From: **Mary Winch** marywinch@clintonlaw.net
Subject: Answer to Affirmative Defenses re Dulberg v Law Office of Thomas J. Popovich and Hans Mast, Case No. 14 LA 377
Date: March 26, 2019 at 1:16 PM
To: Paul Dulberg pdulberg@comcast.net

MW

Mr. Dulberg,

Julia Williams asked that I email you the attached proposed Answers to Affirmative Defenses in the above referenced matter. Please review and provide us with your comments.

I will provide a verification page in a separate email for your signature if you approved the attached answers.

Mary

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Dulberg's Answer...t).docx

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

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

PAUL DULBERG'S ANSWERS TO DEFENDANTS' AFFIRMATIIVE DEFENSES

Paul Dulberg, by and through his attorneys, The Clinton Law Firm, LLC, answers Paul Dulberg's Affirmative Defenses as follows:

AFFIRMATIVE DEFENSES
FIRST AFFIRMATIVE DEFENSE: CONTRIBUTION NEGLIGENCE

1. Plaintiff filed a one count Complaint, sounding in negligence, alleging that Defendants failed to properly represent him in the prosecution of a personal injury case, as more fully stated in the Second Amended Complaint, which is incorporated herein.

ANSWER: Plaintiff admits the allegations of this Paragraph #1.

2. Plaintiffs damages, if any, were due to Plaintiffs own fault. In the event Defendants are held liable, any damages awarded to Plaintiff must be reduced by Plaintiffs proximate share of liability. The Plaintiff was negligent and caused his injuries in the following ways:
   (a) Failed to seek outside counsel if he was reluctant to settle the underlying case with the McGuires.
   (b) Provided Mast and Popovich with authority to make a settlement demand against the McGuires for less than $100,000.
   (c) Received a written settlement agreement from the McGuires, forwarded by U.S. Mail from Mast, examined it, deliberated upon it, accepted it, signed it, and mailed it back to Mast.
   (d) Retained successor counsel after Mast and Popovich withdrew, and agreed to a "high-low" agreement at a binding mediation which limited Dulberg's potential recovery against the remaining Defendant, Gagnon.

ANSWER: Plaintiff denies the allegations of this Paragraph #2.

3. If Plaintiff's contributing fault is found to be more than 50% of the proximate cause of the injury or damage, then Plaintiff shall be barred from recovering any damages whatsoever.

ANSWER: Plaintiff denies the allegations of this Paragraph #3.

WHEREFORE, Plaintiff, PAUL DULBERG, respectfully requests that all damages be awarded to Plaintiff in its enitirety.

SECOND AFFIRMATIVE DEFENSE
STATUTE OF LIMITATIONS

1. In Plaintiffs Complaint, it alleges that The Law Offices of Thomas J. Popovich, P.C. and Hans Mast failed to adequately represent him in the action captioned, *Paul Dulberg, Plaintiffv. David Gagnon, et al., Defendants,* Case No. 12 LA 178, McHenry County, Illinois (the 'Underlying Action").

ANSWER: Plaintiff admits the allegations of this Paragraph #1.

2. Plaintiffs damages, if any, were due to Plaintiff's own fault. In the event Defendants are held liable, any damages awarded to Plaintiff must be reduced by Plaintiffs proximate share of liability. The Plaintiff was negligent and caused his injuries in the following ways:
   (a) Failed to seek outside counsel if he was reluctant to settle the underlying case with the McGuires.
   (b) Provided Mast and Popovich with authority to make a settlement demand against the McGuires for less than $100,000.
   (c) Received a written settlement agreement from the McGuires, forwarded by U.S. Mail from Mast, examined it, deliberated upon it, accepted it, signed it, and mailed it back to Mast.
   (d) Retained successor counsel after Mast and Popovich withdrew, and agreed to a "high-low" agreement at a binding mediation which limited Dulberg's potential recovery against the remaining Defendant, Gagnon.

ANSWER: Plaintiff denies the allegations of this Paragraph #2, subparts a-d.

3. Plaintiff, however, did not file this action until November 28, 2017, more than two years after the applicable statute of limitations had run.

ANSWER: Plaintiff denies the allegations of this Paragraph #3.

4. Accordingly, this matter is time-barred.

ANSWER: Plaintiff denies the allegations of this Paragraph #4.

WHEREFORE, Plaintiff, Paul Dulberg, respectfully requests that Plaintiff be awarded recovery under the statute of limitations.

AFFIRMATIVE DEFENSES
THIRD AFFIRMATIVE DEFENSE: PROXIMATE CAUSE

1. Plaintiff filed a one count Complaint, sounding in negligence, alleging that Defendants failed to properly represent him in the prosecution of a personal injury case, as more fully stated in the Second Amended Complaint, which is incorporated herein.

ANSWER: Plaintiff admits the allegations of this Paragraph #1.

2. Plaintiff retained successor counsel after Popovich and Mast withdrew. To the extent that any malpractice occurred during Dulberg's representation by the Popovich firm or its agents, which is expressly denied, and to the extent that any malpractice or proximately caused damages could have been remedied by Dulberg and his successor counsel, then Mast and Popovich can never be found to be the proximate cause ofDulberg's damages.

ANSWER: Plaintiff denies the allegations of this Paragraph #2.

WHEREFORE, Plaintiff, PAUL DULBERG, respectfully requests that judgment be entered on his behalf and against Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast.

Respectfully submitted,

By: /s/ Julia C. Williams

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