

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

In the Matter of:

STEVEN MESSNER,

Attorney-Respondent,

Commission No. 2021PR00094

No. 3122711

NOTICE OF FILING

TO: RICHARD GLEASON
COUNSEL FOR ADMINISTRATOR
A.R.D.C.
One Prudential Plaza
130 East Randolph Drive, Suite 1500
Chicago, Illinois 60601-6219
rgleason@iadc.org
ARDCeServices@iadc.org

PLEASE TAKE NOTICE that on January 21, 2022 I will e-file the Respondent's Answer to Complaint by causing the original copy to be e-filed with the Clerk of the Attorney Registration and Disciplinary Commission.

Respectfully submitted,

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

SAMUEL J. MANELLA #06190368
Counsel for Attorney-Respondent
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FILED
1/21/2022 9:30 AM
ARDC Clerk

PROOF OF SERVICE

I, SAMUEL J. MANELLA, on oath state that I served a copy of the Notice of Filing and ANSWER TO COMPLAINT on the individual at the address shown on the foregoing Notice of Filing, sent via e-mail at rgleason@iardc.org, ARDCeService@iardc.org on January 21, 2022 at or before 4:00 p.m.

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

/s/ Samuel J. Manella

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In The Matter of:)	
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STEVEN MESSNER,)	
)	Commission No. 2021PR00094
Attorney-Respondent,)	
)	
No. 3122711.)	

ANSWER TO COMPLAINT

NOW COMES, Attorney-Respondent, STEVEN MESSNER, by and through his attorney, SAMUEL J. MANELLA, and hereby files his Answer to Complaint, and states and alleges as follows:

Respondent was licensed to practice law in Illinois in 1978 and Florida in 1980. Respondent was admitted to practice in the U.S. District Courts for the Northern District of Illinois in 1979, as well as the United States Tax Court.

COUNT I

(Assisting a client in committing tax fraud by disguising \$421,306.48 of personal income as a corporate expense, and in order to avoid paying taxes on \$421,306.48 in personal income)

1. At all times alleged in this complaint, Respondent was the sole owner of Steven Messner & Associates, a law firm which was located in Northbrook, and was the sole attorney operating and providing services as part of that entity. Respondent practiced primarily in divorce, criminal defense, and corporate litigation matters.

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Respondent was also a certified public accountant and provided bookkeeping and tax services to his clients who desired those services.

ANSWER:

Respondent admits the allegations contained in Paragraph 1 of Count I of the Complaint, and further answering, states the law firm/accounting firm practices in Northfield, Illinois.

2. At all times alleged in this complaint, Downes Swimming Pool Company ("DSPC") was a company located in Arlington Heights and engaged in the business of installing and servicing swimming pools. Luis Downes ("Luis") was the owner and sole shareholder of the company, and Christine Downes ("Christine") was Luis's wife.

ANSWER:

Respondent admits the allegations contained in Paragraph 2 of Count I of the Complaint.

3. Dating back to at least 2000 and through 2018, Respondent annually prepared the federal and Illinois tax returns for DSPC and Luis and filed the tax returns on their behalves. Respondent executed each of the tax returns Respondent filed on behalf of DSPC and Luis, and in doing so stated under penalty of perjury that he had examined the tax return and, to the best of his knowledge, the tax return was true, correct, and complete.

ANSWER:

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

4. In 2012, Christine filed dissolution of marriage proceedings against Luis in Lake County. The Clerk of the Court docketed the case 2012 D 1892 ("the marriage dissolution case"). Respondent appeared on behalf of Luis in the marriage dissolution case.

ANSWER:

Respondent admits the allegations contained in the first and second sentences of Paragraph 4 of Count I of the Complaint. Respondent denies the allegation contained in the third sentence of Paragraph 4 of Count I of the Complaint.

5. Throughout the marriage dissolution case, Respondent represented DSPC in responding to subpoenas from Christine's lawyers and continued to prepare and file the corporate tax returns on behalf of DSPC, and the personal tax returns on behalf of Luis. Respondent also communicated with Luis's lawyers and with Christine's lawyers on Luis's behalf as Luis's personal attorney.

ANSWER:

Respondent admits the allegations contained in the first sentence of Paragraph 5 of Count I of the Complaint. Respondent admits the communications set forth in the second sentence except the allegation that he communicated as Luis' personal attorney.

6. One of Christine's claims in the marriage dissolution case was that DSPC was a marital asset, and that she was entitled to half of the value of DSPC. Another of Christine's claims was that she was entitled to maintenance payments based on Luis's income and the valuation of DSPC. As a result of Christine's claims, both the valuation of DSPC and Luis's income were matters at issue in the marriage dissolution case.

ANSWER:

Respondent does not have knowledge sufficient to form a belief of the truth of the allegations contained in Paragraph 6 of Count I of the Complaint, and therefore denies the aforescribed allegation.

7. In 2012, while the dissolution or marriage proceedings were pending, Luis told Respondent that he was tired of his personal finances being scrutinized, and asked Respondent to provide him an American Express credit card on Respondent's American Express account. Respondent agreed and provided Luis with Luis's own American Express credit card linked to Respondent's American Express account, ending in the six digits 0-71009 ("the AMEX card" and "the AMEX account").

ANSWER:

Respondent denies that Luis "was tired of his personal finances being scrutinized" and in the affirmative, states that Luis desired more privacy as alleged in Paragraph 7 of Count I of the Complaint. Respondent admits providing Luis with an American Express credit card linked to Respondent's account.

8. Between January 18, 2012 and August 14, 2017, DSPC provided Respondent \$1,013,500 on Luis's behalf for Respondent to deposit in Respondent's IOLTA account at By Line Bank, with an account number ending in the last four digits 1392 ("Account 1392"). Respondent deposited those funds in Account 1392. Luis and Respondent intended for these corporate funds to pay for Luis's future personal and legal fees.

ANSWER:

Respondent admits the allegations contained in the first and second sentences

contained in Paragraph 8 of Count I of the Complaint, and denies the allegation contained in the third sentence of Paragraph 8 of Count I of the Complaint.

9. Luis and Respondent agreed that Respondent would bill DSPC for "service fees" for these expenses, and then draw checks for those amounts from Account 1392 against the funds DSPC deposited with Respondent for the benefit of Luis. Luis and Respondent agreed that these personal expenses would be disguised as DSPC expenses so that Luis would not have to pay personal income taxes for the funds DSPC provided on his behalf, and so DSPC could claim those funds as business expenses for tax reporting purposes.

ANSWER:

Respondent denies the allegations contained in Paragraph 9 of Count I of the Complaint.

10. Between January of 2012 and November of 2017, Luis made a total of \$219,308.48 in charges on the AMEX card. All of the charges were for Luis's own personal purposes. When Respondent received each month's AMEX account statements, Respondent paid the outstanding balance with a check he drew on Account 1392 against the funds DSPC provided him and which he had previously deposited into Account 1392, as described in paragraph eight, above.

ANSWER:

Respondent admits the allegations contained in the first sentence of Paragraph 10 of Count I of the Complaint. Respondent neither admits nor denies the allegation contained in the second sentence and admits the allegation contained in the third sentence of Paragraph 10 of Count I of the Complaint.

11. In addition, from 2012 until 2017, Luis incurred legal fees for services rendered to him personally, and not to DSPC, from three different law firms and an appraisal company as a result of the pending dissolution of marriage proceedings. The total of these legal and professional fees rendered to Luis personally was \$161,143.50. Respondent paid those fees by drawing checks on Account 1392 against the DSPC funds Respondent deposited in Account 1392, as described in paragraphs eight and nine, above.

ANSWER:

Respondent admits the allegations contained in Paragraph 11 of Count I of the Complaint.

12. In addition, between 2012 and 2017, Respondent provided personal legal services to Luis personally, and not to DSPC, as part of Luis's dissolution of marriage proceedings. Respondent's charges for these services totaled \$40,855. Instead of billing Luis for these services he had rendered to Luis and not to DSPC, Respondent billed DSPC for "professional services" for those fees, and then paid himself by drawing checks on Account 1392 against the funds DSPC previously provided Respondent, as described in paragraphs eight and nine, above.

ANSWER:

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

13. For each year from 2012 until 2017, on company ledgers and federal and state tax returns, Respondent, on DSPC's behalf, categorized Luis's charges on the

AMEX card described in paragraph 10, above, and his personal legal and professional fees, described in paragraphs 11 and 12, above, as business expenses.

ANSWER:

Respondent does not have knowledge sufficient to form a belief of the truth of the allegations contained in Paragraph 13, and therefore denies the aforescribed allegation.

14. Respondent's statements on the tax forms, described in paragraph 13, above, were false, because the expenses were personal expenses of Luis, not business expenses. From 2012 through 2017, the claimed business expenses for DSPC, as described in paragraph 13, above, totaled \$421,306.98, which had the effect of decreasing DSPC's taxable income for those years by a total of \$421,306.98, and resulted in Luis avoiding paying taxes on \$421,306.98 of income.

ANSWER:

Respondent does not have knowledge sufficient to form a belief of the truth of the allegations contained in Paragraph 14 of Count I of the Complaint, and therefore denies the aforescribed allegation. Further answering, in the affirmative, Respondent states that all returns were subsequently amended to reflect the nature of the item and said amendments were filed with the Internal Revenue Service, taxes paid and disseminated to all parties.

15. At the time Respondent filed the corporate tax returns on behalf of DSPC each year from 2012 through 2017, Respondent knew that DSPC had paid for Luis's personal expenses charged to the AMEX account and had paid Luis's personal legal and professional fees relating to the dissolution of marriage proceedings.

ANSWER:

Respondent admits the allegations contained in Paragraph 15 of Count I of the Complaint.

16. Respondent further knew that DSPC' s claimed business expenses for Luis's AMEX account charges and Luis's personal legal and professional fees relating to the dissolution of marriage proceedings violated federal or state law tax laws, because the claimed business expenses were Luis's personal expenses and not DSPC's business expenses. Respondent further knew that for each year DSPC claimed as a business expense Luis's personal expenses charged to the AMEX account and Luis's personal legal and professional fees relating to the dissolution of marriage proceedings, DSPC's taxable income would decrease in the amount of those claimed expenses.

ANSWER:

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

17. Respondent further knew that DSPC's funds provided on behalf of Luis personally constituted taxable income for Luis, and that by not declaring that income on Luis's tax returns, Luis was avoiding paying income taxes on those funds in violation of federal and state tax laws.

ANSWER:

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

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

- a. assisting a client in conduct the lawyer knows to be criminal or fraudulent, by conduct including assisting Luis and DSPC to violate federal and state tax laws, in violation of Rule 1.2(d) of the Illinois Rules of Professional Conduct (2010);
- b. making a false statement of fact to a third party, by conduct including certifying to the Illinois Department of Revenue from 2012 through 2017 that the corporate tax returns he prepared and filed on behalf of DSPC were true and accurate to the best of his knowledge, when he knew that the tax returns were false, in violation of Rule 4.1(a) of the Illinois Rules of Professional Conduct (2010);
- c. making a false statement of fact to a third party, by conduct including certifying to the Internal Revenue Service from 2012 through 2017 that the corporate tax returns he prepared and filed on behalf of DSPC were true and accurate to the best of his knowledge, when he knew that the tax returns were false, in violation of Rule 4.1(a) of the Illinois Rules of Professional Conduct (2010); and
- d. engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, by conduct including preparing and filing corporate tax returns he knew were false, and by certifying with his signature that those filed tax returns were accurate and truthful, in

violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010).

ANSWER:

Respondent denies the allegations contained in Paragraph 18 (a) through (d) of Count I of the Complaint.

COUNT II

(Lack of candor toward the tribunal and false statements to Luis's attorney)

19. The Administrator realleges the allegations contained in paragraphs one through 17, above.

ANSWER:

The Respondent realleges the responses to the allegations contained in paragraphs one through 17, above.

20. At all times alleged in this complaint, Lake County Court Local Rule 11.02 required parties in a divorce proceeding in the Lake County Circuit Court to exchange Comprehensive Financial Affidavits, a form prescribed the Supreme Court, which listed income, expenses, assets and liabilities. Rule 11.02 further required that each party of record file a certifying that the Comprehensive Financial Affidavit had been completed and setting forth the date the completed Comprehensive Financial Affidavit was served on the opposing party.

ANSWER:

Respondent admits the allegations contained in Paragraph 20 of Count II of the Complaint.

21. On or about April 23, 2013, James Quigley ("Quigley"), who was representing Luis in the pending dissolution of marriage proceedings, asked Respondent to prepare the Comprehensive Financial Affidavit on behalf of Luis. Respondent prepared the affidavit but omitted from the affidavit that Luis's income was understated as a consequence of DSPC having paid AMEX fees and attorneys' fees on his behalf, as described in paragraphs seven through 14, above. Respondent did not inform Quigley that the Comprehensive Financial Affidavit was false, in that omitted the AMEX and legal fees payments DSPC made on Luis's behalf. On November 7, 2013, Quigley filed notice with the Court in the marriage dissolution case that the Comprehensive Financial Affidavit had been tendered to Christine's lawyers.

ANSWER:

Respondent admits the allegation contained in the first sentence of Paragraph 21 of Count II of the Complaint. Respondent admits he prepared the Affidavit and denies the balance of the second sentence of Paragraph 21. Respondent denies that the Affidavit was false as alleged in the third sentence. Respondent admits the allegation contained in the fourth sentence of Paragraph 21 of Count II of the Complaint.

22. Respondent knew when he tendered the Comprehensive Financial Affidavit to Quigley that it was false, and that Quigley would rely on the accuracy of the affidavit, provide it to opposing counsel, and then file a notice with the Court that the affidavit had been tendered in accord with Rule 11.02.

ANSWER:

Respondent denies the allegations contained in Paragraph 22 of Count I of the Complaint.

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

- a. knowingly offering false evidence, by conduct including providing Quigley a false Comprehensive Financial Affidavit which Respondent prepared and which was executed by Luis, knowing Quigley would tender the affidavit to opposing counsel and then notify the court that the affidavit had been tendered, in violation of Rule 3.3(a)(3) of the Illinois Rules of Professional Conduct (2010);
- b. failing to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, by conduct including failing to disclose to Quigley that the Comprehensive Financial Affidavit that Respondent prepared and which was executed by Luis was false, in violation of Rule 4.1(b) of the Illinois Rules of Professional Conduct (2010); and
- c. engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, by conduct including preparing the Comprehensive Financial Affidavit which he knew was false and then failing to disclose to Quigley or the court that the affidavit was false, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010).

ANSWER:

Respondent denies the allegations contained in Paragraph 23 (a) through (c) of Count II of the Complaint.

COUNT III
(False Statements to Christine's Lawyer)

24. The Administrator realleges the allegations contained in paragraphs one through 22, above.

ANSWER:

The Respondent realleges the responses to the allegations contained in paragraphs one through 22, above.

25. On December 22, 2015, Christine's lawyer Peter Wifler ("Wifler") filed a Petition for Rule to Show Cause in the marriage dissolution case in which he sought, among other things, that Luis be required to show cause as to why he should not be held in contempt of court for having failed to produce his 2014 tax return.

ANSWER:

Respondent admits the allegations contained in Paragraph 25 of Count III of the Complaint.

26. On January 5, 2016, Respondent wrote a letter to Wifler in response to the pending Petition for Rule to Show Cause. In the letter, Respondent wrote:

" .. .In the past couple of years when you needed a document or funds from Lou, you contacted me directly and I resolved your requests. I am quite surprised at this motion and I find the means and method that you use very unprofessional. A simple request, as in the past, would have achieved the same results, without unnecessary legal costs. Accordingly, please find enclosed the 2014 tax return.... "

ANSWER:

Respondent admits the allegations contained in Paragraph 2 of Count III of the Complaint.

27. When he provided Luis's 2014 tax return to Wifler, Respondent knew that the tax return understated Luis's income as a consequence of DSPC having paid AMEX fees and attorneys' fees on Luis's behalf, as described in paragraphs seven through 14, above, but did not disclose that fact to Wifler.

ANSWER:

Respondent does not have knowledge sufficient to form a belief of the truth of the allegations contained in Paragraph 27 of Count III of the Complaint, and therefore denies the aforescribed allegation.

28. When he provided Luis's 2014 tax return to Wifler, Respondent knew that Wifler would rely on the tax return as evidence in the pending dissolution of marriage proceedings with respect to any determination of the amount of maintenance payments due Christine.

ANSWER:

Respondent does not have knowledge sufficient to form a belief of the truth of the allegations contained in Paragraph 28 of Count III of the Complaint, and therefore denies the aforescribed allegation.

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

- a. unlawfully obstructing another party's access to evidence, by conduct including providing Luis's 2014 income tax returns to Wifler

during the course of the marriage dissolution proceedings when Respondent prepared the income tax returns and knew that the income tax returns misstated Luis's income, in violation of Rule 3.4(a) of the Illinois Rules of Professional Conduct (2010); and

- b. engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, by conduct including providing the 2014 tax returns to Wifler when her prepared the tax returns and knew was false, and then failing to disclose to Wifler that the tax returns were false, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010).

ANSWER:

Respondent denies the allegations contained in Paragraph 29 of Count III of the Complaint.

WHEREFORE, the Respondent prays that the Complaint be dismissed.

Respectfully submitted,

/s/ Samuel J. Manella
SAMUEL J. MANELLA, Attorney for Respondent

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