No. 122046

IN THE SUPREME COURT OF ILLINOIS

In re MARRIAGE of	)	Appeal from the Appellate Court
	)	Case #3-15-0101
CHRISTINE GOESEL,	)	Third Appellate District
Petitioner-Appellant,	)	2017 IL App (3d) 150101
	)	
and	)	
	)	
ANDREW GOESEL,	)	Appeal from the Circuit Court of
Respondent,	)	Will County, Illinois, Twelfth Judicial
	)	Circuit. Circuit No. 2013 D 107
	)	Judge Dinah Archambeault, presiding
(Laura A. Holwell,	)	
Contemnor-Appellee)	)	

REPLY BRIEF AND ARGUMENT FOR PETITIONER-APPELLANT

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ORAL ARGUMENT REQUESTED

I.

APPELLANT'S REPLY BRIEF ARGUMENT

A. EARNED FEES ARE AVAILABLE FUNDS AND MAY BE DISGORGED SUBJECT TO A COURT'S DISCRETION

Amici Curiae, The Illinois State Bar Association and the American Academy of Matrimonial Lawyers, have presented this Court with a Brief setting forth the interests of attorneys and potential consequences to attorneys if it is determined that "available" as used in Section 501(c-1) of the Illinois Marriage and Dissolution of Marriage Act ("IMDMA" hereafter) includes those amounts earned and paid to counsel for the other party. 750 ILCS 5/501

The interests of the parties come before the interests of counsel for the parties. Section 501(c-1) of the IMDMA was designed to ameliorate the problem of an economically advantaged spouse from using their greater access to income or assets as a tool against the other spouse. In re Marriage of Earlywine, 2013 IL 114779 (2013) at ¶26.

The priority is further demonstrated by the provisions of IMDMA which make any interim award without prejudice to any final allocation and without prejudice to any claim *or right* of either party *or any counsel* of record at the time of the award (emphasis added). 750 ILCS 5/501(c)(2)

Subsequently, that claim or right can then be presented either by the appropriate party *or counsel* at a hearing on contribution pursuant to Section 503 or fees pursuant to Section 508 (emphasis added). 750 ILCS 5/503(j), 750 ILCS 5/508. An independent proceeding seeking a judgment against a former client cannot be brought until 90 days

have elapsed since counsel has withdrawn if dissolution proceedings remain pending. 750 ILCS 5/508(e) The ability of counsel to pursue fees pursuant to Section 508 within a dissolution proceeding cannot be addressed unless a contribution hearing has been held or waived. 750 ILCS 5/508(c) This often results in former counsel having to wait until the end of a case to be paid any balance due and owing. Section 508 prohibits counsel from entering an agreement that collateralizes a client's assets unless approved by a court. 750 ILCS 5/508(d) This prohibition includes marital assets. Each of these provisions recognize an attorney's right to be paid in the context of dissolution proceedings and prioritizes the rights of the parties over the attorney.

When considering all issues pertaining to disgorgement, it is crucial that it be remembered that disgorgement is only available if both parties lack the ability to pay their attorney's fees. Such a finding, usually, leaves the marital estate as the only means of paying both counsel in a divorce matter.

WHETHER FUNDS THAT ARE PROPERTY OF AN ATTORNEY ARE AVAILABLE

Advanced payment retainers are owned by an attorney and are subject to disgorgement. Earlywine, 2013 IL 114779 at ¶16. Amici curiae cite Altman for the position that once a fee has been earned, title to the money, as property, has passed and the attorney is free to do with it as he wishes. (Amici Brief p. 6 (citing Altman and Block, 2016 IL App(1st) 143076 at ¶33)) To the extent that Altman focuses the test of availability on who owns or has title of property, the assertion that funds are unavailable once title passes must fail. Otherwise, Altman runs afoul of Earlywine's holding that advanced payment retainers, although property of an attorney, are subject to disgorgement.

Likewise, and consistent with the same, a test of whether the funds are held in trust or in an attorney's operating account fails. To the extent Appellee-Contemnor ("Holwell" hereafter) attempts to elevate her ownership interest by asserting that she had earned the fees, the argument must fail- she either owned the fees as her property or she did not.

Under Earlywine, ownership by an attorney of fees does not make them unavailable for disgorgement. Earlywine at ¶16 and 29. The amici curiae argue that the lawyers' property cannot be rationally understood to be a "litigation resource", however, Earlywine, by definition of an advance payment retainer, allows a court to forfeit an attorney's property for disgorgement. (Amici curiae Brief p. 7) The next contention is the distinction that, although ownership of an advance payment retainer is deemed to have passed to an attorney, the funds are subject to reimbursement and, therefore, only funds not yet earned are available for disgorgement.

WHETHER EARNED FEES ARE AVAILABLE

Amici curiae focus on the fact that Holwell billed her time and earned her fee for their position that the funds were "unavailable". (Amici curiae Brief p. 6) Amici curiae do not address the fact that Holwell had not yet applied $13,000.00 towards her fees as those amounts remained "disputed" and whether those funds, earned but not paid, would be subject to disgorgement.

This raises another potential consequence, if an attorney maintains an amount in trust, has earned fees to credit against that amount, but not yet transferred those funds, are they subject to disgorgement? or are funds only available while they remain in trust? Without counsel being subject to the jurisdiction of the court even for those funds paid

for fees earned, the party in control of the assets will have an advantage. This is contrary to the purpose of the statute.

Section 501(c-1) uses several terms when addressing interim fees including, "retainer" or "interim payment". 750 ILCS 5/501. Amici curiae assert that interim payments as set forth in the statute refer to that portion of the funds subject to reimbursement to the client, i.e. "unearned". (Amici curiae Brief p. 5) Christine acknowledges that the term "previously paid" may not strictly adhere to the traditional definition of payment as it modifies both "interim payment" as well as "retainer". However, this does not mean that the term "interim payment" is limited in its definition and does not include earned fees. Amici, again, assert that this must have been the legislature's intent as this was the only portion that still belonged to the client. (Amici curiae Brief at Page 8) But, again, ownership or whether the fees "still" belong to the client is not the test for availability.

Obviously, in Earlywine, if the funds were not available due to being property of an attorney, this Court would not have found them to be subject to disgorgement given the language of the statute. Christine maintains that given the holding in Earlywine that an advance payment retainer, although property of an attorney, is subject to disgorgement; earned fees, although property of an attorney, are likewise subject to disgorgement.

Determining that "available" included those funds earned by an attorney does not render the word "available" meaningless. Circuit Courts would retain the discretion to determine to what extent any funds earned and paid to an attorney would be subject to disgorgement. Courts have found that certain funds can be deemed unavailable for

purposes of a party's ability to pay interim attorney's fees. In re Marriage of Radzik, (finding that retirement funds, as exempt, are not subject to interim fee awards except under limited circumstances).

Finding that "available" does not include payments made to an attorney for fees earned would result in the words "interim payments" being deemed meaningless in the statute. A limitation on the availability of "interim payments" to those funds previously paid to, but remaining held by, an attorney is outside the terms of the statute and would render the "interim payment" language a nullity. Restricting the term "available" to only those funds not yet earned would significantly limit a court's discretion to effectuate the underlying purpose of the interim fee statute.

When this Court in Earlywine, was determining the intention of the legislature, in quoting the language of the statute (750 ILCS 5/501(d)(3)), it is revealing to see that portion of the quote the Earlywine opinion (¶23) emphasized in italics when discussing disgorgement of fees already paid to an attorney in situations where the trial court had determined both parties were unable to pay their attorney fees:

> "… the court (or hearing officer) shall enter an order that allocates available funds for each party's counsel, *including retainers* or interim payments, or both, previously paid, in a manner that achieves substantial parity between the parties.' (Emphasis added)"

Neither the legislature nor the Court carved out an exception for certain kinds of retainers, such as advance payment retainers or earned retainers. While it is undoubtedly within the prerogative of the legislature to carve out an exception to disgorgement for "earned" retainers by amending the statute, it is, with all due respect, suggested that for this Court to add the exception, crosses the line from judicial interpretation of legislation to legislation. Clearly, as in most adversarial situations, there are competing interests. It

is apparent, from the quote placed in italics by its Opinion, this Court noted the legislature was purposely not carving out "earned" or any other kind of retainers from what is considered available for disgorgement.

In this matter, Andrew liquidated marital retirement assets totaling in excess of $375,000.00 between January, 2014 and June, 2014 without notice to Christine. (R.C744) Andrew then used these funds, which would otherwise be unavailable for interim fees, to pay his attorney which, according to amici curiae, make those funds unavailable due to being earned as of the time of payment. (A105-110) Those funds are then unreachable by Christine for interim fees under any circumstances and, depending on the value of the marital estate, could be lost even for purposes of allocating her share of marital property. The result would be a marital asset, otherwise not available for interim fees, being depleted leaving Christine with no ability to obtain interim fees and no recourse other than to seek a judgment against Andrew for the marital funds he diverted. While an attorney may be in the middle of a party's efforts to devalue and deny the other party their equitable portion of a marital estate, an attorney should not be a direct or indirect participant in that action.

The response is not that an interim fee petition can simply be filed. A fee petition filed in the early stages will not necessarily result in an interim award of prospective fees sufficient to provide for the parties' fees for the remainder of the proceedings. Attorneys will still have balances due and owing and, if deemed unavailable once earned and paid, an attorney that does not immediately file a Petition for Interim Fees when the other party has made a payment over the amount then due (that does not happen often) will be left

with no chance of getting interim attorney's fees even if disgorgement is deemed appropriate.

WHAT ARE POTENTIAL CONSEQUENCES

Does this mean that an attorney does not have the right to be paid? and, once paid, that the attorney should be weary that those fees paid, perhaps years before, will have to be reimbursed to one of the parties in a dissolution of marriage action? Logic dictates that this answer should be "No". Just because an absurd result is possible under a statute does not mean that it is required. The other argument is equally as absurd, if a party with no financial means liquidates the marital estate the day before a Petition for Interim Fees is filed and pays all the proceeds to their attorney for an outstanding balance due, are those earned fees unavailable and outside the reach of the court?

Christine does not argue that requiring an attorney to pay back funds paid years beforehand would be appropriate or to have been contemplated by the statute. However, to argue that an attorney that receives over sixty-five thousand dollars (ten thousand dollars of which were transferred to Attorney LeVine which he held in trust subject to the court's ruling) from January through June of a given year while representing to the court, through filings on behalf of her client that her client is in dire financial straits, is not subject to disgorgement is absurd. No rule of construction requires a court to turn a blind eye to reality. People v. Hannah, 207 Ill.2d 486, 503 (2003). Such a consequence is exactly what the legislation was enacted to avoid. The conclusion is not in harmony with the stated purpose of the statute. People v. Carpenter, 385 Ill.App.3d 156 (2008).

Holwell knew she was receiving funds, knew of her representations made to the court on behalf of her client, and then asserted to the court that the funds she was paid

were unavailable. Holwell turned a blind eye to the source of the funds. Apparently, Holwell believed the $13,000.00 she received that remained "disputed" (although held in her office account) at the time of the interim fee hearing that she had not applied towards Andrew's outstanding balance of fees were unavailable as well. She never turned over those funds although they were not applied towards her fees/ expenses at the time of the interim fee hearing and, therefore, not paid (Holwell testified that it was not yet determined as of the interim fee hearing if this amount was to be applied to her or former Attorney Boback's balance). (R. 100, L4- R. 101, L17)

As stated in Earlywine, there are two clients in a divorce case. Earlwine at ¶29. A party that substantially depletes a marital estate, paying his attorney in the process, may hope, but cannot expect, that the other party will be left in a position unable to retain or pay their counsel as a result of the party's actions. More so, an attorney should recognize this activity and be forthright with the court and other counsel regarding the activity or, at least, as an officer of the court, not use the statute as a shield to perpetuate the situation when her client's actions come into the light.

Finding that fees earned by an attorney are unavailable will have an even more profound effect in low-income, low-asset cases. These cases are more likely to be accepted by an attorney for a lower retainer although attorneys typically bill at their same hourly rate. Consequently, a retainer is depleted quicker and both counsel are faced with proceeding on a credit basis with their clients. If one party utilizes an already small marital estate to pay his attorney, the other party may be left with little to no assets to pay her attorney, without a right to seek allocation of those fees earned and paid to opposing counsel through an interim fee hearing. This will leave counsel for the petitioning party

with the decision of whether to remain in the case or withdraw due to opposing counsel already being paid from marital assets.

In addressing the Altman dissent, amici curiae point out that a court can be called upon to address the reasonableness of fees and, if it finds the fees were unreasonable, it can order any amount to be repaid to the client. (Amici curiae Brief p. 16) This does not address the issue before the court at an interim fee hearing- whether the parties have the ability to pay and whether funds are available. In this matter, Holwell's fees charged were stipulated to be reasonable and necessary for the purposes of the interim fee hearing. (R. 12, L4-17) There was no doubt that she had performed work on behalf of Andrew and her hourly rate and billing related to the same was reasonable. The reasonableness of her charges were not an issue.

The issue was whether her acceptance of $65,000 in attorney's fees from January, 2014 through June, 2014 was reasonable in light of the representations made to the court regarding the financial circumstances of the parties. Holwell accepted payments without any consideration as to where those payments came from despite her knowledge of her client's financial circumstances having represented him since October, 2013 and her representations to the court that he was in financial straits. Her client subsequently asserted to the trial court that he had spent all the funds liquidated so he had no financial ability to pay interim attorney's fees in July, 2014 (when he had made his last payment from those funds to Holwell in June, 2014). Do the statutory provisions make those funds paid to Holwell outside the court's reach?

IF EARNED FEES ARE DEEMED UNAVAILABLE, WHETHER UNAVAILABILITY APPLIES AS OF THE TIME OF FILING OF PETITION FOR INTERIM ATTORNEY'S FEES OR HEARING ON SAME

In the event this Court finds that "earned" fees are not available for disgorgement, it will have to determine whether those fees should be fixed as of the date of filing of a petition for interim fees. Amici curiae suggest that the Third District Appellate Court's decision was "borne from a dark view of divorce attorneys", however, during divorce proceedings, the parties continue with their lives and issues arise throughout the proceedings customarily resulting in additional fees being incurred by both parties while a petition for interim fees may be pending. If one party has greater access to marital assets and is paying his attorney with the same during the pendency of a petition for interim fees, should those funds be deemed outside the reach of the court? Both parties are incurring attorney's fees, both attorneys are earning fees, both attorneys have expenses to pay, but, under the approach taken by amici curiae, only one of those attorneys may get paid, even if a court finds disgorgement is appropriate. That is directly against the purpose of the statutory provisions for interim fees. It must be remembered that Andrew had no financial ability to pay at the time of the interim fee hearing, in part, due to the substantial marital assets he had paid (and or prepaid) for his expenses as well as to his attorney during the months prior to the hearing (while he allegedly was in dire financial straits).

B. BACKGROUND INFORMATION SET FORTH IN CHRISTINE'S BRIEF DOES NOT "DEMONIZE" HOLWELL BUT FRAMES THE ISSUE BEFORE THE COURT BY PROVIDING THE FACTUAL CIRCUMSTANCES AND PROCEDURAL POSTURE OF THE MATTER AT THE TIME OF THE INTERIM FEE HEARING

Holwell's Brief asserts that Christine's recitation of Holwell's behavior in this matter does not lend any support to the legal merits of this appeal.

Holwell asserts that Christine "demonizes" her in the Appellant's Brief. It is important for this Court to know the factual basis when addressing both 1) the appropriate factors for courts to consider when determining whether an attorney's earned and paid fees should be disgorged (provided this Court finds those fees are available) and, 2) the potential consequences of a determination by this Court that funds earned and paid to an attorney are not available for interim fees.

The facts reflect that Holwell received fees from sources other than the HELOC despite the January 18, 2013 Order of Court. (R.C15-16) Holwell asserts that the trial court agreed that Holwell did not violate said order. (Appellee's Brief p.11) However, Holwell cites the trial court's statement that it suspected that it would issue a rule against all attorneys in the matter for violation of the order. (R. 114, L. 5-6) There is no indication by the trial court that it agreed that Holwell did not violate the order. Both Attorney Jaquays and Attorney LeVine then advised the court that, other than their retainers paid prior to becoming attorneys of record, neither had been paid any additional fees in the matter and, therefore, had not been paid from a source other than the HELOC. (R. 114, L. 21 – R. 115, L. 2) Further, the court then confirmed that the other attorney then involved in the matter, the Guardian ad litem Attorney Donlon, was paid from funds outside of the HELOC pursuant to order of court. (R. 115, L. 6-7) Among the attorneys present at the hearing, this leaves only Holwell as the attorney receiving funds from a source other than the HELOC. Holwell's Brief emphasizes that the January 18, 2013 order was "without prejudice" but does not state why this would have any significance as to whether she violated the order as it had not been modified at the time of the interim fee hearing. (Appellee's Brief p. 11)

It seems that Holwell suggests that, since the order of the trial court limiting attorney fees to be paid from a HELOC was entered "without prejudice", it was appropriate for Holwell to receive attorney fees, without notice to the other side, from sources she had to know were from other than HELOC. "Without prejudice" means, "in a way that does not harm or cancel the legal rights or privileges of a party". (Black's Law Dictionary, 7th Edition, p. 1596). Applied to a court order, "without prejudice" means the parties are able to ask for subsequent permission from the court to modify or otherwise change the order, assuming facts exist to justify the request. It does not mean that the parties are free to disregard the order without permission of the court.

Holwell argues that parties have other means to protect against the other party engaging in a "scorched Earth" campaign including the filing of a Petition for Injunctive Relief. (Appellee's Brief p. 41) Certainly, then, an order restricting either party's ability to pay their attorneys is relevant to these proceedings as Christine and Andrew had, essentially, already agreed to injunctive relief on January 18, 2013. (R.C15-16) It is not unreasonable for Christine to rely on the January 18, 2013 Order restricting the payment of attorney's fees and that Holwell, as an officer of the court, would not accept payments without disclosing the same to the court and opposing counsel. It is also relevant to the issue before the Court that Holwell accepted payment of substantial fees during a time that she represented to the trial court that the parties were in severe financial straits and there were no funds available for child support and guardian ad litem fees. (R.C376)

Holwell argues that Christine waited eighteen months to file a Petition for Interim Attorney's Fees (yet it was filed within 3 months of Attorney Jaquays entering his Appearance) as unreasonable despite the January 18, 2013 Order and Holwell's asserted

position that Andrew had no funds. (Appellee's Brief p. 36) This may be a factor for the court to consider to determine whether disgorgement would be appropriate as would the period during which Holwell received payments.

Given the January 18, 2013 Order of court, an order for interim attorney's fees would have been one avenue for the parties to pay their attorneys pursuant to further Order of court. The other avenue, as also pursued by Attorney Jaquays, was to request that the January 18, 2013 order of court be modified to allow the attorneys to be paid from sources other than the HELOC. (R.C898-899)

Holwell accuses Christine of purposefully omitting information pertaining to the sale of certain commercial property indicating that the funds would have been available for interim fees. (Appellee's Brief p. 21) Said commercial property was sold in November, 2014 and, therefore, those funds were not available at the time of the interim fee hearing. (R.C1254) It should be noted that at the time of the hearing on interim fees the ownership of the property was in dispute as to whether it was an asset of the marital estate or belonged to the children. Andrew did not even list the same as an asset on his Financial Disclosure Statement as it was his contention that the property belonged to the children. (R.C836)

Christine did not misrepresent her financial circumstances. Her Financial Disclosure Statement as submitted to the Court set forth her income, assets, and liabilities as of the time of the hearing. (R.C863-864) Christine's Financial Disclosure Statement reflects marital real property with equity of $205,000.00 and retirement assets worth approximately $137,760.00. Andrew's Financial Disclosure Statement reflects marital real property with unknown equity. Further, he sets forth retirement assets with a total

value of approximately $16,000.00 and vehicles with a net value of $33,000.00 as of July, 2014. Andrew also provided an accounting for the gross amount of approximately $375,000.00 (which resulted in a net amount realized of $195,741.94) withdrawn by him from the marital retirement assets without Christine's knowledge from January, 2014 through July, 2014 and used as he deemed appropriate. (A105-110)

Christine did not omit facts pertinent to the interim fee hearing in July, 2014. Nor does Christine "demonize" Holwell. The Orders of Court and payments made to Holwell are of record and relevant to the issue before this Court.

C. THE THIRD DISTRICT APPELLATE COURT DID NOT ERROR IN FINDING THAT NEITHER PARTY HAD AN ABILITY TO PAY THEIR ATTORNEY'S FEES

This issue was previously briefed and submitted to the Third District Appellate Court. Christine has no further arguments other than what was previously set forth in her Response to Holwell's Appellate Brief. Christine incorporates her Response to the Third District Appellate Court into this Reply Brief as though completely set forth herein.

D. HOLWELL'S ACTIONS ARE CONTEMPTUOUS

It is appropriate to vacate a contempt finding on appeal where the refusal to comply with the court's order constitutes a good-faith effort to secure an interpretation of an issue without direct precedent. In re Marriage of Nash 2012 ILApp(1st) 113724 ¶30. Holwell's efforts in this matter were not in good faith. The issue, as stated by Holwell and amici curiae is whether funds earned and paid to an attorney are subject to disgorgement. Holwell refused to return $13,000 which she testified were "disputed" as of the interim fee hearing which Holwell, nevertheless, held in her office account. The funds had not been applied towards Andrew's outstanding balance but remained in

Holwell's possession. Was Holwell's refusal to pay any funds, including the $13,000, ordered to be disgorged in good faith merely to secure her right to appeal the trial court's order?

The funds had not been credited to her client because they had not been released to her. (R. 101, L. 13-17) Yet, Holwell refused to turn over those funds pursuant to the September 29, 2014 disgorgement Order. That refusal was not in "good faith" and did not support her contention that earned and paid fees are not subject to disgorgement.

Holwell specifically asked the trial court, who heard the case and knew all the underlying facts, for a finding of "friendly" contempt and the trial court specifically denied the same. (R. 463, L. 19 - R. 465, L3)

II.

APPELLANT'S REPLY BRIEF CONCLUSION

The Illinois Marriage and Dissolution of Marriage Act sets forth several underlying purposes including timely awards of interim fees to achieve substantial parity in parties' access to funds for litigation costs. 750 ILCS 5/102(8)

The legislature did not define the term available in Section 501(c-1) leaving courts with the discretion to determine what funds are available for disgorgement in each proceeding in light of the facts and circumstances of that matter. A finding that those fees earned and paid to an attorney are never available would leave Circuit Courts powerless to effectuate the statutory purpose of the levelling the playing field amendments even if the facts and circumstances warranted disgorgement of an attorney of those fees earned and paid. On the other hand, if fees earned and paid to an attorney are available for disgorgement Circuit Courts will have the ability, in their discretion with the appropriate facts, to ensure that one spouse cannot manipulate marital assets and take advantage of another spouse.

Attorney Holwell's refusal to comply with the September 29, 2014 Order of court was not merely to challenge the circuit court's authority to disgorge her of fees paid and earned. If that were the case, Holwell would have paid the $13,000 of disputed funds and challenged the disgorgement of the remaining amount. Ms. Holwell simply did not believe that the court should have ordered disgorgement due to Christine's purported actions as she has set forth in her brief. The trial court found otherwise and held Ms. Holwell in contempt based upon the same.

Given the circumstances in this matter, the Third District Appellate Court erred in reversing the trial court's September 29, 2014 Order of disgorgement and erred by vacating the finding of indirect civil contempt entered on January 16, 2015.

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III.

APPELLANT'S REPLY BRIEF CERTIFICATION

I certify that this Reply Brief conforms to the requirements of Rules 341 (a) and (b). The length of the brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 17 pages.

BY: /S/ Mark Ellis
MARK ELLIS on behalf of EDWARD R. JAQUAYS, Attorneys for Appellant

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NOTICE OF ELECTRONIC FILING

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PLEASE TAKE NOTICE that on the 5TH day of SEPTEMBER, 2017**,** there was electronically filed with the Office of the Supreme Court of Illinois: **REPLY BRIEF, AND ARGUMENT FOR PETITIONER-APPELLANT,** which are hereby served upon you.

By: /s/ Mark Ellis
MARK ELLIS, Attorney for
Petitioner-Appellant

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STATE OF ILLINOIS)
) SS
COUNTY OF WILL)

PROOF OF SERVICE

The undersigned, being first duly sworn on oath, deposes and says that she served copies of both this Notice and Reply Brief and Argument upon the named individuals as indicated hereinbelow, at or before the hour of 5:00 p.m. on this 5th day of September, 2017.

TO: Gina L. Colaluca
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Andrew Goesel
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{via U.S. MAIL}

/s/ Mark Ellis

CERTIFICATE

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.

/s/ Mark Ellis
MARK ELLIS, Attorney at Law

EDWARD R. JAQUAYS
MARTIN RUDMAN
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