

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

In the Matter of:

JOHN PAUL CARROLL,
No. 401579.

Commission No. 2022PR00017

MICHELLE GONZALEZ,
No. 6291582

Commission No. 2022PR00018

Attorney-Respondents,

COMPLAINT

Jerome Larkin, Administrator of the Attorney Registration and Disciplinary Commission, by his attorney, Richard Gleason, pursuant to Supreme Court Rule 753(b), complains of Respondents John Paul Carroll (“Respondent Carroll”), who was licensed to practice law in Illinois on May 18, 1976, and Michelle Gonzalez (“Respondent Gonzalez”), who was licensed to practice law in Illinois on May 10, 2007, and alleges that Respondents have engaged in the following conduct which subjects them to discipline pursuant to Supreme Court Rule 770:

COUNT I

(Incompetence and failure to return unearned fees – Tomas Hernandez)

1. At all times alleged in this complaint, Respondent Carroll was a sole practitioner and sole owner of a law firm in Chicago styled as John Paul Carroll & Associates, and practiced primarily in the defense of individuals accused of committing crimes.

2. At all times alleged in this complaint, Respondent Gonzalez was a sole practitioner and sole owner of a law firm in Bolingbrook styled as Michelle Gonzalez & Associates, P.C., and

practiced primarily in the defense of individuals accused of committing crimes.

3. On August 15, 2017, Chicago police arrested Tomas Hernandez (“Mr. Hernandez”), who was not a United States citizen or a person with documents permitting him to remain in the United States, at 6519 W. 16th Street in Berwyn after police recovered cocaine and cannabis at the location. While in police custody, Mr. Hernandez made inculpatory statements in which he admitted possessing the cocaine and cannabis, prior to being informed of his rights, as required by *Miranda v. Arizona*, 384 U.S.436 (1966).

4. On August 16, 2017, the trial court imposed bond on Mr. Hernandez which required that Mr. Hernandez post \$10,000 with the Clerk of the Court to obtain his release from the custody of the Cook County Sheriff. The trial court also imposed, as a condition of Mr. Hernandez’s bond, that he remain on electronic monitoring through pretrial services, a division of the Chief Judge’s Office, which restricted Mr. Hernandez’s movements while he was out of custody on bond.

5. Electronic home monitoring provided by pretrial services did not entitle a defendant to day-for-day credit for time served while on electronic home monitoring. Electronic home monitoring provided by the Cook County Sheriff did entitle a defendant to day-for-day credit for time served while on electronic home monitoring.

6. In or about August, 2017, Mr. Hernandez, or someone on his behalf, posted the \$10,000 bond with the Clerk of the Court. The Cook County Sheriff released Mr. Hernandez from its custody, and Mr. Hernandez remained on electronic home monitoring through pretrial services during the pendency of the case.

7. On September 12, 2017, a Cook County Grand Jury indicted Mr. Hernandez on three felony counts: manufacture or delivery of between 100 and 400 grams of cocaine, a class X felony punishable by six to 30 years in prison; manufacture or delivery of between 2,000 and 5,000

grams of cannabis, a class 1 felony punishable by four to 12 years in prison; and manufacture or delivery of between 500 and 2,000 grams of cannabis, a class 2 felony punishable by three to six years in prison. The Clerk of the Circuit Court of Cook County docketed the case *People v. Tomas Hernandez*, and assigned it docket number 2017CR1348401.

8. In or about September, 2017, Mr. Hernandez, Respondent Carroll, and Respondent Gonzalez agreed that Respondent Carroll and Respondent Gonzalez would jointly represent Mr. Hernandez through trial with respect to the charges described in paragraph seven, above. Mr. Hernandez and Respondents further agreed that Mr. Hernandez would pay Respondent Carroll and Respondent Gonzalez \$5,000 each, which would be paid from the \$10,000 bond posted on Mr. Hernandez's behalf, as described in paragraph six, above.

9. On or about September 26, 2017, Respondents filed their appearances in case number 2017CR1348401, and appeared in court with Mr. Hernandez. In court, the Assistant State's Attorney tendered written discovery to Respondents, including police reports. The police reports contained information that the inculpatory statements made by Mr. Hernandez had been made while Mr. Hernandez was in the custody of the police, and before the police provided him the required *Miranda* warnings.

10. Upon receiving written materials related to the State's evidence, Respondents concluded, or should have concluded, that the principal issues relating to the defense of criminal charges against their client were whether Mr. Hernandez's statements constituted admissible evidence, and whether, absent those inculpatory statements, there was sufficient evidence for the State's Attorney to proceed to trial against Mr. Hernandez.

11. Between September 26, 2017 and June 11, 2018, Respondents appeared in court with Mr. Hernandez ten times. At no time did Respondents file a motion to suppress the inculpatory

statements made by Mr. Hernandez at the time of his arrest.

12. The trial court set Mr. Hernandez's matter for jury trial on June 11, 2018. On the date of trial, Respondents counseled Mr. Hernandez to accept the State's Attorney's offer of four years in prison. Respondents did not inform Mr. Hernandez that, as a result of his undocumented status, he could be deported as a result of a conviction, or that he would not receive day-for-day credit for the time he spent on electronic home monitoring provided by pretrial services. Respondents knew, or should have known, that a defendant received day-for-day credit while on the Sheriff's electronic home monitoring program, but did not receive day-for-day credit while on pretrial service's electronic home monitoring program. Respondents knew, or should have known, that an undocumented person convicted of a felony was subject to deportation proceedings.

13. On June 11, 2018, Mr. Hernandez pled guilty, and the matter was continued to August 15, 2018 for sentencing. At the conclusion of the proceedings on June 11, 2018, Respondents asked the court to refund the bond posted on Mr. Hernandez's behalf to them for attorneys' fees. Mr. Hernandez agreed, and the \$10,000 bond was paid over to Respondents. On or about June 11, 2018, in open court, Mr. Carroll withdrew as Mr. Hernandez's counsel.

14. On August 15, 2018, Mr. Hernandez appeared in court with Respondent Gonzalez for sentencing. During the hearing, the court informed Mr. Hernandez that he would not receive day-for-day credit for the time he spent on electronic home monitoring provided by pretrial services. Mr. Hernandez asked for, and received, a continuance to reconsider his plea.

15. On September 17, 2018, John DeLeon entered his appearance on behalf of Mr. Hernandez, and Respondent Gonzalez withdrew as Mr. Hernandez's attorney. On or about January 18, 2018, Mr. DeLeon filed a motion to vacate Mr. Hernandez's guilty plea, alleging ineffective assistance of prior counsel. On or about February 6, 2019, the court granted Mr. DeLeon's motion

to vacate Mr. Hernandez's guilty plea.

16. On May 8, 2019, Mr. DeLeon filed a motion to suppress statements on behalf of Mr. Hernandez. In the motion, Mr. DeLeon argued that Mr. Hernandez's inculpatory statements should be suppressed, because the statements were obtained before police provided Mr. Hernandez warnings required by *Miranda*.

17. On or about June 27, 2019, after an evidentiary hearing and oral arguments, the court granted Mr. DeLeon's motion to suppress Mr. Hernandez's inculpatory statements, finding that the statements were made while Mr. Hernandez was in custody and before the police provided him with warnings required by *Miranda*. On the same day, following the court's ruling, the State's Attorney dismissed the case against Mr. Hernandez.

18. Respondents provided incompetent representation of Mr. Hernandez, in that they failed to file a motion to suppress the inculpatory statements Mr. Hernandez made, failed to inform Mr. Hernandez that he could be deported as a result of a criminal conviction, and failed to inform Mr. Hernandez that he would not receive day-for-day credit for the time he spent on electronic home monitoring provided through pretrial services.

19. The work Respondents performed on behalf of Mr. Hernandez does not justify their retention of the entire fee of \$10,000. Mr. Hernandez has asked Respondents for a refund of the attorneys' fees that Respondents were paid. As of the date of the filing of this complaint, Respondents have refused to refund any portion of their fee.

20. By reason of the conduct described above, Respondents have engaged in the following misconduct:

- a. failure to provide competent representation, including legal knowledge, skill, thoroughness, and preparation necessary for representation, in defense of their client in *People v. Hernandez*, No.17CR1348401, by conduct including failing

to file and litigate a motion to suppress statements in advance of trial, in violation of Rule 1.1(a) of the Illinois Rules of Professional Conduct (2010);

- b. failure to keep a client reasonably informed about the status of a matter, by conduct including failing to inform Mr. Hernandez that he would not receive day-for-day credit for the time he spent on electronic home monitoring, and that he could be deported as a consequence of his criminal conviction, in violation of Rule 1.4(a) of the Illinois Rules of Professional Conduct (2010); and
- c. making an agreement for, charging and collecting an unreasonable fee, in violation of Rule 1.5(a) of the Illinois Rules of Professional Conduct (2010).

COUNT II

(Incompetence and unreasonable fee – John Castellanos)

21. The Administrator realleges paragraphs one and two, above.

22. On or about May 24, 2012, police officers from the DuPage Metropolitan Enforcement Group arrested John Castellanos (“Mr. Castellanos”) at Mr. Castellanos’s residence in DuPage County. Police recovered guns and drugs from Mr. Castellanos’s home, and Mr. Castellanos made inculpatory written statements in which he admitted possessing both the recovered guns and the recovered drugs.

23. On June 21, 2012, a DuPage County grand jury indicted Mr. Castellanos on one count of unlawful possession of cocaine with intent to deliver; one count of possession of cannabis with intent to deliver; four counts of unlawful possession of a weapon by a felon; and one count of unlawful possession of ammunition by a felon. The DuPage County Clerk of Court docketed the matter *People v. Castellanos*, and assigned it case number 2012CF001107. On the same day, the trial court imposed a bond upon Mr. Castellanos which required Mr. Castellanos to post \$50,000 to gain his release. Mr. Castellanos’s wife posted that bond on Mr. Castellanos’s behalf, and Mr. Castellanos was released on bond.

24. On July 30, 2013, the matter of *People v. Castellanos* was set for jury trial. Mr. Castellanos did not appear for trial, but was represented by attorneys Tim Martin and Rick Kayne, and was tried in *absentia*. Prior to that trial, attorneys Martin and Kayne had not filed a motion to suppress Mr. Castellanos's statements to police. During the trial, attorneys Martin and Kayne did not call Mrs. Castellanos as a witness. On July 31, 2013, a jury returned a verdict of guilty against Mr. Castellanos on all counts, and the trial court entered judgment on the verdict. On October 15, 2013, the trial court sentenced Mr. Castellanos in *absentia* to 25 years in the Illinois Department of Corrections, and ordered that he serve at least 75% of his sentence in prison.

25. On December 17, 2015, Mr. Castellanos was apprehended and remanded to the custody of the Illinois Department of Corrections to serve his sentence in the matter of *People v. Castellanos*, as described in paragraph 24, above.

26. On or about July 18, 2016, Mr. Castellanos and Respondents agreed that Respondents would represent Mr. Castellanos in filing a post-conviction petition relating to the matter of *People v. Castellanos* and any appeal resulting from the denial of the petition. Pursuant to 725 ILCS 5/122, an individual convicted of a crime can petition the trial court to overturn their conviction when there was a substantial denial of their constitutional rights during the trial. Mr. Castellanos and Respondents agreed that Mr. Castellanos would pay Respondents \$2,500 to investigate his claims, and \$20,000 thereafter, which included any expenses Respondents incurred. By October 7, 2017, Mr. Castellanos, or family members on Mr. Castellanos's behalf, had paid Respondents \$22,500.

27. On October 17, 2017, Respondents filed a post-conviction petition for relief pursuant to 725 ILCS 5/122. In their seven-page-long petition, Respondents alleged that Mr. Castellanos received ineffective assistance of trial counsel when his trial counsel failed to object

to his trial in *absentia*, failed to seek to suppress Mr. Castellanos's inculpatory statements relating to his possession of the drugs and guns, and failed to call Mr. Castellanos's wife as a witness, who would have testified that the guns and drugs were hers, and not Mr. Castellanos's. Respondents also alleged that trial counsel intentionally proceeded to trial in *absentia* in order to more easily obtain the posted bond funds as their attorneys' fees. Respondents' petition did not include trial transcripts from the original trial. The State 's Attorney filed a motion to dismiss the petition on the basis that Mr. Castellanos's rights were not violated, and that attorneys Kayne's and Martin's decision not to file a motion to suppress statements or call Mrs. Castellanos at trial was a question of trial strategy, and did not form the basis of a claim that Mr. Castellanos's constitutional rights were violated. Respondents then filed a 12-page response.

28. On May 2, 2017, the trial court dismissed Respondents' post-conviction petition in its entirety, finding that Mr. Castellanos had been properly notified of the trial, had failed to appear, and that attorneys Kayne's and Martin's decision not to file a motion to suppress statements or call Mrs. Castellanos as a witness did not constitute a violation of Mr. Castellanos's constitutional rights. On May 31, 2017, Respondents filed an 11-page motion to reconsider the trial court's ruling. On July 21, 2017, the trial court denied Respondents' motion to reconsider its ruling, and on August 8, 2017, Respondents filed a notice of appeal on Mr. Castellanos's behalf.

29. On October 24, 2017, Respondents filed an appeal on behalf of Mr. Castellanos, challenging the trial court's dismissal of the post-conviction petition. The Clerk of the Appellate Court of the Second District docketed the matter *People v. Castellanos*, 2-17-0605. Upon filing the appeal, Respondents concluded, or should have concluded, that the strategic decisions of trial counsel formed the basis of their appeal, and that a complete record from the trial court was necessary for the appeal.

30. Respondents compiled an appellate record which consisted of transcripts of their post-conviction proceedings and a copy of the common law record. Respondents did not include in the appellate record transcripts from the jury trial, transcripts from the bond forfeiture hearing, transcripts from the sentencing hearing, or transcripts from any other court date. Respondents' brief included a nine-page argument, which consisted of a four-page recitation of the allegations in their post-conviction petition citing to their own petition, the trial court docket, and post-conviction hearing transcripts, and five pages of paragraphs-long quotations from various appellate court opinions. Respondents violated Rule 341(h)(7) when they failed to provide any analysis as to how Mr. Castellanos's rights were violated, apart from general caselaw regarding post-conviction relief and a general recitation of the claims Respondents made in their post-conviction petition.

31. On March 12, 2018, the State filed its response brief in *People v. Castellanos*. The State argued that Respondents had had violated Illinois S. Ct. R. 341(h)(7) and that the Court should affirm the dismissal because Respondents failed to provide a complete record when they alleged that trial counsel was incompetent.

32. Respondents concluded, or should have concluded, that following the filing of the State's Attorney's brief, they should file a motion to supplement the appellate record with a complete record of the trial court proceedings, and file an amended brief to conform with Illinois S. Ct. R. 341(h)(7).

33. On March 27, 2018, Mr. Castellanos's sister Cristina Caballero, after reviewing the State's brief, asked Respondents to file a reply brief. On March 30, 2018, Respondents told Ms. Caballero that filing a reply brief was not necessary, because there were no questions of fact, and that it was for the court to decide if oral arguments were needed. At no point did Respondents file

a reply brief.

34. On April 19, 2018, Ms. Caballero sent a letter to Respondents. In the letter, Ms. Caballero asked that Respondents file a motion to supplement the appellate record with transcripts from the jury trial. At no point did Respondents file a motion to supplement the record.

35. On May 2, 2018, the Appellate Court issued a written order in which it held that Respondents had failed to put forth a sufficient argument supported by relevant authority demonstrating that the petition made a substantial showing of a constitutional violation. The court further held that the brief Respondents prepared on behalf of Castellanos:

“consists of a general outline of the numerous claims that he has made in his postconviction petition and four pages of block quotations from cases concerning the stages of postconviction proceedings. Defendant concludes with his ‘argument’ that, taking the allegations of his petition as true, ‘any number of his allegations, standing alone, cry out for an evidentiary hearing at the third stage.’ However, he does not tell us why [...] Given the absence of clearly-defined issues supported with cohesive arguments and citation to pertinent authority, we will not consider defendant’s appeal.”

The court dismissed the appeal.

36. On May 23, 2018, Respondents filed a motion to reconsider and vacate the order of dismissal and to reinstate the appeal. In the motion, Respondents conceded that “the argument section of [the] brief was deficient and failed to comply with Rule 341(h)(7) [...]”

37. On May 29, 2018, the State’s Attorney filed a response to Respondents’ motion to reconsider and vacate the dismissal. In the response brief, the State noted that Respondents could have filed a reply brief and responded to any of the State’s Attorney’s arguments raised in its response, but chose not to. On June 13, 2018, the court denied Respondent’s petition to reconsider and vacate the order of dismissal.

38. In a letter sent by the Clerk of the Appellate Court to Respondents on the same day, Respondents were informed that they had 35 days to file an appeal to the Illinois Supreme Court. On June 14, 2018, Respondent Carroll withdrew from the matter of *People v. Castellanos*. On July 20, 2018, Respondent Gonzalez sent Castellanos a copy of the letter from the Clerk of the Appellate Court, which was two days after the deadline by which to file an appeal. As a result, Mr. Castellanos was time-barred from seeking leave to appeal the decision of the Appellate Court.

39. Respondents provided incompetent representation of Mr. Castellanos in that they failed to provide a complete appellate record, failed to file an appellate brief that comported with Supreme Court rules, failed to seek leave to supplement the appellate record, failed to seek leave to file an amended brief, failed to file a reply brief, and failed to promptly notify Mr. Castellanos of his appeal deadline.

40. The work Respondents performed on behalf of Mr. Castellanos does not justify their retention of the entire \$22,500 fee. Mr. Castellanos requested that Respondents refund the attorneys' fees they were paid. As of the date of the filing of this complaint, Respondents have refused to refund any portion of their fee.

41. By reason of the conduct described above, Respondents have engaged in the following misconduct:

- a. failure to provide competent representation, including legal knowledge, skill, thoroughness, and preparation necessary for representation, in defense of their client in *People v. Castellanos*, No. 2-17-0605, by conduct including failing to compile a complete appellate record, failing to file an appellate brief in accord with Supreme Court Rules, failing to file a motion to supplement the appellate record, failing to file a motion seeking leave to file an amended brief, and failing to file a reply brief, in violation of Rule 1.1(a) of the Illinois Rules of Professional Conduct (2010);

- b. failure to keep a client reasonably informed about the status of a matter, by conduct including failing to inform Mr. Castellanos of the appeal deadline in case number 2-17-0605, in violation of Rule 1.4(a) of the Illinois Rules of Professional Conduct (2010); and
- c. making an agreement for, charging and collecting an unreasonable fee, in violation of Rule 1.5(a) of the Illinois Rules of Professional Conduct (2010).

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

Respectfully Submitted

Jerome Larkin, Administrator
Attorney Registration and
Disciplinary Commission

By: /s/ Richard Gleason
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