and its

May 26, 2016 orders, and (ii) on June 27, 2016, the Vandenbergs filed a detailed post-trial motion that sought, *inter alia*, to vacate Judge Lynch's erroneous rulings and reinstate the settlement.

97. On December 20, 2016, after briefing and oral argument on the motion to vacate described in paragraph 96 above, Judge O'Hara entered an order vacating the judgment entered in favor of Brunswick by Judge Lynch and all orders entered after June 9, 2015 that were inconsistent with the court's December 20, 2016 order, and reinstated the settlement agreement for $25 million.

ANSWER: Admitted, and the Hearing Board is respectfully referred to Judge O'Hara's order for the full contents thereof.

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

ANSWER: Admitted.

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

ANSWER: Admitted.

100. On March 1, 2017, Brunswick appealed the court's February 15, 2017 order entering judgment for the Vandenbergs referred to in paragraph 99, above.

ANSWER: Admitted.

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.

ANSWER: Admitted, and the Hearing Board is respectfully referred to the November 17, 2017 Opinion of the First District, First Division Appellate Court ("Opinion") for the full contents thereof. Answering further, McNabola affirmatively states that (i) the foundation for Judge Lynch's erroneous rulings and biased commentary against McNabola was developed during the evidentiary hearing, (ii) Judge Lynch barred McNabola and his trial team from being present or reviewing transcripts during the evidentiary hearing, thereby preventing McNabola from actively representing the Vandenbergs during the hearing and assisting them in correcting inaccurate assertions, (iii) the 3:40 pm time referenced by the Appellate Court in its Opinion was supplied by Power and Kralovec, and was based solely on Scot's erroneous estimate, (iv) the actual time, as noted in the answer to paragraph 62 above, was at or near 3:50 p.m., and (v) in addition to the portions of the Opinion quoted in paragraph 101, the Opinion further stated, in relevant part, as follows:

- "[T]he rules of professional conduct cannot give rise to McNabola's duty to speak, the violation of which served as the basis of Brunswick's fraudulent concealment claim. Without establishing that duty, Brunswick cannot prove fraudulent concealment as a means to vacate the parties' settlement agreement." ¶34.
- "In summary, we find that under the facts of this case McNabola did not have a duty to inform Brunswick about the jury note." ¶40.

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).

ANSWER: Denied, including sub-paragraphs (a)-(b) inclusive. Answering further, McNabola affirmatively states that the Administrator's allegations that McNabola violated the Rules rest on numerous facts and conclusions that are false, unsupported by evidence, and/or contrary to the rulings of the Circuit Court and the Appellate Court, including the following false premises, each of which McNabola expressly denies: (i) McNabola *knew* that Agee had not done her job and had not informed Brunswick of the note or its contents; (ii) McNabola believed that the content was material to Brunswick's willingness to settle; (iii) McNabola pretended he was unaware of the content in order to somehow prevent the note from being revealed to Brunswick; and (iv) McNabola believed he could thereby stop the Judge from informing Brunswick of note's content before the case was dismissed per the Settlement. Further answering, McNabola affirmatively states that (i) the allegations on which the Administrator relies are not only false and implausible, they are rebutted by the findings of the Circuit Court and the Appellate Court that the note's content was immaterial, (ii) both sides viewed the note as immaterial to the settlement, and (iii) accordingly, McNabola's duty was to explore the limits of Patitucci's settlement authority and convey his clients' acceptance of the $25 million offer, which he discharged faithfully and timely, resulting in an enforceable $25 million settlement on June 9, 2015, and a net payment of

nearly $20 million to the Vandenbergs. Further answering, McNabola expressly denies that it is a violation of any IRPC or other duty to "engag[e] in conversation" with and to receive information from a clerk of the court where the court notified counsel that the clerk may contact them and thereafter expressly authorized the clerk to contact counsel.

ANSWER TO COUNT IV

Allegedly 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.

ANSWER: Admitted, except McNabola denies that the fee or cost-reimbursement terms were payable to him. Answering further, McNabola affirmatively states that (i) Kinnally engaged the firm, then known as Cogan & McNabola, P.C., pursuant to a written agreement and agreed, among other things, to pay a contingent fee to the firm. Answering further, McNabola affirmatively states that most of the alleged events concerning Kinnally occurred between fourteen and seventeen years ago, and McNabola has made a good faith effort to reconstruct events in order to respond. While there is no statute of limitations applicable to disciplinary complaints, he notes that Illinois law imposes a two-year statute of limitations and six-year statute of repose on civil claims against lawyers, in part because of the prejudice that the passage of time exerts on a party's ability to

defend a case. It is unfair and inappropriate for the Administrator to present charges on events that allegedly occurred so long ago.

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").

ANSWER: McNabola has no knowledge sufficient to form a belief as to the allegations of paragraph 104, as the alleged events took place about sixteen or seventeen years ago, except he admits that Cogan & McNabola, P.C. referred certain workers compensation matters to Stookal, and that Stookal represented Kinnally in her 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").

ANSWER: Admitted, except the complaint was filed by Cogan & McNabola, P.C., not McNabola.

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").

ANSWER: Admitted, except Cogan & McNabola, not Respondent, sent the notice to Hartford.

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.

ANSWER: Paragraph 107 states legal conclusions to which no answer is required. If and to the extent an answer is required, the legal conclusions are denied to the extent they misstate the applicable law. Any facts alleged in paragraph 107 are denied. Answering further, McNabola denies paragraph 107 to the extent it purports to base a disciplinary charge on alleged breaches of common law fiduciary duties.

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.

ANSWER: Denied, except McNabola admits that the firm's file regarding Kinnally contained certain personal information about her, including some financial information, and that Kinnally had told McNabola that she had financial distress and intended to borrow funds from a commercial lender to help pay for living expenses. In addition, Kinnally's deposition testimony corroborated her financial difficulties.

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.

ANSWER: McNabola has no knowledge sufficient to form a belief as to the first sentence of paragraph 109, except he admits that at some point after 2003, during the time MLG represented Kinnally, she told McNabola that she had financial distress and asked McNabola for a loan, which

he declined, informing her that governing ethical rules precluded him from doing so; and he admits that Kinnally told McNabola at some point during MLG's representation of her that she intended to borrow funds from a commercial lawsuit lender to pay for living expenses.

110. In 2003 after Kinnally conferred with Respondent about her need for funds as described in paragraph 109, 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.

ANSWER: Denied, including the allegation that McNabola believed the loan would be advantageous to his father and the implication that such a belief motivated him to give his father's name to Kinnally, except McNabola has no knowledge sufficient to form a belief regarding Kinnally's purported belief as set forth in the last sentence, and McNabola admits that at some point over fourteen or more years ago: (i) Kinnally requested a loan from McNabola and he informed her that a lawyer cannot loan a client funds because it is against the IRPC; (ii) she asked whether it was a good idea for her to go to a commercial lender and asked McNabola for his help and to recommend a source for lawsuit loans; (iii) he advised her, accurately, that it was his understanding that the rates of such lenders were very high; (iv) he suggested she consider borrowing from private individuals at a lower and more favorable rate to her; (v) McNabola told her that the terms of the loan agreement would be negotiated between Kinnally and the individual lender because he could not be involved in setting the terms; and (vi) he gave her names of potential private individual lenders, including his father, Dr. McNabola, a retired physician. Answering further, McNabola affirmatively states that he was attempting to help Kinnally, who

claimed to be in dire financial straits, and neither he nor MLG lent or received any money as a result of these loan arrangements she made.

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.

ANSWER: McNabola denies the alleged conflict and, therefore, denies that he had (and denies any implication that he had) any obligation to take the alleged steps or make the alleged explanation set forth in paragraph 111.

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

ANSWER: Denied, except McNabola admits that during the alleged time period, Dr. McNabola (commonly known to the MLG staff and friends as "Doctor Mac"), a surgeon of over fifty years, who died in 2016, visited the firm's offices from time to time after he retired as a surgeon, initially to take care of matters related to his own consulting practice and later primarily for company, to read newspapers and pass the time, and was permitted use of an empty office from which, upon information and belief, he managed his various personal and business matters.

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	

ANSWER: McNabola admits upon information and belief that Kinnally borrowed the above sums from Dr. McNabola on or about the alleged dates at the 10% interest rate.

114. In each of the loans referenced in paragraph 122[113] 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."

ANSWER: Denied, except McNabola admits upon information and belief, that Kinnally appears to have signed promissory notes that include the quoted language and that employees of MLG provided limited clerical assistance to Dr. McNabola in preparing the promissory notes and witnessed Kinnally's signature on two of the ten notes. Answering further, McNabola affirmatively states that eight of the notes bear no signature of a witness.

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.

ANSWER: Admitted, except that McNabola denies the characterization of the so-called "accelerator clause" to the extent it is inconsistent with the terms of the clause, and refers the Hearing Board to the notes for the contents thereof.

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 113 above, were messengered to Kinnally by employees of Respondent's office including Respondent's secretary, Tracy Battistoni. (hereafter "Battistoni")

ANSWER: McNabola has no knowledge sufficient to form a belief as to the allegations of paragraph 116 except (i) he admits, upon information and belief, that some personal checks from Dr. McNabola may have been messengered to Kinnally by employees of MLG, and (ii) he denies any implication that he provided any loan to Kinnally from his or MLG's funds or received any repayment or any benefit from any loans made by Dr. McNabola or anyone else to Kinnally. Further answering, McNabola affirmatively states, upon information and belief, that Dr. McNabola wrote checks for the loans to Kinnally from his own personal funds.

117. The loans referenced in paragraph 113, 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.

ANSWER: Denied, including the allegation that that Dr. McNabola was McNabola's alter ego.

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.

ANSWER: Admitted, and McNabola respectfully refers the Hearing Board to the signed settlement statement for the entire contents thereof. Further answering, McNabola affirmatively states that (i) McNabola, without request from Kinnally, voluntarily caused his firm to accept half of the $40,000 fee to which it was then entitled, and was paid $20,000, (ii) he also voluntarily caused his firm to defer to a later date Kinnally's obligation to repay case expenses advanced on her behalf, and (iii) this voluntary reduction of the fee and deferral of case expense was for the sole benefit of Kinnally.

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.

ANSWER: Admitted, except McNabola denies paragraph 119 to the extent it misstates the contents of the Hartford policy, to which the Hearing Board is referred for the contents thereof. Answering further, McNabola affirmatively states, upon information and belief, that the Hartford policy provided that collateral source payments, including workers compensation benefits, would be set off from any arbitration award.

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.

ANSWER: Admitted.

121. The funds awarded to Kinnally during the arbitration for the under-insured motorist matter referred to in paragraph 119, above, were held by Hartford until Kinnally completed treatment so that Hartford could determine the full amount of the set-off.

ANSWER: Admitted.

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.

ANSWER: Admitted, upon information and belief.

123. Thereafter, Hartford declined to pay the amount awarded to Kinnally during the arbitration of the under-insured motorist matter referred to in paragraph 122, 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.

ANSWER: McNabola admits the first sentence, and, upon information and belief, admits the second sentence. Answering further upon information and belief, McNabola affirmatively states that Hartford was not legally responsible to pay the UIM arbitration award according to the terms of its insurance policy with Kinnally.

124. At no time did Kinnally pay the $83,000 to Dr. McNabola that he had loaned to her, referred to in paragraph 113, above, nor did she pay him any interest on those funds.

ANSWER: Admitted, upon information and belief.

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.

ANSWER: Admitted, upon information and belief.

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."

ANSWER: McNabola admits that the chancery complaint was filed, but denies the remaining allegations of paragraph 126 to the extent they are inconsistent with that complaint, and refers the Hearing Board to the complaint for the contents thereof.

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.

ANSWER: Admitted, upon information and belief.

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.

ANSWER: Admitted. Answering further, McNabola affirmatively states that Karen Enright, who was then affiliated with the firm Winters, Enright, Salzetta & O'Brien, had previously appeared as additional counsel for Dr. McNabola in February 2012, and that when Ms. Enright became affiliated with MLG as a partner in or about September 2012, she later caused MLG to file an appearance for Dr. McNabola. She did so via a motion filed on October 12, 2012 for leave to substitute MLG as counsel, and provided due notice to Kinnally through her counsel of record. On October 19, 2012, the Court granted leave to substitute and expressly noted in her handwritten

addition to the order that Kinnally's counsel had not objected to the substitution. Kinnally's acquiescence to MLG's substitution as counsel for Dr. McNabola constituted consent to the representation and a waiver of any argument (or related objection) that MLG's representation of Dr. McNabola violated IRPC 1.9(a).

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.

ANSWER: The first and third sentences are admitted, except for the "therefore" in the third sentence, which is denied. The remainder of paragraph 129 alleges legal conclusions to which no response is required. To the extent a response is required, such allegations and any remaining factual allegations are denied, including the incorrect allegations that the chancery matter was "substantially related" to the matter in which McNabola had formerly represented Kinnally, and that financial assistance was "advanced to Kinnally in the personal injury matter." Further answering, as asserted above in answer to paragraph 128, Kinnally, through her counsel, consented to, and waived any objection to, MLG appearing on behalf of Dr. McNabola in the litigation adverse to Kinnally.

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

ANSWER: Paragraph 130 alleges legal conclusions to which no response is required, except McNabola admits, upon information and belief, that no attorney at MLG procured consent from Kinnally before Enright caused MLG to substitute on behalf of Dr. McNabola in order to continue her representation of him, but affirmatively states that Kinnally did not object to and consented to MLG's representation of Dr. McNabola in the chancery matter as set forth in the answer to

Paragraph 128 above. Otherwise, to the extent a response is required, such allegations are denied, and any remaining allegations, including the allegation that Kinnally did not provide informed consent to MLG's representation of Dr. McNabola and the implication that obtaining informed consent was required or that McNabola represented his father.

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.

ANSWER: Admitted for the time period October 19, 2012 until December 27, 2012, but denied with respect to any implication that Mark personally represented Dr. McNabola in that lawsuit.

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.

ANSWER: The first sentence is admitted. The second and third sentences contain characterizations of positions asserted in court, which are denied to the extent they are inconsistent with the positions asserted. Further answering, McNabola affirmatively states that neither he nor the law firm was party to this case. In addition (i) McNabola did not initiate the loans, (ii) while MLG's employees provided limited clerical assistance to Dr. McNabola, they did not "implement or process the loans," (iii) Dr. McNabola was not an alter ego of McNabola or MLG, (iv) McNabola did not loan any money to or received any loan payments from Kinnally, and (v) Enright represented Dr. McNabola before she joined MLG, and (vi) after Enright joined MLG, she continued to be responsible for this matter.

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."

ANSWER: McNabola admits, upon information and belief, that Judge Mason commented as alleged and that the quoted language appears in the transcript from the proceedings in which she ruled on the cross-motions for summary judgment, but McNabola denies that he or MLG circumvented ethical obligations or allowed his father to act as a surrogate to make a loan to Kinnally. Answering further, McNabola affirmatively states that at no time did he loan any personal or law firm funds to Kinnally directly or indirectly, or receive payment from her on any such loan, and attorney Emily Adams of the ARDC has previously acknowledged in writing that it is not a violation of the IRPC for an attorney to refer a client to a family member for a loan.

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).

ANSWER: Denied, including each and every sub-paragraph (a)-(c) inclusive.

ANSWER TO COUNT V

Alleged 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.

ANSWER: McNabola repeats and realleges his answers to paragraphs 103 through 133 above as his answer to paragraph 135.

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.

ANSWER: Denied, including the allegation that the document stated that "the expenses owed to the McNabola firm" included the loans totaling $83,000 from Dr. McNabola or that the memo was prepared "as a result of" Kinnally's failure to repay Dr. McNabola, except McNabola admits, upon information and belief, that (i) his firm prepared the memorandum to Stookal, (ii) it was dated September 21, 2011, and (iii) it accounted for the Kinnally settlement proceeds and disbursements, and also itemized the loans Dr. McNabola had made to Kinnally from his own funds. McNabola respectfully refers the Hearing Board to the memorandum for the contents thereof. Answering further, McNabola affirmatively states that (i) the memorandum did not "direct" payment of such loan funds to the firm, nor was such payment to the firm ever requested, and (ii) the memorandum concluded that Kinnally had "received approximately $528,000 net tax

free," itemized as the $25,000 in cash from the personal injury settlement, $83,000 in cash loans from Dr. McNabola, and $420,000 in workers compensation benefits (including medical benefits).

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.

ANSWER: Paragraph 137 alleges legal conclusions to which no response is required. If and to the extent a response is required, McNabola denies the allegations. Any facts alleged in paragraph 137 are denied.

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.

ANSWER: Paragraph 138 alleges legal conclusions to which no response is required. If and to the extent a response is required, McNabola denies the allegations including any factual allegations, except that he admits that he did not "explain to Kinnally" the alleged statement, but denies that the statement is accurate or that he had any obligation to explain inaccurate information to Kinnally. Further answering, as asserted above in answer to paragraph 128, Kinnally, through her counsel, consented to, and waived any objection to, MLG appearing on behalf of Dr. McNabola in the litigation adverse to Kinnally.

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);[.]

ANSWER: Denied, including each and every sub-paragraph (a)-(b) inclusive.

ANSWER TO COUNT VI

Allegedly 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.

ANSWER: Admitted, except McNabola denies that O'Keefe's start date was August 2011, and denies that the firm dissolved. Further answering, McNabola affirmatively states that (i) O'Keefe was employed as a paralegal MLG beginning in August 2010, and (ii) the name of the firm was changed in July 2012 from Cogan & McNabola, P.C. to 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.

ANSWER: Denied.

142. In each of the promissory notes for the loans described in paragraph 143[141] 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.

ANSWER: McNabola has no knowledge sufficient to form a belief as to the truth of the allegations of paragraph 142, but denies any implication that he created or directed to be created any promissory notes and denies that he authorized the inclusion of such language in any promissory notes. Further answering, McNabola affirmatively states upon information and belief, the language quoted in paragraph 142 is the same or similar language that a commercial lender or any other lender would have required to protect its investment.

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

ANSWER: Denied, including the allegation that McNabola "directed" O'Keefe to make loans, except McNabola admits upon information and belief that O'Keefe loaned funds to Stephanie Prince. Answering further, McNabola affirmatively states that (i) neither he nor MLG ever loaned money to any client, and (ii) Ms. Prince was wheelchair-bound, in chronic pain, anxiety ridden,

had serious medical conditions, was in the process of being evicted at or about the time of the dates listed in paragraph 143, and later was grateful for the assistance.

144. The payments described in paragraph 143, 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.

ANSWER: McNabola has no knowledge sufficient to form a belief as to the allegations of Paragraph 144, except he admits upon information and belief that O'Keefe's loan to Ms. Prince was not for court costs or litigation expenses but was to avoid eviction from her home.

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.

ANSWER: Denied.

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.

ANSWER: Denied.

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.

ANSWER: Denied, except McNabola admits that he signed check no. 4076 in the alleged amount from MLG's IOLTA account. Answering further, McNabola affirmatively states that (i) the source of the funds to repay the loan from Ms. O'Keefe was the settlement proceeds from the $3.5 million settlement that MLG had negotiated on Ms. Prince's behalf, which was fully and properly documented, (ii) accordingly, neither MLG nor McNabola "refunded" or paid Ms.

O'Keefe, and McNabola denies any implication that he or MLG indirectly loaned funds to Ms. Prince via Ms. O'Keefe, and (iii) rather, O'Keefe was transparently repaid from Ms. Prince with her knowledge, direction, and consent from Ms. Prince's settlement funds in the same manner than any commercial lender would have been repaid.

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.

ANSWER: Paragraph 148 alleges legal conclusions to which no response is required. If and to the extent a response is required, McNabola denies the allegations, including any factual allegations, and further denies that he authorized the interest rate, prepayment clause or any of the terms of the transactions described in paragraphs 141-47.

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 143, above.

ANSWER: McNabola denies paragraph 149, except he admits the first sentence but denies any implication that he violated that prohibition.

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).

ANSWER: Denied, including each and every sub-paragraph (a)-(c) inclusive.

ANSWER TO COUNT VII

Alleged 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")

ANSWER: Admitted. Answering further, McNabola affirmatively states that several other issues were submitted for arbitration.

152. In or about August 2011, the dispute referred to in paragraph 151, 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.

ANSWER: Admitted. Answering further, the arbitration ruling addressed many additional issues, including issues on which McNabola and MLG prevailed, and was binding and closed as of April 9, 2012.

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

ANSWER: Admitted. Answering further, Respondent affirmatively states that (i) he fired Papin on behalf of Cogan & McNabola, P.C. for Papin's various acts of incompetence and misconduct, including, without limitation, violating the injunction referred to in paragraph 41 above, neglecting case files, and demonstrative lack of courtroom skills, and other outrageous and untruthful behavior, (ii) Papin is biased against McNabola, (iii) Papin has threatened to "get McNabola's law license" as his life's ambition, and (iv) Papin ghost-wrote Kinnally's communications with the ARDC.

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.

ANSWER: Denied. Answering further, McNabola affirmatively states that (i) on or about July 2, 2012, Michael Cogan and John Power resigned without notice from Cogan & McNabola, P.C., (ii) the firm did not dissolve, and its name was changed to McNabola Law Group, P.C., (iii) in breach of their fiduciary duties to MLG and McNabola, Cogan and Power and other employees surreptitiously organized their new firm as early as 2010 but did not inform the firm or its partners until July 2, 2012, and (iv) upon information and belief, Jon Papin began working for the firm now known as Cogan & Power, and to improperly solicit business, among other things, from Cogan & McNabola before July 2, 2012.

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.

ANSWER: Denied, except that McNabola admits that (i) he knew at all times that O'Keefe and Papin had a long friendship and history of having worked together at other personal injury firms, and (ii) after July 2, 2012, he became suspicious that O'Keefe was providing proprietary, confidential and privileged firm information to Papin. Further answering, McNabola affirmatively states that (i) O'Keefe was advised that she should cease communications with Papin regarding firm matters after his termination, (ii) McNabola had reason to believe that O'Keefe was communicating with Papin, including providing Papin with information to which Papin was not entitled as a former employee of the firm, (iii) McNabola had terminated Papin for misconduct as described above and Papin resented McNabola for doing so, and (iv) Papin has clearly expressed his intent to destroy McNabola's profession and take his law license.

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.

ANSWER: Denied.

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.

ANSWER: Denied, except McNabola admits that a subpoena was issued and refers the Hearing Panel to the subpoena for the contents thereof.

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.

ANSWER: Denied, except McNabola admits that the arbitration matter had been closed as of April 9, 2012.

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.

ANSWER: Denied. Answering further, McNabola states that the cell phone was property of the Firm and the Firm therefore was entitled to the records.

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.

ANSWER: McNabola has no knowledge sufficient to form a belief as to the truth of the allegations in paragraph 161, except he denies the term "surreptitiously."

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).

ANSWER: Denied including each and every sub-paragraph (a)-(b) inclusive. Answering further, McNabola affirmatively states that this Count fails under *In re Karavidas*, 2013 IL 115767.

WHEREFORE, McNabola asks that the Hearing Board find in his favor on all Counts in the Complaint, and grant such other relief as is just and proper.

Dated: March 26, 2021

Respectfully submitted,

Mark Edward McNabola

By: /s/Edward W. Feldman
One of his attorneys

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