ATTORNEY-CLIENT RETAINER AGREEMENT
ADVANCE FEE RETAINER

This is an Agreement you, **Paul R. Dulberg** of **4606 Haydew Court, McHenry, Illinois,** and I, THOMAS W. GOOCH, of THE LAW OFFICES OF GAUTHIER and GOOCH, have made this **16th day of December, 2016.**

1. ENGAGEMENT AGREEMENT - You agree to retain and engage me to represent you in relation to a certain matter relating to an excessive fees case against **Thomas J. Popovich, the Law Offices of Thomas J. Popovich, P.C., and his nominees,** you authorize me to appear in any lawsuit which may be filed in this matter, to enter into discussions toward settlement or compromise of any such litigation, or to proceed as I deem advisable with your approval.

2. This matter is being accepted with an advance payment retainer of **$10,000.00** the receipt of which is hereby acknowledged. CLIENT, **Paul A. Dulberg**, understands that no work will be performed on their behalf until the retainer is paid in full.

Upon receipt of payment, the retainer funds shall become the property of Gauthier & Gooch and will not be deposited into a client trust account. The retainer funds shall be deposited into the Gauthier & Gooch general account where it will be used to pay expenses. Gauthier & Gooch recommends and sets advance payment retainers as opposed to security retainers for the reason that Gauthier & Gooch sets the amount of the advance payment retainer predicated upon the initial necessities of the case and further because of prospective economic advantage to the client. Gauthier & Gooch believes that the use of an advance payment retainer is advantageous to a client in that it secures Gauthier & Gooch's representation through the use of funds which, once paid, secure representation to the conclusion of the matter. A security retainer is one where the money received from a client is held in a trust account or escrow account for the client with fees billed as earned or incurred against the account. Such funds remain the property of the client until earned, and are not beyond the reach of the client's creditors.

Notwithstanding that this is an advance payment retainer, any unused or unbilled portion of this advance payment retainer will be returned to the client.

The initial retainer shall be applied against actual legal services performed for the CLIENT. The advance payment retainer, and any other payment made by or on behalf of CLIENT in excess of any outstanding balance due COUNSEL, shall be considered the property of COUNSEL, subject to any refund due CLIENT as provided under Article VII of this Section, and shall be deposited into COUNSEL'S general account. The

actual legal services performed for the CLIENT shall include all time spent by COUNSEL for CLIENT concerning this matter, excluding the initial interview.

3. BILLING AND FEE BASIS - My fee is based upon the amount recovered on your behalf. My fee is **25%** of the gross amount recovered, **LESS THE RETAINER PAID**. You will also be billed for all necessary costs and expenses incurred on your behalf and you will be called upon to pay for necessary costs and expenses in advance. Reasonable costs and expenses, include but are not limited to, both testifying expert fees and consulting (non-testifying) expert fees, filing costs, service of process costs, deposition costs, and other costs attendant with court filings, court appearances and appearances in the prosecution and/or settlement of this case. You will also be billed for all necessary costs and expenses incurred on your behalf and you may be called upon from time to time to pay for necessary costs and expenses in advance. Reasonable costs and expenses can include but are not limited to: both testifying experts and consulting (non-testifying) experts expert fees, filing costs, service of process cost, deposition costs and other costs incurred with court filings, court appearances and appearances in the prosecution and/or settlement of this case.

4. I will from time to time seek the assistance of other professionals and staff at our office as I deem appropriate for the most effective and efficient handling of your case.

5. NO RESULTS PREDICTED - I have not made any warranties or representations. Nor have I given you any assurances as to the ultimately favorable or successful resolution of your claim or defense of the action referred to above, nor as to the favorable outcome of any legal action that may be filed. All of my expressions relative to your case are only my opinion based upon all facts presented to me at the time that opinion is offered.

6. PAYMENT BY OPPOSING PARTY - The court may order your adversary to pay part or all of your attorneys' fees and costs. Such awards are totally unpredictable. You will remain primarily liable for such payment of the total fee and costs. Any amount received pursuant to court order will be credited to your account or refunded to you if I have already been paid in full.

7. SETTLEMENT - I will not make any settlement of your case without your consent, nor will any proceedings be filed in court without your prior knowledge and consent unless necessary to protect you interests on an emergency basis.

Agreed this **16th Day of December 2016**

Paul R. Dulberg

THOMAS W. GOOCH for
GAUTHIER and GOOCH

Thomas W Gooch
GAUTHIER and GOOCH
209 South Main Street
Wauconda, Illinois 60084

LAW OFFICES
GAUTHIER AND GOOCH
209 SOUTH MAIN STREET
WAUCONDA, IL 60084

THOMAS W. GOOCH
MICHAEL J. GAUTHIER
SABINA D. WALCZYK

OFFICE: 847-526-0110
FAX: 847-526-0603
EMAIL: office@gauthierandgooch.com

CHICAGO OFFICE
4003 N. BROADWAY AVENUE
SUITE 206
CHICAGO, IL 60613
OFFICE: 312-600-4385

December 16, 2016

Thomas J. Popovich
Law Offices of Thomas J. Popovich, P.C.
3416 West Elm Street
McHenry, Illinois 60050

RE: Dulberg v. Popovich

Greetings:

I have been retained by Paul R. Dulberg to represent him in a cause of action for legal malpractice against you for the mishandling of his case, and the specific settlement of a portion of that case for substantially less than could have been obtained.

If you are covered by a policy of professional liability insurance you should immediately put your carrier on notice. In my experience, most legal malpractice policies require immediate notification and you place your coverage in jeopardy by failing to do so.

You should acquaint the adjuster you speak with of my identity, and if they so wish they may contact me. However, I intend to file suit against you within the next 7 days.

Very truly yours,

GAUTHIER & GOOCH,

Thomas W. Gooch, III

TWG/mgb
Enc.
cc: Paul Dulberg

LAWYER SEARCH: ATTORNEY'S REGISTRATION AND PUBLIC DISCIPLINARY RECORD

ARDC Individual Attorney Record of Public Registration and Public Disciplinary and Disability Information as of February 8, 2017 at 1:14:07 PM:

Full Licensed Name:	Thomas J. Popovich
Full Former name(s):	None
Date of Admission as Lawyer by Illinois Supreme Court:	November 8, 1990
Registered Business Address:	Law Offices of Thomas J. Popovich, P.C. 3416 W Elm St Mchenry, IL 60050-4433
Registered Business Phone:	(815) 344-3797
Illinois Registration Status:	Active and authorized to practice law - Last Registered Year: 2017
Malpractice Insurance: (Current as of date of registration; consult attorney for further information)	In annual registration, attorney reported that he/she has malpractice coverage.

Public Record of Discipline and Pending Proceedings:

Case(s) below are identified by caption and Commission case number. If there is more than one case, the cases are listed in an order from most recent to oldest. A case may have more than one disposition or more than one component to a disposition, in which situation each disposition and component is also listed separately within that case record, again in an order from most recent to oldest.

Click on Rules and Decisions ("R & D") to access any documents regarding this lawyer that are in Rules and Decisions. R & D contains all disciplinary opinions of the Supreme Court and most other Court orders and board reports issued since 1990. If R & D does not contain the decision that you are seeking, contact the Commission's Clerk's office for assistance. Contact information for the Clerk's office is available at Office Hours.

In re Thomas J. Popovich, 15PR0119

Case is pending. For more information, call ARDC at (312) 565-2600 or, within Illinois, at (800) 826-8625.

Check carefully to be sure that you have selected the correct lawyer. At times, lawyers have similar names. The disciplinary results displayed above include information relating to any and all public discipline, court-ordered disability inactive status, reinstatement and

restoration dispositions, and pending public proceedings. Investigations are confidential and information relating to the existence or status of any investigation is not available. For additional information regarding data on this website, please contact ARDC at (312) 565-2600 or, from within Illinois, at (800) 826-8625.

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$10,000 Down
25%
+ costs

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

In the Matter of:

THOMAS J. POPOVICH,

Attorney-Respondent,

No. 6203684.

Commission No. 2015PR00119

FILED --- December 28, 2015

COMPLAINT

Jerome Larkin, Administrator of the Attorney Registration and Disciplinary Commission, by his attorney, Scott Renfroe, pursuant to Supreme Court Rule 753(b) complains of Respondent Thomas J. Popovich, who was licensed to practice law in Illinois on November 8, 1990, and alleges that Respondent has engaged in the following conduct which subjects Respondent to discipline pursuant to Supreme Court Rule 770:

(*Allegations common to Counts I and II, below*)

1. During the events alleged in Counts I and II of this complaint, Respondent and his then-spouse ("Mrs. Popovich") practiced together in McHenry County in a law firm that concentrated in the representation of claimants in personal-injury, wrongful death, medical malpractice, workers compensation and other matters. In 2007, Mrs. Popovich initiated a proceeding to dissolve the couple's marriage. The couple later made efforts to reconcile, but, during the events described in paragraphs two through 18, below, Respondent engaged in activities that were motivated, at least in part, to reduce the amount he might be required to pay Mrs. Popovich in a future dissolution proceeding, by concealing from her the amounts recovered by the firm on behalf of its clients, and (because most of those clients were

COUNT I

(Failure to keep client funds separate from own property -- McMackin)

2. On or about August 16, 2007, Scott McMackin was injured as a consequence of an incident in which he fell from a roof. Sometime thereafter, Respondent and McMackin agreed that Respondent and his law firm would represent McMackin and his wife, Tamara McMackin, in matters relating to the August 16, 2007 incident, on a contingent-fee basis, with the firm's entitlement to a one-third fee being contingent upon the recovery of an award or settlement. The McMackins later agreed to settle their claims against one entity, Weber Roofing, for $450,000.

3. On or about October 22, 2009, Respondent received a check from Weber Roofing's insurer, Secura Insurance Companies. That check, number 000146568, had been made payable to the McMackins and Respondent in the amount of $450,000, and its proceeds represented the full and final settlement of the McMackins' claims against Weber Roofing. Respondent later deposited the settlement check into an account ending in the four digits "9009" at the McHenry Savings Bank in McHenry. That account was entitled "Law Offices of Thomas J. Popovich Client Trust Account" ("client trust account") and was used by Respondent as the depository of funds belong to Respondent's clients, to third parties and, presently or potentially, to Respondent.

4. On or about January 16, 2010, Respondent met with the McMackins to discuss the settlement of their claims against Weber Roofing. Following that meeting, and despite the fact that the law firm's contingent-fee agreement entitled it to claim up to $150,000 from the Weber Roofing settlement as fees, Respondent gave his clients a check he had drawn on the client trust account payable to their order in the amount of $440,000. In the memo section of that check, Respondent wrote that the check's proceeds represented the "net settlement" amount due his clients. At or about that time, Respondent caused entries to be made in the law firm's internal records that purported to show that the remaining $10,000 from the McMackin settlement had been paid to the firm (with $7,222.84 attributed to reimbursement of expenses and only $2,777.16 paid as legal fees).

5. Respondent drew the $440,000 "net settlement" distribution check to his clients (described in paragraph four, above) for an amount in excess of the amount the McMackin's might otherwise have received, and caused the firm's internal record entries to be made to reflect that the firm's recovery was only $10,000, because he was attempting to conceal from Mrs. Popovich the actual amount Respondent and the firm were entitled to receive as fees in the McMackin case.

6. On or about January 25, 2010, Respondent asked the McMackins to give him $250,000 from the proceeds of the "net settlement" check described in paragraph four, above. Respondent told his clients that $150,000 of that amount would represent his firm's fees for handling the case against Weber Roofing, and that the remaining $100,000 would be held by Respondent in trust for the McMackins' benefit, to pay possible third-party claims or costs relating to a possible appeal. On January 25, 2010, at Respondent's request, Tamara McMackin drew two checks payable to Respondent individually (not to the law firm) in the total amount of $250,000.

7. Respondent did not prepare a distribution statement for the McMackins explaining the remittance of any money to them or the method by which that amount had been determined.

9. Although at least $100,000 of the funds he deposited into the money market account represented money Respondent had agreed to hold in trust for the McMackins, the account was not a separate, identifiable client trust account. Within two days of opening the money market account, Respondent had written checks totaling $200,000 on the account for his own business or personal purposes, without notice to, or authority from, the McMackins.

10. Respondent's use of at least $50,000 of funds he had agreed to hold in trust for his clients constitutes a conversion of those funds. Respondent later made at least partial restitution to the McMackins by paying them $75,000.

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

a. failure to provide a client, upon the conclusion of a contingent-fee matter, with a written statement stating the outcome of the matter and showing the remittance to the client and the method of its determination, by conduct including failing to provide the McMackins with a written settlement or distribution statement at the time he distributed the Weber Roofing settlement proceeds, in violation of Rule 1.5(c) of the Illinois Rules of Professional Conduct (1990 and 2010);

b. failing to hold property of clients or third persons that was in his possession in connection with a representation separate from his own property, by conduct including depositing proceeds from the McMackin settlement into the money market account and later converting at least $50,000 of those funds, in violation of Rule 1.15(a) of the Illinois Rules of Professional Conduct (2010); and

c. conduct involving dishonesty, fraud, deceit or misrepresentation, by conduct including concealing the amount of the law firm's fees from the McMackin case from his then-spouse and by converting at least $50,000 from those proceeds, in violation of Rule 8.4(a)(4) of the Illinois Rules of Professional Conduct (1990) and Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010).

COUNT II

(*Failure to keep client funds separate from own property -- Carranza*)

12. The Administrator realleges paragraphs one through 10, above.

13. On or about December 6, 2010, Respondent received the $50,000 proceeds of a settlement he had obtained for a client named Ana Carranza, a worker at a fast-food restaurant, and deposited that amount into his client fund account at McHenry Savings Bank (identified in paragraph three, above). At or about that time, Respondent determined that Carranza owed a total of $10,930.08 to two lienholders and an additional $273.17 to the law firm as reimbursement of expenses. Respondent also determined that if he agreed to reduce his one-third contingent fee from $16,666.67 to $13,796.75, Carranza would receive a total of $25,000 from the settlement of her claims.

14. On December 6, 2010, Respondent drew a check, number 12587, on the client fund account payable to Carranza's order in the

15. Respondent's use of the proceeds of check number 12587, which included at least $25,000 to which his client was entitled, constitutes a conversion of those funds.

16. On December 20, 2010, Respondent drew a check on the client fund account, number 12631, that he made payable to Carranza's order in the amount of $25,000. The proceeds of that check represented restitution for the funds Respondent converted from the proceeds of check number 12587 (referred to in paragraphs 14 and 15, above).

17. At or about the time he drew check number 12631 on the client fund account, Respondent caused entries to be made on the firm's internal ledgers to show that the $25,000 payment to Carranza had been made as a referral fee for an unrelated client matter. That entry was made as part of Respondent's efforts to conceal from Mrs. Popovich information about the money Respondent and the law firm were receiving as legal fees.

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

a. failing to hold property of clients or third persons that was in his possession in connection with a representation separate from his own property, by conduct including converting the proceeds check number 12587, in violation of Rule 1.15(a) of the Illinois Rules of Professional Conduct (2010); and

b. conduct involving dishonesty, fraud, deceit or misrepresentation, by conduct including concealing the amount of the law firm's fees from the Carranza case from his then-spouse, misrepresenting the proceeds of check number 12631 as a referral fee, and by converting the proceeds of check number 12587, in violation of Rule 8.4(c) 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 pursuant to Supreme Court Rule 753, 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: Scott Renfroe

Scott Renfroe
Counsel for Administrator
One Prudential Plaza

2013 IL App (2d) 120619-U

Appellate Court of Illinois,
Second District.

In re MARRIAGE OF Kimberly POPOVICH, Petitioner–Appellee,
and
Thomas Popovich, Respondent–Appellant.

No. 2–12–0619.

March 14, 2013.

Appeal from the Circuit Court of McHenry County, No. 11–DV–324, Robert A. Wilbrandt, Judge, Presiding.

ORDER

Justice HUDSON delivered the judgment of the court:

*1 ¶ 1 *Held:* The trial court properly held respondent in contempt for violating an order that he pay interim attorney fees: despite respondent's myriad claims to the contrary, the evidence supported the court's ruling that respondent was financially able to comply with the order.

¶ 2 Petitioner, Kimberly Popovich, petitioned to dissolve her marriage to respondent, Thomas Popovich. Over seven months after that petition was filed, petitioner petitioned the court for interim attorney fees. Pursuant to that petition, the court ordered respondent to pay one of petitioner's attorneys, Benedict Schwarz II, $60,000 in interim attorney fees. Respondent failed to make that payment, and petitioner petitioned the court to hold respondent in contempt of court. Following a hearing on the contempt petition, the court found respondent in contempt and sentenced respondent to jail until he paid Schwarz his fees. Respondent moved to stay his jail sentence, and the trial court denied that motion. Respondent appealed pursuant to Illinois Supreme Court Rule 304(b)(5) (eff.Feb.26, 2010), and this court stayed respondent's jail sentence after respondent posted in the trial court a bond totaling $7,000. At issue in this appeal is whether respondent should have been held in contempt of court for failing to pay Schwarz his fees. [1] For the reasons that follow, we determine that respondent was properly found in contempt. Thus, we affirm.

¶ 3 The facts relevant to resolving this appeal are as follows. Respondent, petitioner, and the parties' three children live a very comfortable life. For example, the family lives in a 4,500 squarefoot home with the family's nanny. This house is large enough so that no one " 'bump[s] into somebody else' " if he or she does not want to interact with others in the home. The parties retain services for housecleaning, fish tank maintenance, and lawn care; they send their children to private school, horseback riding lessons, karate lessons, and music lessons; and they own six cars, including a Mercedes Benz and an Infiniti SUV.

¶ 4 Also, the parties own an allegedly defunct pizza parlor and several rental properties held via a company known as Popovich Properties. In addition, both petitioner and respondent are "popular" and "successful" licensed trial attorneys. At one point, petitioner worked part time while raising the parties' children, and respondent is the sole shareholder and manager of the Law Offices of Thomas J. Popovich, PC, a successful personal injury firm in McHenry County.

¶ 5 On May 4, 2011, petitioner petitioned to dissolve her marriage to respondent. On December 28, 2011, while the dissolution proceedings were pending, petitioner petitioned the court for interim attorney fees. On February 16, 2012, the trial court granted that petition. In that order, the trial court noted:

> "[Respondent] filed a personal tax return indicating an income of approximately $283,000 in 2010. [Respondent] has not filed a tax return for 2011. The court finds that [respondent's]

income, especially income from his law firm, has been variable and is, at this time, extremely difficult or impossible to determine. [Respondent's] contention that he currently 'nets' $4000 per month from his business, contained in his required Financial Affidavit, is simply not credible given the level of his family, personal, and business expenditures. Additionally, the records his businesses did produce, after repeated attempts and related production problems, lend little support to the Financial Affidavit assertions. For instance, [petitioner's] records indicate that [respondent's] firm may have obtained over $11 million dollars in gross settlements in 2010. [The firm's] 2010 tax return suggests the firm had a 'stockholder equity' of over $1.29 million dollars.

*2 Although [respondent] is a seasoned attorney and possesses an undergraduate accounting degree, he claims an astounding lack of knowledge concerning any financial reporting requirements for his own law firm or his related intertwined set of real estate and restaurant businesses. He testified that he 'doesn't know' personally if his tax returns are accurate, he merely relies on the work of others to accurately report. The children's care provider refused to answer questions of payment pursuant to the Fifth Amendment.

The court notes that both parties apparently signed their personal tax returns. Still, the court believes that there is a strong possibility that questionable, negligent, or irregular financial practices may have led to an under reporting of income both for tax purposes and for the purpose of determining [respondent's] current support 'income.'

Some of the allegations of questionable activities that were brought to the court's attention include: the firm allegedly obtained certain legal settlements and fees without obtaining or at least producing IRS 1099 forms concerning the settlements, and yet the firm's tax accountant reported total firm income only on the basis of income reported on 1099 forms received by the IRS; payments of legal fees were allegedly made and deposited directly into [respondent's] personal accounts; [respondent] allegedly 'waived' payments or took cash payments for rent and utilities for 'worthy' or employee tenants of units owned by [respondent] or Popovich Properties; 'loans' and 'loan repayments' were allegedly made between [respondent] and his various business entities with minimal actual documentation or evidence of receipt, payment, or usage; referral fees to other lawyers that were due on settlements were allegedly unpaid and used for other purposes; some settlements were allegedly made with fees 'waived'; and in general, allegations were repeatedly raised of questionable 'business expenses' and questionable or at least woefully incomplete business record keeping practices."

¶ 6 In the part of the order specifically requiring respondent to pay interim attorney fees, the court found:

"The parties have a considerable list of assets and property, including over twenty parcels of real estate; a law firm; bank accounts; numerous vehicles; lines of credit; retirement accounts; securities accounts; life insurance policies; deferred compensation accounts; educational 529 accounts[;] and, as stated in [respondent's] affidavit, 'approximately $700,000 worth of annuities (held jointly by [petitioner] and [respondent]).' The parties also amassed a considerable sum of debt.

Most of the property of the parties is in the control of [respondent] or [respondent's businesses], and [respondent] is the party with greater access to relevant information concerning the law firm and other assets. This observation carries additional weight since [respondent] changed security codes and advised [petitioner] not to enter his business. The court has considered the disparity of information in making an award * * *.

*3 The degree of complexity of the financial issues in this cause appears to be high, including valuation and division of closely held businesses. The court notes that the volume of pleadings, the intricacy of issues raised, and the amount of court time requested for hearing of temporary issues in

this cause is extraordinary. The court finds the rate and time spent by [petitioner's] attorneys on this cause have been reasonable.

[Petitioner] has no current income, and has lived on monies supplied by [respondent], by incurring credit card debt, and by the liquidation of certain assets. The court finds that [respondent] has the financial capacity to pay reasonable amounts of attorney's fees and costs, and that [petitioner] lacks sufficient access to assets or income to pay such reasonable amounts.

Therefore, the court orders [respondent] pay to [petitioner's] attorneys the sum of $80,000 as and for interim attorneys fees. The $80,000 shall be paid within 30 days of the date of this order, with $20,000 to be paid to [one attorney] and $60,000 to be paid to * * * Schwarz."

¶ 7 On March 21, 2012, after more than 30 days had passed, petitioner petitioned the court to hold respondent in contempt of court for, among other things, not paying Schwarz any of the $60,000. Evidence presented at the hearing on that petition revealed that respondent has received multimillion-dollar jury verdicts. His firm consists of eight lawyers and approximately five support staff. Three of the lawyers work primarily in Cook County. Two of these lawyers earn annual salaries around $100,000, with the other attorney earning approximately $75,000 per year. In addition to these salaries, the attorneys receive referral fees for cases they bring to the firm and a percentage of the judgments or settlements they obtain. When asked if any of these three attorneys had "go [ne] to trial" and "obtain[ed] a verdict" within the last three years, respondent indicated that only one of the attorneys had, in three or four cases. Respondent stated that he had not terminated the employment of any attorney in his firm within the last two years, because the attorneys are "bursting at the seams in terms of work." Respondent was quick to clarify that "of course, [this] doesn't always mean[ ] profitability." According to an exhibit that respondent claimed to have never seen, knew nothing about, and questioned because it came from petitioner's attorney, the attorney fees *paid to* respondent's firm during the first quarter of 2012 totaled $370,752.85. However, respondent's gross income amounts to $5,000 every two weeks, with $1,000, among other amounts, being taken out to repay $50,000 he recently took out of his IRA to "keep [the firm] afloat."[2] Moreover, respondent stated that a month prior to the hearing on the contempt petition he did not pay his attorneys their salaries because he did not have the funds with which to do so. Despite the firm's alleged shortfalls, respondent buys tickets to various Chicago Bulls and Chicago Cubs games, which he uses to obtain new business. In 2012, more than $3,800 was spent on such tickets. No attempt was ever made to sell these tickets.

*4 ¶ 8 Todd Christian, who is the property manager for Popovich Properties, testified that, when petitioner petitioned to dissolve her marriage to respondent, there were no unpaid real estate taxes or mortgage payments due on the 20 properties held by Popovich Properties. Now, however, three properties were in arrears on their mortgages. Further, rents for three properties were waived or not collected, and some of the rent payments have been paid in cash to respondent for his own use.

¶ 9 According to the financial affidavit respondent submitted, which contained correct information as of January 18, 2012, respondent's gross monthly income totaled $5,811, and his living expenses were $2,795. Respondent's assets included the family residence, which respondent indicated had an unknown market value and an unknown outstanding debt. Also listed as assets were Popovich Properties, with a value of $86,644.63; a checking account with $6,500 in it; an IBA Securities account, with a value of $43,549.07; $500 in cash; vehicles worth $31,000; a 401(k) plan worth $190,713.73; an E–Trade Roth account worth $15,466; a Roth IRA worth $107,970.48; a life insurance policy with a value of $57,346.44; and a health savings account with an estimated value of $8,500. Additionally, respondent listed the pizza parlor lease as a liability of $116,600, and his law firm as a liability of $635,200. Given these figures, respondent attested that his net worth was a negative $203,609.65. This figure did not include the marital home; $700,000 worth of annuities held by both parties, which both parties indicated could

not be borrowed against; and back taxes owed of approximately $75,000.

¶ 10 According to the exhibits petitioner submitted, respondent's net worth as of January 18, 2012, was much higher. Although some of the figures in petitioner's exhibits were consistent with the figures in respondent's financial affidavit, many of them were significantly higher. For example, petitioner indicated in her documents that Popovich Properties was valued at $1,696,644.63; respondent's checking account had $10,000 in it; and the vehicles were worth $61,000. Given these and the other accounts respondent listed in his financial affidavit, but not the value of the law firm, petitioner indicated that respondent's net worth was $2,891,690.35. The only liability that respondent had that petitioner listed in her documents was a $7 10,000 line of credit.

¶ 11 Cancelled checks from respondent's checking account revealed that respondent paid his own attorneys, one of whom was retained after the court ordered respondent to pay Schwarz interim attorney fees, instead of paying Schwarz. Specifically, these attorneys were paid $7,500 on March 21, 2012; $10,000 on March 28, 2012; $2,500 on March 29, 2012; and $5,000 on April 5, 2012. All of these payments were made over one month after respondent was ordered to pay Schwarz $60,000. Also in March 2012, after respondent was ordered to pay Schwarz, respondent cashed in securities with a value of over $50,000, and he received $10,000 from his father to, according to respondent, pay his support obligation.

*5 ¶ 12 According to a letter respondent sent Schwarz on April 24, 2012, respondent, who indicated that he was unrepresented, wished to set up a payment plan whereby respondent would pay Schwarz $2,500 every month. Respondent indicated in the letter that, if Schwarz agreed to such an arrangement, respondent could begin making monthly payments on May 1, 2012, and pay more than the monthly amount if he had the funds to do so. No payments were ever made.

¶ 13 The trial court found respondent in indirect civil contempt of court and sentenced respondent to jail until he paid Schwarz his fees. In so doing, the court noted that respondent had the means by which to comply with the court's order to pay Schwarz his fees, but respondent refused to comply. In that regard, the court observed that respondent owns his own firm and holds an ownership interest in Popovich Properties; he pays himself $5,000 every two weeks and pays $1,000 toward repayment of a loan he took from his IRA; respondent paid between $20,000 and $30,000 to retain the services of an attorney who did not officially appear in court until after the interim attorney fee award was entered; respondent paid more than $3,800 for sports tickets in 2012, and no testimony was offered concerning whether he could obtain a refund on any of those tickets; respondent has made no concerted effort to liquidate any real estate, and he has waived rents or collected rents in cash that he has used for unknown purposes; respondent has made no effort to curb the firm's expenses or lay off any of the attorneys at the firm; respondent liquidated $50,000 of securities after the court awarded interim attorney fees, and respondent used this money for his own purposes or for the purposes of his law firm; and no evidence was presented regarding the liquidation of the monies held in annuity contracts or IRAs. In a subsequent order, the court observed that it was not requiring respondent to liquidate his IRAs. Rather, the court "considered and base[d] its findings on [respondent's] ability to pay the [court] ordered interim fees without considering the liquidation of assets exempted[.]"

¶ 14 Respondent moved to reconsider, taking issue with each of the financial means to which the court cited in its order. Also, in the motion to reconsider, respondent suggested that he could pay Schwarz $10,000 per month "[b]ased upon the cases that are currently in the process of being settled by the law firm." Respondent also suggested that he could pay Schwarz $10,000 per month by selling some of the assets of Popovich Properties if the court lifted a prior order that respondent's attorney prepared. This order provided that "[b]oth parties are mutually restrained from transferring, encumbering, concealing or otherwise disposing of any property except in the usual course of business or for the necessities of life and both parties must notify the other of any proposed extraordinary

expenditures made after this order was entered." At the hearing on the motion to reconsider, respondent sought to quitclaim three properties worth $300,000 to Schwarz so that Schwarz could sell the properties himself to cover his fees. Schwarz never accepted the quitclaim deeds. Moreover, respondent never paid Schwarz pursuant to his $10,000–per–month suggestion, and, although the court lifted the prior order that respondent's attorney prepared, nothing in the record indicates that respondent ever listed for sale any of the Popovich properties.

*6 ¶ 15 The trial court denied the motion to reconsider. A supplemental record filed with this court reveals that, one day after the court denied respondent's motion to reconsider, respondent's firm received a judgment of $360,000 in attorney fees for a wrongful death case settled in Boone County. Nothing in the record indicates that the trial court was ever made aware of this judgment.

¶ 16 Subsequently, respondent appealed and moved the trial court to stay the jail sentence. The trial court denied that motion, noting that respondent has been "less than candid in disclosing his financial assets" and has engaged in "improper motivations" in that he has "asserted a willingness to impoverish both spouses" if petitioner did not reconcile or sign a marital settlement agreement. The court also clarified that, when it considered respondent's IRAs and annuity contracts, it did not indicate that it was requiring respondent to liquidate those assets. Rather, given that respondent borrowed $50,000 from his IBA Securities account after the award of interim attorney fees was entered and put that money into his firm, "in [the] court's view, [respondent] is exercising his own discretion * * * *, at the very least, to willfully put the court's ordered payment of interim [attorney] fees at the bottom of [respondent's] priority list." In making these findings, the court noted that "[it] does not wish to incarcerate or punish [respondent], or harm his successful law firm." Rather, "[the court] simply desires and demands that [respondent] obey the orders of [the] court," which the court found respondent could do "if he would rearrange his spending priorities." The court found respondent's offer to quitclaim some of the properties of Popovich Properties inadequate to purge the contempt, because "[a] sale of one of the properties, if possible at all at this time, would still result in considerable delay." In the court's view, that "is not the same as initially complying with the court's order."

¶ 17 At issue in this appeal is whether the trial court erred when it found respondent in indirect civil contempt of court for failing to pay petitioner's attorney $60,000 in interim attorney fees. Before addressing that issue, we observe that petitioner contends that several claims respondent raises on appeal are forfeited, as respondent failed to sufficiently cite the record and/or authority to support his claims. Although we agree with petitioner to a certain extent, we will consider the claims in light of the fact that the issue is simple. See *In re Marriage of Ramano,* 2012 IL App (2d) 091339 ¶ 85 (considering forfeited issue even though opposing party correctly noted that the issue was forfeited); see also *In re Marriage of Barile,* 385 Ill.App.3d 752, 757 (2008) (refusing to strike party's brief and, thus, considering issue raised on appeal even though party failed to cite to authority and record to support party's position).

*7 ¶ 18 Turning to the merits, we first consider our standard of review. Respondent claims that our review is *de novo,* as the facts are not in dispute. In contrast, citing a case where our supreme court reviewed a sentence imposed for contempt, petitioner contends that we must review the trial court's contempt finding for an abuse of discretion. Having reviewed the record in addition to the arguments the parties make on this point, we determine that the standard we applied in *Barile* applies here. That is, " '[w]hether a party is guilty of contempt is a question of fact for the trial court, and * * * a reviewing court will not disturb the finding unless it is against the manifest weight of the evidence or the record reflects an abuse of discretion.' " *Barile,* 385 Ill.App.3d at 759 (quoting *In re Marriage of Logston,* 103 Ill.2d 266, 286–87 (1984)).

¶ 19 We now address whether respondent was properly found in contempt of court when he failed to pay Schwarz $60,000 in interim attorney fees. " 'The power to enforce an order to pay money

through contempt is limited to cases of wilful refusal to obey the court's order.' " *Id.* at 75 8 (quoting *Logston,* 103 Ill.2d at 285). The failure to pay interim attorney fees when ordered to do so is *prima facie* evidence of contempt. See *In re Marriage of Petersen,* 319 Ill.App.3d 325, 332 (2001); see also *In re Marriage of Elies,* 248 Ill.App.3d 1052, 1064 (1993). "Once the party bringing the contempt petition establishes a *prima facie* case, the burden shifts to the alleged contemnor to prove that the failure to make * * * payments was not willful or contumacious and that there exists a valid excuse for his failure to pay." *Barile,* 385 Ill.App.3d at 759.

¶ 20 Here, the record establishes that respondent was ordered to pay petitioner's attorney $60,000 in interim attorney fees. The order requiring respondent to make that payment granted respondent 30 days in which to do so. Thirty days after that order was entered, respondent had not paid Schwarz any of the $60,000 he was owed. This evidence was sufficient to meet petitioner's burden of establishing a *prima facie* case of contempt. *Id.*

¶ 21 Respondent claims that he rebutted petitioner's proof, as he established that he is excused from paying Schwarz his fees. Specifically, respondent argues that "[t]he evidence absolutely showed that [he], at the time of the contempt hearing, did not have the financial ability to pay the awarded fees and thus he should not have been held in contempt."

¶ 22 A valid excuse for failing to make court-ordered payments is very limited. That is, a party is excused from making court-ordered payments only if "the failure to * * * pay is due to poverty, insolvency, or other misfortune, unless that inability to pay is the result of a wrongful or illegal act." *Petersen,* 319 Ill.App.3d at 332. To prove this type of "poverty, insolvency, or other misfortune," the alleged contemnor "must show he neither has money now with which to pay, nor has he wrongfully disposed of money or assets with which he might have paid." *Id.* at 332–33.

*8 ¶ 23 The "[f]inancial inability to comply with an order must be shown by definite and explicit evidence." *Id.* at 333. Thus, "[t]he alleged contemnor must show, with reasonable certainty, the amount of money he has received since the order was made and that it has been disbursed in the payment of expenses which, under the law, he should pay before making any payment for support" or fees. *Id.* Moreover, payments that will excuse an alleged contemnor's failure to pay include "money [that] has been used to pay only for the basic necessities of life." *Elies,* 248 Ill.App.3d at 1064; see also *Shaffner v. Shaffner,* 212 Ill. 492, 496 (1904) (when a party faces a finding of contempt, "[i]t is proper that he first pay his bare living expenses; but whenever he has any money in his possession that belongs to him and which is not absolutely needed by him for the purpose of obtaining mere necessities of life, it is his duty to make a payment on [the] decree.").

¶ 24 Here, like our supreme court in *Hengen v. Hengen,* 271 Ill. 278, 282–833 (1916), we "are strongly impressed that the failure of [respondent] * * * to pay [the money owed] was not due to his financial inability to do so, but to his disinclination to pay it." Specifically, the evidence failed to establish that the money respondent used to pay for things other than Schwarz's fees went to the basic necessities of life or to cover costs that, under the law, respondent was required to pay before paying Schwarz his fees. For example, the evidence indicated that, at the end of 2011, respondent spent $50,000 that he got from his IRA to run his law firm and later withdrew $50,000 from his security account, using $25,000 of that amount to pay for his own legal fees. Using money to run a business or to pay for one's own legal fees will not excuse an alleged contemnor from complying with a court order to make payments. See, *e.g., Peterson,* 319 Ill.App.3d at 329, 333 (contempt finding was proper when evidence established that husband, a successful surgeon who owned his own practice, used money to pay his own attorney, among other things, instead of paying support to his wife and fees incurred by the guardian *ad litem*); see also *Shaffner,* 212 Ill. at 496.

¶ 25 Respondent argues that the trial court, in finding him in indirect civil contempt, improperly considered (1) that he could liquidate his IRA; (2) that he could cut down on his law firm's expenses;

(3) that he could sell some of the real estate held by Popovich Properties; (4) his salary; (5) the $700,000 held in annuity contracts; and (6) that he used $50,000 from his security account to pay his own legal fees. Although, perhaps, based on the parties' agreement, the $700,000 in annuity contracts could not be used to satisfy the award of interim fees given to Schwarz, respondent is incorrect on the other points he raises.

¶ 26 First, in contrast to what respondent argues, the trial court *never* required respondent to liquidate his IRA. Indeed, the trial court specifically stated, among other things, that it considered the fact that respondent took money out of his IRA in late 2011 to finance his law firm only because that showed that respondent had the ability to pay Schwarz's fees but instead paid for things that respondent believed were more important. We see nothing improper with this. Indeed, in considering a party's ability to pay interim attorney fees, a court may consider the amount of money a party took out of an IRA. See *In re Marriage of Radzik*, 2011 IL App (2d) 100374, ¶ 64 (after holding that a trial court may not order a party to liquidate an IRA, this court stated that, if a party voluntarily and prematurely cashes out an IRA, "the court, in determining [the party's] ability to pay [interim attorney fees], may consider the amount that [the party] received" from cashing out the IRA). Respondent's citation to a point in the record where the court, in discussing this matter with respondent, says "[o]kay go ahead" does not support his claim that the court mandated that respondent liquidate his IRA. Rather, in our view, given that the record reflects that there were pauses in this discussion, the court said "[o]kay go ahead" in telling respondent to continue with his argument, not in telling respondent to liquidate his IRA.

*9 ¶ 27 Second, respondent argues that the uncontested evidence established that, when the court found him in contempt, his law firm was in debt. We disagree. First, in making this argument, respondent cites to nowhere in the record where the evidence indicated that his firm was $240,000 in debt as of May 14, 2012, which is what respondent asserts in his brief. Second, as the trial court made clear, respondent was not forthcoming with documents that would support his claims that the law firm had no money. Thus, this court, like the trial court, certainly has no obligation to accept as true the conclusory and self-serving statements respondent makes here. See *In re Marriage of Ramos*, 126 Ill.App.3d 391, 398 (1984). Third, even respondent's own testimony contradicts his position. At the hearing on the contempt petition, respondent testified that he employs eight attorneys and that he could not afford to fire any of these attorneys because the workload at the firm is too large. Of the three Cook County lawyers respondent employs, only one has gone to trial within the last three years, and that attorney has tried only three or four cases during that time. The logical inference to make from these facts is that the firm settles a great deal of cases for a profit. Supporting this inference is the evidence that, during the first fiscal quarter of 2012, the firm was paid over $370,000 in attorney fees. Taking this figure as an average for each quarter, respondent's firm receives over $1,480,000 in annual attorney fees. This amount is more consistent with the figures presented to the court for 2010, which were the most recent figures submitted, than with respondent's claims now. Further, one day after the trial court denied respondent's motion to reconsider the contempt finding, respondent's firm settled a wrongful death case and received a judgment of $360,000 in attorney fees. All of this indicates that the law firm is a substantial asset.

¶ 28 Third, respondent contends that the court should not have considered that respondent could have sold some of the real estate that Popovich Properties owned to pay Schwarz his fees, because the prior order that respondent's attorney prepared prohibited him from doing so. Again, we disagree. Although the trial court lifted this order, we believe that a fair reading of the order would have permitted respondent to sell some of the properties as long as respondent notified petitioner first. Further, we find unavailing respondent's claim that he should not have been held in contempt of court when he had offered to tender to Schwarz three parcels of land held by Popovich Properties, which were valued at over $300,000, in settlement of the interim fees owed. It is immaterial that, instead of making monetary payments pursuant

to a court's order, the party who is required to make payments can tender property worth the value of the money owed. *Id.* at 3 97. Indeed, the trial court lacked the power to compel Schwarz to accept a settlement offer and would have abused its discretion if it had accepted the settlement offer instead of enforcing the order for interim attorney fees with an appropriate sanction. See *id.* Likewise, given respondent's numerous assets, including his successful businesses, and his failure to pay any money under either of his suggested installment plans, we find that the trial court would not have been obligated to enforce either of these suggested installment plans. *Hengen,* 271 Ill. At 283 (in finding husband in contempt for failing to pay alimony, court noted that "not only has [the husband] not paid or offered to pay anything, but [he] has interposed every obstacle and objection possible to avoid paying").

***10** ¶ 29 Fourth, although the record indicates that respondent's gross monthly income is $10,000, the evidence also suggests that respondent's actual income might be quite a bit more. The trial court found that some "payments of legal fees were allegedly made and deposited directly into [respondent's] personal accounts." Moreover, the court noted that " 'loans' and 'loan repayments' were allegedly made between [respondent] and his various business entities with minimal actual documentation or evidence of receipt, payment, or usage." Further, the court determined that "referral fees to other lawyers that were due on settlements were allegedly unpaid and used for other purposes" and that "some settlements were allegedly made with fees 'waived.' " Given all of this, the court observed that "in general, allegations were repeatedly raised of questionable 'business expenses' and questionable or at least woefully incomplete business record keeping practices." Respondent has raised nothing in his appeal to refute these findings.

¶ 30 Last, in contrast to respondent's position, the record indicates that $50,000 was taken out of respondent's IBA Securities account between March 1, 2012, and March 31, 2012, which was during the contempt proceedings. Some of this money went to pay one of petitioner's attorneys, with a majority of the rest of the money going to pay respondent's attorneys. Respondent suggests that this was proper because it leveled the playing field. Although the award of interim attorney fees is designed to do exactly that (*In re Marriage of Earlywine,* 2012 IL App (2d) 110730, ¶ 22), the court, not the parties, must decide how leveling the playing field will be accomplished. See 750 ILCS 5/501(c–1)(3) (West 2010) ("the court (or hearing officer) shall assess an interim [attorney fee] award").

¶ 31 As a final matter, we comment briefly on respondent's repeated claims that the trial court set out to punish him when he did not pay Schwarz his fees. The record clearly refutes this. Specifically, the court, in imposing the jail sentence, explicitly stated that it in no way wished to incarcerate respondent, punish him, or hurt his successful law firm. After reviewing the record in addition to the arguments respondent makes, we find nothing in the record to contradict the court's statement.

¶ 32 For these reasons, the judgment of the circuit court of McHenry County is affirmed.

¶ 33 Affirmed.

Presiding Justice BURKE and Justice JORGENSEN concurred in the judgment.

All Citations

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Footnotes

1 Although, in general, a court reviewing a finding of contempt also may review the order that the contemnor failed to comply with (*In re Marriage of Sharp,* 369 Ill.App.3d 271, 277 (2006)), respondent here has explicitly stated that he is not challenging the order requiring him to pay Schwarz $60,000 in interim attorney fees. As a result, we will not consider the propriety of that order.

2 On May 10, 2012, respondent testified that he took the "maximum of $50,000 [out of his IRA] last year and put it into the firm[.]" Since then, and as of May 10, 2012, respondent had paid back "approximately $5,000 this year." According to the paycheck stubs respondent submitted, the $1,000 he paid toward that withdrawal began with the pay period between January 17, 2012, and January 30, 2012.

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