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First Circuit Court of the State of Illinois
County of Cook

Ted E.C. Bulthaup III
Plaintiff

v.

The Law Office of Michael Young
Michael J. Young
Defendants

Case No. 2019L004480

PLAINTIFF’S VERIFIED RESPONSE TO DEFENDANT’S MOTION TO DISMISS

Now comes Ted E.C. Bulthaup III, Plaintiff, responding to Defendants, The Law Office of Michael Young and Michael J. Young’s Motion to Dismiss.

DISCUSSION OF YOUNGS’ FALSE MISLEADING CLAIMS
IN HIS FACTUAL BACKGROUND

This action was brought by Plaintiff Ted Bulthaup against his former criminal defense attorney Michael J. Young and his law firm alleging serial acts of malpractice ranging over an approximately 28-month period. The Amended Verified Complaint was filed timely and details 11 instances of legal malpractice under two causes of action, negligence, breaches of fiduciary duties over 35 pages.

Young in his “Factual Background” makes several false statements; mischaracterizes and omits material facts in others, especial in regard to a plea, that are particularly important, particularly egregious and directly relevant to this response.

Plaintiff was initially charged in DuPage County with tax evasion and related charges.

Defendant Young admits on page one of his Motion to Dismiss that he had an Attorney-Client relationship with Bulthaup but states incorrectly that he was engaged for just 1½ years rather than 28 months. Young therefore had a duty to zealously defend Bulthaup as a fiduciary, and other obligations and duties as described in the Illinois Code of Professional Ethics. Second, Young was paid at least

\$90,000, for his services, much of it in cash. Third, among Youngs' many episodes of malpractice was his handling of a coercion by the State. This was a particularly egregious breach of his fiduciary duties where he concealed the placing of his own interests above those of his client and worked to insure that client's conviction. This act of malpractice and the case of **Morris v Margulis** are particularly relevant as to his Motion to Dismiss, dispositive as to its outcome, and so is described at length. Plaintiff seeks disgorgement of fees paid, lost wages while wrongfully incarcerated, and compensation for emotional distress as provided for in **Morris v Margulis**.

Young asserts on page one of his motion that after an extensive and lengthy negotiation he was able to get 110 charges dismissed in return for a guilty plea on 2 charges. That is factually just not true. The State, on its own initiative, consolidated the gratuitous headline grabbing list of small sums into one single charge totaling over \$100,000 very early in the proceedings. That consolidation increased the dollar amount to a single but higher level of felony which evidently better suited the State's Attorney's purpose.

The State merely informed Young of their already made unilateral decision to consolidate some charges and drop others; simply apprising Young they would then be filing such a Motion without any other prior notice and certainly without any negotiation. This was done largely in Bulthaup's presence, in court, just before a status hearing where Young simply acquiesced on the spot stating that he would have no objection. Bulthaup asked Young why the State would have done this, it seemed odd and Young replied he wasn't sure.

In part, that may have been due to the State's original haste to charge. The Attorney General's office stated in its Press Release that Bulthaup collected but did not fully remit taxes due on the sale of admission tickets to his movie theaters. This allegation was at the center of the State's case. Soon after Plaintiff's arrest, the State realized on their own that there is no such thing as a sales tax on movie admissions, so there could be no taxes due Illinois from that source. Oops.

The State must have also realized Bulthaup could not have committed the associated charges of mail or wire fraud for transmitting collecting sales tax money or filling out the tax return, as the accountant was the sole person to have access to those computers, the only one to know the passwords and user codes for the filing of any taxes, and who indeed did file those improper tax forms as the relevant Administrator. Unknown to Bulthaup at the time of his arrest, that accountant and two of his other Executives were the primary beneficiaries of those skimmed monies.

Shortly after the consolidation of those initial charges, Young filed a motion to have the \$25,000 bail bond released, saying it was to variously hire investigators and auditors, and that Bulthaup was not a flight risk. In the colloquially that followed, the State objected, and the Judge said it was too early in the proceedings to consider such a thing. Immediately after the hearing, the State's Attorney rushed over to Young and in a side conversation offered to release the \$25,000 in bond money directly to Young, rather than the standard practice of keeping those monies for court costs. Young only had to get his Client to plead to that already reduced single count of tax evasion which was the sole charge at that time. The State must have thought that conversation was out of Bulthaups' hearing range. Bulthaup did hear. In essence, the State was offering a financial incentive to Young by diverting Bulthaups' own money away from the State's coffers. After that offer had been made and the State's Attorney left; Young asked Bulthaup if he had heard what the state just offered and Bulthaup said yes. Young then said not to worry about it, he had turned the State down. (Paragraphs 33 thru 36 in the Verified Amended Complaint).

Contrary to Young's assertion in his Motion, there were no allegations of financial institution fraud until approximately one year later; well after Youngs' claim in his Motion to Dismiss that he had already skillfully negotiated them down to one lessor charge.

Young's assertion is false and he certainly knows this. That couldn't be true, for those charges were not alleged nor filed until over a year after Plaintiff was charged and well after the initial tax charges had been consolidated. Those new charges were filed as part of the State's Attorney's campaign of coercion to get Bulthaup to plead (as described in the Amended Verified Complaint). Immediately after the State filed these three Class X Felonies (with sentences of 10 years each), they instantly rushed over to Young saying they would dismiss them all, if Young could just get his client to plead to the single tax charge. That is State coercion, prosecutorial misconduct, and certainly not Defense Attorneys masterful negotiating skills.

Young then alleges in his motion to dismiss that after he had successfully negotiated the charges down, Bulthaup made a voluntary plea of guilty. As Youngs' claim that he masterfully negotiated a plea deal was false, so is this claim.

There was a well-developed, agreed upon defense strategy prior to a plea hearing on July 6, 2016 where upon Young would interrupt after the Judge asked the client if anybody, "promised you, threatened you or coerced you in any way" and Bulthaup would reply, "yes". Young was to then

explain the coercion and show the Judge the evidence of prosecutorial misconduct which were in his coat pocket at that very moment. One of those items was a letter to Plaintiff Bulthaups' wife from an Assistant State's Attorney, outrageously threatening to indict her if she did not wave her spousal privilege and come before the State to answer their questions. Bulthaup had been assured by Young that the Judge must reject any coerced plea and then the case could better proceed to trial with the State's case seriously impeached.

The purpose of this defense strategy was to bring out in open court the extraordinary lengths the State would go to in order to get a conviction including these acts of coercion described above. The State already knew they had a bad case and admittedly had "bad witnesses". Young further avowed the State wouldn't dare indict Mrs. Bulthaup after the prosecutorial misconduct was revealed and all this would have been brought up at trial in his defense.

Before that plea portion of the hearing commenced, Young suddenly tried to get the \$25,000 released to him again, following the same general line of reasoning, this time with the State not objecting. Bulthaup did not know this was on the Young agenda. Youngs' deal with State was that the money would be released to him if he could get his client to pled. Young would have realized that if the plea was rejected per the playbook, the State would have never acquiesced to the \$25,000 being released to Young afterward and would keep it for court fees.

Young made his case for the release of funds, again prevaricating as to the use of those monies. As per Youngs' transcript exhibit, an exasperated Judge finally just asked Young, "Isn't this just really for your fees." Young admitted it was, and the Judge promptly denied Young's request for the second time. The Judge had disrupted Youngs' plan. Young asked for a recess.

When the hearing later resumed, instead of following the plea playbook, where Bulthaup was to reply "Yes" when the Judge asked if he had been threatened and the plea coerced in any way, Young interjected. Young then intentionally caused the false plea to be accepted as truth completely contrary to this agreed upon defense strategy. He "sushed" his client and motioned for him to remain still.

After the hearing concluded, Young gleefully claimed he had put one over on the Judge, that he could vacate the just made plea at any time in the future due to that Judges "Judicial Error", even if Plaintiff was sentenced to imprisonment! Young maintained we now had all this leverage; then maintained Bulthaup should just go along with his program, be satisfied with probation which I would absolutely be granted as a first-time, white-collar offender, and further assuring Bulthaup he wouldn't

ever be sentenced to time. Among other things, this assurance constituted a second act of betrayal under the **Morris** definition. Youngs' reckless act placed his own interests above those of his client while not disclosing the hazardous nature of his new unilaterally adopted defense strategy; and his failure to disclose his underlying purpose that he would financially benefit from getting his own client to plead. Simply put, Bulthaupt was purposefully denied due process by the unconscionable acts of his own attorney.

Youngs conduct at the plea hearing was done to continue to curry favor with the State's Attorney to ensure having the bail of \$25,000 released directly to himself. As described, the State had first offered a corrupt bargain to Young with this money as a form of financial inducement approximately a year earlier. Later, on November 10, 2016 State's Attorney Vaidya appeared and only after a sentence of incarceration was pronounced did Vaidya speak, asking the Judge to release the \$25,000 to Michael Young.

The transcript, testimony and affidavits will fully support this narrative and they must be considered as true for the purposes of this hearing. Conviction was specifically the result of the defendant's act of malpractice as alleged and is breach of his fiduciary duty.

This constitutes an act of betrayal of one's fiduciary duty as defined in well-established governing precedent.

These facts specifically constitute an intentional act of betrayal of his client by his attorney, where Young worked to ensure the conviction of his client and breached his fiduciary duty. A parallel case was described in **Morris v Margulis** and the rulings there are active precedent and give guidance here. In that case, the Plaintiff was relieved the burden of the actual innocence rule and from having to overturn his conviction.

STANDARD OF REVIEW

Defendant Young asserts a defense of "collateral estoppel" contending that in a legal malpractice case arising from the conviction of his former client, Ted Bulthaupt, requires two additional elements to be addressed before proceeding to trial, overturning the conviction and of proving 'actual innocence'. In some instances of malpractice those added elements may be appropriate, but in Illinois there is a recognized exception which is particularly relevant here, that of betrayal as found in **Morris v. Margulis**, 307 Ill. App. 3d 1024, 1039, 718 N.E.2d 709, 241 Ill. Dec. 138 (5th Dist. 1999); rev'd on

other grounds, 197 Ill. 2d 28, 754 N.E.2d 314, 257 Ill. Dec. 656 (2001). In that case, Plaintiff was relieved of the burden of the two remaining elements as an overriding matter of public policy.

“Even if Plaintiff’s factual allegation of malpractice seems to be far-fetched and exaggerated, at the pleading stage these allegations must be accepted as true unless the complaint is shown to be frivolous, malicious or fails to state a claim upon which relief may be granted”. See 28 U.S.C. § 1915A(b)(1).

Contrary to **735 ILCS § 5/2-605**, Young fails to take as true for purposes of the instant motion Plaintiff’s allegations in the Verified Amended Complaint which alleges two primary Causes of Action, Negligence and Breach of Fiduciary Duty. To be clear, Plaintiff’s Amended Verified Complaint is filled with numerous facts, acts and 12 examples over its 35 pages which support the causes of action. Allegations contained in verified pleadings are also deemed to be admissions of fact, and so true. **Winnetka Bank v. Mandas**, 202 Ill. App. 3d 373, 397 (1st Dist. 1990).

Plaintiff’s Amended Verified Complaint cites allegations that, when shown at trial, easily demonstrates that Young failed to meet standards set forth in both **Strickland v. Washington**, 466 U.S. 668 (1984) and **Lafler v. Cooper**, 566 U.S. 156, 132 S. Ct. 1376, 182 L.Ed.2d 398 (2012), each of which affirm that the Sixth Amendment right to counsel extends to the plea-bargaining process. The performance prong in **Strickland** requires a Plaintiff to show his counsel’s representation fell below an objective standard of reasonableness, which Plaintiff has clearly demonstrated that Young failed in the complaint.

In **People v. Brown**, 2017 IL 121681, Illinois affirms that the Sixth Amendment guarantees a criminal defendant the right to effective assistance of counsel at all critical stages of the criminal proceeding, specifically including a guilty plea proceeding.

Young asserts under Illinois law that where a plaintiff does not claim to be innocent of the crime for which he was convicted, he cannot bring a suit for legal malpractice, **Winniczek**, 394 F.3d at 507. Bulthaup always maintained his innocence to his attorney and provided him thousands of pages of documentary evidence, over a dozen exculpatory affidavits, results of a polygraph examination and more. Likewise, Plaintiff continues to claim innocence as stated in the Amended Verified Complaint.

To establish prejudice in the context of a plea, the former defendant must show that the outcome of the plea process would have been different with competent advice. This becomes obvious in both the pleadings and in the complaint and so should be decided at trial on the merits. In our case, attorney

Michael Young actually betrayed his client during the plea process and specifically caused a knowingly false guilty plea to be accepted as true by the Judge, so naturally the outcome would have been dramatically different if not for Youngs' conduct.

As to Defendant's Motion to Dismiss, his contentions in his Rule 2-615 and 2- 619 pleadings and Plaintiff's response to same, boils down to the applicability here of **Morris v. Margulis**.

The reader is cautioned that the ruling precedent discussed here is **Morris v Margulis** and should not be confused with **Moore v Owens**.* **Moore** was the originating case for the 'actual innocence rule'. The case before us meets the standard for relief from the burden of having to prove actual innocence created by **Morris v Margulis, et al.** The **Morris Exception** was crafted to address cases exactly like ours and so where applicable overcomes **Moore v Owens**, thereby allowing such a case to proceed to trial on the merits, *despite Young's assertions to the contrary*.

***Moore v Owens** was a case of negligence classified as "traditional malpractice" which gave rise in the Appellate Court to the "Actual Innocence Rule". One year later, that same Appellate Court realized the actual innocence burden was too broad in the case of **Morris v Margulis** and provided a needed exception where that Appellate Court specifically stated "**we shall not apply Moore**". **Morris v Margulis**. **Morris** was about an intentional betrayal of a fiduciary duty, was labelled as a non-traditional malpractice, and was cited as a particularly egregious form of malpractice that should go to trial on the merits, as per the new exception then created. In that case, Morris was also allowed to proceed without the burden of overturning his conviction and without having to prove his innocence. This was granted as a matter of overriding public policy to serve the greater purposes of justice and to act as deterrent to other lawyers betraying their own client. The Illinois Supreme Court upheld the Appellate Courts ruling and the **Morris Exception** continues to be cited precedent to this day.

Morris has been the well-recognized exception with a case of non-traditional malpractice where there is an allegation that the offending attorney committed an act of betrayal by placing his own interests above those of his client. Such is the case here.

Fundamentally Young asserts that there are two additional elements required of his former Client for this case to be tried on the merits. One, that Plaintiff must have had the conviction overturned, and two, that Plaintiff must prove his actual innocence. Those elements were not required in **Morris v Margulis** and the **Morris Exception** is alive, well and supersedes those additional elements found in **Moore**.

As to the conviction issue, **Morris filed his breach of fiduciary duty based malpractice complaint in the Circuit Court after Plaintiff's conviction had already been affirmed on appeal**. Both the trial court, the appellate court, and the supreme court heard the **Morris** case through all its nuance without requiring Plaintiff to overturn that conviction. If that Plaintiff must still have had to overturn the conviction in the **Morris v Margulis** setting; the offending attorney Bryan Cave would have plead so in their Motion to Dismiss and the court would have ruled in Bryan Caves favor. That Bryan Cave did not do, and that the courts did not ever require it, is dispositive as to the application of the **Morris Exception**. If it were otherwise, a pleading that the conviction needed to be overturned and wasn't, would have overcome all other factors in the case and the offending attorney would have easily escaped any responsibility without have to resort to the Statute of Limitations or the Actual Innocence Rule.

As alleged in Plaintiff's Verified Amended Complaint, paragraphs 58 through 109, the Defendant betrayed his client by putting his own interests above those of Bulthaup. Young intentionally and unilaterally caused a false guilty plea to be accepted as truth; completely contrary to a previously agreed upon defense strategy, all without his client's prior knowledge or consent. Further, Young's act of betrayal was for his own benefit and enrichment; and at the expense of his then client Ted Bulthaup. That was the beginning of Youngs' tangled web, which he continued to weave when he tried to conceal his prior acts by his concocted "Judicial Error" plan and assuring Bulthaup would get probation, which did not happen and during which additional acts of malpractice were committed. As in **Morris**, Young "**betrayed**" his client which is an "**egregious**" act that cannot be considered remotely reasonable by any standard.

In **Morris v Margulis**, that court specifically confirmed, "**As stated previously, all inferences favorable to the party opposing summary judgment must be indulged. A reasonable inference is that Goebel and Bryan Cave aided the United States Attorney's office in an effort to curry favor.**" In the same way, it is a reasonable inference in this case is that Young, at minimum, acted to "**curry favor**" with the State's attorney, against his own client's interest and in order to have his clients \$25,000 bail deposit released directly to himself.

While the "actual innocence rule" still applies with a "**traditional**" allegation of malpractice, **Morris** ruled, "**the case before us is not a traditional case**"; just as it is alleged that the actions committed by Young are also **not a 'traditional'** case. Young betrayed his client and **Morris** is the sole exception recognized by the Illinois Supreme Court that frees any Plaintiff from having to prove his innocence where the standard for that rule is met.

As to the greater public policy issue:

The Illinois rule that a Plaintiff must have his conviction overturned and also prove his innocence is based on an underlying public policy issue that a convicted person should not be able to profit from the crime, and so was installed as an additional Judicial barrier to re-entry into the justice system

. but the Illinois Supreme Court let stand the Court of Appeals ruling in **Morris** that with an allegation of betrayal of a criminal Defendant by his attorney, there is a parallel, clear and overriding public policy issue that the betraying attorney should not be able to profit from that betrayal. Young should not be allowed to escape responsibility of his malpractice, based on **Morris**, and that such a case should be tried on the merits as an equitable remedy, to act as deterrence, and serve the greater ends of justice.

For that reason, the additional barriers of re-entry into the court system that were deemed appropriate for cases of traditional malpractice, are not to be applied concerning allegations of non-traditional malpractice. This is now well-established law that overrides **Moore v Owens**.

The **Morris** ruled described that with “egregious” “acts of betrayal” the Plaintiff was also allowed full damages including for emotional distress. The Illinois Supreme Court upheld that such a case is to be tried on the merits and the **Morris Exception** had been crafted and enacted to that purpose. That would be the appropriate ruling here in **Bulthaup v Young** as the **Morris** case confirmed when it ruled, “all inferences favorable to the party opposing summary judgment must be indulged” and why even if Plaintiff’s factual allegation of malpractice seems to be far-fetched and exaggerated, at the pleading stage these allegations must be accepted as true as go to trial for the higher purposes of justice and deterrence.

Ruled in the **Morris** case, “**A reasonable inference is that Goebel and Bryan Cave aided the United States Attorney’s office in an effort to curry favor**”. Based on the transcripts of both the plea and sentence hearings, the timeline and supporting testimony; a very reasonable inference is that Young likewise placed his own interests ahead of his client and betrayed Bulthaup to curry favor with the State’s Attorney. That effort enabled Young to collect what amounts to a financial reward directly from the court using Bulthaups’ own money, with at least the tacit complicity of the State’s Attorney who would normally have taken that \$25,000 for court fees.

Contrary to what Young claims in his Motion, the **Morris** exception is widely cited in the literature and in case law. Most frequently, this is in the context that the malpractice alleged does not reach the required level of severity to trigger the **Morris Exception** and so in those instances the traditional rules, including the actual innocence rule, would still apply, **Paulsen v Cochrun (2005)**, **Winniczek v Nagelberg (2005)** and **Herrera -Corral v Hyman (2011)** are such examples. As shown in the above instances the Courts did specifically acknowledge the existence of the **Morris Exception** and accepts its appropriateness, where applicable.

Defendant Young significantly errs when he incorrectly claims these same cases as working against **Morris** and supporting his contentions. Those cases above, and many more actually support the existence of the **Morris Exception** while giving guidance as to its application.

Using Young's first citation, **Paulson v Cochrun**, is illustrative as to his other false claims. This case was based on negligence, ineffective counsel and the fee arrangement; all of which are traditional claims, none of which is a breach of fiduciary duty claim as required for the **Morris Exception** so fail to trigger the exception.

“An exception was recognized to Moore v. Owens, 298 Ill. App. 3d 672, 674 (1998), where the criminal defense attorney had intentionally worked, contrary to his client's interests, to secure the client's conviction, but that possibility aside, Illinois courts have reaffirmed their commitment to the general rule requiring actual innocence.” Paulsen, 356 Ill. App. 3d at 360. Young is simply and wrongfully omitting facts in Paulsen and that the actual innocence rule was only applied because the allegations there did not meet the standards of **Morris** to trigger the application of the exception. Young plays loose with the truth.

Cases that meet the **Morris standards** are granted the **Morris exception**. Cases that don't meet the standard don't get the exception. It is very simple.

In context, Plaintiff Paulsen realized his allegation failed to measure up to the **Morris Standard** and so then attempted to carve out a second separate and distinct exception. The Court confirmed the alleged malpractice did not meet the **Morris** standard to trigger the exception and also refused to recognize a second proposed exception; so there was no relief granted from the actual innocence rule.

The Court said, **“we believe the trial court properly applied the actual innocence rule in dismissing**

this case. The facts here do not warrant the establishment of another exception to the rule, beyond the “betrayal” exception in Morris”.

Paulson actually confirms the existence of the **Morris Exception** by reference when ruling the causes of action in **Paulsen** were insufficient to trigger it. All these inappropriately pled cases have a similar case history and do not support Young’s analysis, they refute Youngs’ contentions. Plaintiff summarizes all Youngs’ alleged supporting precedents in the attached exhibit. Be aware of this clever man.

There are few legal malpractice claims filed in criminal cases, fewer still that can also be filed timely, and even less that can allege breaches of fiduciary duties that met the standards of the **Morris Exception**.

However, there are no citations where the **Morris** exception was forgotten, set aside or overruled.

See Exhibit A for a discussion on Young’s cited precedents and their applicability. The triggers for the exception are narrow, but the Exception exists. Young should have read his own citations.

Plaintiff asserts the Morris ruling is wholly applicable precedent in the matter now before the court and so governs as defining law and is dispositive to this case.

Young’s contentions about **Morris v Margulis** are based on his own suppositions; here we simply quote the applicable passages and the definitions from the rulings:

A) The Morris Definition of Breach of Fiduciary Duty

An ARDC disciplinary proceeding was cited in the **Morris** case. See in re **Rosin**, 118 Ill.2d 365, 113 Ill. Dec. 276, 515 N.E.2d 85 (1987), where the Chief Justice delivered the opinion noting, **“Among the fiduciary duties owed by the attorney to the client are the duties of fidelity, honesty, and good faith. The attorney's fiduciary duties are breached when an attorney places his own interests above those of the client.”**

“It is the prevailing rule that, as between persons sustaining a fiduciary or trust or other confidential relationship toward each other, the person occupying the relation of fiduciary or of confidence is under a duty to reveal the facts to the plaintiff (the other party), and that his silence when he ought to speak, or his failure to disclose what he ought to disclose, is as much a fraud at law as an actual

affirmative false representation or act; and that mere silence on his part as to a cause of action, the facts giving rise to which it was his duty to disclose, amounts to a fraudulent concealment. Chicago Park District v. Kenroy, Inc., 78 Ill. 2d 555, 562, 37 Ill. Dec. 291, 402 N.E.2d 181 (1980), quoting Annotation., 173 A.L.R. 576, 588 (1948)." That is precisely what happened when Defendant Young interjected on his own initiative at the plea hearing to prevent the plea from being rejected, and conversely caused a false guilty plea to be accepted by the Judge as truth, contrary to the approved upon defense strategy.

B) The Morris Definition of "Betrayal"

"This case is about Betrayal!" and "To apply Moore v Owen, (referring to the actual innocence rule) to a situation where a criminal defense attorney intentionally works to ensure his client's conviction would be unconscionable. This would allow counsel for the defendant to urge the jury in closing argument to convict his client. Then the same traitorous attorney could defend an action filed by his former client with the plea: "Well, you were guilty, weren't you?" We will not adopt such a policy." This is what happened in **Bulthaup v Young**, and Young's strategy in his own defense directly parallels the mock example in the courts ruling.

C) The Morris Definition of Non-traditional Malpractice

The Morris ruling creates two distinct and separate categories of malpractice as to a criminal case, 'traditional' and 'non-traditional' for the purposes of triggering the exception. Traditional malpractice revolves around conduct such as negligence, ineffective assistance of counsel, failures to calendar, competence, zealous advocacy, communication, lack of diligence, requirements of knowledge and skill, etc. That does not mean damages cannot be sought for traditional acts of malpractice, only that the Plaintiff is not relieved from the actual innocence rule and overturning the conviction before his case can be heard.

"In this case (Morris v Margulis) we are not confronted with a traditional malpractice claim." and when **"a criminal defense attorney intentionally works to insure his client's conviction"** is deemed a non-traditional form of malpractice, unique and so relieves Plaintiff from certain burdens before it can proceed.

Young wrongly attempts to blur the distinction between traditional and non-traditional malpractice in every instance. He is wrong, they are totally separate and distinct; and any

allegation must be classified as one or the other for the purpose of deciding the applicability of **Moore v Owens**.

Morris rules, “**Moore v Owens and its "actual innocence" rule* will not be applied to situations where an attorney willfully or intentionally breaches the fiduciary duties he owes to his criminal defense client.**” That is very simple.

D) The Morris Exception

The Morris case creates an exception relieving the Plaintiff from having to prove innocence.

There should be no argument that in a case where non-traditional malpractice is alleged, especially as in this instance a betrayal of one’s fiduciary duty as alleged herein, those burdens are relieved as plainly and unequivocally stated in **Morris** and upheld by higher court rulings.

Defendant has yet to provide a single precedent where a plaintiff has alleged betrayal, or even a simple breach of some other fiduciary duty, where the courts still applied the actual innocence rule. All his cited cases, either affirmatively or by exception, accept the relief that **Morris** provides.

E) There Is No Requirement That Offending Attorney Actually Colludes With The State.

Collusion with the State did occur in **Morris**, but that was fact issue, not a requisite element to betrayal. The court defined betrayal as an act of the attorney, without regard to anything the State did, or did not do, by framing the act as “**where a criminal defense attorney intentionally works to ensure his client's conviction**”. The motive for the act in **Morris** was “**an effort to curry favor**” with the States Attorney such as is also alleged here, in order to receive a financial benefit.

F) The Plaintiff Is Not Required To Have The Conviction Overturned.

In **Morris**, Plaintiff was convicted, and the conviction was never required to be overturned. **Morris** was even incarcerated, and his conviction had already been upheld by the appellate court at the time his malpractice action was filed.

The fact that the conviction had not been overturned was never asserted as collateral estoppel in their Motion to Dismiss, nor was it ever considered by the court. If this was a valid plea, it would have been pled and succeeded. The standing conviction was a non-issue due to the relief granted with **Morris v Margulis**.

In **Morris**, as Plaintiff was relieved from having to prove actual innocence, and if overturning the conviction could have been a basis for collateral estoppel and the case dismissed, Defendants surely would have pursued that strategy, and surely the court would have upheld it and rule in favor of the offending attorney and so dismiss the case. That didn't happen.

Clearly this barrier to entry fell under the same consideration of the greater public policy issues as part of the relief from actual innocence rule. Plaintiff was relieved of both these barriers so that the overriding issue of betrayal by one's own attorney could and should be considered in the Courts.

THE ACTUAL INNOCENCE RULE IS NOT APPLICABLE
BECAUSE PLAINTIFF HAS SUFFICIENTLY PLED YOUNG'S BETRAYAL

Defendant Young also asserts a defense of "collateral estoppel" at the pleading stage contending that in a legal malpractice case arising from the conviction of a defendant, his then client, Ted Bulthaup, has two additional burdens, one of overturning the conviction and two of proving 'actual innocence' in order to bring his case. In some instances that may be appropriate, but in Illinois there is a recognized exception which is particularly relevant to this case, that of betrayal as found in **Morris v. Margulis**, 307 Ill. App. 3d 1024, 1039, 718 N.E.2d 709, 241 Ill. Dec. 138 (5th Dist. 1999); rev'd on other grounds, 197 Ill. 2d 28, 754 N.E.2d 314, 257 Ill. Dec. 656 (2001).

In **Missouri v. Frye**, , 566 U.S. 134, 132 S. Ct. 1399, 182 L.Ed.2d 379 (2012), the Supreme Court of the United States noticed the state of America's criminal court system, that "ours 'is for the most part a system of pleas, not a system of trials.' As to a coerced guilty plea, that Court noted that, **"a frighteningly high percentage of people ... confess to crimes they did not commit."**

There, the Supreme Court went on to affirm that the Sixth Amendment guarantees the right to the assistance of counsel when entering a guilty plea, stating **"the negotiation of a plea bargain..... is almost always the critical point for a defendant."** Thus, **"defense counsel has responsibilities in the plea bargain process.... which must be met to render the adequate assistance of counsel that the Sixth Amendment requires."**

Among the many allegations in the Amended Verified Complaint, one of the keys to understanding the causes of injury is Defendant Young's handing of a coerced plea, the final result of which ended in his Client's incarceration, causing damages. Plaintiff has pled in his complaint that this

constituted one of the most egregious acts of Young's malpractice, defined as betrayal, and therefore established precedent applies and Young's claim of "collateral estoppel must be denied on that basis.

As set forth in Plaintiff's Verified Amended Complaint, it is surely not hard to comprehend that Plaintiff Bulthaup, relying on his attorney, would plead guilty whereupon Michael Young would then act in good faith as a fiduciary according to a pre-determined and agreed upon plan of action. Young was to explain to the Court that the plea had been coerced and cause it to be rejected by the Judge. For Young to then unilaterally enact a different plan, mid-hearing, without his Client's consent placed his client in jeopardy and so is an act of **betrayal**. In ruling on Young's motion to dismiss, the Court needs to carefully review Plaintiff's allegations set forth in paragraphs 48 thru 56 in the Verified Amended Complaint and as further described in this Verified Response.

To be clear, Illinois law provides that the actual innocence rule bars some malpractice claims - not all malpractice claims. Here, Young is not entitled to a free pass on the alleged malpractice, which has been appropriately pled by Plaintiff and meets the standards found in **Morris**.

In **Morris**, Defendants Bryan Cave, had asserted that the plaintiff could not prevail in his action unless he proved that he was actually innocent of the charges for which he was ultimately convicted, citing **Moore v. Owens**, 298 Ill. App.3d 672, 698 N.E.2d 707 (1998). Defendant Young's defense also pleads that **Moore v. Owens** likewise shields him from his own conduct. Simply put, it does not. The **Morris** court rejected Bryan Cave's assertion and this Court should likewise reject Young for the same reason.

The **Morris** court held that **"it would be "unconscionable" to apply the "actual innocence" rule and that it will not be applied to situations where a criminal defense attorney intentionally breaches the fiduciary duties he owes to his criminal defense client and intentionally works to ensure their clients' conviction."** This recognizes that such treacherous ethical violations do occur and must be deterred to serve the greater purposes of justice. This is an important matter and an overriding public policy issue that defeats **Moore v Owens**.

The Court affirmatively recognized a legal malpractice action alleging negligent legal advice in accepting a plea agreement, if proven to be an intentional breach of fiduciary duty, is an exception in Illinois as a *betrayal*, and so relieves the Plaintiff from having the burden to first prove innocence and any malpractice allegation should go to trial on the merits.

Plaintiff alleges in his Verified Amended Complaint numerous actions of betrayal which are a significant element of Young's greater malpractice, all of which now must be considered as true, none of which has been, nor can be, refuted until trial and all of which should be considered there and then on the merits.

YOUNGS' MALPRACTICE, MOTIVE, COERCED PLEA AND BETRAYAL

In **People v. Clark**, 386 Ill.App.3d 673, 899 N.E.2d 342 (3d Dist. 2008), due process requires that guilty pleas be knowing and voluntary. (In the case before us, that should be referenced as to Bulthaup repeating, "**Not other than that**" as his attorney had then just interrupted and already plead.) A guilty plea made in reliance on the advice of an ineffective attorney may be involuntary. In **Faretta v California** 422 U.S. 806, 834 (1975) quoting **Illinois v Allen**, 397 U.S. 337, 350-51 (1970), Justice Scalia for the US Supreme Court acknowledged the Framers intentional wording in the Sixth Amendment affords the right to "*assistance*" of counsel. According to the Court, the choice of language reflected the drafter's desire to give control of the defense to the Defendant, and not his lawyer. By Young interjecting the unexpected new strategy of using "Judicial Error" without consulting his own Client, especially after not disclosing he would first make an effort to grab the bond money; Young effectively and wrongfully denied his own Client due process by unilaterally substituting an illegitimate defense strategy, at least in part to safeguard his corrupt bargain with the State to release the \$25,000 bond directly to him as reward for getting his Client to plead. That placed Young's Client in harm's way and eventually into prison. The fruits from this conflict of interest was Young's motive and constitutes another act of intentional betrayal. Here, as ruled in **Rosin**, "The attorney's fiduciary duties are breached when an attorney places his own interests above those of the client." And **Morris** labels that act as "Betrayal".

Again per **Rosin**, and in **Morris**, Young places his own interests above those of his client. Young was to be armed with the citations of precedent which were then thought to be key to a successful outcome with the probation officer. This is described in paragraph's 48 thru 56 of the Verified Amended Complaint. Youngs' failure to appear constitutes another act of betrayal and was causal to Bulthaup's incarceration and so furthers Plaintiff's claim for damages. There can be little doubt the outcome of the plea process would have been different if Young had shown up, given competent advice and argument.

. "Representations which a court may find reasonable for a layman to rely upon will not necessarily be considered reasonable for an attorney to rely upon."

Now Young seeks to cover up this malpractice by attempting to hide behind a shield of his own misconduct in the handling of a plea that he himself entered when he interrupted Bulthaup, all in violation of his fiduciary duty to his Client.

Young also provides a transcript of his Client's closing statement (Young's exhibit four) as proof of Bulthaup's admission of guilt. The Court in **Morris** ruled, a **"traitorous attorney could defend a (malpractice) action filed by his former client with the plea (by stating): "Well, you were guilty, weren't you?" We will not adopt such a policy."** That rule applies to Defendant Young's attempted tactic here and his motion should be denied on that basis so we can proceed to trial.

Bulthaup had read online that he must show remorse and take full responsibility if he were to get probation. The transcript shows Bulthaup did just this, but no more than this. Never once did his Client say in that final statement that he was guilty of anything. He did take responsibility.

Bulthaup did say he had been negligent in his duties as an Officer of those companies by having failed to be diligent over a few top executives. Bulthaup repeatedly said everything that happened was his fault and his responsibility to prevent, which is true. It was his responsibility to see the business ran right and that staff paid the taxes in full. It was his responsibility to see investor's money was safeguarded, that the bank and the creditors got paid, and that his family was financially secure. Bulthaup did fail in all those responsibilities and freely admitted it years ago and does again here and now. However....

. . . . while those failures may be sufficient for Bulthaup to be financially liable for the underpayment of sales taxes due, any such failures were not criminal acts.

Bulthaup did not pled guilty as charged in that Closing Statement, nor did he commit the crimes the State alleged, nor commit any other criminal act, and he did not admit actual guilt in his closing statement as Young alleges on page 15 of his analysis. Bulthaup never said anything different than this throughout the entire ordeal, from the very first instant through to his closing statement and that includes to his own attorney Michael Young; with the sole exception of the plea hearing under the direction of Young himself where Bulthaup parroted Young saying, "No not other than that". Bulthaup admits it was his responsibility to see these things did not occur, but he never admitted to any criminality. His lawyer had maintained the Judge must be reject due to the asserted coercion and it was Youngs' job to explain the prosecutorial misconduct and present the documentation.

ANALYSIS OF YOUNG’S ASSERTIONS IN RULE 2-615 PLEADING

As to 2-615, Defendant Young largely depends on **Moore v Owens** with its “Actual Innocence Rule” and completely mischaracterizes **Morris v Margulis** which crafted the **Morris Exception** to override the actual innocence rule, when applicable. The **Morris** case has been previously discussed at length and its rulings are very simply stated requiring little or no analysis or spin, and so is largely quoted and in context below to refute Young’s version.

The Appellate Court that ruled in **Moore v Owens (1998)** also ruled on **Morris v Margulis** in 1999. *Young wrongly characterizes Morris v Margulis (1999) “as lightly reasoned from a twenty-year-old Illinois Court of Appeals ruling.”* **Moore v Owens** was a case of *negligence classified as “traditional malpractice”* which gave rise to the “Actual Innocence Rule”. **Morris v Margulis** was about an *intentional breach of fiduciary duty*, described as *non-traditional malpractice*, and was a particularly “egregious” form of malpractice. One year after **Moore**, that same Appellate Court realized the actual innocence burden was too broad in the new case of **Morris v Margulis**, and so provided a needed exception and the Appellate Court specifically stated, “we shall not apply Moore” to **Morris**.

The **Morris** court ruling was to cure an obvious defect as **Moore** was too broad and did not allow for attorneys to be held accountable for the egregious “betrayal” of their fiduciary duties. **Moore** ruled that such cases should go to trial on the merits, as per the new exception then created. In that case, **Morris** was allowed to proceed without the burden of overturning his conviction and without having to prove his innocence. The Illinois Supreme Court upheld the Appellate Courts ruling and the **Morris Exception** continues to be cited precedent to this day.

The **Morris** Court’s reasoning for crafting the **Morris** exception was to provide a specific basis for overcoming the ‘actual innocence rule’ stated in **Moore v Owens** as an overriding matter of public policy and to serve the greater ends of justice; where an attorney betrays his fiduciary duty by placing his own interests above those of his clients.

Again, quoting from **Morris**, when they considered the required elements to bring a malpractice action in a criminal case. “**The next issue concerns the question of whether Morris, as an element of this claim against Bryan Cave for breach of fiduciary duty, must prove “actual innocence,” as we required in the context of a criminal defendant’s legal malpractice action (Moore v Owens) against his former attorney based on negligence. See Moore v. Owens, 298 Ill. App. 3d 672, 232 Ill. Dec. 616, 698 N.E.2d 707 (1998); see also Kramer v. Dirksen, 296 Ill.App.3d 819, 231 Ill. Dec. 169, 695**

N.E.2d 1288 (1998). Bryan Cave claims that the rule announced in these (prior precedents) cases is dispositive. Morris agrees that these cases are dispositive only if applicable.” The **Morris** court then ruled those other cases were “traditional malpractice” and not applicable, because there was no allegation of a more serious allegations of breach of fiduciary duty. The **Morris** Court did not require Plaintiff to overturn his conviction, under the relief from having the burden of proving actual innocence so the case could be heard. This was due to an overriding public policy concerns that superseded **Moore v Owens**.

The **Morris** Court gave the Plaintiff relief from proving innocence and denied Defendants Motion to Dismiss on that basis, going on to craft the **Morris Exception** which still supersedes Moore, where applicable to this very day. This is very simple.

To be clear, Illinois law provides that the actual innocence rule bars some malpractice claims - not all malpractice claims.

Cases that might otherwise not be heard due to **Moore**, would be heard with the **Morris** ruling, as deterrence to misbehaving attorneys and as matter of basic fairness and equity to those victims of their own attorney’s betrayal. **Morris** overcomes **Moore**.

Quoting exactly what the court reasoned, “**Among the fiduciary duties owed by the attorney to the client are the duties of fidelity, honesty, and good faith. The attorney's fiduciary duties are breached when an attorney places his own interests above those of the client.**”. The **Morris** standard does not require violating confidentiality and does not require actual collusion with the State. In **Morris**, merely “**an effort to curry favor**” was the motive for the offending attorney placing his interests above his client’s interests.

The **Morris** Courts reasoning was “**To apply Moore v Owen, (referring to the actual innocence rule) to a situation where a criminal defense attorney intentionally works to ensure his client's conviction would be unconscionable. This would allow counsel for the defendant to urge the jury in closing argument to convict his client. Then the same traitorous attorney could defend an action filed by his former client with the plea: "Well, you were guilty, weren't you?" We will not adopt such a policy.**” That is essentially Young’s tactic in the case before us and the behavior the **Morris Exception** came into existence to address.

Contrary to Young’s analysis of **Moore v Owens**, the **Morris** court went on to actually say, **“Moore and its "actual innocence" rule will not be applied to situations where an attorney willfully or intentionally breaches the fiduciary duties he owes to his criminal defense client.”** Morris trumps Moore.

The **Morris** Court specifically affirmed, **“Among the fiduciary duties owed by the attorney to the client are the duties of fidelity, honesty, and good faith. The attorney's fiduciary duties are breached when an attorney places his own interests above those of the client”**. and then went on to say, **“As stated previously, all inferences favorable to the party opposing summary judgment must be indulged. A reasonable inference is that Goebel and Bryan Cave aided the United States Attorney's office in an effort to curry favor.”**

There is no requirement that collusion occurred between the State and the offending attorney, the standard is when a defense attorney intentionally works to ensure his client's conviction which is of course an “egregious” breach of fiduciary duty.

The Appellate Court used the word **“if”** rhetorically when it agreed with the **Morris** trial ruling: **“If Bryan Cave had an attorney-client relationship with Morris, then the act of secretly providing cross-examination questions or other assistance to the United States Attorney would constitute a breach of the duty of loyalty. Because the act was secret, it would be a fraudulent concealment.”** 307 Ill.App.3d at 1041, 241 Ill.Dec. 138, 718 N.E.2d 709, citing **Chicago Park District v. Kenroy, Inc.**, 78 Ill.2d 555, 37 Ill.Dec. 291, 402 N.E.2d 181 (1980).

What the court also said was **“In this case (Morris v Margulis) we are not confronted with a traditional malpractice claim.”** “Traditional” refers to causes of actions such as negligence and failures of effective counsel. The distinction tends to fall along the lines where the malpractice was “intentional” and a “breach of a fiduciary duty.”

Young’s analysis is flat wrong when he asserts, **“In the aftermath of Morris, both the Illinois Court of Appeals and the Seventh Circuit Federal Court of Appeals continued to require plaintiffs to demonstrate actual innocence”**. That observation is incomplete, omits material facts, and Young is here being deceptive. The Courts require plaintiffs to demonstrate actual innocence only when the standard to trigger the Morris Exception cannot be met. **Morris** is not applicable when the allegations are of traditional malpractice.

Using Young's first citation, **Paulson v Cochrun**, as illustrative of his others, this case was based on negligence, ineffective counsel and the fee arrangement, none of which is a breach of fiduciary duty as required for the **Morris Exception**.

"An exception was recognized to Moore v. Owens, 298 Ill. App. 3d 672, 674 (1998), where the criminal defense attorney had intentionally worked, contrary to his client's interests, to secure the client's conviction, but that possibility aside, Illinois courts have reaffirmed their commitment to the general rule requiring actual innocence." Paulsen, 356 Ill. App. 3d at 360. Young is simply and wrongfully omitting facts and he plays loose with the truth.

Young then deceitfully cites precedents in support of his false claim; precedents that do not reconcile with his assertions. Those cases are, **"Paulsen v. Cochran, 826 N.E.2d 526 (Ill App. Ct. 2005) (citing Griffin v. Goldenhersh, 752 N.E.2d 1232 (Ill. App. Ct. 2001) and Woidtke v. St. Clair County, 335 F.3d 558, 562 (7th Cir. 2003))."** These and other cases Young asserts elsewhere as supportive for his cause were all "traditional" claims of malpractice and so failed to trigger the **Morris Exception**. Therefore, the Actual Innocence Rule was still applicable and only support Young's analysis when he wrongfully omits material facts.

Cases that meet the **Morris standards** are granted the **Morris exception**. Cases that don't meet the standard don't get the exception. It is very simple.

In context, Plaintiff Paulsen realized his allegation failed to measure up to the **Morris Standard** and so then attempted to carve out a second separate and distinct exception. The Court ruled confirming the alleged malpractice did not meet the **Morris** standard to trigger the exception and also refused to recognize a second exception; so there was no relief granted from the actual innocence rule.

The Court said, **"we believe the trial court properly applied the actual innocence rule in dismissing this case. The facts here do not warrant the establishment of another exception to the rule, beyond the "betrayal" exception in Morris"**.

Paulson actually confirms the existence of the **Morris Exception** by reference when ruling the causes of action in **Paulsen** were insufficient to trigger it. All these inappropriately pled cases have a similar case history and do not support Young's analysis, they refute him. Plaintiff summarizes all Youngs' alleged supporting precedents in the attached exhibit. Be aware of this clever man.

Young analysis is also false when he asserts, **“Instead of broadening the *Morris* exception, courts extended the actual innocence rule,”** The court was not asked to broaden the **Morris Exception**, Paulsen asked that an additional separate and distinct exception be recognized and the court refused. Further, the Actual Innocence Rule was not extended, it remained as it was prior to Paulsen and remains the same to this very day. Young is simply not telling the truth, *again*.

Young continues, **“holding that it (actual innocence rule) applied to all claims of legal malpractice against former criminal counsel, even if the plaintiff does not allege that their conviction was the results of the alleged malpractice.”** The actual innocence rule applies to cases, unless the rule is defeated by the **Morris Exception**. Again, cases that meet the **Morris Standard** receive the benefit of the **Morris Exception**. Cases that don’t meet the **Morris** standards don’t get the exception. It’s all very simple.

Young also misses in his analysis that when the **Morris Court** denied Bryan Cave’s Motion to Dismiss; they court observed that the same and similar **“cases are dispositive only if applicable.”** Youngs’ citations were not applicable as to the **Morris Exception**.

Young said, **“There is no record of any court applying the *Morris* exception by allowing a plaintiff who is collaterally estopped from alleging their actual innocence to sidestep the element entirely.”** That is just not true, and the first example is **Morris** which is now a long-recognized exception based on a breach of a fiduciary which was ruled as a non-traditional malpractice claim. There are many cases referenced in the law that include **Morris**, but where the actual innocence rule could not be relieved because the Plaintiff alleged a traditional malpractice claim such as negligence which fails to meet the required standard in **Morris** as in all the other cases Young cites above

When Defendant Bryan Cave asked the **Morris** court to reconsider the **Moore v Owen** decision in their Motion to Dismiss, the Court declined to look at the old case and its actual innocence rule and said, **“We also decline to apply the "actual innocence" rule to this case”**.

The **Morris** court went on to rule, **“The brief filed by Bryan Cave on this issue, no doubt in all good faith, is misleading and just plain wrong.”** Likewise, Youngs’ brief has been shown to be **misleading and just plain wrong”**.

In **Morris v Margulis**, that court specifically confirmed, **“As stated previously, all inferences favorable to the party opposing summary judgment must be indulged. A reasonable inference is**

that Goebel and Bryan Cave aided the United States Attorney's office in an effort to curry favor.”

In the same way, it is a reasonable inference that Young at minimum acted to “**curry favor**” with the State’s attorney against his own client’s interest in order to have Defendants \$25,000 bail deposit released to himself as described herein and the Verified Amended Compliant; and that his intentionally causing a false plea to be accepted as true by the Judge without consultation or approval of his client, putting his own interests above that of Bulthaup and so causing his conviction, which clearly constitutes multiple breaches of his fiduciary duties.

While there is evidence that there may have been direct collusion with the State, at the very least tacit cooperation, unknown to Bulthaup at the time in regard to Young grabbing the \$25,000 bond money for his own interest. Whether there was or was not collusion, cooperation or just knowledge and acceptance is immaterial to a finding of betrayal. Betrayal is where the offending attorney puts his own interests above that of his Client which relieves Plaintiff from having to prove innocence under **Moore** and not what the State did, or did not, do.

The **Morris Exception** is infrequently applied because so many malpractice cases are based on “traditional” causes of action that do not meet the non-traditional standard in **Morris**. Hopefully the goal of deterrence in Moore is being achieved. However, the **Morris Exception** is often cited in literature and case law and continues to be governing and superseding precedent in face of the **Moore v Owens** ruling since the Actual Innocence Rule came into being. **Moore** was overly broad when it allowed offending attorneys who had betrayed their clients to escape responsibility for their actions, just as Young is attempting to do here.

A finalizing statement in **Morris v Margulis** is proper summation to rebut Young’s Rule 2-615 pleading here, “**To apply Moore v Owen, (referring to the actual innocence rule) to a situation where a criminal defense attorney intentionally works to ensure his client's conviction would be unconscionable. This would allow counsel for the defendant to urge the jury in closing argument to convict his client. Then the same traitorous attorney could defend an action filed by his former client with the plea: "Well, you were guilty, weren't you?" We will not adopt such a policy.**” The theoretical example in the Morris ruling is directly parallel to what Young is actually trying to accomplish here, with the exception that Young did not argue his Plaintiff was guilty, he did worse by actually interrupting the plea proceedings and then caused a false guilty plea to be accepted as true by the trial Judge.

And summarizing their denial of Defendant's Motion to Dismiss in **Morris**, "**We also decline to apply the "actual innocence" rule to this case**" and also, "**The brief filed by Bryan Cave on this issue**" "**is misleading and just plain wrong.**" That is the case here.

WHEREFORE, the Plaintiff respectfully requests this Honorable Court to Deny the Defendants Motion to Dismiss, enter Plaintiffs Motion to Compel Discovery at the earliest opportunity and proceed to a trial on the merits.

ANALYSIS OF YOUNG'S STATUTE OF LIMITATIONS IN RULE 2-619 PLEADING

Defendant agrees in his 2-619 analysis that when the exception in **Morris v Margulis** is ruled applicable; all the elements requisite to proceed are present and the case should proceed to trial on the merits; unless time barred where the Statute of Limitations offers shelter to an offending attorney from being held accountable for his malpractice.

The Illinois Statute of Limitations has a two-year period for filing a legal malpractice action. This statute contains its own discovery rule, which provides that the two-year period begins to run when the plaintiff knew or reasonably should have known of an injury, and that the injury was wrongfully caused.

Youngs' motion states, "**The Plaintiff cites Morris in the second cause of action in his amended complaint.**", but Young seems to fail to understand the full implications when he follows with, "**It is unclear whether Plaintiff alleges that the exception only applies to this particular cause of action, or if the Plaintiff alleges that the exception applies to both causes of action contained in the amended complaint.**" The **Morris Exception** simply applies as to Plaintiff being allowed to bring their entire case to trial on the merits without being barred by the standards in **Moore v Owens**. Restating, **Morris v Margulis** applies to Bulthaupt and his being relieved of the burden of having to prove actual innocence in order for his Verified Amended Complaint, **Bulthaupt v Young 2019-L-4480**, to be heard and adjudicated in its entirety, as filed. There is no separation as to which allegations or causes of action can, or can't, be argued within a filed case as to **Morris** or anywhere else.

Youngs' Contentions

- 1) Young first states, "According to Plaintiff's Amended Complaint, the Plaintiff became aware of Defendants' alleged "betrayal" on the date of his conviction, July 6, 2016. At this point in time the Plaintiff is aware of all the facts necessary to fulfill the five elements of his legal malpractice claim. Therefore, the cause of action accrued, and the statute of limitations began to run."
- 2) Young then states, "According to the Plaintiff's Amended Complaint, the Plaintiff was aware of all the underlying facts relating to Defendants' alleged misconduct during the probationary interview and sentencing hearing on the date Plaintiff was sentenced, at the latest. Plaintiff was sentenced on November 10, 2016, meaning the two-year statute of limitations for that portion of the claim expired on November 10, 2018. Plaintiff did not file his first complaint in this matter until April 26, 2019. Other portions of Plaintiff's Amended Complaint relate to Plaintiff's probationary interview, sentencing hearing and post-sentence communications with the Defendant."
- 3) Finally, Young states "In the context of legal malpractice claims against a plaintiff's former criminal defense lawyer, this usually means the statute of limitations does not begin to run until the plaintiff secures post-conviction relief. *Griffin*, at 1240. Before having their conviction overturned, they are collaterally estopped from arguing their actual innocence, and they cannot fulfill the sixth element of the cause of action. *Id.* at 1239. Once they secure the necessary post-conviction relief and are no longer precluded from professing their actual innocence, they can assert a legal malpractice claim with all six required elements. It is at this moment that their cause of action for legal malpractice accrues, and the statute of limitations begins to run."

Bulthaups' Refutation

Taking Youngs' last contention first, Young simply restates his Rule 2-615 argument, contradicting his other contentions stated above with his 2-619 argument. First, Young asserts the limitations period has expired, oops, no on second thought, it hasn't even begun.

For the purposes of responding to Young's Motion to Dismiss, Plaintiff focused on a single particularly egregious act of malpractice that paralleled those allegations in **Morris v Margulis** which should be dispositive and defeat Young's Rule 2-615 pleading. **Morris** and its **Morris Exception** relieves a Plaintiff from extra elements in **Moore v Owens**, including having to prove actual innocence.

Young asserts that Bulthaup must have also had the underlying criminal conviction overturned.

That is not true. **Morris filed his breach of fiduciary duty based malpractice complaint in the Circuit Court after Plaintiff's conviction had already been affirmed on appeal.** Both the trial court, the appellate court, and the supreme court heard the **Morris** case through all its nuance without requiring Plaintiff to overturn their conviction. If that Plaintiff must still have had to overturn the conviction in a **Morris v Margulis** setting; the offending attorney Bryan Cave would have plead so in their Motion to Dismiss and the court would have ruled in their favor. That Bryan Cave did not do, and that the courts did not require. If it were otherwise, a pleading that the conviction needed to be overturned and wasn't would have overcome all other factors in the case and the offending attorney would have easily escaped any responsibility.

The **Morris** Court's reasoning for crafting the **Morris Exception** was to provide a basis for specifically overcoming the 'actual innocence rule' first stated in **Moore v Owens** by that very same court just the year before. There is an overriding matter of public policy to serve the greater ends of justice in **Morris**, where an attorney betrays his fiduciary duty by placing his own interests above those of his client. Cases that might otherwise not be heard due to **Moore**, would be heard according to **Morris** as deterrence to misbehaving attorneys and as matter of basic fairness and equity to those victims of their own attorney's betrayal. **Morris overcomes Moore, as evidenced by the fact that the court that so ruled and provided the sole exception to the actual innocence rule, had created the actual innocence rule just the year before.**

In the Verified Amended Complaint, the allegation of just of one of the several acts of "betrayal" should provide relief from having to prove innocence and also from having the conviction overturned per the **Morris Exception**. That being said, all the requisite elements are present for the case of **Bulthaup v Young** to fully proceed in its entirety, just as in **Morris**.

If Plaintiff's argument with **Morris v Margulis** is recognized by this honorable court in refuting Youngs' Rule 2-615; then it must also prevail here as to Youngs' third contention for the same reason.

Moving ahead with the remaining two contentions

Young was referred by a mutual friend who Bulthaup respected, trusted and thought should know. Bulthaups' description of Defendant Youngs' behavior, his practice and conduct are described accurately everywhere, but that was only from benefit of hindsight. Bulthaup did not comprehend their import, nor did he understand at the time that Youngs' acts in some cases constituted negligence and in

others being a breach of his fiduciary duties; nor did he realize he was legally damaged until well after he was behind bars. “**A layperson is presumptively unable to discern malpractice as it occurs.**” was held in **Goodman v. Harbor Market, Ltd.**, 278 Ill. App.3d 684, 689-90, 663 N.E.2d 12 (1995), **Lamet v. Levin**, 2015 Ill App (1st) 143105; **Butler v. Mayer, Brown & Platt**, 301 Ill. App.3d 919, *et al.*

Young maintained throughout that Bulthaup would not be found guilty and later that he would not be incarcerated. Bulthaups’ time, efforts, and thoughts were almost exclusively focused on those goals believing naively that any attorney would always act in good faith. Youngs’ mantra was always “**Win with Young**” and “**stall, stall, stall**”, even his website was www.winwithyoung.com. Bulthaup is not an attorney, nor had he ever been accused of a crime before, nor does he have any experience with the criminal justice system. It would be a vast understatement to say it’s been a real learning experience for him.

Case law is very clear as to a layman’s inability to recognize and sustain legally actionable malpractice damages caused by his own fiduciary attorney. While the client may have witnessed attorney misbehavior, they very likely do not know the ethical standards required, nor recognize actions as malpractice when they experienced them. That would especially be true in a case such as this where the offending attorney had put his own interests above his clients, fails to disclose or actively conceals misbehavior, then refuses discovery of his work product and communications for an extended period to this very day, as evidenced in numerous documented attempts and a still outstanding Rule 214 Motion to Compel Discovery.

This is also the last count of the causes of action in the Amended Verified Complaint.

There are generally recognized guidelines for courts to determine “reasonably known or should have known”. These guidelines also set case appropriate parameters for the application of the Statutes’ Discovery Rule which is also generally a fact-based question and decision. Together these precedents allow the court to render a decision as to the of setting of a reasonable commencement date for the limitation period when there is a fact-based analysis.

Section 13-214.3(b) contains its own “discovery” rule. Under the discovery rule a limitations period begins to run only when the plaintiff “knows or reasonably should know of his injury and also knows or reasonably should know that it was wrongfully caused.”

Courts have further held that while a layperson is presumptively unable to discern malpractice, at some point an injured client becomes possessed of sufficient information concerning their injury and its cause to trigger an inquiry. The client then has a duty to actively determine whether actionable misconduct was involved. An injured person is not held to a standard of knowing the unknowable, yet once it reasonably appears that an injury was wrongfully caused, the party may not slumber on his rights. This is usually a question of fact and seems a reasonable standard to apply here. **Witherell v. Weimer**, 85 Ill.2d 146, 156, 52 Ill.Dec. 6, 421 N.E.2d 869 (1981); accord **Jackson Jordan, Inc. v. Leydig, Voit & Mayer**, 158 Ill.2d 240, 249, 198 Ill.Dec. 786, 633 N.E.2d 627 (1994). Normally, the discovery date will be a question of fact. **Knox College v. Celotex Corp.**, 88 Ill.2d 407, 416, 58 Ill.Dec. 725, 430 N.E.2d 976 (1981).

The timeline below demonstrates that once people with some knowledge and experience suggested to Bulthaupt his situation and his attorney's acts may well be malpractice causing an actual injury, he immediately began to research the issue. His investigation started within weeks of Young's last act of malpractice, (also a betrayal), concerning his Motion to Reconsider which was heard on April 28, 2017. Given his confinement and living circumstances, his limited access to even his own case file, Young's refusal to provide reasonable discovery by the withholding of notes, work product and communication records; Bulthaup's ability to conduct appropriate 'due diligence' within four to five months after Young's last act of malpractice and come to a tentative conclusion is rather remarkable. That timeline is laid out below.

Bulthaupt only comprehended that he was wrongfully injured by his attorney several months after Young's Motion to Reconsider was denied after argument at a hearing on April 28, 2017.

Given the generally accepted guidelines, a strong argument can be made for using September 1st, 2017 as the commencement date of the limitations period.

Bulthaup's path to that realization, his behavior after that realization, his rapid move afterwards to investigate, to discovery through the filing of his complaint are also described below. They are consistent with the proper application of case law to the statute. The standard of review for "reasonably known or should have known" is cited in numerous cases and is generally based on fact questions.

A relevant standard for analyzing "reasonably known or should have known" in a malpractice case is described in **Niziolek v. Chicago Transit Authority**, 620 N.E.2d 1097 (Ill. App. 1st Dist. 1993),

where the Judge affirmed, "**Representations which a court may find reasonable for a layman to rely upon will not necessarily be considered reasonable for an attorney to rely upon.**" recognizing that attorneys through knowledge and experience have a considerably higher standard for "reasonable" analysis than does a novice.

The ruling court in **Morris** stated there, "**It is the prevailing rule that, as between persons sustaining a fiduciary or trust or other confidential relationship toward each other, the person occupying the relation of fiduciary or of confidence is under a duty to reveal the facts to the plaintiff (the other party), and that his silence when he ought to speak, or his failure to disclose what he ought to disclose, is as much a fraud at law as an actual affirmative false representation or act; and that mere silence on his part as to a cause of action, the facts giving rise to which it was his duty to disclose, amounts to a fraudulent concealment * * *.**" **Chicago Park District v. Kenroy, Inc.**, 78 Ill. 2d 555, 562, 37 Ill. Dec. 291, 402 N.E.2d 181 (1980), **quoting Annot.**, 173 A.L.R. 576, 588 (1948). Young certainly violated these principles as alleged in the complaint and such conduct affected Bulthaup's timely knowledge. Young concealed some of his actions and his true motives, placing his own interests above those of his clients which further complicated any timely analysis.

Nolan v. Johns-Manville, 85 Ill.2d 161 (1981), further elaborates stating that, "**an injured person is not held to a standard of knowing the inherently unknowable, yet once it reasonably appears that an injury was wrongfully caused, the party may not slumber on his rights.**"

Basic Timeline for Commencement of the Limitations Period

Defendant alleges two different commencement dates, the first at a hearing on July 6, 2016 and the second at a sentence hearing on November 10, 2016. There were equally provable and just as egregious acts of malpractice in each instance.

Regarding Young's first contention that his act of malpractice with a coerced plea on July 6, 2016 should be the commencement date. It is clear that Bulthaup had not yet comprehended Young's actions to be misconduct. Otherwise, Bulthaup would have had the false plea that Young intentionally caused to be accepted as true by the Judge, immediately vacated based on the "Judicial Error" that Young claimed afterward he could do at any future time, followed with Young's firing and replacing him, suing him for a refund if necessary.

Bulthaup naturally witnessed what Young did in both hearings, but was lost in the first instance

after Young diverged from the approved plan, saying, “**May I interject, no, not other than that**” while ‘shushing’ his client; changing the approved upon defense strategy without consulting his client. Afterward failing to disclose the true nature and his motive for what just happened and its import.

As to the second date Young finds acceptable, his unilateral decision to not zealously follow the approved plans and strategy leading up to and including the sentence hearing on November 10, 2016, included multiple instances of malpractice as described in the complaint. At the November 10th hearing no precedents were cited, no affidavits were presented, none of the many documents his client had given him were presented and explained to the Judge. Young represented he had spent many hours preparing what ended up being a half a page of notes on a legal pad.

Bulthaupt only understood these failures to be malpractice many months after his incarceration, which happened immediately after that hearing. November 10th was not even Bulthaupt’s last court appearance under Youngs’ representation.

That occurred February 19, 2017 where Young failed to show up timely due to his taking a new case scheduled at a distant jurisdiction rather than show up as he should to a vital hearing. As described in the complaint, the hour was then so late that when Young arrived over two and a half hours after the scheduled time, the presiding Judge had to leave to swear in new Judges in a ceremony scheduled elsewhere. Even if the Judge was so inclined, there was not even remotely enough time to hear argument. The Judge stayed just long enough to severely reprimand Young; setting him straight as to where he should have been first that morning and to never repeat that mistake in his courtroom again, after which he continued the case. Bulthaupt was then shipped back to the Vandalia Penitentiary. There is an entire section starting on page 27 of the Verified Amended Complaint, titled Youngs’ **Post-Sentence Breaches of Fiduciary Duties**, including this malpractice through to his later fraudulent handling of the Motion to Reconsider on April 28, 2017. The last section in the Complaint is captioned, **Young Denies Plaintiff Access to Work Product** and describes Youngs serial refusal to provide his work product and communications under various pretexts; variously maintaining he has no obligation to provide this discovery to his own client, to the unbelievable claim that he only had one page of notes, and later that he had no records at all, kept everything “in his noodle”. What basis does Young have for alleging either of these two acts of malpractice over any of the many other acts of malpractice enumerated in the Verified Amended Complaint?

Young is alleging these two dates, and such allegations must fail in the absence of affirmative actions by the Plaintiff evidenced at the time of those hearings. There is no evidenced-based or fact-based reason in support of Young to justify these particular dates as determinative over any other act of malpractice.

The Statute's Discovery Rule should apply to determining a date after the April 28th, 2017 hearing and Plaintiffs statements and his Verified Complaint must be considered as true for these purposes. Going further, **"Even if Plaintiff's factual allegation of malpractice seems to be far-fetched and exaggerated, at the pleading stage these allegations must be accepted as true unless the complaint is shown to be frivolous, malicious or fails to state a claim upon which relief may be granted"**. See 28 U.S.C. § 1915A(b)(1).

Certainly, acts of malpractice did occur on those dates and throughout Youngs' representation as described in the complaint. In some instances, as with the coerced plea on June 6th, Defendant Young afterward concealed his actions by explaining them away; saying what he did was even better for the Defendant and so masked his improper actions. In other situations, Bulthaup knew he was injured but did not realize that it was due to actionable malpractice. It is well recognized that the statutory period does not even necessarily begin when the injured person is first aware of his injury. Further, limitations periods may be extended by both the statutory discovery rule and common law from a known or approximate date of when Plaintiff became aware or reasonably should have become aware that the injury was wrongfully caused. That could be days, months or even years after the actual act of malpractice.

As a layperson is presumptively unable to discern malpractice as it occurs, and since Youngs' malpractice was continuing throughout his representation, no date prior to his last representation on April 28, 2017 can rightfully be supported nor considered. In this instance the Discovery Rule requires a fact based inquiry, Bulthaups' timeline is to be considered true for the purposes of these pleadings.

In brief, the appropriate timeline to consider is

The last act of Young's malpractice concerns the argument of his Motion to Reconsider on April 28, 2017 and his subsequent phone call with his client some days later. That is the benchmark Plaintiff used for the purposes of filing the complaint which occurred on April 26, 2019.

Bulthaup was told that some of Young's acts may have been wrongful in an ARDC context and a possible theory for an ineffective assistance of counsel appeal by an inmate librarian in the newly reopened penitentiary law library sometime between the first and third week of May 2017. Inmates were generally allowed only one 30-minute visit per week so proper research on the Trustee's insight was impossible. Bulthaup was transferred to the Statesville Transfer Center on May 17, 2017 and then on to a Chicago work/release jail on June 16, 2017.

Bulthaup was allowed out with three 6-hour passes per week starting at the very end of July. After approximately three weeks, no later than August 16, 2017, Bulthaup met with an attorney friend as a casual matter and for free food. Within this same period, Bulthaup had his first access to his own defense materials that had been prepared and given Young for the case. During that lunch Bulthaup told his story just as a matter of interest but was told by the friend it actually did sound like he had a valid case for malpractice. That was Bulthaup's first credible information that there may be a genuine cause of action. Bulthaup immediately started writing his recollections of events and researching the best he could given the restrictive environment from which he was then operating. Shortly after commencing this work, Bulthaup reached out to Young to obtain the missing papers and evidence discs but Young refused all discovery over the following years. There is still an outstanding Rule 214 Motion to Compel Discovery.

Standards and Discovery Precedent for Commencement of the Limitations Period

"At some point the injured person becomes possessed of sufficient information concerning his injury and its cause to put a reasonable person on inquiry to determine whether actionable conduct is involved. This is usually a question of fact." Knox College v. Celotex Corp., 88 Ill.2d 407, 416, 430 N.E.2d 976 (1981). See also Betts v. Manville Personal Injury Settlement Trust, 225 Ill. App.3d 882, 896, 588 N.E.2d 1193 (1992).

In its review of relevant case law, the appellate court relied on the Illinois Supreme Court's ruling in **Knox College v. Celotex**, 88 Ill.2d 407 (1982). **"The court held that the statutory period does not necessarily start when the injured person is first aware of his injury, but rather when he should reasonably be aware that the injury was wrongfully caused. Nolan v. Johns-Manville, 85 Ill.2d 161 (1981), and further elaborates on Knox's intention, stating that it ensures "an injured person is not held to a standard of knowing the inherently unknowable, yet once it reasonably appears that an injury was wrongfully caused, the party may not slumber on his rights."**

The discovery rule "**delays commencement until the person has a reasonable belief that the injury was caused by wrongful conduct, thereby creating an obligation to inquire further on that issue.**" **Dancor**, 288 Ill. App.3d at 673.

"Limitations periods may also be extended by common law or the statutory discovery rule, under which a plaintiff's cause of action does not accrue until they know or through reasonable diligence should have known of an injury and that the injury was wrongfully caused" (see **Clay v. Kuhl**, 727 N.E.2d 217, 223 (Ill. 2000); see also **Joseph A. Ruth v. The Paul Revere Life Ins. Co.**, No. 08 C 50102, 2010 WL 3527561, at *2 (N.D. Ill. Sept. 2, 2010)).

All the above cited case above are recognized precedent and so dispositive.

CONCLUSION

Case law is very clear that a layperson is presumptively unable to discern malpractice as it occurs. Further, that while they may have actually witnessed attorney misbehavior, they very likely did not know the ethical standards required of an attorney, nor recognize actions as malpractice when they experienced it. That would especially be true in a case such as this, where the attorney fails to disclose or actively conceals his misbehavior in real time or later refuses all discovery request of his work product and communications for an extended period.

It is ludicrous for Young to plead that each act of malpractice had a separate "commencement date" relating to the date it occurred with a statutory limitation period two years after each of those individual breaches as he is claiming regardless of any other factor found in case law.

It makes even less sense that he asserts it appropriate for him to pick any individual act over the entire 30-month timeline and set the commencement date for the entire case based on his selection.

The standard for commencement of the limitation period is the realization of not the injury itself, but that malpractice was casual and there were actual damages. The statutory period does not necessarily start when the injured person was first aware of his injury, but rather when he was reasonably aware that the injury was wrongfully caused. Therefore, the act constituting malpractice can predate the commencement date of the statute by days, months or even up to six years with repose.

Bulthaup used the date of April 28, 2017 as his benchmark and filed on April 26, 2019. It is unreasonable to believe an earlier commencement date than April 28th is appropriate, and any such other date alleged cannot be supported by the facts or precedent.

A better argument than Young's allegations evidenced by his own suppositions can be made and fully supported by fact and by precedent for a commencement date of September 1, 2017; and given Youngs' later verifiable malpractice of withholding material case evidence and his refusal to comply with reasonable discovery, it would be reasonable to look at even a later date. This Plaintiff will not do, as even though it was before Bulthaup knew there was actionable malpractice, he is satisfied that the statutory burden is met with the scheduled date of Youngs' last arguments and that Plaintiffs filing date of April 26th, 2018 was appropriate and timely.

WHEREFORE, the Plaintiff respectfully requests this Honorable Court to Deny the Defendants Motion to Dismiss, enter Plaintiffs Motion to Compel Discovery at the earliest opportunity and proceed to a trial on the merits.

CONCLUSION

This Amended Verified Complaint must be considered as true and Defendant Young is correct when he cites 735 ILCS 5/2-615, on page two of his Motion, captioned "Standard of Review", that it **"must be interpreted by the reviewing court in a light most favorable to the Plaintiff (Bulthaup)"**.

Also in 28 U.S.C. § 1915A(b)(1). **"Even if Plaintiff's factual allegation of malpractice seem to be far-fetched and exaggerated, at the pleading stage these allegations must be accepted as true."**

Young incorrectly asserts that his former Client must prove his actual innocence. Young fails to rightly recognize the Illinois Supreme Court exception in **Morris v. Margulis** that the actual innocence rule only bars some malpractice claims, not all malpractice claims. The Court in **Morris** concluded that "the case at hand is not a traditional malpractice claim" (such as this claim is not a traditional complaint) and declined to require the additional burden of proving actual innocence due to the attorney's betrayal of his own client.

For the purposes of this Verified Response, the ruling in **Morris v. Margulis** relieves Plaintiff from having to first prove innocence. The Morris court ruled, **"To do otherwise would allow criminal defense attorneys to go so far as to urge juries to convict their clients, and then allow them to defend their actions by arguing that the criminal defendants were found guilty. Then the same traitorous attorney could defend a (malpractice) action filed by his former client with the plea (by stating): "Well, you were guilty, weren't you?" We will not adopt such a policy."**

Also in **Morris**, in addition to liquidated damages such as those claimed in Plaintiff's Verified Complaint, the Morris Court ruled damages can be awarded for mental suffering. **Morris** ruled, **"We believe that the reasoning of Doe v. Roe, 289 Ill. App.3d 116, 681 N.E.2d 640 (1997), is sound. We agree with Doe that when an attorney has reason to know that a breach of fiduciary duty is likely to cause emotional distress, damages will be given for mental suffering. We believe that under Doe, if Morris otherwise proves his case, damages for emotional distress should be and are recoverable."**

A prima facie case has been made in the complaint as to Young's **"betrayal"** and relevant details of the circumstances have been further detailed here. This betrayal is especially heinous as numerous citations herein are also supported by United States Supreme Court ruling in **Strickland** when it ruled that a **"defense counsel has responsibilities in the plea bargain process which must be met to render the adequate assistance of counsel that the Sixth Amendment requires."** A betrayal by an attorney of his fiduciary duties, especially concerning the Constitution of the United States should be considered a serious matter worthy of going to trial. The Illinois Supreme Court in **Morris** relieves Bulthaup from the burden of proving himself innocent due to this very concern.

In this instance, Young's actions meet the standard of betrayal as Defendant embraced an illegitimate and reckless defense strategy concerning the guilty plea without prior agreement or even consultation with his client, after which he led his client down a primrose path with warranties of outcome and false assertions. Young put his own interests ahead of his Client and took the money, all actions that were in breach of his fiduciary duties, amounting to egregious acts of betrayal.

This Court should deny Young's Motion to Dismiss, based on Young's betrayal regarding the coerced plea and his alleged corrupt bargain. Such conduct is exactly that which is described in **Morris** and is specifically why the Illinois Supreme Court carved out the exception of betrayal.

Young asserts on page 15 of his motion, "there is no set of facts under any circumstances that Bulthaup can allege, nor can Bulthaup prove the necessary elements to establish a prima facie case of legal malpractice". That is simply not true, there is a set of facts and the circumstances have been fully and accurately described.

A careful reading of Bulthaups' Amended Verified Complaint demonstrates that the elements required are indeed present and that Plaintiff did submit to this honorable court a prima facie case of malpractice that should be tried on the merits.

Plaintiff therefore respectfully requests that Defendant Young's Motion to Dismiss be denied and that we proceed towards trial.

Respectively submitted,

Ted E. C. Bulthaup III

Plaintiff, Ted EC. Bulthaup III, dated this 20th day of March 2019

Exhibit: Young's Cited Precedents

Every malpractice case cited by Young as precedent for having to have the conviction overturned concerned negligence or some similar traditional malpractice as the cause of action. In some instances, the case was not even about malpractice but where the search term "actual innocence" brought up for appeals of conviction cases or sentencing objections.

In its ruling, the Morris Court said precedent is dispositive in regard to the actual innocence only where applicable. Not one of Young's citations is in the regard to an alleged a breach of fiduciary duty, none concerned betrayal where the attorney put his own interests above those of his client.

Defendant cannot cite a single case where Plaintiff was relieved having to prove actual innocence but still had to overturn the conviction, whereas.....

Plaintiff can cite governing case law where the victim of the malpractice did not have the conviction over-turned, was in fact still incarcerated, and was relieved of the burden of having to prove innocence.

Illinois law does not allow a defendant in a criminal case to bring a legal malpractice claim "merely upon proof that the attorney failed to meet minimum standards of professional competence and that had he done so the defendant would have been acquitted on some technicality," The Court acknowledged that no Illinois court— has determined whether the actual-innocence rule acts as a barrier to a claim of breach of contract or simple breach of fiduciary duty

Morris v Margulis is a 1999 malpractice case that governs the ruling of Defendants Motion to Dismiss in **Bulthaup v Young**. Young citations in support of the application of the actual innocence rule were not litigated prior to the carve out for relief found in **Morris v Margulis** or are otherwise not relevant given the malpractice allegation in them did not reach the required standard of betrayal needed to trigger the Morris exception.

That carve out for the non-traditional malpractice of betrayal is now recognized law in Illinois, providing the sole exception to a Plaintiff having to prove actual innocence and further was brought with Plaintiff not bearing the burden of overturning the conviction.

Morris relieves Plaintiff from those extra burdens as a matter of public policy with allegations of a defendant attorneys' betrayal of their fiduciary duties, which the Court labelled a non-traditional form of malpractice. Even if applied ex post facto, **Morris** would not have relieved Plaintiff from proving innocence when the alleged malpractice alleged failed to reach the level of egregiousness and unfaithfulness demanded in the Morris standard of betrayal.

Moore v Owens is a 1998 malpractice case alleging a traditional case of negligence and failure of effective counsel; so irrelevant even if it were applied ex post facto as this allegation does not reach the required Morris level to trigger the exception.

Kramer v Dirksen is a 1998 malpractice case alleging a traditional case of negligence and a failure of effective counsel and so irrelevant even if applied ex post facto this allegation does not reach the required Morris level to trigger the exception.

Levine v Kling is a 1993 case adjudicated prior to the recognized and now accepted relief in the Morris Ruling. This is another case of ineffective assistance of counsel, a traditional form of malpractice, and not one where an offending attorney violated his fiduciary duty and so irrelevant even if applied ex post facto this allegation does not reach the required Morris level to trigger the exception.

People v Barnslatter, is a 2007 criminal case seeking post-conviction relief and not a civil malpractice case in any manner whatsoever. It was premised upon supposedly newly discovered evidence of actual innocence, also asserting ineffective assistance claims and claims concerning the plea now barred by res judicata. The court also found the petition deficient on its merits. No civil matter, no suit against former counsel. Completely irrelevant.

Herrera -Corral v Hyman is an interesting 2011 case that proves the rule i.e. the Morris Exception. Herrera originally alleged legal malpractice, breach of fiduciary duty, breach of contract and loss of consortium, all stemming from Mr. Hyman's ineffective assistance of counsel. That is all traditional malpractice and so fails to reach the level of egregiousness betrayal required.

Herrera-Corral then requested that the court recognize another exception to the actual innocence rule, where the alleged malpractice did not result in a conviction but, rather, the loss of the benefit of the bargain. Mr. Herrera-Corral points out that he lost the right to appeal the denial of the motion to suppress, a benefit he achieved in pleading guilty.

Again, not reaching the standard of malpractice required to trigger the Morris exception. Therefore, given the fact set and the allegation, he cannot state a cause of action in tort for legal malpractice arising from a criminal case.

Further, Herrera's inability to plead actual innocence also precluded his causes of action for breach of fiduciary duty and breach of contract as those claims arose from the same acts of legal malpractice as did the tort claim where the Morris Exception standard was not met.

Compare Winniczek v Nagelberg, (2005) 394 P.3d 505 (breach of contract claim involved a fee dispute, not incompetent representation or betrayal); **Morris**, 307 Ill. App. 3d 1024 (breach of fiduciary duty involved intentional wrongdoing by the attorney and was not a traditional legal malpractice claim).

In the first case referenced in that ruling, **Winniczek**, the court pointed out again Plaintiffs allegation is a traditional case and so fails to reach the **Morris** standard. In the second, the court actually quotes **Morris** and its standard (breach of fiduciary duty involved intentional wrongdoing by the attorney and was not a traditional legal malpractice claim) pointing out that the same claims arose from the same acts of legal malpractice as did the tort claim, and so did not meet the Morris standard.

So in Herrera the dismissal of the amended complaint for failure to state a cause of action was correct in that the Plaintiff did not allege his attorney's misbehaviors rose to the level requisite for the actual innocence rules to be suspended.

Paulsen v Cochrun, a 2005 case, that alleged negligence, failure of effective counsel, even complained about the fee arrangement. A primary question was whether the actual innocence rule applies when the alleged malpractice resulted in an unfair penalty, not an improper conviction. **Paulsen** mentions the same cases that Young has brought up here to support his contentions. Those cases do not support Defendant's contentions, but instead support Plaintiff Bulthaupt as to **Morris**.

The **Paulsen** court's discussion of **Morris v Margulis** is most relevant. **"In Morris, decided in 1999, an exception to the actual innocence rule was recognized. There, the plaintiff sought damages in a malpractice suit against his criminal defense attorney for breach of fiduciary duties by intentionally undermining his own client. The plaintiff had been convicted of criminal charges related to the failure of a savings and loan company. His convictions were affirmed on appeal."** (Notice the convictions were not overturned and the case was allowed to proceed by the appellate court.) **"The plaintiff filed a legal malpractice action. The trial court granted summary judgment for the defendants on the question of whether counsel breached his fiduciary duty. This (Appellate) court reversed and remanded the case on various grounds"** which is where this appellate court ruled that where there is a malpractice allegation of betrayal of fiduciary duty it relieves the burden of Plaintiff proving actual innocence.

The **Paulsen** ruling goes on, **"we believe the trial court properly applied the actual innocence rule in dismissing this case. The facts here do not warrant the establishment of another exception to the rule beyond the "betrayal" exception in Morris"**. In context, Plaintiff Paulsen's allegation failed to measure up to the standard originally set by this same court in **Morris**, and so there was no relief from the actual innocence rule granted. The court did confirm that the sole exception to the actual innocence rule is the exception provided in **Morris**. The **Paulsen v Cochrun** court ruling references and evidences the **Morris** exception and so supports Plaintiffs contentions.

Griffin v. Goldenhersh is a 2001 case where plaintiff's claim alleged a traditional case of malpractice citing causes of action including an allegation of ineffective assistance of counsel, conflict of interest and was time-barred and so irrelevant even if applied ex post facto this allegation does not reach the required **Morris** level to trigger the exception.

Woidtke v St. Clair County is a 2003 case where plaintiff alleged traditional cases of malpractice citing causes of action including negligence and conflict of interest; both irrelevant here even if applied ex post facto as this allegation does not reach the required level in **Morris** to trigger the exception..

Certificate of Service

I hereby affirm that on or before the 20th day of March, 2020, a copy of this Response was provided to defendants by mailing a copy of this Verified Response by regular U.S. Mail, postage prepaid with a certificate of mailing, to Michael J. Young and The Law Office of Michael J. Young, at that office located at 9842 West Roosevelt Rd, Westchester, IL 60154 and afterward by emailing a copy to both esqmichaelyoung@yahoo.com and mike@winwithyoung.com.

Ted E.C. Bulthaup III

Ted E.C. Bulthaup III,
dated this 20th day of March 2020