Rules and Decisions

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DECISION FROM DISCIPLINARY REPORTS AND DECISIONS SEARCH

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

In the Matter of:

JOEL ALAN BRODSKY,

Attorney-Respondent,

No. 6182556,.

Commission No. 2018PR00064

FILED --- August 21, 2018

COMPLAINT

Jerome Larkin, Administrator of the Attorney Registration and Disciplinary Commission, by his attorney, Lea S. Gutierrez, pursuant to Supreme Court Rule 753(b), complains of Respondent, Joel Alan Brodsky, who was licensed to practice law in Illinois on November 1, 1982, and alleges that Respondent has engaged in the following conduct, which subjects him to discipline pursuant to Supreme Court Rule 770:

COUNT I
(*Using means with no substantial purpose other than to embarrass, delay, or burden third persons - Twyman*)

1. On October 16, 2015, Donaldson Twyman ("Twyman") purchased a 2013 Infiniti SUV for $35,000 from S&M Auto Brokers. After Twyman purchased the vehicle, he discovered information that had not been disclosed to him at the time of purchase: the vehicle had previously been in a serious accident; had been rebuilt; and the odometer had been rolled back. Twyman consulted with attorney Peter Lubin ("Lubin") to determine his legal options, and Lubin determined that Twyman had a valid claim against S&M Auto Brokers and its owners, Saed Ihmud and Mohammed Ihmud, for selling Twyman an automobile without informing him that the vehicle had been in a serious accident, and for manipulating the vehicle's odometer to deceive Twyman about the vehicle's mileage.

2. On April 8, 2016, Lubin filed a complaint on behalf of Twyman in the United States District Court for the Northern District of Illinois, Eastern Division, against S&M Auto Brokers, Saed Ihmoud and Mohammed Ihmoud pursuant to 49 U.S.C. ? 32705(a) ("the Federal Odometer Act"), 625 ILCS 5/3-112.1 ("the Illinois Odometer Act") and 815 ILCS 505/2 ("the Illinois Consumer Fraud and Deceptive Business Practices Act"). The clerk of the court captioned the matter *Donaldson Twyman vs. S&M Auto Brokers, Saed Ihmoud, and Mohammed Ihmoud*, docket number 16 cv 4182.

3. On or about April 23, 2016, Respondent and Saed and Mohammed Ihmoud agreed that Respondent would represent S&M Auto Brokers and the Ihmouds in relation to case number 16 cv 4182 for an agreed-upon fee. On May 4, 2016, Respondent filed his appearance in case number 16 cv 4182 on behalf of S&M Auto Brokers and the Ihmouds.

following paragraphs. Respondent's conduct was directed at Lubin as well as the plaintiff's expert, Donald Szczesniak ("Szczesniak").

5. At a status hearing on or about June 30, 2017, Respondent stated that Lubin was in the business of extorting businesses like S&M and that Lubin files lawsuits like case number 16 cv 4182 when there is no basis for doing so. In addition, on or about August 25, 2016, Respondent accused Lubin of "recidivist conduct" because "he [had] filed three other lawsuits" for the same type of claim.

6. After Respondent's statements described in paragraph five, above, on August 25, 2016, the court entered an order stating that the attorneys "should act professionally instead of antagonistically toward each other and recognize that as officers of the Court they are expected to treat each other reasonably and professionally."

7. Despite Judge Kendall's August 25, 2016 written warning, Respondent continued a pattern and practice of unprofessional behavior including false allegations and inappropriate diatribes in pleadings accusing Lubin of lying, extortion, attempting to create a false record, and repeatedly requesting sanctions without any good-faith basis; false allegations impugning plaintiff's expert, Donald Szczesniak ("Szczesniak"), and vitriolic emails to Lubin.

Pleadings Regarding Lubin

8. Between September 21, 2016 and March 13, 2017, Respondent repeatedly filed pleadings accusing Lubin of having an improper motive for filing case number 16 cv 4182, and of engaging in criminal wrongdoing, including the following:

> a. Motion for a Protective order filed September 21, 2016:
>
> Plaintiff does not consider a lawsuit a way to redress a legitimate grievance by uncovering the truth and applying the law, but instead considers it to be a profit making, fee generating, enterprise for attorneys. ?1
>
> b. Objection and Response to Plaintiff's Motion to Dismiss Record with Progressive Insurance Documents Because Plaintiff Misrepresents What They Show as They do not Show the Car was in a Major Accident filed on October 14, 2016:
>
> Plaintiff's attorney keeps on filing false and misleading pleadings to try to run up exorbitant fees in a case in which the Plaintiffs [sic] attorney has proved by his actions that he has no interest in the truth, and just sees the litigation process as an extortion game, in which his goal is only to extort as much money as possible out of the Defendants, no matter what the truth is. ?1
>
> Used car dealers are not fair game targets for unscrupulous attorneys who look at lawsuits as a means to commit ?legal extortion,' and not as a way to get at the truth and remedy a wrong.?4
>
> c. Reply in Support of S&M Auto Broker's Motion *in Limine* Regarding Expert Witnesses and for Other Relief filed on January 27, 2017:
>
> Defendant S&M Auto has said from the first that this case was an attempt at extortion by using false hyperbole and fabricated evidence. ?9
>
> d. Response to Plaintiff's Motion for Partial Summary Judgment and Defendant's Cross-Motion for Summary Judgement filed on February 10, 2017:

entire motion is based on a premise that has no basis in law, and is further supported by a statement of uncontested facts that is anything but uncontested. Never, in over three decades of practice has Defendants [sic] lawyer seen anything like this perpetrated by lawyers in a court of law. This is akin to a situation back in the 1980's where certain personal injury attorneys set up auto-staged accidents and then filed injury lawsuits based on those staged accidents. ?1

e. Motion to Reconsider Order of February 16, 2017, or for an Extension of Time to Provide Supplemental Expert Reports filed on February 20, 2017:

What is happening in this case is that the Plaintiffs' [sic] attorneys are fabricating a case, with the help of [their] unscrupulous [expert], where there is none, and are trying to use the fee shifting provisions of the Illinois Consumer Fraud statute as a tool of extortion by running up an exorbitant amount of fees in the hope that they can fool a jury or put the Plaintiff at such risk he will rather pay something than risk losing his business built up over a decade. What Plaintiffs [sic] attorneys are doing reminds Defenant [sic] of cases in the 1990's [sic] where a group of personal injury attorneys were caught staging accidents to defraud insurance companies. ?2

f. Response to Plaintiff's Motion Clarification and Reply in Support of Defendant's Motion to Strike LR 56.1(c) Statement and for Sanctions filed on March 8, 2017:

The only reason for [filing the motion for summary judgment], and filing the hundreds of pages of documents in support, is so that Plaintiffs' [sic] attorneys can run up a huge legal bill which it intends to try to pass that bill off to Defendants under the fee shifting provisions of the Illinois Consumer Fraud Act. From Plaintiffs' [sic] Attorneys [sic] point of view this case has nothing to do with the facts or the law, and is solely a money making enterprise where the real party in interest are [sic] the attorneys for the Plaintiff and not the Plaintiff himself. ?9

g. Reply In Support of Motion for Sanctions Regarding Plaintiff's Declared "Expert" Donald Szczesniak filed on March 13, 2017:

Defendant asserts that to bring a lawsuit in U.S. District Court to extort money, based entirely on false evidence, and an expert who is [sic] tampers with witnesses and presents false declarations and/or engages in false lawsuit ? is no small matter. ?10

9. Respondent's statements in the pleadings described in paragraph eight, above, that Lubin had filed a fabricated case, filed false and misleading pleadings and engaged in fee churning and extortion had no basis in law or fact, and were frivolous, because Lubin had a basis in law and fact for filing the litigation at issue and was not engaged in fee churning or extortion.

Pleadings Regarding Donald Szczesniak - Plaintiff's Expert

10. Between January 27, 2017 and March 13, 2017, Respondent filed pleadings containing false and harassing allegations regarding Szczesniak.

11. On January 27, 2017, Respondent filed a reply in support of S&M Auto Brokers' Motion *in limine* seeking a ruling that its disclosed experts were qualified to give expert testimony. In that reply, Respondent accused the plaintiff's expert, Donald Szczesniak ("Szczesniak"), of filing a fabricated report in case number 16 cv 4182, and stated that Szczesniak had a history of filing fabricated expert reports in unrelated matters.

13. On February 13, 2017, Respondent filed a motion in case number 16 cv 4182 entitled "Motion for an Order Holding Plaintiff's ?Expert' Witness Donald Szczesniak in Indirect Criminal Contempt of Court and to Refer this Matter to the United States Attorney." In that motion, Respondent accused Szczesniak of damaging the fence of a woman named Diane Weinberger ("Weinberger"), who was a witness in an unrelated matter, in a purported attempt to intimidate Weinberger.

14. Respondent's allegations that Szczesniak had damaged Weinberger's fence, as described in paragraph 13, above, were solely based on the Weinberger's unsubstantiated allegations. At the time that Respondent filed the pleading accusing Szczesniak of damaging Weinberger's fence, Respondent had no evidence that Szczesniak had been questioned or charged in relation to Weinberger's damaged fence, and Respondent took no action beyond speaking with Weinberger to inform himself about the alleged facts of Weinberger's claim.

15. Respondent's allegations that Szczesniak had damaged Weinberger's fence had no basis in law or fact, were frivolous, and had no other purpose than to harass and intimidate Szczesniak, and to impugn Szczesniak's reputation before the court in case number 16 cv 4182.

16. Respondent's February 13, 2017 motion described in paragraph 13, above, also falsely accused Szczesniak of sending Respondent an anonymous facsimile in a purported attempt to intimidate Respondent from searching into Szczesniak's background. At the time that Respondent filed the pleading accusing Szczesniak of sending Respondent an intimidating anonymous facsimile, Respondent had no evidence to support his accusation that Szczesniak sent him the facsimile.

17. Respondent's actions in accusing Szczesniak of sending Respondent an anonymous facsimile were unsubstantiated, false, and frivolous, and had no other purpose than to harass and intimidate Szcezesniak, and to impugn Szczesniak's reputation before the court in case number 16 cv 4182.

18. On February 14, 2017, the court summarily dismissed Respondent's February 13, 2017 Motion for an Order Holding Plaintiff's "Expert" Witness Donald Szczesniak in Indirect Criminal Contempt of Court and to Refer this Matter to the United States Attorney. Then on February 27, 2017, Respondent filed a motion seeking sanctions against Szcesniak and against the plaintiff for retaining Szczesniak. Respondent's February 27, 2017 motion again accused Szczesniak of damaging a fence and sought an order barring Szczesniak from testifying due to his allegedly improper and illegal behavior.

19. On March 13, 2017, Lubin filed a response to Respondent's motion for sanctions, asserting that Respondent's accusations were false, and attaching affidavits from Szczesniak, his wife, and son Luke who all attested that Szczesniak was home sick at the time the fence had allegedly been damaged.

20. On March 13, 2017, Respondent filed a pleading entitled "Reply in Support of Sanctions Motion for Sanctions Regarding Plaintiff's Declared ?Expert' Donald Szczesniak." In that pleading, Respondent called Szczesniak a liar, and Respondent falsely accused Szczesniak of fabricating a son named Luke in his sworn declaration, and of fabricating the affidavit filed by Luke, because Respondent's LexisNexis public records search did not reveal that Szczesnizk had a son named Luke.

21. Respondent's actions in accusing Szczesniak of fabricating a son named Luke and fabricating the affidavit filed by Luke, were unsubstantiated, false, and frivolous, and had no other purpose than to harass and intimidate Szcezesniak, and to impugn Szczesniak's reputation before the court in case number 16 cv 4182.13.

Emails to Lubin

22. Between September 20, 2016 and March 29, 2017, Respondent repeatedly sent emails to Lubin that had no substantial purpose, other than to harass or burden Lubin, including the following:

money making exercise. The law as a method of extortion. How can I work with an extortionist? I doubt the court will feel that a lawsuit is not for getting at the truth, but only for making money for the lawyer, but you keep sending those emails. The admissions (or should I say confessions) will be very useful in my motion and fee petition.

b. An email dated January 9, 2017 at 9:03 at stating:

Your attempt to manufacture a case where none exists is deplorable and your attempt as using your law license to commit extortion will not succeed and we will be seeing fees from you after your ridiculous case is dismissed.

c. An email dated January 9, 2017 at 12:39 pm, stating:

As to my remarks, the only thing unprofessional here is what you are doing, which is making up a bogus case and trying to run up hours to extort money through a lawsuit.

d. An email dated March 29, 2017 at 6:23 pm, stating:

I just read the pack of lies on your Motion for Protective Order, even your own reporter said it was your behavior that caused her to walk out. I love your quote about the degrading search for the truth. That is all your case is, a degradation of the search for the truth. How do you even call yourself a lawyer? You are an embarrassment to the profession.

23. At the time that Respondent made the statements in the emails described in paragraph 22, above, calling Lubin an extortionist, Respondent knew that Lubin was not extorting money in case number 16 cv 4182, and Respondent did not believe that Lubin was a criminal. Respondent's actions in accusing Lubin of extortion and manufacturing a case were unsubstantiated, false, and frivolous, and had no other purpose than to harass and intimidate Lubin.

24. On April 27, 2017, Lubin filed a motion for sanctions against Respondent, based upon the conduct described in paragraphs 8 through 20, above. On July 7, 2017, a hearing was held on Lubin's motion for sanctions, during which Lubin testified regarding his good-faith basis for filing the lawsuit, discussed Szczesniak's integrity and qualifications, denied being in a criminal enterprise. Szczesniak also testified about the importance of his reputation to his work an expert witness, denied damaging Weinberger's fence, denied sending Respondent an anonymous fax, and confirmed that he has a son named Luke. Respondent did not submit any evidence contradicting Lubin's or Szczesniak's testimony, nor did he provide any explanation for his behavior throughout the case, including the allegations against Lubin and Szczesniak.

25. On March 28, 2018, the Honorable Virginia M. Kendall entered an order granting Lubin's motion for sanctions. Judge Kendall's order stated, *inter alia*, that she had "warned [Respondent] numerous times to curb his vitriolic conduct. Instead of heeding the Court's advice, at every opportunity, he increased his acerbic behavior, culminating in his unhinged attack against Szczesniak. In doing to, [Respondent] acted in bad faith and if left unpunished, his actions would serve to undermine the integrity of this Court."

26. Judge Kendall's March 28, 2017 order required Respondent to pay a $50,000 fine to the Clerk of the Court, attend an ethics course approved by the ARDC, and attend and provide the court with verification of successful completion of an anger management course. Judge Kendall's order also referred Respondent to the Executive Committee "for consideration of being barred or suspended from practicing in the Northern District of Illinois for his failure to abide by the Court rules."

27. On April 6, 2018, Respondent filed a notice of appeal of Judge Kendall's order with the United States Court of Appeals for the Seventh Circuit. As of July 25, 2018, the date that this matter was voted by the Inquiry Board,

a. bringing or defending a proceeding, or asserting or controverting an issue therein, with no basis in law and fact for doing so that was not frivolous, by conduct including, but not limited to, filing pleadings that stated the Lubin was an extortionist and that Szczesniak had a habit of filing fabricated reports, and that Szczesniak had damaged Weinberger's fence to intimidate the witness, and by seeking an order holding Szczesniak in indirect criminal contempt and to referring him to the United States Attorney, in violation of Rule 3.1 of the Illinois Rules of Professional Conduct (2010);

b. using means that have no substantial purpose other than to embarrass, delay, or burden a third person, by conduct including, but not limited to, sending emails and filing pleadings accusing Lubin of extortion, and by filing pleadings stating that Szczesniak had damaged a witness' fence, had a history of fabricating reports, and had no son named Luke, in violation of Rule 4.4 of the Illinois Rules of Professional Conduct (2010); and

c. conduct prejudicial to the administration of justice, by conduct including, but not limited to, filing pleadings containing baseless accusations of wrongdoing against Lubin and Szczesniak, and causing a degradation of process in case number 16 cv 4182 by ignoring multiple warnings of the court thereby challenging the court's judicial authority, in violation of Rule 8.4(d) of the Illinois Rules of Professional Conduct (2010).

COUNT II
(*Failure to abide by client's directives and disclosing confidential information - Gamon*)

29. At all times alleged in Count II of this complaint, the Attorneys Lien Act, 770 ILCS 5, provided, in part:

> [a]ttorneys shall serve notice in writing, which service may be made by registered or certified mail, upon the party against whom their clients may have suits, claims or causes of action, claiming such lien and stating therein the interest they have in such suits, claim, demands or causes of action.

30. On September 11, 2014, Respondent and Terry Johnson ("Johnson"), President of Gamon Plus, Inc. and Gamon International, Inc. ("Gamon"), agreed that Respondent and attorney Andrew Tiajoloff ("Tiajoloff") would represent Gamon in a lawsuit against Campbell Soup Company, Inc., and others for patent infringement. Respondent and Johnson agreed that Respondent and Tiajoloff would receive 40% of any recovery in the matter.

31. On January 23, 2015, Gamon, Respondent, and Tiajoloff entered into a supplemental retainer agreement with the law firm Niro, McAndrews, Dowell, & Grossman, LLC ("NiroMcAndrews"), because of the firm's experience with patent litigation. Pursuant to the January 23, 2015 supplemental retainer agreement, NiroMcAndrews would receive 25% of any recovery in the matter, and Respondent and Tiajoloff would each receive 7.5% of any recovery in the matter. Attorneys Raymond Niro, Jr. ("Niro"), Kyle Wallenberg ("Wallenberg"), and Matthew McAndrews ("McAndrews") were the attorneys from NiroMcAndrews responsible for handling the Gamon matter.

32. On October 8, 2015, Niro filed a complaint in the Northern District of Illinois on behalf of Gamon. The matter was docketed as *Gamon Plus, Inc. et al. v. Campbell Soup Company, et al.*, and assigned case number 15-cv-8940.

33. On October 8, 2015, Niro, Wallenberg, and McAndrews filed their appearances as counsel for Gamon in case number 15-cv-8940. On October 9, 2015, Respondent filed his appearance on behalf of Gamon.

34. During the course of representing Gamon, Respondent learned of and participated in confidential negotiations between Gamon and a third party litigation funding company (hereinafter "TPLF") regarding Gamon financing its legal costs related to case number 15-cv-8940 through TPLF. On February 8, 2016, Gamon and TPLF executed a

35. On January 21, 2015, TPLF and McAndrews entered in to a confidentiality and non-disclosure agreement with respect to the litigation funding negotiations and prospective financing agreement between TPLF and Gamon. Shortly thereafter, McAndrews communicated the nature of the confidentiality and non-disclosure agreement to Respondent.

36. On February 10, 2016 at 10:29 am, Johnson sent Respondent an email that "instructed [him to] immediately withdraw as counsel of record in the litigation," and further stated that Respondent would receive the previously agreed to share of any judgment. Respondent received Johnson's email within ten minutes of it being sent.

37. On February 10, 2016 at 10:35 am, Niro sent an email to Lisa Ferrari and Respondent, notifying Ferrari that Respondent had been terminated as counsel and instructed to withdraw from the case immediately. Respondent received Niro's email within ten minutes of it being sent.

38. On February 10, 2016 at 10:41 am, Respondent sent an email to Johnson stating that he would not withdraw until he received a written agreement signed by all attorneys and clients in the matter stating that Respondent would receive his agreed upon 7.5% of the proceeds. Respondent ended the email by asking Johnson if his proposal was agreeable. At no time did Johnson respond to Respondent's February 10, 2016 at 10:41 am email, nor did Johnson agree to allow Respondent to delay withdrawing as Gamon's attorney until he received a written confirmation of the fee agreement signed by all parties.

39. At 10:42 am on February 10, 2016, Respondent sent an email to Ferrari in response to Niro's 10:35 am email described in paragraph 37, above, stating that he was "not out yet" and that he would inform Ferrari when he filed a motion to withdraw.

40. At 10:43 am on February 10, 2016, Niro sent an email to Respondent asking him to comply with Gamon's instructions to "immediately withdraw as counsel in the litigation." Though Respondent received Niro's 10:43 am email, as of February 14, 2016 Respondent had not complied with Johnson's request to immediately withdraw as counsel for Gamon.

41. On February 10, 2016, after Respondent received Johnson's email asking Respondent to withdraw, Respondent filed what purported to be an attorney lien to secure his fees in case number 15cv8940 that purported to be filed "on behalf of all plaintiffs." Respondent caused his attorney's lien to be served upon TPLF, as well as Johnson, the opposing attorneys, and the registered agents for the Campbell Soup, Meijer, Trinity Manufacturing, and Kroger Co.

42. Respondent's purported attorney lien was improper and untimely because at the time that Respondent filed it, he had already been terminated. In addition, Respondent's purported attorney lien was improper because TPLF was not a party against whom a litigant had made a claim, and therefore, TPLF was not an appropriate or necessary entity upon whom to serve a lien, pursuant to the Attorney Lien Act, described in paragraph 29, above.

43. By serving the lien on TPLF, Respondent revealed the fact of Gamon's negotiations with TPLF to opposing counsel and to the public, thereby alerting opposing counsel to the fact that Gamon had sought funding from TPLF, and therefore may be eager to settle because Gamon did not have had sufficient assets to engage in lengthy litigation.

44. On February 10, 2016, shortly after noon, TPLF emailed McAndrews and Niro asking them to call immediately because Respondent had filed a pleading with TPLF on the service list.

45. On February 10, 2016 at 12:41 pm, Niro sent an email to Respondent notifying him that his lien disclosed to opposing counsel and the public information covered by the attorney-client privilege and work product immunity and asked him to withdraw the lien and the service list from the public record. Though Respondent received Niro's February 10, 2016 email sent at 12:41 pm, at no time did Respondent take action to withdraw the lien or service list

[Respondent had]" within 24 hours. Though Respondent received Niro's email shortly thereafter, at no time did Respondent return the requested documents and other information to Gamon or Niro.

47. As of February 11, 2016, Respondent had not withdrawn as counsel for Gamon as requested. On that same date, Gamon filed an emergency motion to terminate Respondent as counsel for Gamon and to remove Respondent as counsel of record in case number 15-cv-8940.

48. On February 14, 2016, Respondent filed a motion in case number 15cv8940, purportedly on behalf of Gamon, seeking to disqualify NiroMcAndrews from representing Gamon due to a purported conflict of interest. At no time did Johnson give Respondent authority to file the February 14, 2016 motion seeking to disqualify Niro and McAndrews, nor did Johnson give Respondent any authority to take any action on behalf of Gamon after February 10, 2016. At the time that Respondent filed his motion seeking to disqualify NiroMcAndrews, Respondent's services had been terminated, and therefore, he had no authority to do anything on behalf of Gamon except seek to withdraw.

49. In his motion to disqualify NiroMcAndrews, Respondent falsely accused the firm of illegally attempting to obtain a commission or kickback from TPLF, and Respondent revealed confidential information relating to the representation of Gamon, including the following:

> Prior to even seeking additional counsel, Attorney Brodsky and Attorney Tiajoloff provided the information for, worked with, and obtained from patent Attorney David L. Applegate (of the IP practice group of Williams, Montgomery & John), a fifty three (53) page "Overview of Potential Litigation Strategies," which was supported by over five hundred (500) pages of exhibits. The purpose of obtaining this document was to obtain an independent analysis of the strength of Gamon's case, know what defenses were likely to be presented (if any) and analyze how to best present the case, and defend against any defenses. A tremendous amount of work was done by Attorney Brodsky and Attorney Tiajoloff, (tantamount to preparing the case for trial), went [sic] into producing this document. Therefore, when Attorney Brodsky first (and later Attorney Tiajoloff) met with Mr. Niro and Mr. McAndrews they knew that when the final patent issued involving the invention at issue in the above referenced litigation, that Gamon had an extremely strong patent infringement case, with damages in many tens of millions of dollars, if not more.

50. On February 14, 2016, Respondent also filed a response to Gamon's emergency motion to terminate Respondent as counsel for Gamon, described in paragraph, 47, above. Respondent attached an affidavit to his response that disclosed the nature of the fee agreement between Gamon and NiroMcAndrews, and disclosed the content of purported conversations that Respondent had with Johnson and purported conversations between Mr. Johnson and Niro and McAndrews.

51. On February 16, 2016, Gamon filed a motion requesting an order sealing Respondent's motion to disqualify and Response to Gamon's emergency motion to terminate Respondent as counsel due to the fact that both pleadings revealed confidential business information and communications and information subject to the attorney client

52. On February 17, 2016, Respondent filed a response objecting to Gamon's motion requesting an order sealing Respondent's motion to disqualify and Response to Gamon's emergency motion. In his February 17, 2016 response, Respondent again accused NiroMcAndrews of attempting to obtain an illegal kickback from TPLF, and attempting to cover up the illegal kickback by sealing Respondent's pleadings.

53. On February 19, 2016, the Honorable Charles R. Norgle, Sr. held a hearing on Gamon's motion to terminate Respondent as counsel for Gamon, described in paragraph 47, above. On that date, Judge Norgle entered an order granting Gamon's motion to terminate Respondent as counsel for Gamon. Judge Norgle's February 19, 2016 order also granted Gamon's motion to seal Respondent's motion to disqualify NiroMcAndrews and to seal Respondent's Response to "Emergency" Motion to Terminate [Respondent] as Counsel for Plaintiffs, described in paragraphs 48 and 50, above. In addition, Judge Norgle's February 19, 2016 order granted Gamon's motion to seal Respondent's response to Gamon's motion to seal.

54. On February 19, 2016, McAndrews sent Respondent a letter, again requesting that Respondent return to Gamon any of Gamon's documents or electronic files that were in Respondent's possession. As of February 22, 2016, Respondent had not returned Gamon's property. On that date, Niro sent Respondent an email, again requesting that he return Gamon's business documents. Respondent received McAndrews' February 19, 2016 email and Niro's February 22, 2016 email shortly after they were sent.

55. On February 24, 2016, Gamon filed a motion to strike, or in the alternative, seal Respondent's notice of attorney lien, as described in paragraph 41, above, stating that the lien had been filed without Gammon's authorization, and stating that the lien divulged to opposing counsel Gamon's confidential business information.

56. On that same date, TPLF informed McAndrews that, due to Respondent's public disclosure of the fact of the relationship between TPLF and Gamon, TPLF would not continue funding negotiations in the *Gamon* matter.

57. On February 25, 2016, Judge Norgle entered an order granting Gamon's motion to strike Respondent's notice of attorney's lien, as described in paragraph 55, above.

58. As of July 25, 2018, the date that this matter was voted by the Inquiry Board, Respondent had not returned Gamon's documents and electronic files.

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

a. failing to abide by a client's decisions concerning the objectives of representation, by conduct including, but not limited to, failing to withdraw from representing Gamon upon request and filing a motion to disqualify Gamon's other attorney's without direction or authority to do so from Gamon, in violation of Rule 1.2 of the Illinois Rules of Professional Conduct (2010);
b. revealing information relating to the representation of a client without the client's informed consent, by conduct including, but not limited to, disclosing the relationship between Gamon and TPLF, in violation of Rule 1.6 of the Illinois Rules of Professional Conduct (2010);
c. failing to withdraw from representation after being discharged, by conduct including, but not limited to, failing to withdraw immediately upon the Gamon's request and by holding himself out as Gamon's attorney by filing pleadings purportedly on behalf of Gamon after being discharged, in violation of Rule 1.16(a)(3) of the Illinois Rules of Professional Conduct (2010); and
d. Failure to promptly surrender papers and property to which the client is entitled upon termination of representation, by conduct including, but not limited to, failing to return Gamon's documents and electronic files after requested to do so, in violation of Rule 1.16(d) of the Illinois Rules of Professional Conduct (2010).

COUNT III

(Using means that have no substantial purpose other than to embarrass, delay, or burden third persons and

> a) All records and communications shall be confidential and shall not be disclosed except as provided in this Act. Unless otherwise expressly provided for in this Act, records and communications made or created in the course of providing mental health or developmental disabilities services shall be protected from disclosure regardless of whether the records and communications are made or created in the course of a therapeutic relationship.

61. Section110/2 of the Mental Health and Developmental Disabilities Confidentiality Act defines "Confidential Communication" or "communication" as:

> Any communication made by a recipient or other person to a therapist or to or in the presence of other persons during or in connection with providing mental health or developmental disability services to a recipient.

62. In or about November 2016, Respondent and S.F. agreed that Respondent would represent S.F. in matters relating to the dissolution of his marriage to G.F., Cook County Circuit Court case number 2016 D XXXXXX, *In re the Marriage of G.F. and S.F.*. Respondent and S.F. agreed that S.F. would pay Respondent $300 per hour for his work in relation to case number 2016 D 230507.

63. In or about December 2016, S.F. and G.F. agreed to attend counseling to assist them with co-parenting their minor child.

64. On December 12, 2016, G.F.'s attorney, John Kay, sent Respondent an email stating that a psychologist named Dr. Karla Steingraber had agreed to assist S.F. and G.F. with co-parenting, and seeking to confirm with Respondent that Dr. Steingraber would be "utilized for counseling purposed only in this case and that she shall not be called as a witness or otherwise used for any litigation purpose."

65. Later on December 12, 2016, Respondent sent an email to Kay stating "[w]e agree that Dr. Steingraber is not to be called as a witness or otherwise used for any litigation purpose."

66. On or about December 14, 2016, S.F. and G.F. attended their first appointment with Dr. Steingraber. During the course of S.F. and G.F.'s appointments with Dr. Steingraber, the parties discussed terms of a parenting agreement and they entered into a preliminary parenting agreement.

67. On December 21, 2016, Dr. Steingraber sent an email to S.F. and G.F. memorializing the terms discussed during their counseling session that would lead to successful co-parenting. The email asked S.F. and G.F. to contact Dr. Steingraber if the terms she outlined did not fit with their understanding. Some of the co-parenting terms outlined in Dr. Steingraber's email included communication with both parents, handling of health and medical information and decisions, and the time for certain holiday pick-ups.

68. At the end of Dr. Steingraber's December 21, 2016 email, it stated:

> Notice: The information contained in this e-mail is confidential information intended only for the use of the individual(s) named above. If the reader of this message is NOT the intended recipient, you are hereby notified that any dissemination, distribution or retention of these materials is illegal. Please do not read, copy, or let anyone else see these materials if sent to you in error. Delete the materials completely and call or email me back at the number listed above for appointments to identify the error involved in your receipt of this correspondence.

69. On or before December 23, 2016, S.F. forwarded a copy of Dr. Steinberger's December 21, 2016 email to Respondent.

70. On January 10, 2017, Respondent filed a motion on behalf of S.F. entitled "Motion of S.F. to Continue and

71. Respondent's motion disclosed that S.F. and G.F. had entered into counseling with Dr. Steingraber, attached a copy of Dr. Steingraber's December 21, 2016 email to S.F. and G.F., which outlined preliminary terms of successful co-parenting discussed during counseling, and sought to have the court adopt the terms outlined in Dr. Steingraber's email.

72. Respondent's actions in referencing and attaching Dr. Steingraber's email, which outlined the terms of co-parenting discussed by S.F. and G.F. when in counseling, to his motion violated the agreement that the parties had reached via the emails described in paragraphs 64 and 65, above, that Dr. Steingraber would not be used for any litigation purpose. Respondent's actions in referencing and attaching Dr. Steingraber's email to Respondent's January 10, 2017 motion also violated Section 110/3 of the Mental Health and Developmental Disabilities Confidentiality Act, as described in paragraphs 60 and 61, above, because Respondent disclosed records of confidential communications made or created in the course of Dr. Steingraber providing mental health services without G.F.'s consent.

73. On August 23, 2017, Respondent sent an email to opposing counsel, and copied it to S.F., G.F., and various personnel in the two school districts in which S.F and G.F's child could have attended school. The email stated that G.F. was "very mentally sick" and stating the "the psychiatric report that [the custody evaluator was] writing [would] confirm that." The email also stated that the following:

> [G.F.'s] actions are the sign of someone who is pathologically obsessed with having to have things her way, and will stop at nothing, who will lie, mislead, and fabricate, to achieve that end. Her other actions in the divorce case, her starting the case with false allegations in an ex-parte petition for order of protection which was thrown out of court, her false statements about the child representative Judge Bender, her false statements about her not making agreements that she clearly made, her false statements about property ownership, her attempt at stealing $180,000 in corporate money that did not belong to her or [S.F.] (and unfortunately I could go on and on and on) show that [G.F.] doesn't care about the consequences of her actions no matter who his [sic] hurt, even if it is her own [child]. [G.F.] is mentally ill and needs serious help. This is a fact that anyone can, and does, see, not conjecture.

74. At the time that Respondent copied his August 23, 2017 email to G.F., Respondent knew that G.F. was represented by counsel in relation to case number 2016 D 230507.

75. Respondent's actions in sending his August 23, 2017 email to opposing counsel, G.F., and the school district employees had no substantial purpose other than to embarrass or harass G.F..

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

a. communicating with a person known to be represented by counsel about the subject of the representation, in violation of Rule 4.2 of the Illinois Rules of Professional Conduct (2010), by conduct including, but not limited to, sending an email to G.F. regarding her actions in registering her minor child for school in District 28;
b. using means that have no substantial purpose other than to embarrass, delay, or burden a third person, by conduct including, but not limited to, sending an email to school officials in two school districts stating that G.F. was "very mentally sick" and in need of "serious help," in violation of Rule 4.4 of the Illinois Rules of Professional Conduct (2010); and
c. committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects by disclosing confidential information (preliminary parenting agreement) made in connection with receiving mental health services in violation of Section 110/3 of the Mental Health and Developmental Disabilities Confidentiality Act, 740 ILCS 110/3, in violation of Rule 8.4(b) 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

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Respectfully submitted,

Jerome Larkin, Administrator
Attorney Registration and
Disciplinary Commission

By: Lea S. Gutierrez

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