

APPELLANT EXHIBIT 2

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Jeffrey H. Kaplan, Clerk of the Court APPELLATE COURT 2ND DISTRICT

No. 2-23-0072

SC

IN THE APPELLATE COURT OF ILLINOIS SECOND JUDICIAL DISTRICT

PAUL R. DULBERG,)	
)	Appeal from
Plaintiff-Appellant,)	The Circuit Court of the 22nd Judicial Circuit
)	McHenry County, Illinois
V.)	Honorable Joel D. Berg, Judge Presiding
)	Circuit Court No. 2017LA000377
HANS MAST and THE LAW OFFICES)	
OF THOMAS J. POPOVICH, P.C.,)	Notice of Appeal Filed: March 3, 2023
)	,
Defendant-Appellees.		

DEFENDANTS/APPELLEES HANS MAST AND THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.'S RESPONSE TO PLAINTIFF/APPELLANT PAUL R. DULBERG'S EMERGENCY MOTION FOR 4TH EXTENSION TO FILE APPELLANT'S BRIEF, TO CONDUCT AN AUDIT OF THE RECORD ON APPEAL TO DISCOVER CHANGED OR MISSING DOCUMENTS, AND TO SUPPLEMENT THE RECORD ON APPEAL

Defendants/Appellees Hans Mast and The Law Offices of Thomas J. Popovich, P.C. (collectively "the Firm"), by and through their attorneys, pursuant to Illinois Supreme Court Rule 361(b)(3),(g), hereby respond to Plaintiff/Appellant Paul R. Dulberg's ("Dulberg's") motion that he has titled "Emergency Motion and Fourth Motion to Extend Time to File Appellant's Brief (Civil) Emergency Motion to Conduct an Audit of the Record on Appeal to Discover Changed or Missing Documents; Supplement the Record on Appeal and, if Granted, For 35 Days Extension of Time After the Trial Court Clerk Has Supplemented and/or Corrected the Record on Appeal to File Appellant's Brief" ("Motion" or "Mtn."). In response, the Firm states as follows:

INTRODUCTION

This is an appeal of a grant of a summary judgment motion in favor of the Firm in a legal malpractice action based on the statute of limitations. Ex. 1 hereto, Notice of Appeal (C2139-

C2144); Ex. 2 hereto, Feb. 1, 2023 Summary Judgment Order (C2138); Mtn. Ex. D, Feb. 1, 2023 Transcript (R493-R512). The former client Dulberg brought this action alleging that the Firm was negligent in recommending Dulberg accept an inadequate settlement in an underlying personal injury case arising out of a chain saw accident. Ex. 3 hereto, 2nd Amd. Legal Malpractice Compl. (C269-C293). The Circuit Court found that the instant legal malpractice case is time-barred by the two-year attorney statute of limitations of 735 ILCS 5/13-214.3(b). Ex. 2 hereto, Feb. 1, 2023 Order (C2138); Mtn. Ex. D, Feb. 1, 2023 Transcript (R493-R512).

Dulberg filed his notice of appeal back on March 3, 2023, and minimal activity has occurred in this appeal since that time. Ex. 1 hereto, Notice of Appeal (C2139-C2144). Dulberg has already been granted 155 days of extensions for his opening brief. Mtn. ¶3. On his final deadline for filing his opening brief, Friday, November 3, 2023 around 5pm, Dulberg served a motion that he titled as an "emergency" request for (i) leave to retain an auditor to conduct an audit and forensic investigation of the records of the Circuit Court and of this Court, (ii) to supplement the record on appeal, (iii) for leave to amend the docketing statement (which may be a typographical error, as such is only referenced in the "wherefore" clause), (iv) for leave to request the record on appeal for "related cases" (which might be another typographical error, as such is only referenced in the "wherefore" clause), and (v) for a further extension of time to file his appellant's brief. Similarly as with Dulberg's prior motion for miscellaneous relief that he filed on October 2, 2023, which was denied other than allowing a third and final extension, Dulberg's arguments are unsubstantiated and fail to comply with the Illinois Supreme Court Rules. Ex. 4 hereto, Dulberg Amd. Mtn. for 3rd Extension & Other Relief; Ex. 5 hereto, Oct. 10, 2023 Appellate Order. This Court should deny all relief requested in Dulberg's Motion.

ARGUMENT

I. This Court should deny Dulberg's Motion as it does not present an emergency.

Dulberg's Motion should be denied outright as it does not present a genuine emergency. See Ill. App. Court 2nd Dist. Rule Local Rule 109(a). The primary basis for Dulberg's various requests for relief is the alleged incompleteness of the record on appeal, but Dulberg has been on notice of such possible issues from at least the time that he filed his initial motion for extension back on May 24, 2023. Ex. 6, May 24, 2023 Dulberg's 1st Mtn. for Extension for Appellant's Brief. In this regard, Dulberg's May 24, 2023 motion for an initial extension of time for his opening brief stated the extension was sought due to, among other reasons, "various problems within the Record on Appeal" and "errors by the Clerk of the Circuit Court in preparation of the Record on Appeal," including "missing report of proceedings, mismatched sections, documents with only one of the Defendants' names where it should be all, Memorandums of Law where the body of the motions should be, [and] violations of the Supreme Court of Illinois Standards and Requirements for Electronic Filing the Record on Appeal." Id. at ¶1, 8.b. and Wherefore Clause. If there are any issues with the record on appeal, then Dulberg should have followed the procedures for supplementing the record in III. S. Ct. Rule 329. He failed to do so, as further discussed below. Dulberg's failure to timely arrange for any supplement to the record and delay in preparing his brief is not a basis for emergency relief. See In re Marriage of Larocque, 2018 IL App (2d) 160973, ¶¶94-95 (emergency motion was properly denied as "litigants do not have an absolute right to a continuance"). Ill. S. Ct Rule 361(g) states, "Except in the most extreme and compelling circumstances, a motion for an extension of time will not be considered an emergency." No extraordinary circumstances are present here, and there is no emergency.

II. The Court should deny Dulberg's request for leave to retain an auditor to audit the records of the Circuit Court and of this Court.

This Court should deny Dulberg's unprecedented request for leave to retain an auditor to

audit the records of the Circuit Court and of this Court. Dulberg cites no authority that would warrant such extraordinary relief. On the contrary, the requisite procedures for correcting any issues with the record on appeal are set forth in Ill. S. Ct. Rule 329, which do not allow retention of an auditor. As discussed below, Dulberg failed to follow those procedures. Further, Dulberg's request to retain an auditor is misguided because he fails to understand that the purpose of arranging for any supplement to the record on appeal is to ensure the record is sufficient "to present fully and fairly the questions involved," not to incur extraordinary time and resources in scrutinizing every conceivable minutiae of detail in documents that are irrelevant to this appeal. See Ill. S. Ct. Rule 329. While Dulberg reaches far afield in requesting a forensic investigation of the court's records, it should be kept in mind that a request for a forensic investigation of a party's records is not even ordinarily permitted at the trial court level. Carlson v. Jerousek, 2016 IL App (2d) 151248, ¶69 (trial court abused its discretion in compelling the forensic imaging of the plaintiff's computers during the discovery process). Further, certain categories of electronically stored information, such as online access data, data in metadata fields that are frequently updated automatically, and forms of ESI that would require extraordinary efforts for production, are presumptively not discoverable even between parties. *Id.* at ¶48-49. Dulberg's request to audit the court's records has no support and is simply a delay tactic.

III. The Court should again deny Dulberg's request for leave to supplement the record on appeal due to Dulberg's delay and failure to follow proper procedures.

It is Dulberg's burden as the appellant to present a complete record on appeal, in order to support any arguments that he may raise as to why the trial court's ruling was in error. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). If the record is incomplete, then Dulberg should have followed the procedures in Ill. S. Ct. Rule 329 for seeking leave to supplement the record. *McCarty v. Weatherford*, 362 Ill. App. 3d 308, 312 (4th Dist. 2005). Ill. S. Ct. Rule 329 states:

The record on appeal shall be taken as true and correct unless shown to be otherwise and corrected in a manner permitted by this rule. Material omissions or inaccuracies or improper authentication may be corrected by stipulation of the parties or by the trial court, either before or after the record is transmitted to the reviewing court, or by the reviewing court or a judge thereof. Any controversy as to whether the record accurately discloses what occurred in the trial court shall be submitted to and settled by that court and the record made to conform to the truth. If the record is insufficient to present fully and fairly the questions involved, the requisite portions may be supplied at the cost of the appellant. If necessary, a supplement to the record may be certified and transmitted. The clerk of the circuit court shall prepare a certified supplement to the record which shall be filed in the reviewing court upon order issued pursuant to motion.

Dulberg's various requests to supplement the record on appeal should be denied, as they do not comply with Ill. S. Ct. Rule 329.

A. Dulberg's renewed blanket request for this Court to order the Circuit Court to re-prepare the record on appeal should again be denied.

To the extent that Dulberg renews his request for this Court to order the Circuit Court to start over in preparing a new or substitute record on appeal, that request should again be denied. Mtn. pg. 6 "wherefore" clause. This Cout previously denied such a request that Dulberg made in a motion he filed on October 2, 2023. Ex. 4, Dulberg Amd. Mtn. for 3rd Extension & Other Relief pg. 8; Ex. 5, Oct. 10, 2023 Order. The clerk already prepared and filed the record on April 24, 2023, which consists of 2148 pages of the common law record and 512 pages of reports of proceedings. The clerk also already executed a Certification of Record in the form required by Ill. S. Ct. Rule 324 and the Article III Forms Appendix, which certificate appears at the front of the record. It is the burden of Dulberg, not the Court, to identify any documents that may be missing from the record and to arrange for any necessary supplement to the record. See *McCarty*, 362 Ill. App. 3d at 312-13 (while "the clerk of the circuit court failed to file many of the documents that were before the trial court[,]...the clerk's failure [did] not excuse the [plaintiffs], who, as appellants, clearly had the burden to present this court with a sufficiently complete record on appeal"); *Swift Agricultural Chemicals Corp. v. Marten*, 4 Ill. App. 3d 60, 61

(5th Dist. 1972) ("[w]hile...Supreme Court Rule 326 places the obligation of filing the record upon the clerk of the trial court[,] it is nevertheless incumbent upon the appellant to see to the preparation and forwarding of the record in the course of his appeal"). Dulberg's blanket request for a re-do of the record deviates from Ill. S. Ct. Rule 329, which specifies that only the "requisite portions" should be included in a supplemental record, not that the clerk should file the entire record all over again. It is not unduly burdensome to require the appellant to ensure the record is adequate in an appeal he chooses to pursue. *McCarty*, 362 Ill. App. 3d at 313-14; *Lorts v. Illinois T. Railroad*, 80 Ill. App. 3d 974, 977 (5th Dist. 1980).

B. This Court should deny Dulberg's request to supplement the record on appeal with a document from the unrelated *McDonald* case, which was not before the Circuit Court in this matter.

This Court should deny Dulberg's request to supplement the record on appeal to add an order from the unrelated case *Mark McDonald, Individually and as Special Administrator of the Estate of Julie McDonald, and as Father of Ian McDonald, Quinlin McDonald, and Chloe McDonald, minor children v. Law Offices of Thomas J. Popovich, P.C., James P. Tutaj, and Thomas J. Popovich, Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois no. 2012LA000326 (transferred from Circuit Court of Cook County no. 2012 L 000196) (the "McDonald Case"). Mtn. Ex. A, McDonald Case Order. It does not appear that the McDonald Case is referenced anywhere in the record, as a search on the record on the term "McDonald" does not return any results. Nor does Dulberg provide any explanation of the McDonald Case in his current Motion. It would be improper to supplement the record with a copy of an order from the McDonald Case, as such is from a different case and the document was never before the Circuit Court in this matter. Johnson v. Matviuw, 176 Ill. App. 3d 907, 912 (1st Dist. 1988).*

In any event, Dulberg cannot raise a new argument in this appeal about the order in the

McDonald Case. It appears that Dulberg may wish to make a new argument based on the apparent fact that Judge Thomas A. Meyer entered an order on October 19, 2012 in which he recused himself from the unrelated McDonald Case that had been filed against The Law Offices of Thomas J. Popovich, P.C. Mtn. Ex. A. But Dulberg has forfeited any issue with Judge Meyer having presided over part of the instant legal malpractice case because he never filed a motion for substitution of judge. People v. Cavin, 28 Ill. App. 3d 863, 868 (1st Dist. 1975); People v. Fitzgerald, 55 Ill. App. 3d 626, 632 (1st Dist. 1977). Judge Meyer disclosed in this case that he knew the parties and that he had presided over the underlying personal injury case, and Dulberg did not file a motion for substitution of judge. Mtn. Ex. B, Feb. 3, 2020 Transcript (R66:22-R67:7); Mtn. Ex. C, May 10, 2018 Transcript (R4:8-10). Dulberg as appellant cannot raise new issues for the first time on appeal. Cambridge Eng'g, Inc. v. Mercury Partners 90 BI, Inc., 378 Ill. App. 3d 437, 454, 456 (1st Dist. 2007). Since Dulberg never filed a motion for substitution of judge, the issue is forfeited. Cavin, 28 Ill. App. 3d at 868; Fitzgerald, 55 Ill. App. 3d at 632. Further, a party cannot seek relief on a question of whether a judge should have recused himself on his own initiative, but rather a party needs to file a motion for substitution of judge if he were to believe that a judge should not preside over a case, which Dulberg failed to do here. In re *Marriage of O'Brien*, 2011 IL 109039, ¶45.

C. This Court should deny Dulberg's request to supplement the record on appeal with an audio recording of the deposition of Hans Mast.

This Court should deny Dulberg's request to supplement the record on appeal with an audio recording of the deposition of appellee/defendant Hans Mast. The issue Dulberg references is that 2.5 years after his former counsel took the remote deposition of defendant Mast, Dulberg argued that there were technical issues with the deponent Mast's ability to view Dulberg's exhibits that Dulberg's counsel displayed at the deposition. Mtn. Ex. D, Dec. 21,

2022 Transcript (R476-R488); Ex. 7 hereto, Dec. 21, 2022 Order (C2056) (denying Dulberg's second amended motion to exclude the deposition of Hans Mast and to re-take the deposition of Hans Mast, and denying Dulberg's oral motion to supplement the record with an audio recording of the Mast deposition); see also Ex. 8 hereto, Dulberg's second amended motion to exclude the deposition of defendant Mast and to grant leave to re-depose Mast (C1770 - C1839); Ex. 9, the Firm's response thereto (C1968 - C2004), and Ex. 10, Dulberg's reply (C2033 - C2055). The court denied Dulberg's second amended motion to exclude the deposition of Mast and declined to allow Dulberg leave to re-take the deposition, and explained that since Dulberg's counsel conducted the deposition, controlled the exhibits, did not make any objections at the time, and did not raise any concerns with the deposition until 2.5 years later, the court would not strike the deposition of Mast and would not allow Dulberg leave to re-take the deposition. Mtn. Ex. D, Dec. 21, 2022 Transcript (R476-R488); Ex. 7 hereto, Dec. 21, 2022 Order (C2056). At that hearing, Dulberg offered to tender an audio recording of Mast's deposition to the Circuit Court, but the Circuit Court declined to accept or review such, finding it would be irrelevant to the court's ruling. Mtn Ex. D, Dec. 21, 2022 Transcript (R479:17 - R481:9); Ex. 7 hereto, Dec. 21, 2022 Order (C2056). Since the audio recording was never reviewed by the Circuit Court, it should not be included in the record on appeal. See Garvy v. Seyfarth Shaw LLP, 2012 IL App (1st)110115, ¶¶25-27 (finding that privilege logs that the defendant had tendered to the plaintiff in court, but which the trial court did not review, should not be included in the record on appeal).

D. This Court should deny Dulberg's request to supplement the record on appeal with other possible reports of proceedings.

This Court should deny Dulberg's request to supplement the record on appeal with any additional reports of proceedings at this point. Ill. S. Ct. Rule 323(a) puts the burden on the appellant to make a written request to court reporting personnel by the date his docketing

statement is due for preparation of any transcripts that the appellant wishes to include in the record. Thus, Dulberg was required to request court reporting personnel prepare any necessary transcripts by March 17, 2023 (the date his docketing statement was due, which was 14 days after the notice of appeal was filed on March 3, 2023). Ex. 1 hereto, Notice of Appeal (C2139-C2144); Ill. S. Ct. Rules 312 & 323(a). The court reporting personnel were then required to file any requested transcripts within 49 days of the date of the filing of the notice of appeal, meaning by April 21, 2023. Ex. 1 hereto, Notice of Appeal (C2139-C2144); Ill. S. Ct. Rule 323(b). Here, 512 pages of transcripts have been filed. R1-R512. If the court reporting personnel did not timely file some of the transcripts, then Dulberg should have followed the procedures in Ill. S. Ct. Rules 323(b),(e) and 329 for supplementing the record with any such missing transcripts. Dulberg was required to file any motion for extension of time to file any necessary transcripts by the expiration of the original due date or any extension thereto (meaning by April 21, 2023), or within 35 days after the due date, if he could provide a reasonable excuse for failure to file such a motion earlier. Ill. S. Ct. Rule 323(e). Far more than 35 days have now passed since the April 21, 2023 deadline for filing reports of proceedings, and thus it is too late for Dulberg to arrange for the filing of any additional reports of proceedings at this point. Ill. S. Ct. Rule 323(e); Hall v. Turney, 56 Ill. App. 3d 644, 648 (1st Dist. 1977) (rejecting appellant's untimely request for an extension of time to file reports of proceedings that was disguised as a request for an extension of time to file the entire record).

Accordingly, it is now too late for Dulberg to supplement the record with a different version of the September 16, 2022 transcript that was transcribed by a different court reporter. Mtn. Ex. E, ¶¶6-16. The only version of the September 16, 2022 transcript in the record is at R389-R401 (Ex. 11 hereto). This Court cannot make any ruling that would allow Dulberg to

substitute a different transcript instead, as III. S. Ct. Rule 329 states, "Any controversy as to whether the record accurately discloses what occurred in the trial court shall be submitted to and settled by that court." Thus, any question over the precise words that were spoken should have been timely addressed by the Circuit Court, not by this court on an emergency motion filed on the appellant's final deadline for his brief. Ill. S. Ct. Rule 329. In Lawrence, the appellate court denied such an appellant's motion to supplement the record on appeal where there was a controversy as to whether the supplemental material accurately disclosed what had occurred in the trial court. In re Marriage of Lawrence, 146 III. App. 3d 307, 310-11 (3rd Dist. 1986). The Lawrence court found the appellant had failed to follow the requirements of Ill. S. Ct. Rule 329 for supplementing the record on appeal and had displayed an "utter disregard of clearly define[d] rules [that] disrupt[ed] the orderly disposition of an appeal." Id. Likewise, here this Court should not "reward appellant's inattentiveness to supreme court rules." *Id.* Furthermore, this Court cannot consider Dulberg's auditor's affidavit since she fails to attach the documents referenced, such as the two different September 16, 2022 transcripts being compared and the court reporter's emails containing the transcripts. Mtn. Ex. E, Pasha Affidavit ¶¶4, 8; Ill. S. Ct. Rule 191(a); Robidoux v. Oliphant, 201 Ill. 2d 324, 343-44 (2002); Lucasey v. Plattner, 2015 IL App (4th) 140512, ¶19-20, 23. Thus, even if this issue could be considered, which it cannot per Ill. S. Ct. Rules 323 and 329, Dulberg fails to present adequate information for this Court to resolve any controversy over the transcript. Robidoux, 201 III. 2d at 343-44. Regardless, Dulberg fails to point to any inaccuracy in the record, as the version of the September 16, 2022 transcript that is in the record reflects that there had been no deadline for expert discovery, which is consistent with the fact that there is no order in the record suggesting that expert discovery had closed. Ex. 11, Sept. 16, 2022 Transcript at R393:12-15.

Dulberg also notes that the record does not contain any transcripts from the January 10, 2018 and February 27, 2018 court conferences, but such is another example of his failure to satisfy Ill. S. Ct. Rule 329, along with the specific requirements of Ill. S. Ct. Rule 323 for reports of proceedings. Mtn. pg. 5-6; Mtn. Ex. E, Pasha Affidavit ¶¶17-26. Dulberg and his auditor are uncertain as to whether a court reporter was even present at the January 10, 2018 and February 27, 2018 court conferences in the first place. Mtn. Ex. E, Pasha Affidavit ¶17-26. At the January 10, 2018 court conference, the court simply granted the Firm's motion to answer or otherwise plead through February 7, 2018 and set a further status conference for February 27, 2018. Ex. 12, Jan. 10, 2018 Order (C47). At the February 27, 2018 court conference, the court simply set an agreed briefing schedule on the Firm's motion to dismiss. Ex. 13, Feb. 27, 2018 Order (C93). Dulberg provides no explanation as to whether such two transcripts, if they even exist, could be material to this appeal. See Mtn. Ex. E, Pasha Affidavit ¶¶17-26. Nor did Dulberg make any effort to timely arrange for a bystander's report under Ill. S. Ct. Rule 323(c). Dulberg fails to understand that Ill. S. Ct. Rule 323 does not contemplate that the record on appeal will include every potentially available report of proceedings. Rather, Rule 323(a) provides that "the appellant shall make a written request to the court reporting personnel...to prepare a transcript of the proceedings that appellant wishes included in the report of proceedings," which "shall include all the evidence pertinent to the issues on appeal." The rule warns that a party who orders unnecessary transcripts may be assessed "[t]he entire expense of incorporating unnecessary and immaterial matter in the report of proceedings" as costs against that party. Ill. S. Ct. Rule 323(a). If Dulberg were to believe that the January 10, 2018 and February 27, 2018 proceedings were somehow "pertinent to the issues on appeal," he should have arranged for such reports of proceedings to be incorporated into the record prior to his

deadline. Ill. S. Ct. Rule 323(a),(e).

E. Dulberg's reference to metadata in the PDFs for the record on appeal is not a basis to supplement the record.

Without developing any argument on the point, Dulberg notes that common law volume 1 has a PDF creation date of April 24, 2023 at 9:31am and a filing date of April 24, 2023 at 10:00am, that common law volume 2 has a PDF creation date of April 24, 2023 at 9:28am and a filing date of April 24, 2023 at 10:03am, and that the reports of proceedings have a PDF creation date of April 25, 2023 at 8:06am and a filing date of April 24, 2023 at 10:03am. Mtn. pg. 2-3 & Mtn. Exs. G & H. This Court notified the parties on April 25, 2023 at 8:48am that the record had been filed. Mtn. Ex. F. Such does not show that anything unusual occurred, but rather simply suggests that sometimes the record is saved as a new PDF once it is received by the appellate court.

In sum, Dulberg has failed to follow the appropriate procedures under Rules 329 and 323 for arranging for any necessary supplement to the record. His vague and untimely requests for leave to supplement the record should be denied. *McCarty*, 362 Ill. App. 3d at 312-13.

IV. This Court should again deny Dulberg leave to amend his docketing statement.

To the extent the request is re-raised, this Court should again deny Dulberg's request for leave to amend his docketing statement to include "related cases." Mtn. pg. 6 "wherefore" clause. This Court previously denied Dulberg's request to amend his docketing statement in the motion he filed on October 2, 2023. Ex. 4, Dulberg Amd. Mtn. for 3rd Extension & Other Relief, pg. 6-7, 9; Ex. 5, Oct. 10, 2023 Order. As before, Dulberg has not identified any cases that would fall under the definition of "related cases" in Local Rule 113, and thus there are no other matters that should be referenced in the docketing statement. Local Rule 113 states:

Rule 113 Related-case statements

- (a) If an appeal is related to any case in the Court, or in any other court, the appellant shall file and serve, with his or her docketing statement, an additional statement that includes the name, docket number, and status of all such related cases....
- (b) For purposes of this Local Rule, a "related case" is (1) any prior or pending case involving substantially the same parties <u>and</u> the same or similar issues or (2) any prior or pending criminal case involving a codefendant of the defendant in the present appeal.
- (c) For purposes of this Local Rule, "any other court" means the Illinois Supreme Court, any other district of the Illinois Appellate Court, or any circuit court in the second appellate district.

[Emphasis added.]

Dulberg referenced the *McDonald* Case in his October 2, 2023 motion, and this Court rejected Dulberg's request to amend his docketing statement to refer to same. Ex. 4, Dulberg Amd. Mtn. for 3rd Extension & Other Relief, pg. 7; Ex. 5, Oct. 10, 2023 Order. Based on the caption, Dulberg was not a party to the *McDonald* Case, and thus it does not involve "substantially the same parties" as required by Local Rule 113(b)(1). Mtn. Ex. A, *McDonald* Order; *Northbrook Prop.* & Cas. Ins. Co. v. GEO Int'l. Corp., 317 Ill. App. 3d 78, 81 (2000) (finding the requirement of the parties being "sufficiently similar" for purposes of 735 ILCS 5/2-619(a)(3) was not satisfied when only one of the parties was the same in the two suits).¹

This Court likewise previously rejected Dulberg's request to amend his docketing statement to refer to the underlying personal injury suit in which the Firm represented Dulberg, which gave rise to this legal malpractice case, *Paul Dulberg v. David Gagnon, Bill McGuire, and Caroline McGuire*, Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois no. 2012LA000178. Ex. 4, Dulberg Amd. Mtn. for 3rd Extension & Other Relief, pg. 7; Ex. 5, Oct. 10, 2023 Order; Ex. 3 hereto, 2nd Amd. Compl. (C269-C293) at ¶32. The Law Offices of Thomas J. Popovich, P.C. and Hans Mast were not parties to the underlying suit, and thus the parties are not "substantially the same." Ex. 3 hereto at C279-C285 (the underlying personal

¹ Furthermore, the fact that Local Rule 113(b)(2) contains a separate prong for "any prior or pending criminal case involving a codefendant of the defendant in the present appeal" shows that civil cases are not "related cases" for purposes of this rule when only one of the parties is the same.

injury complaint is Ex. B to the legal malpractice complaint); see *Northbrook*, 317 Ill. App. 3d at 81. Further, the issues are different, because any question of legal malpractice (and the statute of limitations for filing a claim for legal malpractice) cannot be resolved in the underlying case. See *Roberts v. Heilgeist*, 124 Ill. App. 3d 1082, 1087 (2nd Dist. 1984) (the injury alleged in a legal malpractice action is different from the injury alleged in an underlying tort claim).

In sum, Dulberg has not identified any case that constitutes a "related case" under the definition of Local Rule 113, and thus there is no reason for Dulberg to amend his docketing statement to refer to any other cases.

V. This Court should again deny Dulberg's request for leave to request the record on appeal for "related cases."

This Court previously denied Dulberg's vague request for this Court to order other courts to cooperate in submitting documents from other cases to supplement the record on appeal in this case. Ex. 4, Oct. 2, 2023 Amd. Mtn. for 3rd Extension & Other Relief pg. 9; Ex. 5, Oct. 10, 2023 Order. To the extent that Dulberg renews that request (Mtn. pg. 6 "wherefore" clause), it should again be denied. A party generally cannot supplement the record with documents that were not actually filed in the trial court or considered by the trial court. *Johnson v. Matviuw*, 176 Ill. App. 3d 907, 912 (1st Dist. 1988). And while Dulberg does not identify any "related cases" under Local Rule 113, even if he were to identify such a case, Local Rule 113 regardless does not provide a mechanism for supplementing the record on appeal.

VI. Dulberg should be denied an additional extension of time for the appellant's brief past his final deadline.

This Court should deny Dulberg's request for yet another extension of time, as lengthy extensions have already been granted and the Court previously set a final deadline. Mtn. pg. 2-3. The Firm did not object to Dulberg's initial requests for two extensions of time of 60 days each,

which Dulberg's counsel requested due to his workload on other matters, personal issues, and issues with the record. Mtn. pg. 3; Ex. 6 hereto, May 24, 2023 Dulberg's 1st Mtn. for Extension for Appellant's Brief ¶1a; Ex. 14 hereto, Jul. 24, 2023 Dulberg's 2nd Mtn. for Extension for Appellant's Brief ¶1-2. Dulberg thereafter requested a third extension of 90 days, to which the Firm did not oppose an additional 21-day final extension. Ex. 4, Oct. 2, 2023 Amd. Mtn. for 3rd Extension & Other Relief, ¶1. This Court, in ruling on Dulberg's third motion for an extension, allowed an additional 35 day extension to November 3, 2023, but warned Dulberg that "[a]bsent extraordinarily compelling circumstances, this date will not be further extended." Ex. 5, Oct. 10, 2023 Order. The November 3, 2023 final deadline has now passed, with no appellant's brief filed. Id. For Dulberg to now request an even longer open-ended extension of 35 days after any future unknown date that his auditor might complete work is excessive and could potentially delay this appeal indefinitely. York v. Mulryan, 2015 IL App (1st) 132830, ¶25 (denying motion for extension file appellee's brief where the party had "caused unnecessary delay in the disposition of this case on appeal"); Premier Elec. Constr. Co. v. Morse/Diesel, Inc., 257 Ill. App. 3d 445, 454-56 (1st Dist. 1993) (trial court properly acted within its discretion in denying a third motion for extension to file a brief, where two extensions had already been allowed). Dulberg's failure to understand the meaning of a final deadline and failure to prioritize this case amounts to a failure to prosecute. This Court has discretion to dismiss an appeal where the appellant fails to file an opening brief on time. Universal Underwriters Ins. Co. v. LKQ Smart Parts, Inc., 2011 IL App (1st) 101723, ¶10.

WHEREFORE, Defendants/Appellees Hans Mast and The Law Offices of Thomas J. Popovich, P.C. request that this Court deny the aforementioned motion of Plaintiff-Appellant Paul R. Dulberg and grant any other appropriate relief, including dismissal of this appeal.

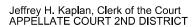
Respectfully submitted,

By: /s/ George K. Flynn

One of the Attorneys for Defendants-Appellees Hans Mast and The Law Offices of Thomas J. Popovich, P.C.

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No. 2-23-0072

SC

IN THE APPELLATE COURT OF ILLINOIS SECOND JUDICIAL DISTRICT

PAUL R. DULBERG,)	
)	Appeal from
Plaintiff-Appellant,)	The Circuit Court of the 22nd Judicial Circuit
)	McHenry County, Illinois
V.)	Honorable Joel D. Berg, Judge Presiding
)	Circuit Court No. 2017LA000377
HANS MAST and THE LAW OFFICES)	
OF THOMAS J. POPOVICH, P.C.,)	Notice of Appeal Filed: March 3, 2023
)	**
Defendant-Appellees.		

NOTICE OF FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on the 6th day of November, 2023, we filed with The Clerk of the Appellate Court of Illinois, Second District, **Defendants/Appellees Hans Mast and The Law Offices of Thomas J. Popovich, P.C's Response to Plaintiff/Appellant Paul R. Dulberg's Emergency Motion for 4th Extension to File Appellant's Brief, to Conduct an Audit of the Record on Appeal to Discover Changed or Missing Documents, and to Supplement the Record on Appeal, a copy of which is attached hereto and served upon you.**

/s/ George K. Flynn

One of the Attorneys for Defendants/Appellees Hans Mast and The Law Offices of Thomas J. Popovich, P.C.

George K. Flynn
Michelle M. Blum
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
200 S. Wacker Drive, Suite 2550
Chicago, IL 60606
Tel: (312) 431-3700
gflynn@karballaw.com
mblum@karballaw.com

CERTIFICATE OF SERVICE

I, the undersigned, an attorney, certify that I filed the foregoing Defendants/Appellees Hans Mast and The Law Offices of Thomas J. Popovich, P.C's Response to Plaintiff/Appellant Paul R. Dulberg's Emergency Motion for 4th Extension to File Appellant's Brief, to Conduct an Audit of the Record on Appeal to Discover Changed or Missing Documents, and to Supplement the Record on Appeal and Notice of Filing through Odyssey eFileIL and served each party by emailing a copy to each party listed below on November 6, 2023.

Attorneys for Plaintiff/Appellant Paul R. Dulberg

Alphonse A. Talarico Law Office of Alphonse A. Talarico 707 Skokie Blvd., Suite 600 Northbrook, IL 60062 Phone: (312) 808-1410 contact@lawofficeofalphonsetalarico.com

alphonsetalarico@gmail.com

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the

statements set forth herein are true and correct.

/ / 2 5/ 1 1/ 5/	
/s/ Michelle Blum	
Michelle Blum	

EXHIBITS TO

DEFENDANTS/APPELLEES HANS MAST AND THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.'S RESPONSE TO PLAINTIFF/APPELLANT PAUL R. DULBERG'S EMERGENCY MOTION FOR 4TH EXTENSION TO FILE APPELLANT'S BRIEF, TO CONDUCT AN AUDIT OF THE RECORD ON APPEAL TO DISCOVER CHANGED OR MISSING DOCUMENTS, AND TO SUPPLEMENT THE RECORD ON APPEAL

Exhibit	Description
1	Mar. 3, 2023 Notice of Appeal (C2139 - C2144)
2	Feb. 1, 2023 Summary Judgment Order (C2138)
3	Dec. 6, 2018 Second Amended Legal Malpractice Complaint (With Exhibits)
	(C269 - C293)
4	Oct. 2, 2023 Dulberg's Amended Motion for Third Extension of Time to File
	Appellant's Brief and for Other Relief
5	Oct. 10, 2023 Appellate Order
6	May 24, 2023 Dulberg's Motion for First Extension of Time to File Appellant's
	Brief
7	Dec. 21, 2022 Order (C2056)
8	Nov. 23, 2022 Dulberg's Second Amended Motion to Exclude the Deposition
	of Defendant Mast and to Grant Leave to Re-depose Mast (C1770 - C1839)
9	Nov. 30, 2022 The Firm's Response to Dulberg's Second Amended Motion to
	Exclude the Deposition of Defendant Mast and to Grant Leave to Re-depose
	Mast (C1968 - C2004)
10	Dec. 19, 2022 Dulberg's Reply in Support of Second Amended Motion to
	Exclude the Deposition of Defendant Mast and to Grant Leave to Re-depose
	Mast (C2033 – C2055)
11	Sept. 16, 2022 Transcript of Court Proceedings (R389 - R401)
12	Jan. 10, 2018 Order (C47)
13	Feb. 27, 2018 Order (C93)
14	Jul. 24, 2023 Dulberg's Motion for Second Extension of Time to File
	Appellant's Brief

This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Appellate County, Illinois

Instructions ▼	THIS APPEAL INVOLVES A MATTER SUBJECT TO EX	XPEDITED DISPOSITIOD (\$\frac{1}{2}\) (\$\frac{1}\) (\$\frac{1}{2}\) (\$\frac{1}{2			
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(custody/visitation rights) or relocation of a child.	APPEAL TO THE APPELLATE COURT OF ILLINOIS SECOND District				
Just below "Appeal to the Appellate Court of Illinois," enter the number of the appellate district that	from the Circuit Court of McHenry Cour	nty			
will hear the appeal and the county of the trial court. If the case name in the	In re				
trial court began with "In re" (for example, "In re Marriage of Jones"), enter that	Paul R. Dulberg	Trial Court Case No.:			
name. Below that, enter the names of the parties in the trial	Plaintiffs/Petitioners (First, middle, last names) ✓ Appellants Appellees	17LA000377			
court, and check the correct boxes to show which party is filing the appeal	V. Appendix Appendes	Honorable Joel D. Berg for S.J. only			
("appellant") and which party is responding to the appeal ("appellee").	Hans Mast and The Law Offices of Thomas J. Popovich, P.C.	Judge, Presiding			
To the far right, enter the trial court case number, the trial judge's name, and the Supreme Court Rule that allows the appellate court to hear the appeal.	Defendants/Respondents (First, middle, last names) Appellants ✓ Appellees	Supreme Court Rule:			
	NOTICE OF APPEAL (CIVIL)				
In 1, check the type of appeal. For more information on choosing a type of appeal, see <i>How to File a Notice of Appeal</i> .	Joining Prior Appeal	EXHIBIT 1 TO THE FIRM'S RESPONSE TO DULBERG'S EMERGENCY MOTION			
	Separate Appeal Cross Appeal				
In 2 , list the name of each person filing the appeal and check the proper box for each person.	2. Name of Each Person Appealing: Name: Paul R. First Middle	Dulberg Last			
	Plaintiff-Appellant Petitioner-A	ppellant			
	☐ Defendant-Appellant ☐ Respondent-Page 1 of 6	Appellant			

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In 3, identify every order or judgment you want to appeal by listing the date the trial court entered it.

State your relief:

In 4, state what you want the appellate court to do. You may check as many boxes as apply.

reverse the trial court's judgment (change the judgment in favor of the other party into a judgment in your favor and w send the case back to the trial court for any hearings that are still required;

vacate the trial court's judgment (erase the judgment in favor of the other party) send the case back to the trial court for a new hearing and a new judgment;

- change the trial court's judgment to say: Defendants' Motion for Summary Judgment is Denied
- Order the trial court to: transfer this case to the first district (Cook County Law Division) for reassignment; order Defendants to answer the Discovery filed and served by Plaintiff's attorney Thomas W. Gooch;

✓ other: <u>Judge Thomas Meyer should have self-recused because he knows the parties, was</u> the Judge in the underlying matter 12 LA 178 and is friends with one of the Defendants. Therefore all orders should be reviewed; have Case Management Conferences and Case Management Orders; reopen F(1) discovery; Plaintiff's privileged discussions with his attorney Thomas W. Gooch after retention regarding when he knew that Defendants actions were malpractice should be removed from the record; find that Plaintiff's objections of "undue burden" to Defendants" Supplemental Requests should be ruled/treated the same as Defendants' discovery objections of undue burden; determine whether a hearing on Plaintiff's objections made at Plaintiff's deposition were valid; have all Court orders redesignated to match the enter date to the file date and to the hearing date; strike all motions instigated by the Court; all stipulations must be signed by the party making the stipulation; proposed order not agreed to by the Plaintiff should not have been sent to this Honorable Court and should not have been entered; Plaintiff, a Party with a Pro Se appearance previously filed, should have been allowed to hear and speak at the Zoom proceedings when his attorney was hospitalized; oral motions not filed or noticed should not be allowed; the Judge should not be allowed to make an oral motion and grant his own oral motion; depositions that violate (multiple) Supreme Court rules should be stricken; Zoom depositions with missing exhibits should be stricken, Zoom depositions where the officer authorized to administer oaths was never given all exhibits used should be stricken; Defendants' ex parte communication on November 9, 2022 between non-attorney Ms. Wang and Plaintiff's former attorney Julie C. Williams (formerly Julia C. Floyd) and any other ex parte communication between: this Honorable Court; Plaintiff's former attorneys and Defendants' former offices should be revealed; the Order entered on December 6, 2022 should be stricken and a corrected Order should replace it because: there was no order entered on November 11, 2022 (VETERANS DAY); allow the contemporaneous audio recording of Defendant Hans Mast deposition made by the officer authorized to administered oaths be entered in to the record as evidence for the purpose of proof that the Deposition Of Defendant Hans Mast contained numerous major violation of Supreme Court Rules; strike the Zoom Deposition of Defendant Hans Mast completed in violation of numerous Supreme Court Rules without the waiver of said violation by the Parties; grant Plaintiff's motion to Depose Defendant Hans Mast; deny Defendants' Motion for Summary Judgment based upon the Zoom deposition of Defendant Hans Mast and disregarding the Law of the State of Illinois regarding the Statute of Limitation for Legal Malpractice and the requirement of pecuniary loss as determined by the Illinois Supreme Court in 2022 IL 126935 SUBURBAN REAL ESTATE SERVICES, INC., et al., Appellees, v. WILLIAM ROGER CARLSON JR. et al., Appellants; upon remand to consider Plaintiff's additional vicarious pecuniary losses stemming from Defendants erroneous settlement advice in the underlying case to release the homeowners for \$5,000.00 (the McGuires in the underlying

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and grant any other relief that the court finds appropriate.

If you are completing	/s/ Paul R Dulberg	4606 Hayden Ct.	
this form on a computer, sign your	Your Signature	Street Address	
name by typing it. If you are completing it	Paul R Dulberg	McHenry, Illinois, 60051	
by hand, sign by hand and print your	Your Name	City, State, ZIP	
name. Fill in your	pdulberg@icloud.com	(847) 497-4250	
address, telephone number, and email address, if you have	Email	Telephone	Attorney # (if any)
one.	Additional Appellant Signature		
All appellants must sign this form. Have	/s/		
each additional appellant sign the form here and enter their	Signature	Street Address	
complete name, address, telephone number, and email address, if they have	Name	City, State, ZIP	
one.	Email	Telephone	Attorney # (if any)

GETTING COURT DOCUMENTS BY EMAIL: You should use an email account that you do not share with anyone else and that you check every day. If you do not check your email every day, you may miss important information, notice of court dates, or documents from other parties.

PROOF OF SERVICE (You must serve the other party and complete this section)

In 1a, enter the name, mailing address, and I sent this document: email address of the To: a. party or lawyer to whom you sent the Name: George Flvnn document. Middle First In 1b, check the box to 200 S. Wacker Drive #2550, Chicago, Illinois, 60606 show how you sent the Address: document, and fill in Street, Apt # City any other information Email address: gflynn@karballaw.com required on the blank lines By: In 1b, check the box to b. show how you are An approved electronic filing service provider (EFSP) sending the document. Email (not through an EFSP) CAUTION: If you and Only use one of the methods below if you do not have an email address, or the the person you are sending the document person you are sending the document to does not have an email address. to have an email address, you **must** use Personal hand delivery to: one of the first two The party options. Otherwise, you may use one of the The party's family member who is 13 or older, at the party's residence other options. The party's lawyer The party's lawyer's office Mail or third-party carrier On: March 3, 2023 In c, fill in the date and C. time that you sent the Date document. □ a.m. At: 2. I sent this document: In 2, if you sent the To: a. document to more Name: than 1 party or lawyer, Middle First Last fill in a, b, and c. Address: Otherwise leave 2 Street, Apt # ZIP Citv blank. State Email address: b. By: An approved electronic filing service provider (EFSP) ☐ Email (not through an EFSP) Only use one of the methods below if you do not have an email address, or the person you are sending the document to does not have an email address. Personal hand delivery to: The party The party's family member who is 13 or older, at the party's residence The party's lawyer ☐ The party's lawyer's office Mail or third-party carrier On: C. Date At: a.m. Time

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know to be false is perjury, a Class 3 Felony.

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign by hand and print your name.

/s/ Alphonse A. Talarico		
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Print Your Name	Attorney # (if any)	

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CIRCUIT COUR	T FOR THE 22ND JUDICI FILED McHenry County, Illinois	AL CIRCUIT #12
STATE OF ILLINOIS COUNTY OF MCHENRY SS	FEB I - 2023 KATHERINE M. KEEFE Clerk of the Circuit Court	GEN. NO. 17 LA 37
Paul Dulberg Popovich and Ma	VC	
Date 2-1-23 Plaintiff's Attorney Alph	ORDER Defende	y 6 corgo K. Flynn
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Popovich and Mi Summery Judge	next, it	-s hereby
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Prepared by: Le 205- 18- Flya. Attorney for: Defendants	<u></u>	FIRM'S RESPONSE TO DULBERG'S EMERGENCY MOTION
Attorney Registration No.: 42393	4 9 Judge	

THE UNITED STATES OF AMERICA IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,)	
Plaintiff,)	
v.) No. 17 LA	377
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,)	
Defendant.)	

SECOND AMENDED COMPLAINT AT LAW

Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE CLINTON LAW FIRM, LLC, complains against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), as follows:

COUNT I LEGAL MALPRACTICE

A. Parties and Venue

- 1. Paul Dulberg, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.
- 2. The Law Offices of Thomas Popovich, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.
- 3. Hans Mast is an agent, employee, or partner of The Law Offices of Thomas Popovich, P.C., and is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.

EXHIBIT 3 TO THE FIRM'S RESPONSE TO DULBERG'S EMERGENCY MOTION

- 4. As an agent, employee, or principal in Popovich, Popovich is liable for Mast's actions alleged herein.
- 5. Venue is proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.

B. Relevant Facts

- 6. On or about June 28, 2011, Dulberg assisted Caroline McGuire ("Caroline"), William McGuire ("Williams") (Caroline and William collectively referred to herein as "the McGuires"), and David Gagnon ("Gagnon") in cutting down a tree on the McGuire's property.
 - 7. Dulberg lives in the next neighborhood over from the McGuire family.
- 8. Caroline McGuire and William McGuire are a married couple, who own real property in McHenry, McHenry County, Illinois ("the Property").
 - 9. David Gagon is Caroline's son and William's stepson.
- 10. On June 28, 2011, at the Property, Gagnon was operating a chainsaw to remove branches from a tree and cut it down on the Property.
- 11. The McGuire's purchased and owned the chainsaw that was being utilized to trim, remove branches, and cut down the tree.
- 12. Dulberg was invited to the McGuire's property to see if he wanted any of the wood from the tree.
- 13. William physically assisted with cutting down the tree and, then, later supervised Gagnon's actions.
 - 14. Caroline supervised Gagnon's and William's actions.

- 15. Gagnon and the McGuires asked Dulberg to assist with trimming and removal of the tree.
 - 16. Gagnon was acting on behalf of Caroline and William and at their direction.
- 17. Caroline, William, and Gagnon all knew or show have known that a chainsaw was dangerous and to take appropriate precautions when utilizing the chain saw.
- 18. The safety information was readily available to Caroline and William as the safety instructions are included with the purchase of the chainsaw.
- 19. It is reasonably foreseeable that the failure to take appropriate caution and safety measures could result in serious injury.
- 20. The likelihood of injury when not properly utilizing the chainsaw or not following the safety precautions is very high.
- 21. The safety instructions outlined are easy to follow and do not place a large burden on the operator of the chainsaw or the owner of the property.
- 22. Caroline, William, and Gagnon had a duty to exercise appropriate caution and follow the safety instructions for the chainsaw.
- 23. Caroline, William, and Gagnon breached that duty by either not exercising appropriate care, failing to follow the safety instructions, or failing to instruct Gagnon to exercise appropriate care and/or follow the safety instructions.
- 24. Caroline and William, owners of the property and the chainsaw, instructed Gagnon to use the chain saw despite Gagnon not being a trained in operating the chainsaw.
 - 25. Gagnon was operating the chain saw in close proximity to Dulberg.
- 26. Neither Gagnon nor Dulberg were provided protective equipment when operating or assisting with operating the chainsaw.

- 27. Gagnon failed to utilize the chainsaw in compliance with the safety measures outlined in the owner's manual.
- 28. Caroline and William failed to instruct and require that Gagnon utilize the chainsaw only in compliance with the safety measures outlined in the owner's manual.
- 29. Gagnon lost control of the chainsaw that he was using and it struck Dulberg in the right arm, cutting him severely.
- 30. Dulberg incurred substantial and catastrophic injuries, including, but not limited to, pain and suffering, loss of use of his right arm, current and future medical expenses in amount in excess of \$260,000, lost wages in excess of \$250,000, and other damages.
- 31. In May 2012, Dulberg hired Mast and Popovich to represent him in prosecuting his claims against Gagnon and the McGuires. **Exhibit A**.
- 32. Mast and Popovich, on behalf of Dulberg filed a complaint against Gagnon and the McGuires. **Exhibit B.**
 - 33. Mast and Popovich entered into an attorney client relationship with Dulberg.
- 34. Based upon the attorney client relationship, Mast and Popovich owed professional duties to Dulberg, including to a duty of care.
- 35. On behalf of Dulberg, Mast and Popovich prosecuted claims against both Gagnon and the McGuire's.
- 36. The claims against Gagnon were resolved later through binding mediation with new counsel.
- 37. The claims against the McGuires included (a) common law premises liability, (b) statutory premises liability, (c) common law negligence, and (d) vicarious liability for the acts of their son and agent.

38. In late 2013 or early, Mast urged Dulberg to settle the claims against the McGuire's

for \$5,000.

39. On November 18, 2013, Mast wrote two emails to Dulberg urging Dulberg to

accept the \$5,000.00, "the McGuire's atty has offered us (you) \$5,000 in full settlement of the

claim against the McGuires only. As we discussed, they have no liability in the case for what Dave

did as property owners. So they will likely get out of the case on a motion at some point, so my

suggestion is to take the \$5,000 now. You probably won't see any of it due to liens etc. but it will

offset the costs deducted from any eventual recovery...." * * * "So if we do not accept their \$5,000

they will simply file a motion and get out of the case for free. That's the only other option is letting

them file motion getting out of the case". (See Emails attached as **Group Exhibit C.**)

40. Similarly, on November 20, 2013, Mast emailed Dulberg urging him to accept the

\$5,000.00 otherwise "the McGuires will get out for FREE on a motion." (See Emails attached as

Group Exhibit C.)

41. On or around December 2013 or January 2014, Mast met with Dulberg and again

advised them there was no cause of action against William McGuire and Caroline McGuire, and

verbally told Dulberg that he had no choice but to execute a release in favor of the McGuires for

the sum of \$5,000.00 and if he did not, he would get nothing.

42. During that same time frame, Mast advised Dulberg that the Restatement of Torts

318 was the only mechanism to recover from the McGuires and that Illinois did not recognize the

Restate of Torts 318, thus Dulberg did not have any viable claims against the McGuires.

43. Mast failed to advise or inform Dulberg of other basis for recovery against the

McGuires.

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- 44. Based upon Mast's erroneously advice that Dulberg's claims against the McGuire's were not viable and that Dulberg would not recover if he pursued the claims, Dulberg settled with the McGuire's and their insurance company, Auto-Owners Insurance Company, for \$5,000, which included a release of all claims against the McGuire's and claim for indemnification under the McGuire's insurance policy. **Exhibit D (Settlement).**
 - 45. Mast also told Dulberg that Gagnon's insurance policy was limited to \$100,000.
- 46. From 2013 forward, Mast and Popovich represented repeatedly to Dulberg that there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and led Dulberg to believe that the matter was being properly handled.
- 47. Mast also reassured Dulberg that Dulberg would be able to receive the full amount of any eventual recovery from Gagnon.
- 48. After accepting the \$5,000 settlement, Dulberg wrote Mast an email on January 29, 2014 stating "I trust your judgment." (See Email attached as **Exhibit E.**)
- 49. Mast and Popovich continued to represent Dulberg into 2015 and continuously assured him that his case was being handled properly.
- 50. The McGuires owned their home, had homeowner's insurance, and had other property that could have been utilized to pay a judgment against them and in favor of Dulberg.
- 51. Dulberg cooperated with and appropriately assisted Mast and Popovich in prosecuting the claims against Gagnon and the McGuires.
- 52. In December of 2016, Dulberg participated in binding mediation related to his claims against Gagnon.

- 53. In December of 2016, Dulberg was awarded a gross amount of \$660,000 and a net award of \$561,000 after his contributory negligence was considered.
- 54. Dulberg was only able to recovery approximately \$300,000 of the award from Gagnon's insurance and was unable to collect from Gagnon personally.
- 55. Only after Dulberg obtained an award against Gagnon did he discover that his claims against the McGuires were viable and valuable.
- 56. Following the execution of the mediation agreement and the final mediation award, Dulberg realized for the first time in December of 2016 that the information Mast and Popovich had given Dulberg was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake.
- 57. It was not until the mediation in December 2016, based on the expert's opinions that Dulberg retained for the mediation, that Dulberg became reasonably aware that Mast and Popovich did not properly represent him by pressuring and coercing him to accept a settlement for \$5,000.00 on an "all or nothing" basis.
- 58. Mast and Popovich, jointly and severally, breached the duties owed Dulberg by violating the standard of care owed Dulberg in the following ways and respects:
- a) failed to fully and properly investigate the claims and/or basis for liability against the McGuires;
- b) failed to properly obtain information through discovery regarding McGuires assets, insurance coverages, and/or ability to pay a judgement and/or settlement against them;
- c) failed to accurately advise Dulberg of the McGuires' and Gagnon's insurance coverage related to the claims against them and/or Dulberg's ability to recover through McGuires' and Gagnon's insurance policies, including, but not limited to, incorrectly informing

Dulberg that Gagnon's insurance policy was "only \$100,000" and no insurance compnay would pay close to that;

d) failed to take such actions as were necessary during their respective representation

of Dulberg to fix liability against the property owners of the subject property (the McGuires)

who employed and/or were principals of Gagnon, and who sought the assistance Dulberg by for

example failing to obtain an expert;

failed to accurately advise Dulberg regarding the McGuires' liability, likelihood

of success of claims against the McGuires, the McGuires' ability pay any judgment or settlement

against them through insurance or other assets, and/or necessity of prosecuting the all the claims

against both the McGuires and Gagnon in order to obtain a full recovery;

f) Coerced Dulberg, verbally and though emails, into accepting a settlement with the

McGuires for \$5,000 by misleading Dulberg into believing that he had no other choice but to

accept the settlement or else "The McGuires will get out for FREE on a motion."

59. As a direct result of Mast and Popovich's wrongful actions, Dulberg suffered

serious and substantial damages, not only as a result of the injury as set forth in the binding

mediation award, but due to the direct actions of Mast and Popovich in urging Dulberg to release

the McGuires, lost the sum of well over \$300,000.00 which would not have occurred but for the

acts of Mast and The Law Offices of Thomas Popovich, P.C.

WHEREFORE, your Plaintiff, Paul Dulberg prays this Honorable Court to enter judgment

on such verdict as a jury of twelve (12) shall return, together with the costs of suit and such other

and further relief as may be just, all in excess of the jurisdictional minimums of this Honorable

Court.

8

Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his attorneys The Clinton Law Firm

<u>/s/ Julia C. Williams</u> Julia C. Williams

Edward X. Clinton, Jr., ARDC No. 6206773 Julia C. Williams, ARDC No. 6296386 The Clinton Law Firm 111 W. Washington, Ste. 1437 Chicago, IL 60602 312.357.1515

ed@clintonlaw.net juliawilliams@clintonlaw.net

CONTRACT FOR LEGAL SERVICES

		**			
(hereinafter persons or e	I agree to emp "my attorney") to ntities responsible to	ploy the LAW OF represent me in the for causing me to su	FICES OF THOMA prosecution or settler free injuries and damage.	S J. POPOVIC nent of my clain ges on the	H, P,C, against day of
in my claim.	My attorney agric The approval of a	ees to make no char my settlement amour	re for legal services unit cannot be made with	nless a recovery hout my knowle	is made dge and
including, but	I the event my clair ny attorney may ne t not limited to	n results in more the ed to incur reasona penses such as accid	leration for his legal by suit or settlemen an one (1) trial and/o ble expenses in prop- ent reports, filing fee stand those expenses	i; this will increa of an appeal of a criv handling row	ase to trial. I
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STATE OF ILLINOIS



IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT

PAUL DULBERG

DAVID GAGNON, Individually, and as · Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,

Defendants,

COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE, and CAROLINE MoGUIRE and BILL McGUIRE, individually, and states as follows:

Count 1

Paul Dulberg vs. David Gagnen, individually, and as Agent of Caroline and Bill McGuire

- On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.
- . On June 28, 2011, Defendants CAROLINE McGUIRE and BILL McGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder

Avenue, in the City of Mcl DISWISSED OR AN ORDER WIONILL KALLED AND AND CONFERENCE IN COURTROOM.

JURE TO APPRAIS MAY RESULT IN THE CASE меневу **вет** ток бонбришись BEINE DISMISSED ON AN ORDER

LOCAL RULE 3,10 NOTICE

EXHIBIT

Received 11-28-2017 04:31 PM / Circuit Clerk Accepted on 11-29-2017 09:53 AM / Transaction #17111117451 / Case #17LA0003 Received 12-07-2018 03:38 PM / Circuit Clerk Accepted on 12-10-2018 01:03 PM 1 Tansaction #3126388 / Case #17LA000377 Page 11 of 25

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- On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's frome at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.
- On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.
- On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID-GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Hinois.
- On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.
- 7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.

- 8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL.

 McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.
- 9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.
- 10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUF DULBERG.
- At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.
- 12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.

- 13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:
 - A. Falled to maintain control over the operating of the chainsaw;
 - b. Failed to take precaution not to allow the chainsaw to move toward the Rightiff,
 PAUL DULBERG, so as to cause injury;
 - o. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;
 - d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;
 - e. Otherwise was negligent in operation and control of the chainsaw.
- That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.
- 15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of Res Ipsa Loguitur.

WHEREFORE, Plaintiff, PAUL DULBERG, domands judgment against Defendants,
DAVID GAGNON, and CAROLINE MCGUIRE and BILL McGUIRE in an amount in excess of
\$50,000.00, plus costs of this action.

Count II

Paul Dulberg vs. Caroline McGuiro and Bill McGuire

- 1-15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.
- That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.
- 17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, and or work in a safe and reasonable manner.
- 18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.
- 19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.
- That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL, DULBERG.

- 21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE were negligent in one or more of the following ways:
 - a. Falled to control operation of the chainsaw;
 - b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff
 PAUL DULBERG, so as to cause injury:
 - c. Falled to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;
 - d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;
 - e. Otherwise was negligent in operation and control of the chainsaw.
- DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of meney for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants.

CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of \$50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS I POPOVICH, P.C.

One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, F
3416 West Him Street
Lake, Illinois 60050
(815) 344-3797
ARDC No.:05203684

From: Paul Dulberg <pdulberg@comcast.net>
Subject: Fwd: Dave's Best and oldest friend John
Date: December 28, 2016 10:33:35 AM CST

To: paul_dulberg@comcast.net

From: Paul Dulberg comcast.net>
Date: November 20, 2013 at 7:26:53 AM CST
To: Hans Mast hansmast@comcast.net>

Subject: Re: Dave's Best and oldest friend John

Morning Hans,

Ok we can meet. I will call Sheila today and set up a time.

Please send me a link to the current Illinois statute citing that the property owner is not liable for work done on their property resulting in injury to a neighbor.

I need to read it myself and any links to recent case law in this area would be helpful as well.

Thanks,

Paul

Paul Dulberg 847-497-4250 Sent from my iPad

On Nov 20, 2013, at 6:59 AM, Hans Mast < hansmast@comcast.net > wrote:

Paul, lets meet again to discuss. The legality of it all is that a property owner does not have legal liability for a worker (whether friend, son or otherwise) who does the work on his time, using his own independent skills. Here, I deposed the McGuires, and they had nothing to do with how Dave did the work other than to request the work to be done. They had no control on how Dave wielded the chain saw and cut you. its that simple. We don't have to accept the \$5,000, but if we do not, the McGuires will get out for FREE on a motion. So that's the situation.

---- Original Message -----

From: Paul Dulberg < pdulberg@comcast.net>

To: Hans Mast < hansmast@comcast.net >

Sent: Tue, 19 Nov 2013 02:29:56 -0000 (UTC)

Subject: Re: Dave's Best and oldest friend John

I still don't get how they don't feel responsible for work done on their property by their own son that ended up cutting through 40% of my arm.

Perhaps their negligence is the fact that they didn't supervise the work close enough but they did oversee much of the days activity with David. Just because Dave was doing the work doesn't mean they were not trying to tell their kid what to do. They told him plenty of times throughout the day what to do. How is that not supervising?

Paul

Paul Dulberg

847-497-4250

Sent from my iPad

On Nov 18, 2013, at 8:07 PM, Hans Mast < hansmast@comcast.net> wrote:

Paul whether you like it or not they don't have a legal liability for your injury because they were not directing the work. So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case

Sent from my iPhone

On Nov 18, 2013, at 7:40 PM, Paul Dulberg <pdulberg@comcast.net> wrote:

Only 5, That's not much at all.

Is this a take it or leave it or do we have any other options?

If you want a negligence case for the homeowners ask what happened immediately after the accident.

Neither of them offered me any medical assistance nor did either of them call 911 and all Carol could think of besides calling David an idiot was calling her homeowners insurance.

Received 12-07-2018 03:38 PM / Circuit Clerk Accepted on 12-10-2018 01:03 PM / Transaction #3126388 / Case #17LA00037

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Page 18 of 25

They all left me out in the yard screaming for help while they were busy making sure they were covered.

She even went as far as to finally call the Emergency Room after I was already there just to tell me she was covered.

How selfish are people when they worry about if their insured over helping the person who was hurt and bleeding badly in their yard.

I'm glad she got her answer and had to share it with me only to find out her coverage won't even pay the medical bills.

I'm not happy with the offer.

As far as John Choyinski, he knows he has to call you and said he will tomorrow.

Paul

Paul Dulberg 847-497-4250 Sent from my iPad

On Nov 18, 2013, at 1:28 PM, Hans Mast < hansmast@comcast.net > wrote:

Im waiting to hear from John. I tried calling him last week, but no one answered.

In addition, the McGuire's atty has offered us (you) \$5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the \$5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery....

Let me know what you think...

Hans

---- Original Message -----

From: Paul Dulberg pdulberg@comcast.net
To: Hans Mast hansmast@comcast.net
Sent: Fri, 15 Nov 2013 22:41:26 -0000 (UTC)
Subject: Dave's Best and oldest friend John

Hans,

Just spoke with John Choyinski again about talking with you.

I am leaving your number with him as he has agreed to talk with you about David Gagnon.

I believe he will try and call sometime tomorrow.

Paul

Oh and I know that nothing that happened right after the incident makes any difference as to the validity of the injuries but David's conduct immediately after the incident does show his lack of moral values for other humans and what he was willing and was not willing to do to help me get medical help. For his actions towards me or any other human being is enough to sue the shit out him alone. It is the things that happened afterwards that upset me the most.

Sorry for the rant but Dave was a complete ass all the way and deserves this.

Paul Dulberg 847-497-4250 Sent from my iPad



The Law Offices of Thomas J. Popovich P.C.

3416 W. ELM STREET

McHenry, Illinois 60050 Telephone: 815.344.3797

FACSIMILE: 815.344.5280

www.popovichlaw.com

Mark J. Vogo James P. Tutaj Robert J. Lumber Theresa M. Freeman

THOMAS J. POPOVICH HANS A. MAST JOHN A. KONNAK

January 24, 2014

Paul Dulberg 4606 Hayden Court McHenry, IL 60051

RE:

Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire McHenry County Case: 12 LA 178

Dear Paul:

Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Thank you for your cooperation.

Very truly yours,







<u>Waukegan Office</u> 210 North Martin Luther King Jr. Avenue Waukegan, IL 60085

GENERAL RELEASE AND SETTLEMENT AGREEMENT

NOW COMES PAUL DULBERG, and in consideration of the payment of Five-Thousand (\$5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22nd Judicial Circuit, McFienry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants, Cause No. 2012 LA 178, and that this settlement is contingent upon WILLIAM McGUIRE and CAROLYN McGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/0.01, et seq.

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

	Tames 1 4		(etti
***	1 Was not 63	or older on the date of th	
		A A A MACE ON THE CHARGE OF THE	© Occurrence

- I was not receiving SSI or SSDI on the date of the occurrence.
- I am not eligible to receive SSI or SSDI.
- I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

- That any subrogated claims or liens for medical expenses paid by or on a. behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.
- Ь, That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released

That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, heirs and successors of

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the dates set forth below.

Dated:			
PAUL DULBERG			
STATE OF ILLINOIS) SS. COUNTY OF MCHENRY) SS. PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.			
Dated this day of January, 2014,			
Notary Public			

From: Paul Dulberg <pdulberg@comcast.net>

Subject: Fwd: McGuire settlement

Date: December 28, 2016 10:21:55 AM CST

To: paul_dulberg@comcast.net

From: Paul Dulberg comcast.net>
Date: January 29, 2014 at 1:59:31 PM CST
To: Hans Mast chansmast@comcast.net>
Subject: Re: McGuire settlement

Ok, it's signed and in the mail.

Hope that some yahoo in the govt, doesn't someday decide to go after everyone they think they might get a dollar out of and end up holding me responsible for the McGuires fees incurred while they fight it out.

I'm not in the business of warranting, insuring or protecting the McQuires from government. Especially for only 5 grand. For that kind of protection it could cost millions but I trust your judgement.

Paul

Paul Dulberg 847-497-4250 Sent from my iPad

On Jan 29, 2014, at 11:49 AM, Hans Mast < hansmast@comcast.net > wrote:

SSD has to be part of it...its not going to effect anything... We can't prevent disclosure of the amount...

---- Original Message ----

From: Paul Dulberg comcast.net>
To: Hans Mast <hansmast@comcast.net>
Sent: Wed, 29 Jan 2014 17:47:39 -0000 (UTC)

Subject: Re: McGuire settlement

What and why do those questions have any relevance at all and why do they need to be part of this agreement?

Particularly the one about being eligible.

Also, I cannot warranty against what SSDI, Medicare or any other government institution wishes to do.

Is it possible to make this agreement blind to the McGuires or David Gagnon?

What I mean is can we make it so that the amount of money cannot be told to them in any way?

It would drive David's ego crazy if he thought it was a large sum and was banned from seeing how much it is.

Paul Dulberg 847-497-4250

Sent from my iPad

On Jan 29, 2014, at 10:51 AM, Hans Mast < hansmast@comcast.net > wrote:

Its not a big deal...if you weren't receiving it than don't check it...not sure what the question is...

---- Original Message -----

From: Paul Dulberg cpdulberg@comcast.net>
To: Hans Mast <hansmast@comcast.net>
Sent: Wed, 29 Jan 2014 16:16:04 -0000 (UTC)

Subject: McGuire settlement Here is a copy of the first page.

It has check boxes and one of the check boxes says;

I am not eligible to receive SSI or SSDI.

Another says;

1 am not receiving SSI or SSDI.

As you know, I have applied for SSDI and SSI



291

From: Paul Dulberg <pdulberg@comcast.net>

Subject: Fwd: Memo

Date: December 27, 2016 6:11:20 PM CST

To: paul_dulberg@comcast.net

From: Paul Dulborg pdulborg@comcast.net
Date: February 22, 2015 at 7:42:25 PM CST

To: Hans Mast < hansmast@att.net>

Subject: Re: Memo

To believe David's version of events you must believe I was committing suicide. Who in their right mind puts his arm into a chainsaw?

I figured you would cop out again...

Now I'm left wondering... How hard is it to sue an atty?

And yes I am and have been looking for someone who will take this case...

The issue of my word vs David Gagnons... Did he cut me or did I cut myself?

Of coarse he cut me.

Next issue please?

Paul Dulberg 847-497-4250 Sent from my iPad

On Feb 22, 2015, at 7:20 PM, Hans Mast < hansmast@att.net> wrote:

Paul I no longer can represent you in the case. We obviously have differences of opinion as to the value of the case. I've been telling you over a year now the problems with the case and you just don't see them. You keep telling me how injured you are and completely ignore that it doesn't matter if you passed away from the accident because we still have to prove that the defendant was at fault. While you think it is very clear - it is not. My guess is that seven out of 10 times you will lose the case outright. That means zero. That's why I have been trying to convince you to agree to a settlement. You clearly do not want to. There's only \$100,000 in coverage. Allstate will never offer anything near the policy limits therefore there's no chance to settle the case. The only alternative is to take the case to trial and I am not interested in doing that. I will wait for you to find a new attorney. I can't assist you any further in this case, Just let me know.

Sent from my iPhone

On Feb 22, 2015, at 7:14 PM, Paul Dulberg comcast.net wrote:

Let's not be harsh, We have a couple of weeks till dr Kujawa's billing arrives.

I agree showing me the memo is a good idea it's just not the accuracy I expected.

I know I'm being confrontative about all of this but let's face it, my working days are over let alone a career I have been building since I was in high school. My dreams of family are over unless I have enough to provide and pay for the care of children and a roof.

What's left for me?

Facebook, scrap booking, crafts, etc... A life of crap...

With ongoing pain and grip issues in my dominate arm/hand that are degenerative.

This is as total as it gets for us in the working class short of being paralyzed or dead.

I need someone who is on my side, top of their game and will see to it that I'm comfortable after all this is over.

What I feel is an attempt to settle for far less than this is remotely worth just to get me off the books.





Binding Mediation Award

Paul Dulberg ADR Systems File # 33391BMAG David Gagnon

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, it. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement-themediator finds as follows:

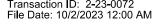
Paul Dulberg Finding in favor of: Gross Award: Comparative fault: % (if applicable) Net Award:

Comments/Explanation

The Hongrable James P. Etchingham, (Ret.)

ADR Systems + 20 North Clark Street + Floor 25 + Chicago, IL 60602 312.960.2260 · Info@adrsystems.com · www.adrsystems.com







Jeffrey H. Kaplan, Clerk of the Court APPELLATE COURT 2ND DISTRICT

SC

No. 2-23-0072

IN THE APPELLATE COURT OF ILLINOIS SECOND JUDICIAL DISTRICT

PAUL R. DULBERG,) Appeal from the Circuit Court of the
) 22 nd Judicial Circuit, McHenry County,
) Illinois
Plaintiff-Appellant) Relief Sought: Appellant's Brief Due Date Extended
) to December 29, 2023/Allow Appellant to Amend
) his Docketing Statement to Include Related
) Cases/Order the Clerk of the 22 nd Judicial Circuit to
) Amend the Record on Appeal to Include All
	Missing Documents and Hyperlinks at No
	Additional Cost to Appellant and to Include an
	Affidavit of Completeness & Certification /Allow
	Appellant to Request the Record On Appeal for All
	Related Cases /To File a Brief In Excess Of The
	Prescribed Page Limits
)
HANS MAST and the LAW OFFICES OF	
THOMAS J. POPOVICH, P.C.)
,)
Defendants-Appellees)
) Honorable Joel D. Berg, Judge Presiding
) Date of Notice of Appeal March 3, 2023
) Date of Judgment February 1, 2023, 2017 LA 000377
) Date of Post judgment Motion Order: None
) Circuit Court 2017LA000377
) Circuit Court 201/LA0003//

AMENDED THIRD MOTION FOR EXTENSION OF TIME TO FILE APPELLANT"S BRIEF and MOTION TO ALLOW APPELLANT TO AMEND HIS DOCKETING STATEMENT TO INCLUDE RELATED CASES / TO ORDER THE CLERK OF THE 22nd JUDICIAL CIRCUIT TO AMEND HER REPORT ON APPEAL TO INCLUDE ALL MISSING DOCUMENTS AND HYPERLINKS AT NO ADDITIONAL COST TO APPELLANT AND TO INCLUDE AN AFFIDAVIT OF COMPLETENESS & CERTIFICATION /ALLOW APPELLANT TO REQUEST THE RECORD ON APPEAL FOR ALL RELATED CASES/ TO FILE A BRIEF IN EXCESS OF THE PRESCRIBED PAGE LIMITS ALL PURSUANT TO SUPREME COURT RULES 323(b), 329, 341(b), 343(c), 361, 366(a)(3) and (a)(5), 608.

(Civil)

Plaintiff-Appellant Paul R Dulberg (Appellant) moves this Honorable Court for an EXTENSION OF TIME TO FILE APPELLANT"S BRIEF and MOTION TO ALLOW APPELLANT TO AMEND HIS DOCKETING STATEMENT TO INCLUDE RELATED CASES / TO ORDER THE CLERK OF THE 22nd JUDICIAL CIRCUIT TO AMEND THE RECORD ON APPEAL TO INCLUDE ALL MISSING DOCUMENTS AND HYPERLINKS AT NO ADDITIONAL COST TO APPELLANT AND TO INCLUDE AN AFFIDAVIT OF COMPLETENESS & CERTIFICATION /ALLOW APPELLANT TO REQUEST THE RECORD ON APPEAL FOR ALL RELATED CASES/ TO FILE A BRIEF IN EXCESS OF THE PRESCRIBED PAGE LIMITS ALL PURSUANT TO SUPREME COURT RULES 323(b), 329, 341(b), 343(c), 361, 366(a)(3) and (a)(5) and 608. and in support of said motion states as

follows:

I. APPELLANT'S AMENDED MOTION FOR AN EXTENSION OF TIME TO FILE APPELLANT'S BRIEF

- 1. On September 28, Plaintiff's Attorney spoke with Appellees' Attorney indicating the nature of this Motion, to which Appellees' Attorney indicated a need to contact his clients regarding any objection to the Motion. Appellees' Attorney stated that he would get back to me as soon as the Appellees decide, and Appellees Attorney's response is attached to this Amended Motion as Appellant's Exhibit A. Appellees object to all relief requested in this Amended Motion and counter with no objection to a 21-day extension to file Appellant's Brief. (III. S. Ct. 361(a) and Local Rule Article 1 General Rules 102(b). Please see Appellants Exhibit A attached)
- Appellant's Attorneys also e-mailed a copy of this Amended Motion to Appellees'
 Attorneys before filing it.
- 3. The number of days previously requested is 120, the number of days previously granted is 120, and the total number of days is 120. (Local rule 104 (a)(1))
- 4. The total number of days requested, and the total number of days granted to other parties

- are (0) none. (Local Rule 104(a)(2))
- 5. The number of days that will have elapsed from the date of filing of the Notice of Appeal to the date that the case will be ready for disposition is three hundred forty-nine days.

 (Local Rule 104(a)(3), Local Rule 106(b) and Local Rule 108(a) & (b))
- 6. Appellant filed his Notice of Appeal on March 3, 2023.
- 7. The Record on Appeal was filed on April 24, 2023 and made available for download on April 25, 2023.
- 8. Appellant's Brief due date was first extended sixty days by this Honorable Court to July 31, 2023.
- 9. Appellant's Brief due date was thereafter extended a second time by this Honorable Court to September 29, 2023.
- 10. Sixty days is insufficient to prepare and file Appellant's Brief for the following reasons:
- (a) The record on appeal consists of three volumes totaling 2,660 pages;
- (b) Appellant requested the entire record be prepared, but Appellant's attorney has discovered missing Report of Proceedings, mismatched sections, documents with only one of the Defendants' names where it should be all, Memorandums of Law where the body of the motions should be, violations of the Supreme Court of Illinois Standards and Requirements for Electronic Filing the Record on Appeal (Revised- Effective March 1, 2022) regarding §1. Definitions (i) Hyperlink ... and so on. (Investigation Continues.)
- (c) Appellant's attorney has made extensive efforts to have Appellant's Brief ready for filing by the September 29, 2023 considering the above listed problems and his Court hearing/filing schedule on April 25, 2023 case # 2021P008775 Public Administrator's

motion, May 4, 2023 case # 2022L010905 where he argued a "Motion for a Special Order" and additionally he had to brief two separate 735 ILCS 5/2-619.1 motions and a Separate 735 ILCS 5/2-615 motion for hearings on May 25, 2023 and July 31, 2023, resolve a dispute regarding an order to be entered on May 4, 2023 where the Honorable Judge declined to choose between proposed orders and there wasn't a Court Reporter present, drafting and filing/serving case # 2023CH04351 on May 2, 2023 a Complaint for Declaratory Judgment with an expiring Statute of Limitations against a municipal corporation and twenty-one additional defendants and two emergency personal problems as previously stated in support of Appellant's first Motion for Extension of Time. Subsequent to the filing of Appellant's initial Motion for Extension of Time the following court schedule required Appellant's Attorney's preparation and appearances: May 31, 2023 The Estate of Hutchinson, Deceased 19PR000098 continuing after remand from the Illinois Appellate Court, 2nd District for further proceedings; Dulberg v. Baudins et al 2022L010905 drafting and filing Response to Defendants' 735 ILCS 2-619.1 Motions to Dismiss; Dulberg v. Olsen Notice of Supreme Court rule 304(a) Appeal First District 1-23-1142 on June 26, 2023; (on June 28, 2023 a traumatic personal event that was experienced by Appellant Paul R. Dulberg" attorney that continues to the filing of this Second Motion for Extension of Time and onward (Please see below); preparation for a sur-response in Dulberg v. Baudins et al; preparation for an Amended Complaint and Response for a Motion for Summary Judgment due with an appearance July 31, 2023 in 2022L010905, Court Appearance on July 20, 2023 two separate Defendants' 735 ILCS 5/2-615 Motions to Dismiss Case 2023CH 04351, First District, Kost v. Village of Mt. Prospect et al; August 22, 2023 The Estate of Hutchinson,

Deceased 19PR000098 Hearing and Decision on Motion to Reconsider; August 29, 2023

Dulberg v. Baudins et al 2022L010905 Hearing on Defendants' 735 ILCS 2-619.1 Motions to

Dismiss; September 18, 2023 Dulberg v. Baudins et al 2022L010905 drafting, filing, and serving

Plaintiffs' 7 page 735 ILCS 5/2-1005(c) Counter-Affidavit; throughout the second 60 days

consulting and advising client regarding his allegations of custodial parent's child abuse based

upon 2015D007566; consulting and advising client regarding his allegations of wrongful taking

without personal jurisdiction based upon 2017M1108676; September 21, 2023 Hearing on

Motion for Summary Judgment, Dulberg v. Baudins et al 2022L010905; September 26, 2023

The Estate of Hutchinson, Deceased 19PR000098 Hearing Motion to Compel.

(d) Appellant's Attorney traumatic ongoing event that began on June 28, 2023 and continues. On June 28, 2023 Appellant's Attorney's Fiancée entered the airport in Manila, Philippines to take a flight to the United States to meet with future family, current friends, and Appellant's Attorney. The schedule flight was to stop in Tokyo, Japan for a short lay over then on to O'Hare International Airport (ORD) Illinois. June 28, 2023 in the Manilla, Philippines was the last time anyone has seen or heard from her. She did not arrive at O'Hare and a cooperative customs agent told Appellant's Attorney that she was not being detained by customs in the United States and upon further investigation stated she was not on the passenger manifest of the connecting flight in Tokyo, Japan. Subsequently, the Embassies in both countries were contacted, an international investigation firm was hired that did not produce any information and resigned after over a month of investigations and local government personnel began an independent investigation that was also fruitless.

It was thereafter discovered that the Japanese customs and criminal police had confiscated her ticket from Tokyo, Japan to the United States and then obtained an air ticket back to the

Philippines that she was forced to use.

The stress of an active practice coupled with the stress of a missing loved one for over 27 days, who was finally discovered to be detained in a Japanese jail, having been handcuffed and weighted leg chained, hair involuntarily cut, forced interrogations for 72 hours without the right to have legal counsel or contact with family or friends, put on trial and released as not guilty but with all personal property and money retained to be returned in the future, that Appellant's Attorney is still attempting to have returned, through first contacting the Japanese Embassy in Tokyo, Japan and thereafter the Philippine Embassy in Japan affected Appellant's Attorney in many negative ways.

11. Appellant is a sole practitioner and has no full-time staff to help in the preparation of Appellant's Brief.

II. APPELLANT'S AMENDED MOTION TO ALLOW APPELLANT TO AMEND HIS DOCKETING STATEMENT BY INCLUDING A STATEMENT OF RELATED CASE

- 12. Appellant's Attorney used and filed the approved Illinois Supreme Court Docketing Statement (Civil) form DS-S 4603.2 but failed to add the required Related-case statement (RULES OF THE ILLINOIS APPELLATE COURT, SECOND DISTRICT October 4, 2022 Rule 113)
- 13. Appellant's Attorney believes that a full and complete understanding of the issues rulings and decisions cannot be properly presented to this Honorable Court without the underlying case and current pending related cases.
- 14. Appellant's Attorney affirmatively states that this error was inadvertent and that Appellant's case and this Honorable Courts complete understanding of this matter which began on June 28, 2011 and continues through the date of the filing

of this Motion requires the addition of documents from said related cases.

- 15. The related cases are as follows:
- a) 2012LA000326 MCDONALD JULIE ESTATE OF VS POPOVICH THOMAS
- J. LAW OFFICES, ET AL CLOSED
- b) 2012LA000178 DULBERG, PAUL VS GAGNON, DAVID, ET AL CLOSED
- c) 2022L010905 Dulberg ET AL VS BAUDIN, KELLY N., ET AL:
- c1) Defendant ADR Systems of America, L.L.C. dismissed;
- c2) the "Olsen Defendants" combined Motion to Dismiss pursuant to 735 ILCS 5/2-619.1 was granted on May 25, 2023 and a Rule 304(a) Appeal is pending 1-23-1142;
- C3) the "Baudin Defendants" Motion to Dismiss was granted on Statute of Limitations grounds only on August 29, 2023;
- c4) Defendant Allstate Property and Casualty Insurance Company Motion for Summary Judgment was granted on September 21, 2023;
- d) In re: DULBERG, PAUL R. Debtor, UNITED STATES BANKRUPTCY COURT,
 NORTHERN DISTRICT OF ILLINOIS, WESTERN DIVISION Case 14-83578
 CLOSED
- e) NORTHERN DISTRICT OF ILLINOIS, WESTERN DIVISION Paul Dulberg v. Carolyn Colvin, No. 15C50219
- III. APPELLANT'S AMENDED MOTION TO ORDER THE CLERK OF THE 22nd JUDICIAL CIRCUIT TO AMEND THE RECORD ON APPEAL TO INCLUDE ALL MISSING DOCUMENTS AND HYPERLINKS AT NO ADDITIONAL COST TO APPELLANT AND TO INCLUDE AN AFFIDAVIT OF COMPLETENESS & CERTIFICATION

- 16. As first stated in Appellant's Second Motion for Extension of Time to file Appellant's Brief, a major obstacle to preparing said Brief was the problems caused by the Record on Appeal being improperly prepared by the Clerk of the 22nd Judicial Circuit.
- 17. In Appellant's Second Motion for Extension of Time to file Appellant's Brief the discovered problems were exposed: Appellant requested the entire record be prepared, but Appellant's attorney has discovered missing Report of Proceedings; mismatched sections; documents with only one of the Defendants' names where it should be all; Memorandums of Law where the body of the motions should be; violations of the Supreme Court of Illinois Standards and Requirements for Electronic Filing the Record on Appeal (Revised- Effective March 1, 2022) regarding §1. Definitions (i) Hyperlink-... and so on. (Investigation Continues.) (Please see Appellant's Second Motion for Extension of Time to file Appellant's Brief Sections 9(a) and 9(b).
- 18. Appellant's attorney has diligently attempted to discover all the errors in the Record on Appeal but has concluded that he neither has the hours or resources to produce a complete rendering of said errors.
- 19. The Clerk of the 22 Judicial Circuit has the complete record at her disposal and the staff to properly prepare the requested complete Record on Appeal.
- 20. The Clerk of the 22 Judicial Circuit should be ordered to prepare the complete record with all Reports of Proceeding and all hyperlinks, all documents ... that equates a complete Record on Appeal and to certify not only the Records submitted but a certification that states affirmatively that the entire file is includer or to list what has been destroyed or lost.
- 21. This amended Record on Appeal should be done at the Clerk's expense as the preparation of the Record on Appeal is one of her tasks and Appellant has already paid an extensive amount for

what she has already submitted.

IV. ALLOW APPELLANT TO REQUEST THE RECORD ON APPEAL FOR ALL RELATED CASES

22. Appellant believes that an ORDER from this Honorable Court would be viewed by other Clerks of Court in order to obtain their cooperation in submitting a Record on Appeal that would give this Honorable Court a complete picture of not only this case but all related cases also.

V. ALLOW APPELLANT TO FILE A BRIEF IN EXCESS OF THE PRESCRIBED PAGE LIMITS

23. Appellant reasonably believes that the current page limit will be inadequate to inform this Honorable Court of all the issues that support his position.

Wherefore, Plaintiff-Appellant prays that this Honorable Court recognize Plaintiff-Appellant's Attorney good faith and extensive efforts to comply with the extended briefing schedules, the problems caused by the Record on Appeal based on its page size and the errors by the Clerk of the 22nd Judicial Circuit in preparation of the Record on Appeal, grant Appellant a 90-day extension of time to file Appellant's Brief, allow Appellant to amend his Docketing Statement to include related cases, order the Clerk of the 22nd Judicial District to amend the Record on Appeal to include all missing documents and hyperlinks, at no additional cost to Appellant and to include an affidavit of completeness and the required certification, allow Appellant to Request the Record on Appeal for all related cases, file Appellant's Brief in excess of the prescribed page limits, and for any and all additional relief this Honorable Court deems equitable and just..

Dated: October 1, 2023 Respectfully submitted,

By: /s/ Alphonse A. Talarico
ARDC 6184530
707 Skokie Boulevard suite 600
Northbrook, Illinois 60062
(312) 808-1410
contact@lawofficeofalphonsetalarico.com

VERIFICATION BY CERTIFICATION PURSUANT TO SECTION 1-109

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

same to be true.

/s/ Alphonse A. Talarico

PROOF OF DELIVERY

I am sending this Amended Motion for Extension of Time to File Appellant's Brief, Proposed Order and Notice of Filing to George K. Flynn and Michelle M. Blum, Karbal Cohen Economou Silk Dunne, LLC., 200 S Wacker Drive, Suite 2550, Chicago, Illinois 60606, Tel: (312) 431-3700, Fax: (312) 431-3670, gflyn@karballaw.com, mblum@karballaw.com by an approved electronic filing service provider (EFSP) on October 1, 2023 at 4:30 p.m.

I certify that everything in the *Proof of Delivery* is true and correct. I understand that a false statement herein is perjury and has penalties provided by law under 735 ILCS 5/1-109.

Dated: October 1, 2023

/s/ Alphonse A. Talarico
ARDC 6184530
707 Skokie Boulevard suite 600
Northbrook, Illinois 60062
(312) 808-1410
contact@lawofficeofalphonsetalarico.com



Alphonse Talarico <alphonsetalarico@gmail.com>

EXHIBIT A

Dulberg v. Popovich

1 message

George K. Flynn <gflynn@karballaw.com>
To: Alphonse Talarico <alphonsetalarico@gmail.com>
Co: "Michelle M. Blum" <mblum@karballaw.com>

Fri, Sep 29, 2023 at 11:28 AM

Dear Mr. Talarico:

Please let this confirm that I received your voicemail message on September 28, 2023, requesting certain relief, followed by our brief telephone discussion of the same day. Please be advised that I am authorized to agree to a final 21 day extension for the filing of Dulberg's brief on appeal. However, we object to the additional relief outlined in your voicemail message.

Please feel free to contact me if you have any questions regarding this matter.

Best regards,

George K. Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC 200 S. Wacker Drive Suite 2550 Chicago, IL 60606

P: (312) 431-3622 F: (312) 431-3670

E: gflynn@karballaw.com

CONFIDENTIALITY NOTE:

This electronic message transmission contains information from the law firm of Karbal, Cohen, Economou, Silk & Dunne, LLC. which may be confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, please immediately delete this e-mail and be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited.



No. 2-23-0072

SC

IN THE APPELLATE COURT OF ILLINOIS SECOND JUDICIAL DISTRICT

PAUL R. DULBERG,) Appeal from the Circuit Court of the) 22 nd Judicial Circuit, McHenry County,) Illinois
Plaintiff-Appellant)))
HANS MAST and the LAW OFFICES OF THOMAS J. POPOVICH, P.C.))
Defendants-Appellees) Honorable Joel D. Berg, Judge Presiding)Date of Notice of Appeal March 3, 2023)Date of Judgment February 1, 2023)Date of Post judgment Motion Order: None

NOTICE OF FILING THIRD AMENDED MOTION FOR EXTENSION OF TIME TO FILE APPELLANT'S BRIEF

TO: George K. Flynn and Michelle M. Blum Karbal Cohen Economou Silk Dunne, LLC 200 S Wacker Drive, Suite 2550 Chicago, Illinois 60606

Tel: (312) 431-3700, Fax: (312) 431-3670

gflyn@karballaw.com mblum@karballaw.com

PLEASE TAKE NOTICE that on October 1, 2023, the undersigned filed the NOTICE OF FILING THIRD AMENDED MOTION FOR EXTENSION OF TIME TO FILE APPELLANT'S BRIEF of Plaintiff-Appellant Paul R. Dulberg with the Clerk of the Appellate Court Second District, Illinois, a copy is hereby served upon you.

CERTIFICATE OF SERVICE BY ELETRONIC DELIVERY

I, Alphonse Talarico, an attorney, on oath state that I served the foregoing:

NOTICE OF FILING AMENDED MOTION FOR EXTENSION OF TIME TO FILE APPELLANT'S BRIEF upon counsel listed above by an approved electronic filing service provider (EFSP) on October 1, 2023 at 4:30 p.m.

/s/ Alphonse A. Talarico
ARDC 6184530
707 Skokie Boulevard suite 600
Northbrook, Illinois 60062
(312) 808-1410
contact@lawofficeofalphonsetalarico.com

VERIFICATION BY CERTIFICATION PURSUANT TO SECTION 1-109

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

/s/ Alphonse A. Talarico



ILLINOIS APPELLATE COURT SECOND DISTRICT

55 SYMPHONY WAY ELGIN, IL 60120 (847) 695-3750

October 10, 2023

Alphonse A. Talarico Law office of Alphonse Talarico 707 Skokie Blvd., #600 Northbrook, IL 60062

RE: Dulberg, Paul R., v. Mast, Hans, et al.

Appeal No.: 2-23-0072 County: McHenry County Trial Court No.: 17LA377

The court has this day, October 10, 2023, entered the following order in the above entitled case:

Appellant's motion for an extension of time to file the opening brief is granted in part, and the brief is due November 3, 2023. Absent extraordinarily compelling circumstances, this date will not be further extended. Appellees' response brief is due December 8, 2023. Appellant's reply brief is due December 22, 2023.

Appellant's other requests for relief are denied pursuant to appellees' response.

Jeffrey H. Kaplan Clerk of the Court

cc: George Kenneth Flynn Michelle Marie Blum

lay H Kaplan

EXHIBIT 5 TO THE FIRM'S RESPONSE TO DULBERG'S EMERGENCY MOTION



E-FILED Transaction ID: 2-23-0072 File Date: 5/24/2023 1:01 PM

Jeffrey H. Kaplan, Clerk of the Court APPELLATE COURT 2ND DISTRICT

SC

No. 2-23-0072

IN THE APPELLATE COURT OF ILLINOIS SECOND JUDICIAL DISTRICT

PAUL R. DULBERG,) Appeal from the Circuit Court of the) 22 nd Judicial Circuit, McHenry County,) Illinois
Plaintiff-Appellant) Relief Sought: Appellant's Brief Due Date)Extended to July 31, 2023)
HANS MAST and the LAW OFFICES OF THOMAS J. POPOVICH, P.C.)
Defendants-Appellees))Honorable Joel D. Berg, Judge Presiding)Date of Notice of Appeal March 3, 2023)Date of Judgment February 1, 2023)Date of Post judgment Motion Order. None

FIRST MOTION FOR EXTENSION OF TIME TO FILE APPELLANT'S BRIEF (Civil)

Plaintiff-Appellant Paul R. Dulberg ("APPELLANT") moves this Honorable

Court for an extension of time to file Appellant's Brief to JULY 31, 2023 and in support of said motion states as follows:

1. On May 22, 2023 and before filing this motion, Plaintiff's attorney telephoned both attorneys representing the Defendants and left a voice mail message for each Indicating that I would be seeking an extension of time for filing the Appellant's brief for 60 days based upon various problems within the Record on Appeal and my other court hearings. I asked that if either had an objection, to please notify me so I could include the objection within this motion. (ISCR 361(a) and Local Rule Article 1

General Rules 102(b).

- 1a) I hereafter, Defendants' attorney left a voice and e-mail message indicating that they had no objection to the motion.
- 2. The number of days requested, the number of days granted and the total number of days is (0) none as this is Plaintiff's first request. (Local Rule 104 (a)(1))
- 3. The total number of days requested, and the total number of days granted to other parties are (0) none. (Local Rule 104(a)(2))
- 4. The number of days that will have elapsed from the date of filing of the notice of appeal to the date that the case will be ready for disposition is two hundred days.

(Local Rule 104(a)(3), Local Rule 106(b) and Local Rule 108(a) & (b))

- 5. Appellant filed his Notice of Appeal on March 3, 2023.
- 6. The Record on Appeal was filed on April 24, 2023 and made available for download on April 25, 2023 (Please see attached as Appellant's Exhibit A the Circuit Court Clerk's Certification of Record and Appellant's Exhibit B the Appellate Court Clerk's notification of availability.)
- Appellant's Brief is due for filing with the Clerk of the Appellate Court within 35 days from April 25, 2023 on May 30, 2023.
- 8. Thirty-five days is insufficient to prepare and file Appellant's Brief for the following reasons:
 - 8(a) The record on appeal consists of three volumes totaling 2,660 pages;
 - 8(b) Appellant requested the entire record be prepared, but Appellant's attorney has discovered missing report of proceedings, mismatched sections, documents with only one of the Defendants' names where it should be all,

Memorandums of Law where the body of the motions should be, violations of the Supreme Court of Illinois Standards and Requirements for Electronic Filing the Record on Appeal (Revised- Effective March 1, 2022) regarding §1. Definitions (i) Hyperlink-... and so on. (Investigation Continues.)

- 9. Appellant's attorney has made extensive efforts to have Appellant's Brief ready for filing by the May, 30, 2023 considering the above listed problems, his Court hearing schedule on April 25, 2023 case # 2021P008775 Public Administrator's motion, May 4, 2023 case # 2022L010905 where he argued a "Motion for a Special Order" and additionally he had to brief two separate 735 ILCS 5/2 619.1 motions and a separate 735 ILCS 5/2-615 motion for hearings on May 25, 2023 and July 31, 2023, resolve a dispute regarding an order to be entered on May 4, 2023 where the Honorable Judge declined to choose between proposed orders and there was no Court Reporter, drafting and filing/serving case # 2023CH04351 on May 2, 2023 a Complaint for Declaratory Judgment with an expiring Statute of Limitations against a municipal corporation and twenty-one additional defendants and two emergency personal problems.
- 10. Appellant is a sole practitioner and has no full-time staff to help in the preparation of Appellant's Brief.

Wherefore, Plaintiff-Appellant prays that this Honorable Court recognize Plaintiff-Appellant's Attorney good faith and extensive efforts to comply with the initial briefing Schedule, the problems caused by the Report on Appeal based on its page size and the errors by the Clerk of the Circuit Court in preparation of the Record on Appeal (and as additional relief consider ordering the Clerk to prepare an amended Record on

Appeal) and grant Appellant a minimum of 60 days up to and including July 31, 2023 to flle his Appellant's Brief and any and all additional relief this Honorable Court deems equitable and just.

Dated: May 24, 2023

Respectfully submitted,

By: /s/ Alphonse A. Talarico
ARDC 6184530
/0/ Skokie Boulevard suite 600
Northbrook, Illinois 60062
(312) 808-1410
contact@lawofficeofalphonsetalarico.com

VERIFICATION BY CERTIFICATION PURSUANT TO SECTION 1-109

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

_/s/ Alphonse A. Talarico



E-FILED Transaction ID: 2-23-0072 File Date: 5/24/2023 1:01 PM

Jeffrey H. Kaplan, Clerk of the Court APPELLATE COURT 2ND DISTRICT

PROOF OF DELIVERY

SC

I am sending this Motion for Extension of Time to File Appellant's Brief, Exhibits A and B, Proposed Order and Notice of Filing to George K. Flynn and Michelle M. Blum, Karbal Cohen Feonomou Silk Dunne, LLC, 200 S Wacker Drive, Suite 2550, Chicago, Illinois 60606, Tel (312) 431-3700, Fax: (312) 431-3670, gflyn@karballaw.com, mblum@karballaw.com by an approved electronic filing service provider (EFSP) on May 24, 2023 at 4:30 p.m.

I certify that everything in the *Proof of Delivery* is true and correct. I understand that a false statement herein is perjury and has penalties provided by law under 735 ILCS 5/1-109.

Dated: May 24, 2023

/s/ Alphonse A. Talarico
ARDC 6184530
707 Skokie Boulevard suite 600
Northbrook, Illinois 60062
(312) 808-1410
contact@lawofficeofalphonsetalarico.com

APPEAL TO THE APPELLATE COURT OF ILLINOIS

SECOND JUDICIAL DISTRICT

FROM THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

DULBERG, PAUL

Plaintiff/Petitioner

Reviewing Court No: 2-23-0072 Circuit Court/Agency No: 2017LA000377 Trial Judge/Hearing Officer: JOEL D BERG

v.

MAST, HANS ET AL

Defendant/Respondent

E FILED
Transaction ID: 2-23-0072
File Date: 4/24/2023 10:00 AM
Jeffrey H. Kaplan, Clerk of the Court
APPELLATE COURT 2ND DISTRICT

CERTIFICATION OF RECORD

The record has been prepared and certified in the form required for transmission to the reviewing court. It consists of:

- 2 Volume(s) of the Common Law Record, containing 2148 pages
- 1 Volume(s) of the Report of Proceedings, containing 512 pages
- 0 Volume(s) of the Exhibits, containing 0 pages

I hereby certify this record pursuant to Supreme Court Rule 324, this 21 DAY OF APRIL, 2023



Katherine M. Keefe

(Clerk of the Circuit Court or Administrative Agency)



ILLINOIS APPELLATE COURT SECOND DISTRICT

55 SYMPHONY WAY ELGIN, IL 60120 (847) 695-8750

April 25, 2023

Alphonse A. Talarico Law office of Alphonse Talarico 707 Skokie Boulevard, #600 Northbrook, IL 60062

RE: Dulberg, Paul R., v. Must, Hans, et al.

Appeal No.: 2-23-0072 County: McHenry County Trial Court No.: 17LA377

The electronic record on appeal in the above case has been filed. In most cases, you may access all sections of the electronic record at https://researchil.tylerhost.net. In any other case, a link to the appropriate section(s) of the electronic record will be e-mailed to you from no-reply@efilingmail.tylertech.cloud. (Please ensure that you are a service contact in Odyssey eFileIL.) The court hereby orders briefing due dates as follows:

Appellant's brief due:

05/30/2023

Appellee's brief due:

07/05/2023

Appellant's reply brief due: (Ill. S. Ct. Rs. 341, 342, 343)

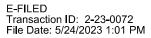
07/18/2023

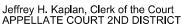
Jeffrey H. Kaplan Clerk of the Court

cc:

George Kenneth Flynn Michelle Marie Blum









SC

No. 2-23-0072

IN THE APPELLATE COURT OF ILLINOIS SECOND JUDICIAL DISTRICT

PAUL R. DULBERG,) Appeal from the Circuit Court of the) 22 nd Judicial Circuit, McHonry County,) Illinois
Plaintiff-Appellant)))
HANS MAST and the LAW OFFICES OF THOMAS J. POPOVICH, P.C.)))
Defendants-Appellees))Honorable Joel D. Berg, Judge Presiding)Date of Notice of Appeal March 3, 2023)Date of Judgment February 1, 2023)Date of Post judgment Motion Order: None

NOTICE OF FILING MOTION FOR EXTENSION OF TIME TO FILE APPELLANT'S BRIEF

TO: George K. Flynn and Michelle M. Blum Karbal Cohen Economou Silk Dunne, LLC 200 S Wacker Drive, Suite 2550 Chicago, Illinois 60606 Tel: (312) 431-3700, Fax: (312) 431-3670 gflyn@karballaw.com mblum@karballaw.com

PLEASE TAKE NOTICE that on May 24, 2023, the undersigned filed the NOTICE OF FILING MOTION FOR EXTENSION OF TIME TO FILE APPELLANT'S BRIEF of Plaintiff-Appellant Paul R. Dulberg with the Clerk of the Appellate Court Second District, Illinois, a copy is hereby served upon you.

CERTIFICATE OF SERVICE BY ELETRONIC DELIVERY

I, Alphonse Talarico, an attorney, on oath state that I served the foregoing.

NOTICE OF FILING MOTION FOR EXTENSION OF TIME TO FILE APPELLANT'S BRIEF upon counsel listed above by an approved electronic filing service provider (EFSP) on May 24, 2023 at 4:30 p.m.

/s/ Alphonse A. Talarico
ARDC 6184530
707 Skokie Boulevard suite 600
Northbrook, Illinois 60062
(312) 808-1410
contact@lawofficeofalphonsetalarico.com

VERIFICATION BY CERTIFICATION PURSUANT TO SECTION 1-109

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

/s/ Alphonse A. Talarico

IN THE CIRCUIT COURT OF TH	IE TWENTY-S	ECOND JUDICIAL	CIRCUIT
MCHENRY	COUNTY, IL	LINOIS	KATHERINE M. KEEFE
PAUL DULBERG,)		Clerk of the Circuit Court
	Ś		****** FILED ******
Plaintiff,)		12/21/2022 1:26 PM
vs.)	No. 17 LA 377	McHenry County, Illinois
)		22nd Judicial Circuit
THE LAW OFFICES OF THOMAS J.	ý		******
POPOVICH, P.C., and HANS MAST,)		
)		
Defendants.			
	ORDER		

This matter coming to be heard on Plaintiff's Second Amended Motion to Exclude the Deposition of Hans Mast and For Leave to Take the Discovery Deposition of Hans Mast, the court having read the Second Amended Motion, Defendants' Response and Plaintiff's Reply and having heard oral argument, it is hereby ordered:

- Plaintiff's motion to exclude and to take the deposition of Hans Mast is denied in its entirety, including all relief sought in the Second Amended Motion and Reply, and Plaintiff's oral motion made during hearing to supplement the record with an audio recording of the Hans Mast deposition.
- 2) The October 17, 2022 briefing order on Defendants' Motion for Summary Judgment stands with hearing set for February 1, 2023 at 10:00 a.m.

Zoom information for Room 201:

Link: https://zoom.us/my/mchenrycourtroom201;

Meeting ID: 272-959-8070

Personal Link Name: mchenrycourtroom201;

Password: no password required

EXHIBIT 7 TO THE FIRM'S RESPONSE TO DULBERG'S EMERGENCY MOTION

Prepared by: 12/21/2022

Atty. No. George K. Flynn/ARDC No. 6239349

Name: Karbal, Cohen, Economou, , 2022

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Thomas A. Meyer

Judge Judge's No.

Thomas Meyer

CLERK OF CIRCUIT COURT OF MCHENRY COUNTY

** FILED ** Env: 20425983 McHenry County, Illinois 2017LA000377 Date: 11/23/2022 12:21 PM Katherine M. Keefe

Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
Plaintiff,)))
V.)) Case No. 17 LA 377
THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST)
Defendants.)

PLAINTIFF'S 2ND AMENDED MOTION TO EXCLUDE THE DEPOSITION OF DEFENDANT HANS MAST TAKEN IN VIOLATION OF SUPREME COURT RULE 206 h(2) REMOTE ELECTRONIC MEANS DEPOSITIONS and ORDERS OF THE ILLINOIS SUPREME COURT In re: ILLINOIS COURTS RESPONSE to COVID-19 EMERGENCY/IMPACT ON DISCOVERY M.R.30370 CORRECTED ORDER APRIL 29, 2020 and M.R.30370 AMENDED ORDER JUNE 4, 2020 and to GRANT LEAVE TO TAKE THE DISCOVERY DEPOSITION OF DEFENDANT HANS MAST

Now Comes Plaintiff Paul Dulberg, by and through his attorney Alphonse A.

Talarico, and for his Motion To Exclude the Discovery Deposition of Defendant Hans

Mast taken in violation of Supreme Court Rule 206 h(2) and Supreme Court Orders

states as follows:

RELEVANT FACTS

1) On June 25, 2020 the Discovery Deposition of Defendant Hans Mast was taken pursuant to a non-filed notice (violation waived) but all 15 exhibits and the questioning

EXHIBIT 8 TO THE FIRM'S RESPONSE TO DULBERG'S EMERGENCY MOTION

of deponent Hans Mast based upon all 15 exhibits violated the Rules and Orders of the Illinois Supreme Court.

- 2) Plaintiff first learned of the aforesaid violations during a hearing on April 27, 2022 when the Honorable Judge Thomas A. Meyer was sent the hard copy of said deposition without any exhibits from Defendants' Attorney's office and the exhibits 1-11 and 13-15 from the Plaintiff's current Attorney's office. (Please see Report of Proceedings April 27, 2022 page 2 line 23-24 and page 4 line 7-9 which is part of the Clerk's online file)
- 3) Plaintiff's current Attorney objected to the use of the discovery deposition of Defendant Hans Mast during the hearing because there's exhibit(s) missing. (Please see Report of Proceedings April 27, 2022 page 31 line 21-24 which is part of the Clerk's online file)
- 4) Plaintiff's current Attorney more completely explained to the Court that the discovery deposition of Hans Mast in all its variations was missing exhibit 12. (Please see Report of Proceedings April 27, 2022 page 36 line 19-24 to page 37 line 1-3 which is part of the Clerk's online file)
- 5) Thereafter this Honorable Court asked Defendants' Attorney whether he had exhibit 12. (Please see Report of Proceedings April 27, 2022 page 37 line 19-20 which is part of the Clerk's online file)
- 6) The Attorney for the Defendants responded "I may. I don't know. I haven't look for it." (Please see Report of Proceedings April 27, 2022 page 37 line 20-21 which is part of the Clerk's online file)

- 7) This Honorable Court ordered Defendants' Attorney to produce exhibit 12 if he has it. (Please see Report of Proceedings April 27, 2022 page 39 line 16-21 which is part of the Clerk's online file)
- 8) On April 28, 2022 Plaintiff's current Attorney received an email from Defendants' Attorney's office with a link at https://www.dropbox.com to access Mast Dep Ex.12. (Please see Plaintiff's Exhibit #1 attached)
- 9) Plaintiff's current Attorney noticed that the label purporting to be authentic on Hans Mast's discovery deposition exhibit 12 seemed not to match the other 14 exhibit label as to fonts, shape, color, and DEPONENT's NAME (Hans Mist not Hans Mast).
- 10) On May 18, 2022 Plaintiff's current Attorney caused to be served upon Certified Shorthand Reporter Barbara G. Smith a Subpoena For Records in which she was requested to produce "The original discovery deposition of Hans Mast taken in this matter on June 25, 2020 including all pages, all indexes, all exhibits and all stenographic/shorthand notes."
- 11) Certified Shorthand Reporter Barbara G. Smith's complete response submitted on a flash drive was received on June 16, 2022.
- 12) Contained on the flash drive is a file titled HPSCANS and therein were a series of communications and handwritten notes between the Certified Shorthand Reporter Barbara G. Smith and Noelle Kappes of US Legal Support and Plaintiff's former attorney Julia C. Williams clearly indicating that Hans Mast discovery deposition taken June 25, 2020 did not have exhibit 12 sent before the deposition nor uploaded during the deposition and said exhibit was never in the Certified Shorthand Reporter Barbara G. Smith's possession before, during or after the deposition was taken, transcribed or

submitted for transmission. (Please see Plaintiff's Group Exhibit #2 Barbara G. Smith job papers0001.pdf and job papers0002.pdf attached)

13) Thereafter, on June 21, 2022 Plaintiff's current Attorney sent Hans Mast's discovery deposition taken on June 25, 2020 with exhibits 1-11 and 13-15, that were located in Plaintiff's former Attorney Julia C. Williams' electronic file with exhibit 12 received from Defendants' Attorney's office on April 28, 2022 with Barbara G. Smith's flash drive to Plaintiff's S. Ct. Rule 213(f)(3) expert Robin D. Williams, MFS, MS, D-BFDE Board Certified, Omni Document Examinations for analysis.

14) On July 11, 2022 Plaintiff's current Attorney received Robin D. Williams's Report of Findings concluding that the label on exhibit 12 did not come from the same group or batch of labels identified as exhibits 1-11 and 13-15. (Please see Plaintiff's Exhibit #3 Robin D. Williams Report of Findings July 11, 2022 attached)

15) On July 11, 2022 Plaintiff's current Attorney received an email from Defendants' Attorney stating that the Hans **MIST EMPHASIS ADDED** exhibit 12 alleged to be part of Defendant Hans Mast's discovery deposition was received separately from U.S. Legal Support by both his office and Plaintiff's former Attorney Julia Williams on July 14, 2020 while the Deposition and Exhibits 1-11 and 13-15 were received from U.S. Legal Support by both his office and Plaintiff's former Attorney Julia Williams on July 10, 2020. (Please see Plaintiff's Exhibit #4 attached)

LAW AND ORDER(S)

Illinois Supreme Court Rule 206. Method of Taking Depositions on Oral Examination

(h) Remote Electronic Means Depositions. Any party may take a deposition by telephone, videoconference, or other remote electronic means by stating in the notice **EMPHASIS ADDED** the specific electronic means to be used for the deposition, subject to the right to object. For the purposes of Rule 203, Rule 205, and this rule, such a deposition is deemed taken at the place where the deponent is to answer questions. Except as otherwise provided in this paragraph (h), the rules governing the practice, procedures and use of depositions shall apply to remote electronic means depositions. (1) Reserved. (2) **Any e hibits or other** demonstrative evidence to be presented to the deponent by any party at the deposition shall be provided to the officer administering the oath and all other parties within a reasonable period of time prior to the deposition, unless the deposition participants are able to view the e hibits in real time during the deposition. **EMPHASIS ADDED** (3) Reserved. (4) The party at whose instance the remote electronic means deposition is taken shall pay all costs of the remote electronic means deposition, unless otherwise agreed by the parties. (5) Time spent at a remote electronic means deposition in addressing necessary technology issues shall not count against the time limit for

the deposition set by Rule 206(d), by stipulation, or by court order. (6) No recording of a remote electronic means deposition shall be made other than the recording disclosed in the notice of deposition.

M.R.30370 CORRECTED ORDER APRIL 29, 2020

(Please see Plaintiff's Exhibit #5 attached)

M.R.30370 AMENDED ORDER JUNE 4, 2020

(Please see Plaintiff's Exhibit #6 attached)

ILCS / ro Ch. , par.

Sec. . Po er o co rts to a er les. a The S pre e

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(735 ILCS 5/1-105) (from Ch. 110, par. 1-105)

Sec. 1-105. Enforcement of Act and rules. The Supreme Court may provide by rule for the orderly and expeditious administration and enforcement of this Act and of the rules, including the striking of pleadings, the dismissal of claims, the entry of defaults, the assessment of costs, the assessment against an offending party of the reasonable expenses, including attorneys fees, which any violation causes another party to incur, or other action that may be appropriate. EMPHASIS ADDED

(Source: P.A. 82-280.)

Rule 211. Effect of Errors and Irregularities in Depositions;

Objections (a) As to Notice. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice. (b) As to Disqualification of Officer or Person. Objection to taking a deposition because of disqualification of the officer or person before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification

becomes known or could have been discovered with reasonable diligence. (c) As to Competency of Deponent; Admissibility of Testimony; Questions and Answers; Misconduct; Irregularities. (1) Grounds of objection to the competency of the deponent or admissibility of testimony which might have been corrected if presented during the taking of the deposition are waived by failure to make them at that time; otherwise objections to the competency of the deponent or admissibility of testimony may be made when the testimony is offered in evidence. (2) Objections to the form of a question or answer, errors and irregularities occurring at the oral examination in the manner or taking of the deposition, in the oath or affirmation, or in the conduct of any person, and errors and irregularities of any kind which might be corrected if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition. (3) Objections to the form of written questions are waived unless served in writing upon the party propounding them within the time allowed for serving succeeding questions and, in the case of the last questions authorized, within 7 days after service thereof. (4) A motion to suppress is unnecessary to preserve an objection seasonably made. Any party may, but need not, on notice and motion obtain a ruling by the court on the objections in advance of the trial. (d) As to Completion and Return of Deposition. Errors and irregularities in the manner in which the

testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, filed, or otherwise dealt with by the officer are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after the defect is, or with due diligence might have been, ascertained. Committee Comments This rule is derived from former Rule 19-9. The language is unchanged except that the period for filing objections to the form of written questions has been extended to seven days in subparagraph (c)(3) in keeping with the committee's policy of measuring time periods in multiples of seven days.

VIOLATIONS

A) The exhibits that were decided upon to be used by former counsel Julia C. Williams, and specifically exhibit 12, were not provided to the officer administering the oath and all other parties within a reasonable period of time prior to the deposition. In fact, **e** hibit **12 was never provided to the officer administering the oath. EMPHASIS ADDED**A1) On or about April 30, 2020 Defendants' Counsel sent an email to Plaintiff's former Counsel Julia C. Williams indicating an awareness of the current Supreme Court rules regarding depositions when he wrote "The recent temporary amendment to Rule 206 (facilitating depositions during the Covid crisis), prompted me to touch base and inquire whether you may want to consider attempting to depose Hans Mast remotely in the 2nd half of May.." (Please see Plaintiff's Exhibit #7 attached.)

A2) On or about May 29th 2020 former attorney Julia C. Williams sent an email to Defendants' Counsel indicating an awareness of the current Supreme Court rules regarding depositions when she wrote "...and given the Supreme Court rules, it makes sense to take advantage of the remote deposition option." (Please see Plaintiff's Exhibit #8 attached.)

A2.1) On or about June 19, 2020 Defendants' attorney emailed Plaintiff's former attorney Julia C. Williams stating "Julia: I just received your notice of attorney lien. Will you still be taking the dep next week?

My experience with receiving liens at this stage of litigation (in a high percentage of cases) is that a withdrawal shortly follows. Hopefully not the case here, but just making sure we are still on for the Mast's dep. (Please see Plaintiff's Exhibit 15 attached.)

A3) On or about June 23, 2020 Plaintiff's former attorney Julia C. Williams emailed Defendants' attorney 23 exhibits that she may emphasis added use in the discovery Deposition of Defendant Hans Mast on June 25, 2020. Additionally she indicated that there could be additions and there may be subtractions. emphasis added Additionally she wrote "...and I will do my best to send them ahead of time." (Please see Plaintiff's Exhibit #9 attached.)

A3.1) On or about June 24, 2020 at 10:49 AM (less than 24 hours before the start of the discovery deposition of Defendant Hans Mast) Plaintiff's former attorney Julia C. Williams emailed Defendants' attorney 1 more exhibit that she **may emphasis added** use. (Please see Plaintiff's Exhibit 9 attached.)

A3.2) On June 25, 2020 the discovery deposition of Hans Mast was called at 10:00 AM "pursuant to subpoena and pursuant to the Code of Civil Procedure of the State" of

Illinois and the RULES OF THE SUPREME COURT THEREOF, PERTAINING TO THE TAKING OF DEPOSITIONS, EMPHASIS ADDED. (Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. and Hans Mast's Motion/Memorandum In Support Of Their Motion For Summary Judgment

A3.3) On June 25, 2020 at 12:31 PM (approximately 15-30 minutes after the conclusion of the discovery deposition of Defendant Hans Mast, Defendant's attorney sends an email to Plaintiff's former attorney Julia C. Williams discussing what is "...fresh in his mind..." but any conversation regarding errors and irregularities in the just concluded

deposition is notably absent. (Please see Plaintiff Exhibit 16 attached.)

Exhibit G page 1 lines 15 to 17)

A3.4) Shortly after the Deposition ended Barbara G. Smith emailed Julia C. Williams asking for Exhibit 12 and Julia C. Williams responded by sending a blank email.

Additionally, Barbara G. Smith called and left a message for Julia C. Williams on July 6, 2020 again requesting Exhibit 12. On July 7, 2020 Barbara G. Smith submitted the June 25, 2020 discovery deposition of Hans Mast to U.S. Legal Support without Exhibit 12. (Please see Plaintiff's Group Exhibit 2 attached).

A3.5) The Deposition of Defendant Hans Mast was received by Plaintiff's former attorney and Defendants' attorney from U.S. Legal Support without the Hans Mist E hibit 12 EMPHASIS ADDED on July 10, 2020.

A4) On or about July 13, 2020 Noelle Kappes, Scheduling and Client Solution Manager U.S. Legal Support sends an email to Plaintiff's former attorney Julia C. Williams stating that "the court reporter indicated you would be sending us exhibit 12 from this deposition (discovery deposition of Defendant Hans Mast taken remotely on June 25,

- 2020) so that we can include it with the transcript. I don't believe we have received it can you send it tomorrow?" (Please see Plaintiff's Exhibit #10 attached)

 A5) On or about July 14, 2020 Plaintiff's former attorney Julia C. Williams emails to Noelle Kappes "Dear Noelle, I am sorry. I thought I had responded to Barbara's email with the exhibit. It is attached here." (Please see Plaintiff's Exhibit #10 attached.)
- A6) On or about July 14, 2020 wtolliver2uslegalsupport.com emailed to Plaintiff's former attorney and Defendants' attorney that "Exhibit 12 is now available to download" (Please see Plaintiff's Exhibit #11 attached)
- A6.1) Exhibit 12 was never presented to the officer administering the oath Barbara G. Smith, CSR, RPR Notary Public but was sent after the deposition of Defendant Hans Mast was taken on June 25, 2020 but sent on July 14, 2020 to Noelle Kappes, Scheduling and Client Solution Manager U.S. Legal Support who forwarded it to wtolliver2, another employee of U.S. Legal Support who created the misspelled, non-conforming HANS MIST [EMPHASIS ADDED label.
- A7) On or about July 14, 2020 Plaintiff's former attorney Julia C. Williams wrote to Plaintiff "Attached is exhibit 12 that was missing in the original transcript copy because the copy that the court reporter received was **blank**. [emphasis added] (Please see Plaintiff's Exhibit #12 attached)
- A8) On or about August 5, 2022 Plaintiff's former attorney inexplicitly emails to Mary Winch marywinch@clintonlaw.net,ed@clintonlaw.net the same email she sent to the same recipients on July 14, 2020. (Please see A5 above and Plaintiff's Exhibit #13 attached)

- B) The deposition participants were not able to view the exhibits in real time during the deposition.
- B1) The following clearly indicated a problem with viewing the exhibits submitted and the Defendant's internet equipment and internet connection and audio during the attempted remote discovery deposition of Defendant Hans Mast:
- B1.1) Q. So I'm uploading Exhibit 2, it's titled Dulberg Mast Dep Exhibit 2, and this should be the original complaint filed in the case Dulberg versus Gagnon, et al., 12 LA 178, filed in McHenry County. Do you see that document?

A. Yeah. What I'm going off are an email I got with all the exhibits attached, so I'm not – that's what I'm looking at.; (Please see Defendants' The Law Offices Of

Thomas J. Popovich, P.C. And Hans Mast's Motion/Memorandum In

Support Of Their Motion For Summary Judgment Exhibit G page 17 lines 3 to 10

also found on 209 of 464 previously filed.)

B1.2) Q. Okay.

A. Oh, uh, I think—It just kicked me off.

Mr. Flynn: I got disconnected, too. It's the Wi-Fi.

By Ms. Williams:

Q. Okay, we'll just wait a minute here.

A. I can hear you. I just can't see you. Q. We'll wait a minute until you can get your video back on.

Mr. Flynn: Julia, we think the Wi-Fi may have dropped here in the office. emphasis added

Ms. Williams: Okay. Well, let's just give a minute and see.; (Please see Defendants'

The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion/Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 22 lines 1 to 10 also found on 211 of 464 previously filed.)

B1.3) Q. Okay. I just uploaded Dulberg Mast Exhibit 4 and it says letter—it's "Letter Re Settlement," and that should be –still be Exhibit 4 that was emailed around to Counsel so that you would have it. And it is labeled POP192 and POP193. Do you recognize those documents?

A. Wait. I think the Internet, maybe because we were having problems, is the Internet went down, so now my exhibits aren't pulling up. Can you try again? Do you have that, George?

Mr. Flynn: Yeah, here's the hard copy. emphasis added

The Witness: I'll look at the **hard copy emphasis added**, so what are you asking?

(Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans

Mast's Motion/Memorandum In Support Of Their Motion For Summary Judgment

Exhibit G page 26 lines 5 to 17 also found on 212 of 464 previously filed.)

B1.4) Q. Okay. Just uploaded Exhibit 5, and this is email dated October 30, 2013, and it's marked at the bottom 000195.

A. Okay.

Q. Okay, and here in this email it looks like you started this email chain to Paul on October 25, 2013. Do you see that?

A. It looks like there's a couple emails here. There's several pages. You just mean the first page?

Q. I think—It should only be, I believe it's only one page and it looks like—

- A. Oh, these aren't part of it? Just one page?
- Q. The document that I have is just one page. Are we looking at the same thing?
- A. Okay.
- Q. It's POP00195 on the bottom.
- A. Yeah, he had a couple other pages on it, but okay.
- Q. Okay. I just want to make sure that I didn't –okay. And on the bottom there of the first sheet, if you have several, I only published one sheet for the purposes of this deposition emphasis added, it states, "Friday, October 25, 2013," do you see that? (Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion/Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 28 lines 16 to 24 and page 29 lines 1-14 also found on 212 of 464 previously filed.)
- B1.5) Q. Okay. So I'm going to upload another file here.
- A. Yeah, our internet is down. That's why I can't bring these up.
- Q. Okay.
- Mr. Flynn: Julia, just so you know, I've got hard copies of the majority of the exhibits you sent with the exception of the larger files, like the insurance policy and the dep transcripts.
- MS. Williams: Okay. Okay, great.
- Mr. Flynn: I've got some of the deposition transcripts, but I didn't want to waste a lot of paper and ink at home.
- MS. Williams: Okay. I think we'll be—For the most part, I think we'll be fine and we'll deal with it if and when we get to that point.

Q. Okay. So the document that I'm looking at now is another email on the –it's now titled Exhibit 6. I don't think it was entitled Exhibit 6 in what I sent to George, but it's an email that the first date on the email is November 4, 2013, and the last date is November 5, 2013 email chain and it's –at the bottom it's stamped Dulberg001531.

A. What exhibit is it?

Q. I think it might have been **5-A (emphasis added)** to George. It's now exhibit 6 for the purpose of this deposition. (Please note that there never was an exhibit marked 5-A)

A. Yeah, that wasn't part of the download then. Do you have—

Mr. Flynn: Yeah, I don't think that was included. (Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion/Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 31 lines 10 to 24 and page 32 lines 1 to 17 also found on 213 of 464 previously filed.)

B1.6) Q. Okay. Okay, I'm going to stop screen sharing. Okay. I'm going to upload another file. This is Deposition Exhibit 7. George, you probably had it as Exhibit 6, but for the purpose of this deposition right now it's going to be 7 and it's an email chain dated—

A. I have these on the computer. You don't need to, unless you want to, but I'm just saying I have these on the computer.

Q. Okay, but Barb needs them, so that's why I keep uploading them, otherwise she doesn't have them. Okay. So Exhibit 7, and it's POP00181 and POP00182,and it's two pages of an email chain, it starts November 15th and

ends November 19, is that accurate?

A. Yes.

(Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion/Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 35 lines 5 to 20 and also found on 214 of 464 previously filed.)

B2) From this point on the transcript indicated that the deponent could not view any exhibits uploaded so that Plaintiff's former attorney Julia C. Williams was asking questions based upon her attempted uploads but the deponent Defendant Hans Mast was looking at physical documents to respond based upon the following:

B2.1) Q. Okay. So I'm going to upload another document and then we can keep going here. And then this is Exhibit 8 and for –it is a letter from Ronald Barch to you, Hans, and it's POP000667. Do you have emphasis added that?

A. What date is it?

Q. I'm sorry, dated November 18, 2013,

A. Yeah, I have emphasis added that.

(Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And
Hans Mast's Motion/Memorandum In Support Of Their Motion For Summary Judgment
Exhibit G page 36 lines 6 to 13 and also found on 214 of 464 previously filed.)
B2.2) Q. Yep, it's POP000181.

A. What exhibit?

Q. It's Exhibit 7.

A. 7, that's the letter.

Q. If may be 6 for you. It may be 6 for you.

- A. Let's take a look. What page is the email?
- Q. The date at the top of the email chain is Tuesday, November 19, 2013.
- A. Yeah, I have emphasis added that.

(Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion/Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 38 lines 1 to 9 and also found on 215 of 464 previously filed.)

B2.3) Q. I'm going to add another exhibit here. Okay, for the purpose of this deposition it's Deposition Exhibit 9. This is a memorandum. At the top it will say, "memorandum," and the date is November 20, 2013, and at the bottom it is identified as POP and then 3 – there's 000003, I believe. Do you have emphasis added that?

A. What exhibit is it?

Q. I think you're probably going to have it as Exhibit 8, but for the purpose of this deposition it's actually going to be Exhibit 9.

(Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion/Memorandum In Support Of Their Motion For Summary Judgment Exhibit G Pages page 40 lines 12 to 22 and also found on 214 of 464 previously filed.)

B2.4) Q. Okay, I'm uploading Dulberg Mast Dep Exhibit 12. This is titled "Legal Research." And this is hard because there's – it's 27 pages. Some of them have Bates numbers, but some of them are black on the bottom, so I think the bates Numbers didn't –didn't take, but it's roughly – looks like roughly 204, maybe 205, Dulberg 204, 205 through roughly Dulberg00304 –Actually, I'm sorry, these aren't going to be continuous. But do you have the packet of legal research in front of you? It appears to be copies out of a – copies of case law out of the Northeastern

Digest.

A. I just have the one case here.

Q. Just one case? Which – What is the case title?

A. The first one, it's LAJATO. emphasis added

(Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion/Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 49 lines 20 to 24, page 50 lines 1 to 11 and also found on 217-218 of 464 previously filed.)

- C) The case of *Tilschner v. Spangler* No.2-10-0111, 949 N.E.2d 688, 350 III.Dec.896, 409 III.App.3d 98 (2011) which Plaintiff Paul Dulberg specifically instructed his former attorney Julia C. Williams to include as an exhibit to be the basis of questions to the deponent Defendant Hans Mast because: Mast had personally given a copy of the certified opinion to Dulberg on November 20, 2013; had personally appeared and argued the case along with Thomas J. Popovich, and Mark J. Vogg of Defendant the Law Offices of Thomas J. Popovich, P.C.; and had insisted that the decision in the case was the reason Plaintiff Paul Dulberg would not prevail in the underlying case against the Defendants Carolyn and William (Bill) McGuire. (This is based upon information and belief pending this Honorable Court's ruling upon Plaintiff's previously filed Motion To Compel concerning his former attorney Julia C. Williams' claims of Attorney-Client Privilege and Work Product.) (Please see Plaintiff's Exhibit 14 *Tilschner v. Spangler* No.2-10-0111 attached)
- C1) <u>Tilschner v. Spangler</u> No.2-10-0111 was not included in exhibit 12 as constituted, when sent 19 days after the deposition had concluded, in response to the inquires of

Noelle Kappes Scheduling and Client Solutions Manager| U.S. Legal Support (Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion/Memorandum In Support Of Their Motion For Summary Judgment Exhibit G found on pages 264 - 290 of 464 previously filed.)

- C2) <u>Tilschner v. Spangler</u> No.2-10-0111 was inexplicitly replaced with an exact duplicate of the <u>Lejato v. AT&T, INC.</u>, No. 1-95-0447 669 N.E.2d 645 283 III. App. 3d 126 (1996) (Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion/Memorandum In Support Of Their Motion For Summary Judgment Exhibit G Pages 264-285 of 464 previously filed.)
- D1) On November 4, 2022 Defendants' attorney was allowed to raise the issue of "waiver" alleging that both Defendant Hans Mast's attorney and Plaintiff Paul Dulberg waived any and all objections by stating "all objections to that manner were waived by both parties." (Please see Report of Proceeding November 4, 2022 page 14 line 14-15 which is contained in the Clerk of Court's electronic file for this matter.
- D2) The Illinois General Assembly empowered the Illinois Supreme Court to make and enforce rules for the Circuit, Appellate and Supreme Court. (Please see above ILCS / ro Ch. , par. and (735 ILCS 5/1-105) (from Ch. 110, par. 1-105).
- D3) Illinois Supreme Court Rule 211 does not allow opposing attorneys to waive the rules and orders powers granted to the Illinois Supreme Court by the Illinois General Assembly.
- D4) It should be noted that:1) there were multiple emails between the Plaintiff and

Defendants' attorneys as close in time as less than 24 hours before and at most 30 minutes after the deposition and the subject of "waiver" was not discussed. (Please see Exhibits 9, 15 and 16 attached.); 2) On July 30, 2020 Julia C. Williams, in response to Plaintiff's question about the Deposition of Hans Mast did not respond with anything about "waiver" of issues and cavalierly stated "Your future counsel will need to bring that before the Judge at some point" Please see Plaintiff Exhibit 17 attached): 3) Julia C. Williams filed her Motion to Withdraw on behalf of herself and the Clinton Law Firm on August 18, 2020 (Please see the Clerk of McHenry County Circuit Court's electric file for this case.)

Wherefore, Plaintiff Paul Dulberg prays that Plaintiff's Motion to Exclude the discovery deposition of Defendant Hans Mast taken remotely on June 25, 2020 is granted, that Plaintiff request to take the deposition of Defendant Hans Mast is granted, but if Defendants' verbal request to file a sur-response is allowed then the Plaintiff be granted a reasonable time to file a sur-reply after considering what's left of Plaintiff's time to respond to Defendant's Motion for Summary Judgment and for any other additional relief this Honorable Court deems fair and equitable.

Respectfully submitted,

/s/ Alphonse A. Talarico	
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Alphonse A. Talarico

By: Alphonse A. Talarico

Plaintiff's attorney

707 Skokie Boulevard Suite 600

Northbrook, Illinois 60022

(312) 808-1410

ARDC No. 6184530

contact@lawofficeofalphonsetalarico.com

alphonsetalarico@gmail.com

RE: Dulberg v. Mast and Popovich

Linda Walters < lwalters@karballaw.com>

Thu 4/28/2022 4:00 PM

To: Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>

Cc: George Flynn <gflynn@karballaw.com>

On behalf of George Flynn, please use the below link to access Mast Dep Ex. 12.

https://www.dropbox.com/s/b2lmm0a6s3oex3d/Mast%20Dep%20Ex.%2012.PDF?dl=0

Thank you.

Linda Walters Asst. to George Flynn

Linda Walters

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Dear Noelle.

I am sorry. I thought I had responded to Barbara's email with the exhibit. It is attached here.

Best Regards.

Julia Williams Of Counsel The Clinton Law Firm 111 W. Washington, Ste. 1437 Chicago, IL 60602 P:312.357.1515 F: 312.201.0737 juliawilliams@clintonlaw.net

put this x in folder on destroys of revened bad fill 12-A-this This message may be privileged and confidential. If you are not the intended recipient, please delete

the email and notify the sender immediately.

Click to Download

Dulberg Mast Dep Exh 12 Legal Research .pdf

to the new 12

still wouldn't send 1-22 70 New was a problem under the

On Jul 13, 2020, at 8:37 PM, Noelle Kappes nkappes@uslegalsupport.com> wrote:

Hi there,

William losbat it or email uniquement

The court reporter indicated you would be sending us exhibit 12 from this deposition so we can include it with the transcript. I don't believe we have received it. Can you send it on tomorrow?

Thank you, Noelle

Please find attached confirmation of scheduling regarding the matter referenced below.

Witness: Hans Mast

Case Name: Paul Dulberg v. Law Offices of Thomas Popovich, et al.

Date: 06/25/2020

Time: 10:00 AM, (GMT-06:00) Central Time (US & Canada)

Location:

Reporter and all Parties will appear via Video Conference.

Thank you for choosing U.S. Legal Support.

Court Reporting | Record Retrieval | Trial Services

Please note: To ensure your safety and the safety of others, when visiting a U.S. Legal Support office, please practice responsible social distancing measures. We ask that you provide and wear your own mask in common areas (halls, restrooms, break areas, cube areas, conference rooms, etc.). Thank you for your understanding and cooperation.

<CFM923267.PDF>

Hi Ms. Williams – This is Barb Smith, the court reporter from US Legal that was present at the dep of Hans Mast on 6-25-20. I am currently working on the transcript and while preparing the exhibits I noticed that Exhibit No. 12, which is the 27 pages of legal research, did not download completely. The Exhibit 12 that I have has blank pages 1-22 and only pages 23-27 have print on them. I just wanted to let you know and check if you wanted to resend or if that's how No. 12 is supposed to be.

called 1-6-20 Left Mossage 1-2 smithed job and amach

noelle about it

Williams responded 7-2-20 but the text space was

Thank you.

112-26

Barb

Job 923267

From: Smith Family (barbnwally@att.net)

To: nkappes@uslegalsupport.com

Date: Tuesday, July 7, 2020, 09:32 PM CDT

Hi Noelle -- Hope you're doing well. I just want to let you know I submitted this job, 923267, last night. Two things I wanted to let you know about. First, this job and 925187 were both submitted last night. These are the first two I used Box for the exhibits. I hope I did them correctly. If there's any problems, please let me know.

For 923267 I have another issue. One of the exhibits, #12, was downloaded during the Zoom session. It's 27 pages and when I first looked at it I noticed that pages 1-22 were blank. I emailed Julia Williams, our client, on 7-2 about this. She responded and the message section of her email was blank. I waited for another email but received none. On 7-6 I called and left her a message and have not received a response. I did note all of this information in the email that I sent the job with.

The main reason I'm telling you all of this is that I am going to be out of town Thursday and Friday. My daughter is getting married in Arkansas so I will not be bringing my computer with me and will be quite busy. Hopefully I hear from her on Wednesday.

Thanks,

Barb

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,)	
PLAINTIFF,)	
)	
V.)	No. 17 LA 377
)	
THE LAW OFFICES OF THOMAS POPOVIO	CH,)	
and HANS MAST,)	
DEFENDANTS.)	

AMENDED NOTICE OF DEPOSITION

TO: All Attorneys of Record (See Attached Service List)

YOU ARE HEREBY NOTIFIED, that pursuant to the provisions of Section 2-1003 of the Illinois Code of Civil Procedure and Supreme Court Rule 206, the following deposition will be taken for the purpose of discovery before a Notary Public via remote electronic deposition at the time and place specified, upon oral interrogatories to be propounded to said witness.

Deponent	Location	Date	<u>Time</u>
Hans Mast	Compton Law Group 85 Market St.	June 25, 2020	10:00a.m.
	Elgin, IL 60123		
	(remote electronic deposition)		

YOU ARE HEREBY FURTHER NOTIFIED that you are by this Notice required to have present at the date, time, and place stated, the said Deponent for oral examination for the purpose of discovery. YOU ARE FURTHER NOTIFIED that PAUL DULBERG, a party to this case, intends to be present at the above noticed deposition.

Edward X. Clinton, Jr., ARDC No. 6206773

Julia C. Williams, ARDC No. 6296386

The Clinton Law Firm

11 W. Washington, Ste. 1437

Chicago, IL 60602

312.357.1515 ed@clintonlaw.net

juliawilliams@clintonlaw.net

AFFIDAVIT OF SERVICE

I, the undersigned, a non-attorney, certify that I served this Notice by emailing a copy to each party to whom it is directed by 5:00 p.m. on June 4, 2020.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

/s/ Julia C. Williams
Julia C. Williams

SERVICE LIST:

George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLG

150 S. Wacker Drive

Suite 1700

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E: gflynn@karballaw.com

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[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

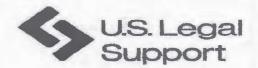
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/s/ Julia C. Williams

Julia C. Williams las



U.S. Legal Support - Chicago 200 West Jackson Sutte 600 Chicago, IL 60606 Telephone: 312-236-8352 Fax: 312-236-3344

	Support	10I	B WORKSHEET
			WORKSHEET WAS LOVE
Resource	Barbara G. Smith		010
Job No.	923267	Job Type	Deposition
Job Date	06/25/2020	Job Time	10:00 AM (GMT-06:00) . Central Time (US & Canada)
Due Date	07/10/2020	Notation	R/VC
Witness	Hans Mast		
Case Name	Paul Dulberg v. Law C	offices of Thomas Popov	vich, et al.
Case No.	17LA377		10 1
Location		c Remote Video Conf es will appear via Video	4) 100
		eo Conference, a websi iness day prior to the se	ite link will be provided by U.S.
Remarks	the deponent		ney George Flynn who will be with

Client	Clinton Law Firm 111 West Washington Street Suite 1437
	Chicago, IL 60602 Phone: 312-357-1515 Fax: 212-201-013
Contact	Julia Williams De la Companya de la
Ordered By	Julia Williams via email
Requested Service	Service Item RemoteDepo w/InstantExhibit - Videoconferencing Videoconferencing Units 1.00 I was RemoteDepo w/InstantExhibit -

Thank you for accepting this assignment. Please note that by accepting this assignment, you acknowledge U.S. Legal Support's requirement to have an up-to-date W-9, BAA, and CIA form submitted prior to our releasing payment.

Please provide the transcript to our production team by due date reflected above. Exhibits to be delivered to production within 3 days after deposition.



Document Examinations

Robin D. Williams, MFS, MS, D-BFDE Board Certified Bonnie L. Schwid, B.S., D-BFDE Board Certified

July 11, 2022

Attorney Alphonse A. Talarico Law Office of Alphonse Talarico 707 Skokie Blvd. Suite 600 Northbrook, Illinois 60062

REPORT OF FINDINGS

RE: Dulberg v Popovich et al LA 377

Dear Attorney Talarico,

Pursuant to your request, I examined the following documents:

Document containing a disputed Exhibit Label

(machine copy)

Q-1 The first page of a 27-page document containing machine copies of pages from a book or books. The first line on the yellow label reads "Exhibit 12".

The label is in the bottom center of a machine copy of 2 pages. The page number in the upper left corner is 502. The center heading reads: "218 Illinois Decisions".

Dated 6-25-2020.

Some of the pages in the 27-page document are duplications of previous pages. The page sequencing in the 27-page document is as follows: 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 854, 855, 856, 857, 858.

Document(s) submitted as containing genuine Exhibit Labels (machine copies):

- K-1 The yellow label at the bottom right of the document reads "Exhibit 1".
- K-2 The yellow label at the top center of the document reads "Exhibit 2".
- K-3 The yellow label at the bottom right of the document reads "Exhibit 3".
- K-4 The yellow label at the bottom right of the document reads "Exhibit 4".
- K-5 The yellow label at the bottom right of the document reads "Exhibit 5".
- K-6 The yellow label at the bottom right of the document reads "Exhibit 6".
- K-7 The yellow label at the bottom right of the document reads "Exhibit 7".

 K-8 The yellow label at the bottom right of the document reads "Exhibit 8".
- The yellow label at the obtaining of the document reads Estate of
- K-9 The yellow label at the bottom right of the document reads "Exhibit 9".



Mailing Address:

1253 Scheuring Road

1001 W. Glen Oaks Ln.

161 N.

Clark Street

Suite A

Suite 21 9

Quite 1600

RE: Dulberg v Popovich et al LA 377 Page 2 July 11, 2022

- K-10 The yellow label at the bottom right of the document reads "Exhibit 10".
- K-11 The yellow label at the bottom right of the document reads "Exhibit 11".
- K-13 The yellow label at the bottom right of the document reads "Exhibit 13".
- K-14 The yellow label at the top center of the document reads "Exhibit 14".
- K-15 The yellow label at the bottom right of the document reads "Exhibit 15".

Assignment

The purpose of the examination was to determine whether the yellow label that is in question on Item Q-1, also identified as Exhibit Label #12 and the labels submitted as genuine on Items K-1 through K-11 and K-13 through K-15 all originated from the same group or batch of labels.

Procedure

The examination consisted of visual and microscopic study of the font styles, the discriminating variations of letter formations, letter designs, beginnings and endings of letters, t-crossings, spelling of words and exterior and interior shapes of the labels.

Opinion

It is the opinion of this examiner that the label in question identified as Q-1, Questioned Label #12, did not come from the same group or batch of labels identified as Items K-1 through K-11 and K-13 through K-15.

Discussion

Item Q-1, Exhibit Label #12 contained a different font in all of the words on the label (except in the word "Date") and in numerals 1 and 2 as illustrated in the attached charts.

It is important to note that the name of Hans <u>Mast</u> was misspelled on Item Q-1, Exhibit Label #12, as "Hans *Mist*".

It is noteworthy that in an enlargement of the label identified as Q-1, Exhibit Label #12, is the appearance of a squared outer edge in the upper left corner of the label that can be seen. This differs from the rounded outer edges of the known labels that were used for comparison.

RE: Dulberg v Popovich et al LA 377

Page 3

July 11, 2022

This examination was conducted from machine copies of the document in question and the exemplars used for comparison. I assume that they are accurate reproductions of the originals. If the original documents become available, I am requesting the opportunity to examine the original documents containing the original labels and revisit my opinion. However, I do not believe my opinion will change.

Please allow four weeks in the event that testimony will be required.

Respectfully submitted, Omni Document Examinations

Robin D. Williams, MFS, MS, D-BFDE

obin N. Williams

Diplomate-Board of Forensic Document Examiners

Dulberg v. Popovich

George Flynn <gflynn@karballaw.com>

Mon 7/11/2022 10:25 AM

To: Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>

Cc: Linda Walters < lwalters@karballaw.com>

1 attachments (26 MB)

EX 0012 Hans Mast 062520.pdf;

Mr. Talarico:

Below is a copy the transmittal email with exhibit 12 received by my office on July 14, 2020. A previous email from July 10, 2020 from US legal contained the other deposition exhibits. The link contained in the July 14 email produced the attached PDF of exhibit 12.

Regards,

From: "wtolliver@uslegalsupport.com" < wtolliver@uslegalsupport.com>

Date: July 14, 2020 at 11:13:35 AM CDT To: George Flynn <gflynn@karballaw.com>

Subject: Exhibit 12 - Paul Dulberg v. Law Offices of Thomas Popovich, et al. - Deposition of Hans Mast,

6/25/2020

(email sent to juliawilliams@clintonlaw.net, gflynn@karballaw.com) Exhibit 12 is now available to download.

U.S. Legal Support has switched to paperless production. Your litigation support package contains digital files of your transcript and exhibits. These files are also readily available 24/7 via our secure Client Online Portal. The certified original will be printed to facilitate lodging with the Court. Should you require a hard certified copy of the transcript or a CD of your files, please contact your local U.S. Legal Support office.

Thank you for choosing U.S. Legal Support.

We have uploaded the following file(s). To open or download, please click on the link(s) below.

File Information

Paul Dulberg v. Law Offices of Thomas Popovich, et al. Case Name

Case No. 17LA377

Job No. 6/25/2020 923267 Job Date

Witness H. Mast Exhibits

If you are unable to see the links or are not redirected to the file(s), please copy and paste the URL below in your browser: https://share.uslegalsupport.com/docs/download?tk=86791893-4ae0-47ae-884c-52dfe3f186c0

Available File(s)

File TypeFile NameDescriptionSize(KB)ExhibitEX 0012 Hans Mast 062520.pdf26741

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George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC Please note our new address below effective May 27, 2022 200 S. Wacker Drive Suite 2550 Chicago, IL 60606

P: (312) 431-3622F: (312) 431-3670

E: gflynn@karballaw.com

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IN THE SUPREME COURT OF ILLINOIS

In re:	Illinois Courts Response to COVID-19 Emergency/Impact On Discovery))))	M.R.30370	

Corrected Order

In the exercise of the general administrative and supervisory authority over the courts of Illinois conferred on this Court pursuant to Article VI, Section 16 of the Illinois Constitution of 1970 (Ill. Const. 1970, art. VI, sec. 16); and in view of the actions that have been taken by the Governor of the State of Illinois in response to the outbreak of the novel coronavirus (COVID-19); and consistent with the order issued by this Court on March 17, 2020,

IT IS HEREBY ORDERED:

Effective immediately and until further order of the Court, paragraph (h) of Illinois Supreme Court Rule 206 is temporarily amended as follows:

- (h) Remote Electronic Means Depositions. Any party may take a deposition by telephone, videoconference, or other remote electronic means by stating in the notice the specific electronic means to be used for the deposition, subject to the right to object. For the purposes of Rule 203, Rule 205, and this rule, such a deposition is deemed taken at the place where the deponent is to answer questions. Except as otherwise provided in this paragraph (h), the rules governing the practice, procedures and use of depositions shall apply to remote electronic means depositions.
 - (1) <u>Reserved.</u> The deponent shall be in the presence of the officer administering the oath and recording the deposition, unless otherwise agreed by the parties.
 - (2) Any exhibits or other demonstrative evidence to be presented to the deponent by any party at the deposition shall be provided to the officer administering the oath and all other parties within a reasonable period of time prior to the deposition, unless the deposition participants are able to view the exhibits in real time during the deposition.
 - (3) <u>Reserved.</u> Nothing in this paragraph (h) shall prohibit any party from being with the deponent during the deposition, at that party's expense; provided, however, that a party attending a deposition shall give written notice of that party's intention to appear at the deposition to all other parties within a reasonable time prior to the deposition.
 - (4) The party at whose instance the remote electronic means deposition is taken shall pay all costs of the remote electronic means deposition, unless otherwise agreed by the parties.
 - (5) Time spent at a remote electronic means deposition in addressing necessary



technology issues shall not count against the time limit for the deposition set by Rule 206(d), by stipulation, or by court order.

(6) No recording of a remote electronic means deposition shall be made other than the recording disclosed in the notice of deposition.

Amended September 8, 1975, effective October 1, 1975; amended January 5, 1981, effective February 1, 1981; amended July 1, 1985, effective August 1, 1985; amended June 26, 1987, effective August 1, 1987; amended June 1, 1995, effective January 1, 1996; amended October 22, 1999, effective December 1, 1999; amended February 16, 2011, effective immediately; amended Dec. 29, 2017, eff. Jan. 1, 2018; amended Sept. 26, 2019, eff. Oct. 1, 2019; temporarily amended Apr. 29, 2020, eff. immediately.

Committee Comments (April 29, 2020)

Paragraph (h)

Where a deponent testifies from a remote location and no neutral representative or representative of an adverse party is present in the room with the testifying deponent, care must be taken to ensure the integrity of the examination. The testifying deponent may be examined regarding the identity of all persons in the room during the testimony. Where possible, all persons in the room during the testimony should separately participate in the videoconference. In furtherance of their obligations under Illinois Rules of Professional Conduct 3.3 (Candor Toward the Tribunal), 3.4 (Fairness to Opposing Party and Counsel), and 8.4(d) (Misconduct), counsel representing a deponent should instruct the deponent that (a) he or she may not communicate with anyone during the examination other than the examining attorney or the court reporter and (b) he or she may not consult any written, printed, or electronic information during the examination other than information provided by the examining attorney. Unrepresented deponents may be similarly instructed by counsel for any party.

Order entered by the Court.



IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Court, this 29th day of April, 2020.

Supreme Court of the State of Illinois