

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

FILED  
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ARDC Clerk

In the Matter of:	)	
	)	
EDWARD WILLIAM HYNES,	)	Commission No. 2021PR00065
	)	
Attorney-Respondent,	)	
	)	
No. 6324093.	)	

**RESPONDENT’S ANSWER AND AFFIRMATIVE DEFENSE TO COMPLAINT**

NOW COMES Respondent, EDWARD WILLIAM HYNES, by and through his counsel, RICHARD J. PRENDERGAST, LTD., and for his Answer and Affirmative Defense to the Complaint, states as follows:

1. Between May 31, 2017 and June 18, 2020, Respondent practiced law as an associate attorney at the law firm of Clausen Miller, P.C. (“Clausen”).

**ANSWER:** Respondent admits the allegations of Paragraph 1.

2. While Respondent was working as an associate attorney at Clausen, he worked under the direction of one or more partners in the firm, any of whom could assign him to work on various client matters. Respondent's duties included, attending court appearances, propounding and responding to discovery, writing and responding to pleadings and motion conducting research, negotiating and communicating settlement offers, entering into settlement agreements, and reporting to his supervising partners.

**ANSWER:** Respondent admits that while he was working as an associate attorney at Clausen, he was assigned to one or more partners in the firm, any of whom could assign him to work on various client matters, and each of whom had the duty and responsibility to review and supervise his work on matters assigned to him. Answering further, in 2019, the primary partner supervising Respondent left Clausen. Clausen assigned to Respondent new “supervising” partners, but Respondent often felt he was without adequate support and guidance from said supervising

partners and denies the characterization that he worked “under the direction of one or more partners” or “supervising partners” to the extent these allegations are meant to suggest that he was adequately supervised during his time at Clausen. Respondent admits that his duties included, *inter alia*, attending court appearances, propounding and responding to discovery, writing and responding to pleadings, conducting research, negotiating and communicating settlement offers, entering into settlement agreements, and reporting to the partners to whom he was assigned.

3. On June 18, 2020, Clausen terminated Respondent’s employment.

**ANSWER:** Respondent admits that on or around June 18, 2020, Clausen sent Respondent a termination letter and, after that date, he did not work further for Clausen.

#### **COUNT I**

(Entering into a Settlement Agreement Without Authority of His Clients– Vick v. McClure)

4. On June 5, 2016, Rachel Vick (“Vick”) sustained injuries when she slipped and fell in the bathroom of a property owned by Ruby McClure (“McClure”). At the time of the incident, McClure was insured by American International Group, Inc. (“AIG Insurance”).

**ANSWER:** Respondent admits that McClure was insured by AIG Insurance. Respondent has no access to any case files or emails from his time at Clausen, with the exception of what has been produced by Clausen as part of this proceeding. For this and other reasons, Respondent is without information sufficient to admit or deny the remaining allegations in Paragraph 4. Answering further, it is Respondent’s recollection that Vick alleged that she had sustained injuries from a slip and fall on McClure’s property.

5. McClure filed a claim with AIG Insurance and AIG Insurance opened a file and assigned an insurance claims adjustor to review Vick’s claims, evaluate AIG’s potential liability, and attempt to resolve the case, if warranted, by an agreement to pay Vick compensation for her claimed injuries.

**ANSWER:** Respondent has no access to any case files or emails from his time at Clausen, with the exception of what has been produced by Clausen as part of this proceeding. For this and other

reasons, Respondent is without specific case information sufficient to admit or deny the allegations in Paragraph 5. That said, Respondent does not contest the allegations contained in Paragraph 5.

6. On January 18, 2018, Benjamin A. Sweeney, from the Law Office of Daniel E. Goodman, LLC, on behalf of Vick filed a complaint for damages against McClure in the circuit court of Cook County. The action was docketed as, *Rachel Vick v. Ruby McClure*, case number 2018 L 000618 (“*Vick v. McClure*”).

**ANSWER:** Respondent has no access to any case files or emails from his time at Clausen, with the exception of what has been produced by Clausen as part of this proceeding. For this and other reasons, Respondent is without specific case information sufficient to admit or deny whether Mr. Sweeney was the attorney at his firm that filed the complaint in *Vick v. McClure* or the specific date that said complaint was filed. That said, Respondent does not contest the allegations in Paragraph 6.

7. Prior to November 1, 2018, Clausen, McClure, and AIG Insurance agreed that Clausen would represent McClure in defense of Vick’s premises liability action. Clausen assigned Respondent to handle the matter on behalf of Clausen, McClure, and AIG, including the tasks referred to in paragraph two, above.

**ANSWER:** Respondent admits that Clausen assigned Respondent to work on Vick’s premises liability action, including with respect to the tasks referred to in Paragraph 2 of the Complaint. Answering further, Respondent denies the characterization that “Clausen assigned Respondent to handle the matter on behalf of Clausen” to the extent that such an allegation can be construed to relieve Clausen and the firm’s partners of their duty and responsibility to supervise Respondent under Rule 5.1 of the Illinois Rules of Professional Conduct and any other applicable rule or law.

8. On November 1, 2018, Respondent filed his appearance as counsel on behalf of McClure and AIG in *Vick v. McClure*.

**ANSWER:** Respondent admits filing an appearance on behalf of McClure and AIG Insurance in *Vick v. McClure*. Answering further, without access to his case files, Respondent cannot

confirm that said appearance was filed on November 1, 2018, but Respondent does not contest this allegation.

9. Between November 1, 2018 and March 5, 2020, Respondent provided legal services in the *Vick v. McClure* matter by working with the client and insurance adjustor, issuing and responding to discovery, and taking and defending depositions.

**ANSWER:** Respondent admits that after being assigned the *Vick v. McClure* file by a supervising attorney at Clausen, he provided legal services on behalf of McClure and AIG Insurance by, *inter alia*, performing the tasks alleged in Paragraph 9.

10. On or about March 6, 2020, Respondent discussed a purported settlement agreement with Terry Lachcik, from the Law Office of Daniel E. Goodman, LLC, counsel for Vick by which Vick would agree to release her claims against McClure in exchange for the payment of \$40,000, which Respondent falsely claimed he had the authority to offer on McClure's behalf. At the time Respondent entered into the purported agreement, he had not spoken to McClure or AIG about the proposed settlement, nor had he received authority to settle the case for that amount.

**ANSWER:** Respondent admits that on or around March 6, 2020, he offered to settle Vick's claims for \$40,000, even though he had not received express authorization from McClure or AIG Insurance to make such an offer or otherwise enter into a settlement agreement. Answering further, while Respondent knows that his action of entering into a settlement agreement without obtaining express authority of his client was improper, he believed that the client would approve a settlement in that amount under the circumstances of the case. Further answering, at the time in question, Respondent was suffering from severe, at times debilitating, depression and anxiety that have been determined (by the ARDC's own expert witness) to be a causative factor of his actions. In addition to stressors in his personal life, Respondent felt completely overwhelmed by his professional duties at Clausen, and following the departure of his primary supervising partner in 2019, he did not feel that there was anyone at the firm to whom he could turn for assistance or advice. In fact, he was not being adequately supervised or supported at Clausen. Answering further, Respondent did not

act out of malice, for self-enrichment, or for any other improper or intentional purpose, but rather in a misguided effort to seek relief from his severe depression and anxiety.

11. Respondent's statements to Mr. Lachcik described in paragraph 10, above, were false, because prior to March 6, 2020, Respondent had not obtained authority from McClure or AIG Insurance to enter into a settlement agreement in the case.

**ANSWER:** Respondent incorporates his answer from Paragraph 10 as if stated fully herein.

12. Respondent knew that the statements to Mr. Lachcik, described in paragraph 10, above, were false, because he knew he had not received authority from AIG or McClure to settle Vick's claim for \$40,000, or any amount.

**ANSWER:** Respondent incorporates his answer from Paragraph 10 as if stated fully herein.

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

- a. failure to abide by a client's decision on whether to settle a matter, by conduct including entering into a purported settlement agreement of the claim against McClure in case number 2018 L 000618 without the knowledge or authority of AIG Insurance and McClure in violation of Rule 1.2(a) of the Illinois Rules of Professional Conduct (2010);
- b. knowingly making a false statement of material fact or law to a third person by conduct including falsely representing to Terry Lachick that his clients had agreed to settle *Vick v. McClure*, for \$40,000, in violation of Rule 4.1(a) of the Illinois Rules of Professional Conduct (2010); and
- c. conduct involving dishonesty, fraud, deceit or misrepresentation by conduct including representing to Terry Lachick that his clients had agreed to settle *Vick v. McClure*, for \$40,000, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010).

**ANSWER:** Respondent admits that he had not obtained authority from McClure or AIG Insurance to enter into a settlement agreement for \$40,000 in *Vick v. McClure*, and that he nonetheless communicated this non-authorized offer to Mr. Lachcik or another representative and/or attorney from the Law Office of Daniel E. Goodman, LLC. Respondent also admits that his actions in this regard were improper. Respondent denies, however, that he acted with the intent to deceive or defraud anyone. Nor did Respondent act out of malice, for self-enrichment, or for

any other improper or intentional purpose. Rather, Respondent's actions were the product of an effort on his part to seek relief from his severe depression and anxiety, which manifested itself due to stressors in Respondent's personal and professional life. Answering further, Respondent's severe depression and anxiety went almost completely untreated during the subject period, and Respondent's condition was further exacerbated by the fact that he felt completely overwhelmed by his professional duties at Clausen following the departure of his primary supervising partner in 2019 (due in part to the lack of meaningful and sufficient supervision and guidance by the new senior attorneys charged with that responsibility). He therefore did not feel that there was anyone at the firm to whom he could turn for assistance or advice. Answering further, as described more fully below in Respondent's factual allegations common to his affirmative defense, Respondent self-reported his actions to the ARDC, cooperated fully with the ARDC investigation (including agreeing to be evaluated by a prominent psychiatrist retained as an expert by the ARDC), and voluntarily underwent intensive mental health treatment to address the cause of his conduct.

## **COUNT II**

(Misrepresentations to the Court in *Vick v. McClure*)

14. At about the same time as he entered into the purported settlement agreement, described in paragraph 10, above, Respondent informed Cook County Circuit Court Associate Judge Moira S. Johnson that the *Vick v. McClure* case had been settled and prepared an order for Judge Johnson's review which indicated that the parties reached a settlement agreement. Based on Respondent's assertions, Judge Johnson issued an order on March 6, 2020, reflecting that the parties settled the matter by agreement and dismissed the *Vick v. McClure* case with prejudice.

**ANSWER:** Respondent has no access to any case files or emails from his time at Clausen, with the exception of what has been produced by Clausen as part of this proceeding. For this and other reasons, Respondent is without information sufficient to admit or deny certain of the specific allegations in Paragraph 14, including the date on which Judge Johnson issued the order described in Paragraph 14. Respondent admits that he informed the Court that the parties had reached a

settlement, even though he had not obtained express authority from McClure or AIG Insurance to enter into a settlement agreement in the case. Respondent admits that his actions in this regard were improper. Further answering, at the time in question, Respondent was suffering from severe, at times debilitating, depression and anxiety that have been determined (by the ARDC's own expert witness) to be a material causative factor prompting his actions. In addition to stressors in his personal life, Respondent felt completely overwhelmed by his professional duties at Clausen, and, following the departure of his primary supervising partner in 2019, he did not feel that there was anyone at the firm to whom he could turn for assistance or advice. Indeed, he was not being adequately supervised or supported at Clausen. Answering further, Respondent did not act out of malice, for self-enrichment, or for any other improper or intentional purpose, but rather in a misguided effort to seek relief from his severe depression and anxiety.

15. Respondent's statement to Judge Johnson, described in paragraphs 14, above, was false, because prior to March 6, 2020, Respondent had not obtained authority from McClure or AIG Insurance to enter into a settlement agreement in the case.

**ANSWER:** Respondent incorporates his answer from Paragraph 14 as if stated fully herein.

16. Respondent knew that his statement and draft order he prepared and presented to Judge Johnson, described in paragraphs 13, above, were false, because Respondent knew that he did not have authority to enter into the purported settlement agreement in the *Vick v. McClure* case.

**ANSWER:** Respondent incorporates his answer from Paragraph 14 as if stated fully herein.

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

- a. knowingly making a false statement of fact or law to a tribunal by conduct including making the false statement to Judge Johnson and preparing an order as described in paragraph 13, above, in violation of Rule 3.3(a)(1) of the Illinois Rules of Professional Conduct (2010); and
- b. conduct involving dishonesty, fraud, deceit or misrepresentation by including making the false statement to Judge Johnson and preparing an order as described in paragraph 13, above, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010).

**ANSWER:** Respondent incorporates his answer from Paragraph 14 as if stated fully herein.

Answering further, Respondent admits that his alleged representation to the Court that the parties had reached a settlement agreement was objectively improper given that he did not have express authorization from his client to enter into the settlement. Respondent denies that he acted with the intent deceive or defraud anyone. Nor did Respondent act out of malice, for self-enrichment, or for any other improper or intentional purpose. Rather, Respondent's actions were a misguided effort to seek relief from his severe depression and anxiety, which manifested itself due to stressors in Respondent's personal and professional life. Moreover, Respondent's severe depression and anxiety went almost completely untreated during the subject period, and Respondent's condition was further exacerbated by the fact that he felt completely overwhelmed by his professional duties at Clausen following the departure of his primary supervising partner in 2019 (due in part to the lack of meaningful and sufficient supervision and guidance by the new senior attorneys charged with that responsibility). He therefore did not feel that there was anyone at the firm to whom he could turn for assistance or advice. Answering further, as described more fully below in Respondent's factual allegations common to his affirmative defense, Respondent self-reported his actions to the ARDC, cooperated fully with the ARDC investigation (including agreeing to be evaluated by a prominent psychiatrist retained as an expert by the ARDC), and voluntarily underwent intensive mental health treatment to address the cause of his conduct.

### **COUNT III**

(Misrepresentations regarding settlement funds - Vick v. McClure)

18. On March 23, 2020, Mr. Lachcik emailed Respondent a copy of a release of liability and settlement agreement that had been signed by Vick.

**ANSWER:** Respondent has no access to any case files or emails from his time at Clausen, with the exception of what has been produced by Clausen as part of this proceeding. For this and other



reasons, Respondent is without information sufficient to admit or deny the allegations in Paragraph

18. That said, Respondent does not contest the allegations contained in Paragraph 18.

19. Between March 23, 2020 and May 23, 2020, Mr. Lachcik sent messages by email and left voice messages for Respondent on multiple occasions regarding the whereabouts of the funds relating to what he believed was the settlement of the *Vick v. McClure* case.

**ANSWER:** Respondent admits that after agreeing to the unauthorized settlement in *Vick v. McClure*, he sent various communications to Mr. Lachcik and his assistant concerning the purported settlement in *Vick v. McClure* and the status of the settlement check. Respondent admits that he did not have express authorization from his client to settle the case, and had not discussed the settlement with McClure or any representative of AIG Insurance. Further answering, at the time in question, Respondent was suffering from severe, at times debilitating, depression and anxiety that have been determined (by the ARDC's own expert witness) to be a causative factor of his actions. In addition to stressors in his personal life, Respondent felt completely overwhelmed by his professional duties at Clausen, and following the departure of his primary supervising partner in 2019, he did not feel that there was anyone at the firm he could turn to for assistance or advice. Indeed, he was not being adequately supervised or supported at Clausen. Answering further, Respondent did not act out of malice, for self-enrichment, or for any other improper or intentional purpose, but rather in a misguided effort to seek relief from his severe depression and anxiety.

20. Between April 20, 2020 and May 29, 2020, Mr. Lachcik's legal assistant, Michelle Leach, sent email messages to Respondent concerning the purported settlement in *Vick v. McClure*.

**ANSWER:** Respondent admits that Mr. Lachcik and/or Ms. Leach sent emails related to the proposed settlement. Respondent otherwise incorporates his answer from Paragraph 19 as if fully stated herein.

21. By email dated April 20, 2020, Respondent replied to Ms. Leach's inquiries regarding the settlement funds. In his response, Respondent stated: "Apologies Michelle. I have had some trouble getting in touch with my adjuster. I have found out that she has left the insurer and spoke with her supervisor. I am waiting for confirmation, but it should be taken care of soon, I will send you an update as soon as possible. Thank you for your patience."

**ANSWER:** Respondent incorporates his answers from Paragraphs 19 and 20 as if stated fully herein.

22. By email dated April 21, 2020, Respondent responded to Ms. Leach's inquiries regarding the settlement funds. In his response, Respondent stated: "I confirmed yesterday the check was ordered. I requested it be sent next-day fedex [sic] to your office, but I have not received an update from the carrier regarding the shipping. I sent another email today to request an update on mailing. I appreciate your patience."

**ANSWER:** Respondent does not contest that he sent the email described in Paragraph 22. Respondent otherwise incorporates his answer from Paragraphs 19 and 20 as if stated fully herein.

23. By email dated May 29, 2020, Respondent responded to Ms. Leach's inquiries regarding the settlement funds. In his response, Respondent stated: "Apologies Michelle, I am working on getting the draft to you ASAP. I should be able to let you know on Monday it is on the way. Thanks again for your patience."

**ANSWER:** Respondent does not contest that he sent the email described in Paragraph 23. Respondent otherwise incorporates his answer from Paragraphs 19 and 20 as if stated fully herein.

24. Respondent's statements to Ms. Leach, described in paragraphs 21, 22 and 23, above, were false because Respondent never discussed the purported settlement with McClure or AIG Insurance and therefore could not have discussed the purported settlement with an AIG Insurance supervisor, or confirm that the check was ordered, or request that the check be sent next day via FedEx, or send a follow up email to AIG Insurance requesting an update on the whereabouts of the purported settlement funds.

**ANSWER:** Respondent incorporates his answer from Paragraph 19 as if stated fully herein.

25. Respondent knew that his statements to Ms. Leach, described in paragraphs 21, 22 and 23, above, were false at the time he made them, because he knew that never discussed the purported settlement with McClure or AIG Insurance and therefore could not have discussed the purported settlement with an AIG Insurance supervisor, or confirm that the check was ordered, or request that the check be sent next-day via FedEx, or send a follow up email to AIG Insurance requesting an update on the whereabouts of the purported settlement funds.

**ANSWER:** Respondent incorporates his answers to Paragraphs 19 through 24 as if stated fully herein.

26. On May 5, 2020, Mr. Lacheik, on Vick's behalf, filed with the court a document entitled, "Plaintiff's motion for judgment pursuant to 735 ILCS 5/2-2301," in which Vick asked that the court enter a judgment against McClure for the purported settlement amount plus costs incurred in obtaining the judgment and interest.

**ANSWER:** Respondent admits the allegations of Paragraph 26.

27. On June 12, 2020, Vick's attorney contacted the firm president of Clausen to complain that Respondent had entered into a settlement with Vick and failed to provide the settlement check. Clausen then conducted an inquiry into Respondent's handling of the matter, and on June 18, 2020, terminated Respondent's employment with the firm.

**ANSWER:** Respondent admits that on or around June 12, 2020, an attorney from the law firm representing Vick left a voicemail for Clausen's president, Dennis Fitzpatrick. A transcript of the voicemail was produced by Clausen for purposes of this proceeding and is the best evidence of its contents. Answering further, Respondent admits that on or around June 18, 2020, Clausen sent Respondent a letter terminating his employment and, after that date, he did not work further for Clausen.

28. Ultimately, AIG Insurance and McClure decided to comply with the terms of the purported settlement of \$40,000 to Vick.

**ANSWER:** Respondent has no access to any case files or emails from his time at Clausen, with the exception of what has been produced by Clausen as part of this proceeding, and has had no communication with McClure or any AIG Insurance representative regarding compliance with the terms of the purported settlement. Respondent is therefore without information sufficient to admit or deny the allegations in Paragraph 28, but it is Respondent's understanding that AIG Insurance did pay the \$40,000 settlement to Vick.

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

- a. knowingly making false statement of material fact or law to a third person by conduct including making the knowingly false statements described in paragraphs 21, 22 and 23, above, in violation of Rule 4.1(a) of the Illinois Rules of Professional Conduct (2010); and
- b. conduct involving dishonesty, fraud, deceit or misrepresentation by conduct including making the knowingly false statements described in paragraphs 21, 22 and 23, above, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010).

**ANSWER:** Respondent admits that certain of his communications to Mr. Lacheik, his assistant, and/or other representatives of opposing counsel's law firm concerning the purported settlement in *Vick v. McClure* and the status of the settlement check were objectively improper because he did not have express authorization from his client to settle the case and had not discussed the settlement with McClure or any representative of AIG Insurance. Respondent denies, however, that he acted with the intent to deceive or defraud anyone. Nor did Respondent act out of malice, for self-enrichment, or for any other improper or intentional purpose. Rather, Respondent's actions were the product of a misguided effort to seek relief from his severe depression and anxiety, which manifested itself due to stressors in Respondent's personal and professional life. Moreover, Respondent's severe depression and anxiety went almost completely untreated during the subject period, and Respondent's condition was further exacerbated by the fact that he felt completely overwhelmed by his professional duties at Clausen following the departure of his primary supervising partner in 2019 (due in part to the lack of meaningful and sufficient supervision and guidance by the new senior attorneys charged with that responsibility). He therefore did not feel that there was anyone at the firm to whom he could turn for assistance or advice. Answering further, as described more fully below in Respondent's factual allegations common to his affirmative defense, Respondent self-reported his actions to the ARDC, cooperated fully with the

ARDC investigation, and voluntarily underwent intensive mental health treatment to address the cause of his conduct.

#### **COUNT IV**

(Entering into a Settlement Agreement Without Authority and Failure to comply with reasonable requests— Spann v. Mann)

30. On October 28, 2015, Erik Spann (“Spann”) was working for Avis Rental Car (“Avis”) when he took an Avis vehicle to a car wash owned and operated by GCA Services Group (“GCA”) and ABM Industries Incorporated (“ABM”). While in line to have the car washed, Charles Mann (“Mann”), an employee of GCA, reversed the vehicle he was driving and struck the vehicle Spann was driving. As a result of the collision, Spann suffered physical injuries.

**ANSWER:** Respondent has no access to any case files or emails from his time at Clausen, with the exception of what has been produced by Clausen as part of this proceeding. For this and other reasons, Respondent is without information sufficient to fully admit or deny the allegations in Paragraph 30. Answering further, it is Respondent’s recollection that Spann alleged he had been hit by a car driven by one of the car wash employees in the manner alleged, and further alleged that he suffered physical injuries as a result.

31. On October 25, 2017, Charles V. Falkenberg of Karlin, Fleisher & Falkenberg, LLC, on behalf of Spann, filed a complaint for damages in the circuit court of Cook County against Mann, GCA, and ABM. The action was docketed as, *Erik Spann v. Charles Mann, GCA Services Group, and ABM Industries Incorporated*, case number 2017 L 010850 (“*Spann v. Mann*”).

**ANSWER:** Respondent admits that Charles V. Falkenberg was the lawyer for Spann, and that Mr. Falkenberg or someone at his direction filed an action on behalf of Spann in the Circuit Court of Cook County. Respondent has no access to any case files or emails from his time at Clausen, with the exception of what has been produced by Clausen as part of this proceeding. For this and other reasons, Respondent is without information sufficient to admit or deny the remaining allegations in Paragraph 31 concerning dates and filing descriptions. That said, Respondent accepts said allegations as true.

32. At the time of the incident, ESIS, which was a wholly owned subsidiary of Chubb, Inc., was acting as a third-party claim's administrator providing claims processing for GCA.

**ANSWER:** Respondent has no access to any case files or emails from his time at Clausen, with the exception of what has been produced by Clausen as part of this proceeding. For this and other reasons, Respondent is without information sufficient to admit or deny the allegations in Paragraph 32. That said, Respondent accepts said allegations as true.

33. Prior to October 25, 2017, Clausen, ESIS, Mann, GCA, and ABM agreed that Clausen would represent Mann, GCA, and ABM in defense of Spann's personal injury action. Clausen assigned Respondent to handle the matter on behalf of ESIS, Mann, GCA, and ABM, including the tasks referred to in paragraph two, above.

**ANSWER:** Respondent has no access to any case files or emails from his time at Clausen, with the exception of what has been produced by Clausen as part of this proceeding. For this and other reasons, Respondent is without information sufficient to admit or deny the allegations in Paragraph 33, but accepts said allegations as true. Further answering, Respondent incorporates by reference his answer to Paragraph 2.

34. On November 30, 2017, Respondent filed his appearance as counsel for Mann, GCA, and ABM in *Spann v Mann*.

**ANSWER:** Respondent admits to filing an appearance on behalf of one or more defendants in the *Spann v. Mann* action and accepts the remaining allegations as true. Answering further, Respondent has no access to any case files or emails from his time at Clausen, with the exception of what has been produced by Clausen as part of this proceeding. Respondent is therefore without information sufficient to specifically admit or deny the remaining allegations in Paragraph 34, including the date he filed his appearance.

35. Between November 30, 2017 and October 2019, Respondent participated in the case by meeting and discussing the case with the clients, opposing counsel, and the insurance adjustor, by issuing and responding to discovery, and by taking and defending depositions.

**ANSWER:** Respondent admits that he participated in the case by taking certain actions, including, *inter alia*, meeting and discussing the case with the clients, opposing counsel, and the insurance adjustor, by issuing and responding to discovery, and by taking and defending depositions. Answering further, Respondent has no access to any case files or emails from his time at Clausen, with the exception of what has been produced by Clausen as part of this proceeding. Respondent is therefore without information sufficient to specifically admit or deny the remaining allegations in Paragraph 35, but accepts said allegations as true.

36. Between October 10, 2019 and January 13, 2020, the ESIS adjustor assigned to the matter sent numerous email requests to Respondent seeking an update on the *Spann v. Mann* matter including any settlement demands made by plaintiff. Respondent did not respond to the ESIS adjustor. At no time was Respondent given authority to settle the matter by ESIS, Mann, GCA, or ABM.

**ANSWER:** Respondent admits that the ESIS adjustor assigned to the matter sent email requests to Respondent seeking an update on the *Spann v. Mann* matter, including emails concerning any settlement demands made by plaintiff. Respondent further admits that at no time was Respondent given authority to settle the matter by ESIS, Mann, GCA, or ABM.

37. Meanwhile, between October 31, 2019 and February 6, 2020, Respondent was engaged in settlement negotiations with Charles Falkenberg, counsel for Spann.

**ANSWER:** Respondent admits that during the subject period, and without receiving express authority from his clients, Respondent engaged in various settlement discussions with Mr. Falkenberg in which Respondent offered to settle the *Spann v. Mann* case. Respondent admits that, as to these communications, he did not have express authorization from his clients to settle the case. Further answering, at the time in question, Respondent was suffering from severe, at times debilitating, depression and anxiety that have been determined (by the ARDC's own expert witness) to be a causative factor of his actions. In addition to stressors in his personal life, Respondent felt completely overwhelmed by his professional duties at Clausen following the

departure of his primary supervising partner in 2019 (due in part to the lack of meaningful and sufficient supervision and guidance by the new senior attorneys charged with that responsibility). He therefore did not feel that there was anyone at the firm he could turn to for assistance or advice. He did not act out of malice, for self-enrichment or for any other improper or intentional purpose, but rather in a misguided effort to seek relief from his severe depression and anxiety.

38. By email dated October 31, 2019, Respondent stated to Mr. Falkenberg, “At this time they (Respondent’s clients) are willing to offer \$50,000 in settlement of all your clients claims.”

**ANSWER:** Respondent admits the allegations of Paragraph 38. Answering further, Respondent incorporates his answer from Paragraph 37 as if stated fully herein.

39. By email dated November 20, 2019, Respondent stated to Mr. Falkenberg, “My client has authorized me to offer \$150,000 in settlement with previously discussed terms.”

**ANSWER:** Respondent admits the allegations of Paragraph 39. Answering further, Respondent incorporates his answer from Paragraph 37 as if stated fully herein.

40. By email dated February 6, 2020, Respondent stated to Mr. Falkenberg, “Per our conversation, let this email confirm that we have a contingent agreement to settle this matter for \$200,000. That agreement is contingent on your client finishing treating and the worker’s compensation case being closed. No money will be paid toward the settlement until those contingencies occur, and until that time this does not constitute a full and complete settlement agreement.”

**ANSWER:** Respondent admits the allegations of Paragraph 40. Answering further, Respondent incorporates his answer from Paragraph 37 as if stated fully herein.

41. Respondent’s statements to Mr. Falkenberg, described in paragraphs 38, 39, and 40, above, were false. Prior to February 6, 2020, Respondent had not obtained authority from Mann, GCA, ABM or ESIS to enter into a settlement agreement.

**ANSWER:** Respondent admits the allegations of Paragraph 41. Answering further, Respondent incorporates his answer from Paragraph 37 as if stated fully herein.



42. Respondent knew that his statements to Mr. Falkenberg, described in paragraphs 38, 39, and 40, above, were false because he knew he had not received authority from ESIS, Mann, GCA, or ABM to settle Spann's claims for \$200,000.

**ANSWER:** Respondent admits the allegations of Paragraph 42. Answering further, Respondent incorporates his answer from Paragraph 37 as if stated fully herein.

43. In reliance on Respondent's February 6, 2020 email, Mr. Falkenberg, on Spann's behalf, sought leave to voluntarily dismiss his case.

**ANSWER:** Respondent admits that Mr. Falkenberg voluntarily dismissed Spann's case in reliance on Respondent's representation that his clients had authorized the settlement agreement. Answering further, Respondent did not act with the intent to deceive or defraud Mr. Falkenberg or his client. Nor did he act out of any malice, self-enrichment or any other improper or intentional purpose. Rather, at the time, Respondent was suffering from severe, at times debilitating, depression and anxiety that has been determined (by the ARDC's own expert witness) to be a causative factor of his actions, and he settled the case without authorization from the client in a misguided effort to seek relief from his severe depression and anxiety.

44. On February 7, 2020, Cook County Circuit Court Judge John H. Ehrlich entered an order in the *Spann v. Mann* case that dismissed the case without prejudice, with leave to refile the case within one year.

**ANSWER:** Respondent has no access to any case files or emails from his time at Clausen, with the exception of what has been produced by Clausen as part of this proceeding. Respondent is therefore without information sufficient to specifically admit or deny the allegations in Paragraph 44 as to the specific date alleged or whether the case was dismissed with leave to reinstate. That said, Respondent accepts the allegations of Paragraph 44 as true.

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

- a. failure to abide by a client's decision on whether to settle a matter, by conduct including entering into a purported settlement agreement of the

claim against Mann, GCA, and ABM, in case number 2017 L 010850 without the knowledge or authority of ESIS, Mann, GCA, or ABM in violation of Rule 1.2(a) of the Illinois Rules of Professional Conduct (2010);

- b. failure to keep the client reasonably informed about the status of a matter, by conduct including not responding to ESIS's emails, in violation of Rule 1.4(a)(3) of the Illinois Rules of Professional Conduct (2010);
- c. knowingly making a false statement of material fact or law to a third person by conduct including falsely representing to Charles Falkenberg that his clients had agreed to settle *Spann v. Mann*, for \$200,000, in violation of Rule 4.1(a) of the Illinois Rules of Professional Conduct (2010); and
- d. conduct involving dishonesty, fraud, deceit or misrepresentation by conduct including making the knowingly false statements described in paragraphs 38, 39, and 40, above, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010).

**ANSWER:** Respondent admits that his actions in connection with the unauthorized settlement of *Spann v. Mann*, and his failure to keep his client reasonably informed regarding the status of that case, were objectively improper. Respondent also admits that his actions in this regard, standing alone, would be in violation of the Illinois Rules of Professional Conduct. Respondent denies, however, that he acted with the intent to deceive or defraud anyone. Nor did Respondent act out of any malice, self-enrichment, or for any other improper or intentional purpose. Rather, Respondent's actions were a misguided effort to seek relief from his severe depression and anxiety, which manifested itself due to stressors in Respondent's personal and professional life. Answering further, Respondent's severe depression and anxiety went almost completely untreated during the subject period, and Respondent's condition was further exacerbated by the fact that he felt completely overwhelmed by his professional duties at Clausen following the departure of his primary supervising partner in 2019 (due in part to the lack of meaningful and sufficient supervision and guidance by the new senior attorneys charged with that responsibility). He therefore did not feel that there was anyone at the firm to whom he could turn for assistance or

advice. Answering further, as described more fully below in Respondent's factual allegations common to his affirmative defense, Respondent self-reported his actions to the ARDC, fully cooperated with the ARDC's investigation, and voluntarily underwent intensive mental health treatment to address the cause of his conduct.

### **AFFIRMATIVE DEFENSE**

While Respondent acknowledges that certain of his acts and omissions as described herein were improper and, standing alone, would be in violation of the Illinois Rules of Professional Conduct, he respectfully submits that the facts and circumstances of this case mitigate strongly against any finding of purposeful misconduct warranting disciplinary action. In support thereof, Respondent states as follows:

#### **FACTUAL ALLEGATIONS COMMON TO RESPONDENT'S AFFIRMATIVE DEFENSE**

1. Respondent practiced law as an associate attorney based in the Chicago, Illinois office of Clausen Miller, P.C. ("Clausen"), effective from on or around May 30, 2017, until his termination from employment on June 18, 2020.

2. During his employment at Clausen, and specifically after the departure of his primary supervising partner in 2019, Respondent often felt that he was on an "island" without meaningful support and/or supervision from the partners at the firm that were responsible for supervising respondent's practice of law on the various cases to which he was assigned. Respondent did not feel that he could confide in or seek advice from these partners, or that they made any meaningful effort to ensure he was growing in his practice of law and otherwise satisfying his responsibilities in the cases to which he was assigned at the firm. Apart from their interest in his billable hours, these partners did not actively supervise Respondent or did not

adequately undertake any of the other responsibilities contemplated in Rule 5.1 of the Illinois Rules of Professional Conduct.

3. The substantial lack of support and supervision following the departure of Respondent's primary supervising partner in 2019, exacerbated Respondent's anxiety and depression in connection with his responsibilities at Clausen.

4. At various points in his life, Respondent had suffered from depression and anxiety, but he had never experienced the severity of symptoms that arose in 2019, when he started to feel completely overwhelmed by his responsibilities at Clausen. These psychological symptoms negatively affected almost all aspects of his job performance, including his concentration and judgment with respect to tasks that he was otherwise fully capable of performing.

5. Respondent felt unable to confide in the partners at Clausen that were supposed to be supervising his practice. His psychological condition led him to believe that he would be viewed as inadequate. He also believed that his mental health would improve over time, but the opposite occurred. Indeed, Respondent's psychological condition grew worse in 2020, as did his feelings of isolation at Clausen, especially after the COVID-19 pandemic began and everyone at Clausen started working remotely.

6. In or around June 2020, Respondent finally came to the realization that he was not in control of his psychological well-being and needed to seek professional help. Respondent informed supervising partner Paige Neel of this fact on June 2, 2020. In mid-June 2020, Respondent applied for leave at Clausen under the Family and Medical Leave Act, and underwent intake interviews with three different mental health facilities. He ultimately elected to partake in a partial hospitalization program at Compass Health. Respondent started the partial hospitalization

program on June 18, 2020. On the same day, Clausen sent Respondent a letter terminating his employment.

7. On July 6, 2020, Respondent self-reported his conduct to the ARDC and has fully cooperated with the ARDC's investigation of his conduct since that time, including responding to various correspondence, providing a sworn statement, and submitting to a psychological evaluation by the ARDC's own retained expert psychiatrist, Dr. Lisa A. Rone ("Dr. Rone").

8. On August 31, 2020, Respondent also completed treatment as part of the partial hospitalization program at Compass Health and transitioned to an outpatient individual care plan. Respondent's outpatient individual care plan included, but was not limited to, individual therapy with a licensed clinical social worker, sessions with a psychiatrist, and medication management with the psychiatrist. Respondent has continued this outpatient care to date.

9. As noted *supra*, Respondent voluntarily agreed to be evaluated by the ARDC's retained expert, Dr. Rone, who is an Assistant Professor of Clinical Psychiatry and Behavioral Sciences at Northwestern University Feinberg School of Medicine. Dr. Rone was retained by the ARDC to conduct a psychological evaluation of Respondent and to determine the causal relationship, if any, between his psychological condition and the conduct as alleged in the Complaint. Respondent cooperated in Dr. Rone's evaluation in all respects, including meeting with her so she could perform her assessment on or around July 8, 2021.

10. Dr. Rone thereafter submitted a written report on July 30, 2021, to the ARDC, which was based, in part, on the materials produced during the ARDC investigation and her own face-to-face examination, interview, and evaluation of Respondent.

11. During the period of the alleged conduct, as affirmed by the findings set forth in Dr. Rone's written report, Respondent suffered from major depression disorder ("MDD") and anxiety.

12. Specifically, Dr. Rone came to the following conclusions regarding Respondent's condition and the effects of said condition on his conduct:

- a. "Mr. Hynes experienced a recurrence of major depression in 2019, which worsened in early-mid 2020. ... He experienced poor concentration, poor cognitive efficiency, decreased occupational functioning, sleep cycle dysregulation, depressed mood with passive suicidal ideation, anxiety, and **derangements in decision-making and judgment.**" (Emphasis added).
- b. **"Mr. Hynes' episode of MDD in 2019-2020 impacted his ability to think clearly and discharge his duties appropriately regarding the actions in question in this complaint. His depression greatly influenced his behavior during this time[.]"** (Emphasis added).
- c. "[T]he severity of his depression did influence the decisions to settle cases without permission and to misrepresent them as settled to the court."
- d. "His judgment was **significantly impaired by his depression.** He recognizes that he made poor decisions including settling cases without permission during this time. He also recognizes that his thought patterns were **depression-driven** and he now has difficulty explaining the logic of his actions." (Emphasis added).

13. Importantly, Dr. Rone concluded that based on his current mental state and existing treatment plan, "Mr. Hynes is currently able to comply with the standards of professional practice and will continue to be able to do so if he maintains an adequate schedule of psychiatric care and

monitors for recurrence of depression symptoms in the future. His current treatment plan is appropriate and effective for him.”

14. On July 27, 2021, the Inquiry Board voted to authorize that a complaint be filed against Respondent. This decision came before Dr. Rone issued her report with the findings as described herein. For a full recitation of Dr. Rone’s findings, Respondent respectfully directs the Hearing Board to Dr. Rone’s July 30, 2021 report.

**AFFIRMATIVE DEFENSE No. 1**  
**(Mental Impairment as a Material and Significant Mitigating Circumstance)**

15. Respondent incorporates by reference each and every answer in response to the Complaint in Paragraphs 1 through 45 as if fully set forth herein. Respondent also incorporates by reference each and every factual allegation common to Respondent’s affirmative defense as set forth in Paragraphs 1 through 14 as if fully set forth herein.

16. Mental illness and impairment is one of several mitigating factors to be considered in the assessment of a disciplinary complaint and/or in connection with imposing an appropriate sanction.

17. As alleged herein, and as more fully set forth in the medical records provided by Compass Health and the July 30, 2021 report by Dr. Rone, Respondent suffered from depression and anxiety that significantly affected and motivated his decision-making.

18. As Dr. Rone concluded, Respondent’s psychological condition was a severe and significant “causative factor” in influencing Respondent’s conduct as alleged. Dr. Rone further concluded that Respondent’s judgment was “significantly impaired by his depression” and that his thought patterns were “depression driven[.]” Indeed, the “severity of his depression did influence the decisions to settle cases without permission and to misrepresent them as settled to the Court[.]”

## CONCLUSION

At all relevant times following the date Respondent self-reported the events relevant to these proceedings, he has cooperated with the ARDC investigation. Among other things, he has agreed to be interviewed and candidly did so. He also agreed to be examined by the ARDC's own psychiatrist expert and, in every other respect, has acted in a manner that candidly reflects his acceptance of responsibility for conduct that could have been entirely nonconsequential had he been afforded the support and constructive supervision by those at Clausen that were charged with the responsibility of supervising, monitoring, and mentoring a young and less experienced colleague. Had Respondent being appropriately supervised, it also would have been apparent to these other attorneys at Clausen that Respondent was suffering from the forces of depression and anxiety, which, as noted, the ARDC's own expert witness verified was the driving force behind the conduct that has led to the charges against Mr. Hynes. In this respect, he has not sought to evade responsibility for his conduct, but rather seeks to place his acts and omission in proper context, given his severe but treatable psychiatric condition.

To assure that his psychological impairment is properly treated so that he is able to continue to pursue a credible and productive career as a member of the Illinois bar, he has entered into good faith negotiations with the ARDC to resolve this matter. In short, Mr. Hynes has done everything that could reasonably be expected of him, from self-reporting his conduct, to seeking proper medical treatment, and accepting responsibility for his actions.

Dated: October 5, 2021

Respectfully Submitted,

By: /s/ Richard J. Prendergast  
Attorney for Respondent



Richard J. Prendergast, Esq.  
Brian C. Prendergast, Esq.  
RICHARD J. PRENDERGAST, LTD. (#11381)  
111 W. Washington St., Suite 1100  
Chicago, Illinois 60602  
(312) 641-0881  
[rprendergast@rjpltd.com](mailto:rprendergast@rjpltd.com)  
[bprendergast@rjpltd.com](mailto:bprendergast@rjpltd.com)