

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

In the Matter of:

NICOLE LYNN BERAN,  
Attorney-Respondent,  
No. 6271587.

Commission No. 2021PR00076

COMPLAINT

Jerome Larkin, Administrator of the Attorney Registration and Disciplinary Commission, by his attorney, Richard Gleason, pursuant to Supreme Court Rule 753(b), complains of Respondent, Nicole Lynn Beran, who was licensed to practice law in Illinois on May 4, 2000, and alleges that Respondent has engaged in the following conduct, which subjects her to discipline pursuant to Supreme Court Rule 770:

ALLEGATIONS COMMON TO ALL COUNTS

1. At all times alleged in this complaint, Respondent was employed by Laura Epstein & Associates, LLC (“Epstein & Associates”), a two-person law firm located in Rockford that concentrated its practice in family law matters. Laura Epstein was the sole owner of Epstein & Associates, and Respondent was the sole associate attorney.
2. During the events described in this complaint, Respondent had authority to meet with prospective clients, to enter into representation agreements with those individuals, to accept payments on the firm’s behalf, and to administer the firm’s payroll.

FILED  
9/2/2021 1:47 PM  
ARDC Clerk

## COUNT I

### *Lack of diligence, failure to communicate, and failure to return unearned fee – Katy Mathey*

3. On April 23, 2019, Respondent met for a consultation with Katy Mathey (“Ms. Mathey”), who was seeking counsel to file a petition on her behalf to obtain a dissolution of Ms. Mathey’s marriage.

4. During the meeting, Respondent agreed to undertake the representation of Ms. Mathey on behalf of Epstein & Associates. Respondent and Ms. Mathey further agreed that Ms. Mathey would provide Epstein & Associates with an advance fee payment of \$3,500, against which Respondent would bill Ms. Mathey for legal fees at an hourly rate of \$250. Respondent and Ms. Mathey further agreed that Ms. Mathey would pay Respondent an additional fee of \$150 for Respondent’s April 23, 2019 consultation with Ms. Mathey. The terms of the agreement between Respondent and Ms. Mathey were contained in a written agreement executed by Respondent and Ms. Mathey.

5. On the same day, April 23, 2019, Ms. Mathey paid the advance fee described in paragraph four, above, by issuing check number 1045 in the amount of \$3,500, and paid the consultation fee described in paragraph four, above, by issuing check number 1046 in the amount of \$150 to Respondent.

6. At some point between April 23, 2019 and May 6, 2019, Respondent prepared a draft petition on Ms. Mathey’s behalf seeking a dissolution of Ms. Mathey’s marriage. On May 6, 2019, Respondent sent the draft petition to Ms. Mathey for Ms. Mathey’s review and signature. On that same day, Ms. Mathey signed the petition, and returned it to Respondent via email. After receiving the executed petition from Ms. Mathey, Respondent told Ms. Mathey that Respondent would file the petition on May 7, 2019. Respondent, however, did not file the petition seeking dissolution of Ms. Mathey’s marriage on May 7, 2019.

7. As of May 20, 2019, Respondent had not taken action to file the petition seeking dissolution of Ms. Mathey's marriage. Ms. Mathey called Respondent on May 7, 2019, on May 14, 2019, and on May 20, 2019, and left telephone messages for Respondent with Respondent's office secretary, asking that Respondent provide Ms. Mathey with an update as to the status of the dissolution of marriage petition. Respondent returned none of Ms. Mathey's messages.

8. As of May 28, 2019, Respondent had not filed any court papers of any kind on Ms. Mathey's behalf. On May 28, 2019, Ms. Mathey again left a telephone message for Respondent with Respondent's office secretary, in which she asked that Respondent return Ms. Mathey's \$3,500 advance fee payment, described in paragraphs four and five, above. Respondent did not return Ms. Mathey's May 28, 2019 message.

9. On June 4, 2019, Ms. Mathey emailed Respondent to discharge Respondent, and again ask that Respondent refund Ms. Mathey's advance fee payment. On or about the same day, Ms. Mathey sent a letter via US Mail to Respondent at the law firm stating the same. Respondent never responded to Ms. Mathey's email or letter, nor did Respondent return any funds to Mathey.

10. As of August \_\_\_\_, 2021, the date the Administrator's investigation of Respondent's representation of Ms. Mathey was referred to Panel C of the Commission's Inquiry Board, Respondent has never filed any dissolution petition on Ms. Mathey's behalf, or returned any portion of Ms. Mathey's advance fee payment. The services Respondent and Epstein & Associates provided do not justify their retention of that entire payment.

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

- a. Failing to act with reasonable diligence and promptness in representing a client, by conduct including not filing a petition for dissolution of marriage on behalf of Ms. Mathey, in violation of Rule 1.3 of the Illinois Rules of

Professional Conduct (2010);

- b. Failing to keep a client reasonably informed about the status of a matter, by conduct including not responding to Ms. Mathey's telephone messages, email, and letter, in violation of Rule 1.4(a)(3) of the Illinois Rules of Professional Conduct (2010);
- c. Failing to promptly comply with reasonable requests for information, by conduct including not responding to Ms. Mathey's telephone messages, email, and letter, in violation of Rule 1.4(a)(4) of the Illinois Rules of Professional Conduct (2010); and
- d. Failing to take steps to the extent reasonably practicable to protect a client's interests upon termination of representation, by conduct including failing to return any unused funds to Ms. Mathey, in violation of Rule 1.16(d) of the Illinois Rules of Professional Conduct (2010).

## COUNT II

*(Lack of competence, lack of diligence, failure to communicate – Karen Gustafson)*

12. On July 29, 2016, Respondent and Karen Gustafson ("Ms. Gustafson") agreed that Respondent would undertake the representation of Ms. Gustafson on behalf of Epstein & Associates. Respondent and Ms. Gustafson further agreed that Ms. Gustafson provide Epstein & Associates with an advance fee payment of \$2,500, against which Respondent would bill Ms. Gustafson for legal fees at an hourly rate of \$250.

13. Between July 29, 2016 and August 14, 2019, in total over the course of Respondent's representation of Ms. Gustafson, Ms. Gustafson paid Respondent \$3,800.

14. On August 4, 2016, Respondent filed a petition for dissolution of marriage on Ms. Gustafson's behalf in the Circuit Court of Boone County. The clerk of the circuit court of Boone County docketed the matter and assigned it case number 2016 D 132 ("the Gustafson case").

15. On December 28, 2016, the circuit court of Boone County entered a marriage dissolution order in case 2016 D 132. At the time of the marriage dissolution order, Ms. Gustafson

was a licensed clinical social worker employed by the Rockford school district, entitled to certain retirement funds provided through the Teachers' Retirement System of the State of Illinois ("TRS"). The marriage dissolution order incorporated a marital settlement agreement ("MSA") entered into by the parties. As part of the MSA, the parties' retirement funds were apportioned. The parties agreed to assign a placeholder value of those retirement funds. The MSA permitted Ms. Gustafson to petition the court after the entry of the marriage dissolution order so as to adjust the value assigned to the pension funds once she obtained a valuation of those funds, and thereby adjust the apportionment of the parties' retirement funds.

16. On June 6, 2017, Respondent, on Ms. Gustafson's behalf, filed a motion to enforce judgement. Among other matters, the motion sought a resolution as to the value and division of Ms. Gustafson's retirement funds, described in paragraph 15, above. In the motion, Ms. Gustafson asserted that the value of her retirement funds was \$36,552.79 less than the placeholder value and sought that she be awarded additional retirement funds from her ex-husband, as provided for in the MSA.

17. On June 5, 2018, in response to Ms. Gustafson's motion to enforce judgment, Ms. Gustafson's ex-husband's counsel John S. Kim ("Mr. Kim"), served, through Respondent, interrogatories and a notice to produce documents upon Ms. Gustafson. Mr. Kim propounded the interrogatories and notice to produce documents in order to determine the basis for Ms. Gustafson's assertion as to the value of the retirement funds. In accord with the Illinois Supreme Court Rules 213 and 214, Ms. Gustafson's discovery responses were due by July 3, 2018.

18. As of July 17, 2018, Respondent had not answered the written discovery propounded by Mr. Kim, described in paragraph 17, above. On July 17, 2018, having not received from Respondent responses to his written discovery, Mr. Kim filed a motion to compel Ms.

Gustafson's production of documents and answers to interrogatories related to the valuation of Ms. Gustafson's retirement funds. Respondent did not notify Ms. Gustafson that Mr. Kim had filed a motion to compel.

19. Respondent did not respond to the motion to compel, described in paragraph 18, above. On July 25, 2018, the court granted the motion to compel. In its order, the court reserved the issue of sanctions, and required Respondent to answer Mr. Kim's written discovery requests by August 8, 2018. Respondent did not notify Ms. Gustafson that the court had granted Mr. Kim's motion to compel.

20. As of September 5, 2018, Respondent had not the discovery requests in the Gustafson case. On the same day, the Court imposed a sanction upon Respondent in the amount of \$500 for Respondent's failure to answer written discovery, as described in paragraph 20, above. On the same day, in open court, Respondent provided Mr. Kim with a two-page statement from TRS, dated December 21, 2016. The statement from TRS contained an estimate of the value of the retirement funds. Respondent further disclosed to Mr. Kim the identity of a certified public accountant named Debra Aurand ("Aurand"), who Respondent intended to call as an expert witness. Respondent also tendered to Mr. Kim two emails from Aurand, one dated February 10, 2017 and the other dated February 12, 2017. The emails contained Aurand's opinion as to a range of values that could be assessed to Ms. Gustafson's retirement funds. The court continued the matter to October 10, 2018 for Respondent's compliance with opposing counsel's written discovery. Respondent did not notify Ms. Gustafson that Respondent had been sanctioned.

21. From September 5, 2018 and until November 9, 2018, Respondent never provided Mr. Kim with the bases for any of Aurand's opinions, as described in paragraph 20, above.

22. On November 9, 2018, as a consequence of Respondent's failure to comply with

written discovery, Mr. Kim filed a second motion to compel seeking the information described in paragraph 20, above. On January 16, 2019, the court granted Mr. Kim's second motion to compel, and ordered Respondent to disclose to Mr. Kim the bases of Aurand's opinions on or before February 13, 2019. The court reserved the issue of sanctions. Respondent did not notify Ms. Gustafson that a second motion to compel had been filed, or that it had been granted.

23. On March 6, 2019, Respondent had still not provided Mr. Kim with the bases for Aurand's opinions, and the court, as a sanction, barred Ms. Gustafson from introducing any expert testimony as to the value of her retirement funds contrary to the stipulated placeholder contained in the December 12, 2016 MSA, as described in paragraph 15, above. Respondent did not notify Ms. Gustafson of the court's sanction.

24. On May 29, 2019, Mr. Kim moved for summary judgment, asserting that without an expert witness to testify as to a value of Ms. Gustafson's pension funds contrary to the placeholder contained in the MSA, described in paragraph 15, above, there remained no genuine issue of material fact, and that Ms. Gustafson's ex-husband was therefore entitled to judgment as a matter of law. On the same day, the court entered a briefing schedule on Mr. Kim's motion for summary judgment and ordered Respondent to file Ms. Gustafson's response on or before June 21, 2019.

25. On June 26, 2019, Respondent had not yet filed a response to Mr. Kim's motion, and filed a motion seeking an extension to file the response.

26. On July 3, 2019, the court granted Respondent's request for an extension, but sanctioned Respondent \$500 for her delayed filing. The court further ordered that Respondent was required to file Ms. Gustafson's response by July 24, 2019. On July 24, 2019, Respondent filed Ms. Gustafson's written response to Mr. Kim's motion.

27. On August 13, 2019, the Court granted Ms. Gustafson's ex-husband's motion for summary judgment, described in paragraph 24, above, and adjudicated the value of Ms. Gustafson's retirement funds to be the placeholder value assigned by the parties in the December 28, 2016 MSA, described in paragraph 16, above. The difference between the placeholder value of the retirement funds contained in the MSA and the value asserted by Ms. Gustafson resulted in a loss of \$36,552.79 to Ms. Gustafson which she otherwise would have received by way of the reapportionment of retirement funds pursuant to the MSA, as described in paragraph 15, above. Respondent did not notify Ms. Gustafson of the motion for summary judgment, or that judgment had been entered against her.

28. Beginning February 10, 2017 and continuing until at February 22, 2019, Ms. Gustafson called Respondent and left messages with Respondent's office secretary three to five times every week, asking for updates on her case. During that period of time, Respondent replied to Ms. Gustafson's messages only twice: once via email on July 7, 2018, and again via email on August 22, 2018. In neither email did Respondent provide Ms. Gustafson with an update on her case.

29. Ms. Gustafson did not learn of the court's judgment, described in paragraph 27, above, until 2020 when she contacted Mr. Kim to ask about the status of the case.

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

- a. Failing to competently represent a client, by conduct including failing to timely respond to discovery requests, resulting in the court imposing sanctions and an adverse judgment against Ms. Gustafson, in violation of Rule 1.1 of the Illinois Rules of Professional Conduct (2010);
- b. Failing to act with reasonable diligence and promptness in representing a client, by conduct including failing to

timely respond to discovery requests resulting in an adverse judgment against her client, Ms. Gustafson, in violation of Rule 1.3 of the Illinois Rules of Professional Conduct (2010); and

- c. Failing to keep a client reasonably informed about the status of a matter, by conduct including failing to advise Gustafson of discovery sanctions and that a judgment having been entered against Ms. Gustafson, in violation of Rule 1.4(a)(3) of the Illinois Rules of Professional Conduct (2010);

### COUNT III

*(Lack of diligence, failure to communicate, and failure to return unearned fee – Vonce Issom)*

31. On July 24, 2019, Respondent met for a consultation with Vonce Issom (“Mr. Issom”), who was seeking counsel to assist him in petitioning the circuit court in Lake County, Illinois to obtain custody of his son.

32. During the meeting, Respondent and Mr. Issom agreed that Respondent would undertake the representation of Mr. Issom on behalf of Epstein & Associates. Respondent and Mr. Issom further agreed that Mr. Issom would provide Epstein & Associates with an advance fee payment of \$3,500, against which Respondent would bill Mr. Issom for legal fees at an hourly rate of \$250.

33. On July 24, 2019, the same day as his consultation with Respondent, Mr. Issom paid the advance fee described in paragraph 32, above, to Epstein & Associates.

34. From July 24, 2019 and until June 15, 2020, Mr. Issom repeatedly left telephone messages for Respondent and sent emails and text messages to Respondent seeking an update as to the status of his matter, but Respondent never provided any update.

35. On June 15, 2020, Respondent emailed Mr. Issom and apologized for her delay in responding to his requests for updates. In the email, Respondent stated that the circuit court of Lake County was opening up following the COVID-19 shutdown earlier that year, and asked Mr.

Issom about his son's current living arrangements, and whether Mr. Issom believed his son's mother would be willing to speak with Respondent. Mr. Issom replied to Respondent's email the same day with answers to Respondent's questions. Respondent never replied to Mr. Issom's response email.

36. Between June 16, 2020 and until December 3, 2020, Mr. Issom repeatedly left telephone messages for Respondent and sent emails and text messages to Respondent seeking an update as to the status of his matter, but Respondent never provided an update.

37. On December 3, 2020, Respondent emailed Mr. Issom. In the email, Respondent asked Mr. Issom to complete a financial affidavit attached to the email, and asked Mr. Issom to provide copies of his last two paystubs, his tax returns, any record of additional income, and any account statements from the prior three months for any joint and individual bank accounts. Within two weeks of receiving Respondent's email, Mr. Issom completed and sent to Respondent the affidavit and requested documents.

38. Respondent never contacted Mr. Issom after December 3, 2020.

39. Respondent never provided Mr. Issom with any documentation showing that she had filed anything in any court on Mr. Issom's behalf at any point during her representation of Mr. Issom.

40. On January 22, 2021, Mr. Issom emailed Respondent. In the email, Mr. Issom discharged Respondent and asked that his unused advanced fee payment be refunded. Respondent never contacted Mr. Issom after January 22, 2021, and never refunded any portion of Mr. Issom's retainer. The services Respondent and Epstein & Associates provided do not justify their retention of that entire payment.

41. By reason of the conduct described above, Respondent has engaged in the following

misconduct:

- a. Failing to act with reasonable diligence and promptness in representing a client, by conduct including failing to file any petition on behalf of Mr. Issom seeking custody of Mr. Issom's child, in violation of Rule 1.3 of the Illinois Rules of Professional Conduct (2010);
- b. Failing to keep a client reasonably informed about the status of a matter, by conduct including failing to notify Mr. Issom as to whether any pleadings had been filed on his behalf, in violation of Rule 1.4(a)(3) of the Illinois Rules of Professional Conduct (2010);
- c. Failing to respond to a client's inquiries, by conduct including not responding to Mr. Issom's text messages and emails seeking an update as to the status of the matter, in violation of Rule 1.4(a)(4) of the Illinois Rules of Professional Conduct (2010); and
- d. Failing to take steps to the extent reasonably practicable to protect a client's interests upon termination of representation, by conduct including failing to return any unused funds to Mr. Issom, in violation of Rule 1.16(d) of the Illinois Rules of Professional Conduct (2010).

#### COUNT IV

*(Failure to cooperate with ARDC investigations)*

42. Between February 22, 2018 and February 1, 2021, the Administrator received requests for an investigation of Respondent from Ms. Mathey, Ms. Gustafson, and Mr. Issom, related to Respondent's handling of each of their family law cases. After reviewing the correspondence, the Administrator docketed investigations into each of their allegations numbered as 2019IN00675, 2019IN02685, and 2021IN00242, respectively. Accordingly, between the dates stated above, counsel for the Administrator sent letters to the address Respondent had previously provided when she completed the annual registration process, requesting that Respondent submit a response and documentation regarding each of the allegations. None of the letters sent to

Respondent were returned to sender or forwarded to another address.

43. On June 17, 2019, Respondent submitted a written response regarding investigation number 2019IN00675, pertaining to her former client Gustafson, but did not provide any supporting documentation. Respondent never provided a written response in investigation number 2019IN02685, pertaining to her former client Ms. Mathey, and never provided a written response in investigation number 2021IN00242, pertaining to her former client Mr. Issom.

44. On September 12, 2019, the Administrator issued a subpoena that required Respondent's appearance for a sworn statement and the production of documents at the ARDC's Chicago office on September 30, 2019 regarding the investigations pertaining to Ms. Mathey and Ms. Gustafson, which were then pending against her. That subpoena was sent via messenger service to the address Respondent had previously provided when she completed the annual registration process and was delivered an individual at the address.

45. Respondent did not appear at the ARDC's Chicago office in response to the subpoena described in paragraph 44, above, and never provided the documents requested in the subpoena.

46. On June 22, 2021, the Administrator issued a second subpoena requiring that Respondent provide the client files pertaining to her representations of Ms. Mathey, Ms. Gustafson, and Mr. Issom by July 15, 2021 at 10:00 AM.

47. On June 22, 2021, Respondent agreed to accept service of the subpoena, described in paragraph 46, above, by email. An investigator for the Administrator subsequently sent Respondent a copy of the subpoena to Respondent at the email address Respondent provided. Respondent acknowledged receipt of the subpoena.

48. As of 1:12 PM on July 15, 2021, Respondent not provided the subpoenaed

documents described in paragraph 46, above. Counsel for the Administrator emailed Respondent and asked that Respondent provide the subpoenaed documents by 5:00 PM the following day, July 16, 2021.

49. Respondent did not provide the subpoenaed documents by July 16, 2021 and did not contact the counsel for the Administrator until July 21, 2021.

50. On July 21, 2021, Respondent sent an email message to counsel for the Administrator. In her message, Respondent stated that she intended to comply with the subpoena, but that she needed “a couple more days” to scan the subpoenaed documents and send them to counsel for the Administrator. On the same day, counsel for the Administrator replied to Respondent by email, and provided Respondent one final extension, until July 26, 2021 at 5:00 PM, to produce the subpoenaed documents.

51. Respondent did not provide the subpoenaed documents by July 26, 2021, and never requested any additional extension of time to respond to the subpoena. Respondent’s production of records in response to the subpoena has never been waived or excused.

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

- a. failing to respond to a lawful demand for information from a disciplinary authority, by conduct including failing to respond to the Administrator's requests for a written response to the Mathey and Issom investigations, as well as for failing to comply with the Administrator's subpoena, which requested Respondent's production of the client files pertaining to Ms. Mathey, Ms. Gustafson, and Mr. Issom, in violation of Rule 8.1(b) of the Illinois Rules of Professional Conduct (2010).

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

Respectfully Submitted

Jerome Larkin, Administrator  
Attorney Registration and  
Disciplinary Commission

By: /s/ Richard Gleason  
Richard Gleason

Richard Gleason  
Counsel for the Administrator  
130 East Randolph Drive, Suite 1500  
Chicago, Illinois 60601  
Telephone: (312) 565-2600  
Email: [rgleason@iadc.org](mailto:rgleason@iadc.org)  
Email: [ARDCeService@iadc.org](mailto:ARDCeService@iadc.org)

Doc. #1410659