

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

In the Matter of:

EDWARD WILLIAM HYNES,

Attorney-Respondent,

No. 6324093.

Commission No. 2021PR00065

COMPLAINT

Jerome Larkin, Administrator of the Attorney Registration and Disciplinary Commission, by his attorney, Michael Rusch, pursuant to Supreme Court Rule 753(b), complains of Respondent, Edward William Hynes, who was licensed to practice law in Illinois on November 10, 2016, and alleges that Respondent has engaged in the following conduct which subjects Respondent to discipline pursuant to Supreme Court Rule 770:

ALLEGATIONS COMMON TO ALL COUNTS

1. Between May 31, 2017 and June 18, 2020, Respondent practiced law as an associate attorney at the law firm of Clausen Miller, P.C. ("Clausen").
2. While Respondent was working as an associate attorney at Clausen, he worked under the direction of one or more partners in the firm, any of whom could assign him to work on various client matters. Respondent's duties included, attending court appearances, propounding and responding to discovery, writing and responding to pleadings and motions, conducting research, negotiating and communicating settlement offers, entering into settlement agreements, and reporting to his supervising partners.
3. On June 18, 2020, Clausen terminated Respondent's employment.

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COUNT I

(Entering into a Settlement Agreement Without Authority of His Clients– Vick v. McClure)

4. On June 5, 2016, Rachel Vick (“Vick”) sustained injuries when she slipped and fell in the bathroom of a property owned by Ruby McClure (“McClure”). At the time of the incident, McClure was insured by American International Group, Inc. (“AIG Insurance”).

5. McClure filed a claim with AIG Insurance and AIG Insurance opened a file and assigned an insurance claims adjustor to review Vick’s claims, evaluate AIG’s potential liability, and attempt to resolve the case, if warranted, by an agreement to pay Vick compensation for her claimed injuries.

6. On January 18, 2018, Benjamin A. Sweeney, from the Law Office of Daniel E. Goodman, LLC, on behalf of Vick filed a complaint for damages against McClure in the circuit court of Cook County. The action was docketed as, *Rachel Vick v. Ruby McClure*, case number 2018 L 000618 (“*Vick v. McClure*”).

7. Prior to November 1, 2018, Clausen, McClure, and AIG Insurance agreed that Clausen would represent McClure in defense of Vick’s premises liability action. Clausen assigned Respondent to handle the matter on behalf of Clausen, McClure, and AIG, including the tasks referred to in paragraph two, above.

8. On November 1, 2018, Respondent filed his appearance as counsel on behalf of McClure and AIG in *Vick v. McClure*.

9. Between November 1, 2018 and March 5, 2020, Respondent provided legal services in the *Vick v. McClure* matter by working with the client and insurance adjustor, issuing and responding to discovery, and taking and defending depositions.

10. On or about March 6, 2020, Respondent discussed a purported settlement agreement with Terry Lachcik, from the Law Office of Daniel E. Goodman, LLC, counsel for Vick

by which Vick would agree to release her claims against McClure in exchange for the payment of \$40,000, which Respondent falsely claimed he had the authority to offer on McClure's behalf. At the time Respondent entered into the purported agreement, he had not spoken to McClure or AIG about the proposed settlement, nor had he received authority to settle the case for that amount.

11. Respondent's statements to Mr. Lachcik described in paragraph 10, above, were false, because prior to March 6, 2020, Respondent had not obtained authority from McClure or AIG Insurance to enter into a settlement agreement in the case.

12. Respondent knew that the statements to Mr. Lachcik, described in paragraph 10, above, were false, because he knew he had not received authority from AIG or McClure to settle Vick's claim for \$40,000, or any amount.

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

- a. failure to abide by a client's decision on whether to settle a matter, by conduct including entering into a purported settlement agreement of the claim against McClure in case number 2018 L 000618 without the knowledge or authority of AIG Insurance and McClure in violation of Rule 1.2(a) of the Illinois Rules of Professional Conduct (2010);
- b. knowingly making a false statement of material fact or law to a third person by conduct including falsely representing to Terry Lachick that his clients had agreed to settle *Vick v. McClure*, for \$40,000, in violation of Rule 4.1(a) of the Illinois Rules of Professional Conduct (2010); and
- c. conduct involving dishonesty, fraud, deceit or misrepresentation by conduct including representing to Terry Lachick that his clients had agreed to settle *Vick v. McClure*, for \$40,000, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010).

COUNT II
(Misrepresentations to the Court in *Vick v. McClure*)

The Administrator realleges and incorporates paragraphs 4 through 11, above.

14. At about the same time as he entered in to the purported settlement agreement, described in paragraph 10, above, Respondent informed Cook County Circuit Court Associate Judge Moira S. Johnson that the *Vick v. McClure* case had been settled and prepared an order for Judge Johnson's review which indicated that the parties reached a settlement agreement. Based on Respondents assertions, Judge Johnson issued an order on March 6, 2020, reflecting that the parties settled the matter by agreement and dismissed the *Vick v. McClure* case with prejudice.

15. Respondent's statement to Judge Johnson, described in paragraphs 14, above, was false, because prior to March 6, 2020, Respondent had not obtained authority from McClure or AIG Insurance to enter into a settlement agreement in the case.

16. Respondent knew that his statement and draft order he prepared and presented to Judge Johnson, described in paragraphs 13, above, were false, because Respondent knew that he did not have authority to enter into the purported settlement agreement in the *Vick v. McClure* case.

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

- a. knowingly making a false statement of fact or law to a tribunal by conduct including making the false statement to Judge Johnson and preparing an order as described in paragraph 13, above, in violation of Rule 3.3(a)(1) of the Illinois Rules of Professional Conduct (2010); and
- b. conduct involving dishonesty, fraud, deceit or misrepresentation by including making the false statement to Judge Johnson and preparing an order as described in paragraph 13, above, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010).

COUNT III
(Misrepresentations regarding settlement funds - Vick v. McClure)

The Administrator realleges and incorporates paragraphs 4 through 11, above.

18. On March 23, 2020, Mr. Lachcik emailed Respondent a copy of a release of liability and settlement agreement that had been signed by Vick.

19. Between March 23, 2020 and May 23, 2020, Mr. Lachcik sent messages by email and left voice messages for Respondent on multiple occasions regarding the whereabouts of the funds relating to what he believed was the settlement of the *Vick v. McClure* case.

20. Between April 20, 2020 and May 29, 2020, Mr. Lachcik's legal assistant, Michelle Leach, sent email messages to Respondent concerning the purported settlement in *Vick v. McClure*.

21. By email dated April 20, 2020, Respondent replied to Ms. Leach's inquiries regarding the settlement funds. In his response, Respondent stated: "Apologies Michelle. I have had some trouble getting in touch with my adjuster. I have found out that she has left the insurer and spoke with her supervisor. I am waiting for confirmation, but it should be taken care of soon, I will send you an update as soon as possible. Thank you for your patience."

22. By email dated April 21, 2020, Respondent responded to Ms. Leach's inquiries regarding the settlement funds. In his response, Respondent stated: "I confirmed yesterday the check was ordered. I requested it be sent next-day fedex [sic] to your office, but I have not received an update from the carrier regarding the shipping. I sent another email today to request an update on mailing. I appreciate your patience."

23. By email dated May 29, 2020, Respondent responded to Ms. Leach's inquiries regarding the settlement funds. In his response, Respondent stated: "Apologies Michelle, I am working on getting the draft to you ASAP. I should be able to let you know on Monday it is on the way. Thanks again for your patience."

24. Respondent's statements to Ms. Leach, described in paragraphs 21, 22 and 23, above, were false because Respondent never discussed the purported settlement with McClure or AIG Insurance and therefore could not have discussed the purported settlement with an AIG Insurance supervisor, or confirm that the check was ordered, or request that the check be sent next-day via FedEx, or send a follow up email to AIG Insurance requesting an update on the whereabouts of the purported settlement funds.

25. Respondent knew that his statements to Ms. Leach, described in paragraphs 21, 22 and 23, above, were false at the time he made them, because he knew that never discussed the purported settlement with McClure or AIG Insurance and therefore could not have discussed the purported settlement with an AIG Insurance supervisor, or confirm that the check was ordered, or request that the check be sent next-day via FedEx, or send a follow up email to AIG Insurance requesting an update on the whereabouts of the purported settlement funds.

26. On May 5, 2020, Mr. Lachcik, on Vick's behalf, filed with the court a document entitled, "Plaintiff's motion for judgment pursuant to 735 ILCS 5/2-2301," in which Vick asked that the court enter a judgment against McClure for the purported settlement amount plus costs incurred in obtaining the judgment and interest.

27. On June 12, 2020, Vick's attorney contacted the firm president of Clausen to complain that Respondent had entered into a settlement with Vick and failed to provide the settlement check. Clausen then conducted an inquiry into Respondent's handling of the matter, and on June 18, 2020, terminated Respondent's employment with the firm.

28. Ultimately, AIG Insurance and McClure decided to comply with the terms of the purported settlement of \$40,000 to Vick.

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

- a. knowingly making false statement of material fact or law to a third person by conduct including making the knowingly false statements described in paragraphs 21, 22 and 23, above, in violation of Rule 4.1(a) of the Illinois Rules of Professional Conduct (2010); and
- b. conduct involving dishonesty, fraud, deceit or misrepresentation by conduct including making the knowingly false statements described in paragraphs 21, 22 and 23, above, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010).

COUNT IV

(Entering into a Settlement Agreement Without Authority and Failure to comply with reasonable requests— Spann v. Mann)

30. On October 28, 2015, Erik Spann (“Spann”) was working for Avis Rental Car (“Avis”) when he took an Avis vehicle to a car wash owned and operated by GCA Services Group (“GCA”) and ABM Industries Incorporated (“ABM”). While in line to have the car washed, Charles Mann (“Mann”), an employee of GCA, reversed the vehicle he was driving and struck the vehicle Spann was driving. As a result of the collision, Spann suffered physical injuries.

31. On October 25, 2017, Charles V. Falkenberg of Karlin, Fleisher & Falkenberg, LLC, on behalf of Spann, filed a complaint for damages in the circuit court of Cook County against Mann, GCA, and ABM. The action was docketed as, *Erik Spann v. Charles Mann, GCA Services Group, and ABM Industries Incorporated*, case number 2017 L 010850 (“*Spann v. Mann*”).

32. At the time of the incident, ESIS, which was a wholly owned subsidiary of Chubb, Inc., was acting as a third-party claim’s administrator providing claims processing for GCA.

33. Prior to October 25, 2017, Clausen, ESIS, Mann, GCA, and ABM agreed that Clausen would represent Mann, GCA, and ABM in defense of Spann’s personal injury action.

Clausen assigned Respondent to handle the matter on behalf of ESIS, Mann, GCA, and ABM, including the tasks referred to in paragraph two, above.

34. On November 30, 2017, Respondent filed his appearance as counsel for Mann, GCA, and ABM in *Spann v Mann*.

35. Between November 30, 2017 and October 2019, Respondent participated in the case by meeting and discussing the case with the clients, opposing counsel, and the insurance adjustor, by issuing and responding to discovery, and by taking and defending depositions.

36. Between October 10, 2019 and January 13, 2020, the ESIS adjustor assigned to the matter sent numerous email requests to Respondent seeking an update on the *Spann v. Mann* matter including any settlement demands made by plaintiff. Respondent did not respond to the ESIS adjustor. At no time was Respondent given authority to settle the matter by ESIS, Mann, GCA, or ABM.

37. Meanwhile, between October 31, 2019 and February 6, 2020, Respondent was engaged in settlement negotiations with Charles Falkenberg, counsel for Spann.

38. By email dated October 31, 2019, Respondent stated to Mr. Falkenberg, “At this time they (Respondent’s clients) are willing to offer \$50,000 in settlement of all your clients claims.”

39. By email dated November 20, 2019, Respondent stated to Mr. Falkenberg, “My client has authorized me to offer \$150,000 in settlement with previously discussed terms.”

40. By email dated February 6, 2020, Respondent stated to Mr. Falkenberg, “Per our conversation, let this email confirm that we have a contingent agreement to settle this matter for \$200,000. That agreement is contingent on your client finishing treating and the worker’s compensation case being closed. No money will be paid toward the settlement until those

contingencies occur, and until that time this does not constitute a full and complete settlement agreement.”

41. Respondent’s statements to Mr. Falkenberg, described in paragraphs 38, 39, and 40, above, were false. Prior to February 6, 2020, Respondent had not obtained authority from Mann, GCA, ABM or ESIS to enter into a settlement agreement.

42. Respondent knew that his statements to Mr. Falkenberg, described in paragraphs 38, 39, and 40, above, were false because he knew he had not received authority from ESIS, Mann, GCA, or ABM to settle Spann’s claims for \$200,000.

43. In reliance on Respondent’s February 6, 2020 email, Mr. Falkenberg, on Spann’s behalf, sought leave to voluntarily dismiss his case.

44. On February 7, 2020, Cook County Circuit Court Judge John H. Ehrlich entered an order in the *Spann v. Mann* case that dismissed the case without prejudice, with leave to refile the case within one year.

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

- a. failure to abide by a client’s decision on whether to settle a matter, by conduct including entering into a purported settlement agreement of the claim against Mann, GCA, and ABM, in case number 2017 L 010850 without the knowledge or authority of ESIS, Mann, GCA, or ABM in violation of Rule 1.2(a) of the Illinois Rules of Professional Conduct (2010);
- b. failure to keep the client reasonably informed about the status of a matter, by conduct including not responding to ESIS’s emails, in violation of Rule 1.4(a)(3) of the Illinois Rules of Professional Conduct (2010);
- c. knowingly making a false statement of material fact or law to a third person by conduct including falsely representing to Charles Falkenberg that his clients had agreed to settle

Spann v. Mann, for \$200,000, in violation of Rule 4.1(a) of the Illinois Rules of Professional Conduct (2010); and

- d. conduct involving dishonesty, fraud, deceit or misrepresentation by conduct including making the knowingly false statements described in paragraphs 38, 39, and 40, above, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010).

WHEREFORE, the Administrator respectfully requests that this matter be assigned to a panel of the Hearing Board, that a hearing be held, and that the panel make findings of fact, conclusions of fact and law, and a recommendation for such discipline as is warranted.

Respectfully submitted,

Jerome Larkin, Administrator
Illinois Attorney Registration and
Disciplinary Commission

By: /s/ Michael Rusch
Michael Rusch

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