

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary
Action against MARTHA L. BURNS,
an Attorney at Law of the
State of Minnesota.

**PETITION FOR
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

The Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition upon the parties' agreement contained in the attached September 20, 1999, and January 22, 2001, stipulations for probation (Exhibits 1 and 2) pursuant to Rules 10(a) and 12(a), Rules on Lawyers Professional Responsibility. The Director alleges:

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on November 16, 1995. Respondent currently resides in Bloomington, Minnesota. On January 1, 2001, respondent was suspended for nonpayment of the attorney registration fee.

INTRODUCTION

On September 22, 1999, the Lawyers Professional Responsibility Board (LPRB) Chair approved a stipulation for probation entered into by the Director and respondent. Respondent's probation was based on respondent's admission that she incompetently handled three immigration matters and had neglected and failed to adequately communicate with the clients in those matters. Exhibit 1.

On January 22, 2001, the LPRB Chair approved a stipulation for extension of probation entered into by the Director and respondent. Respondent's extension of

probation was based on respondent's admission that she incompetently handled two immigration matters and had neglected and failed to adequately communicate with the clients in three immigration matters. Exhibit 2.

Among the conditions of respondent's stipulations for probation was that respondent abide by the Minnesota Rules of Professional Conduct (MRPC) and commit no further unprofessional conduct. The stipulations for probation further provided that if, after giving respondent an opportunity to be heard, the Director concluded that respondent had not complied with the conditions of probation, the Director could file this petition without the necessity of Panel proceedings.

As is more fully detailed below, the Director, after giving respondent an opportunity to be heard, has concluded that respondent has not complied with the conditions of the probation.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

Further Neglect, Failure to Adequately Communicate with Clients and Failure to Return a File

Aguilar Matter

1. In February 1999 Griselda Aguilar hired William P. Kaszynski, P.A. (Kaszynski firm), the law firm for which respondent then worked, in an immigration matter. On February 11, 1999, respondent filed a notice of entry of appearance with the immigration court in which she identified herself individually as Ms. Aguilar's attorney.
2. Respondent left the Kaszynski firm in the fall of 1999.
3. On February 8, 2000, the immigration court issued to respondent notice of a January 11, 2001, hearing in the Aguilar matter. Exhibit 3.

4. Ms. Aguilar attempted to reach respondent by telephone on several occasions prior to the hearing. However, because respondent had failed to communicate to Ms. Aguilar changes in her address and telephone number, Ms. Aguilar was unable to reach respondent.

5. Respondent did not appear for the January 11, 2001, hearing or seek withdrawal from the Aguilar matter.

6. Ms. Aguilar appeared alone at the January 11 hearing. The immigration judge continued the matter until May 10, 2001, and issued a subpoena duces tecum directing respondent to appear and produce Ms. Aguilar's file at that time. Respondent was personally served with the subpoena.

7. By letter dated April 12, 2001, respondent notified Ms. Aguilar of her inability to continue representing her. Exhibit 4. Respondent stated, "If you want your file, please contact me IN WRITING as soon as possible."

8. Respondent failed to appear for the May 10, 2000, hearing and has not formally withdrawn from the Aguilar matter.

Quintana Luna Matter

9. Respondent represented Ana Margarita Quintana Luna in an immigration matter. Respondent filed a petition for asylum on Ms. Quintana Luna's behalf and appeared at the July 2000 hearing on the petition. On July 30, 2000, the immigration court denied Ms. Quintana Luna's petition.

10. Ms. Quintana Luna retained respondent to file an appeal with the Board on Immigration Appeals. Respondent filed a notice of appeal on or about August 28, 2000. Exhibit 5.

11. In the notice of appeal, respondent indicated that she would, "file a separate written brief or statement . . ." The notice form included the following "WARNING:"

Your appeal may be summarily dismissed if you indicate . . . that you will file a separate written brief or statement and, within the time set for filing, you fail to file the brief or statement and do not reasonably explain such failure.

12. Ms. Quintana Luna last spoke with respondent in November 2000. Thereafter, Ms. Quintana Luna attempted to reach respondent by telephone on numerous occasions, but was unsuccessful. Respondent failed to return Ms. Quintana Luna's calls and failed to communicate to Ms. Quintana Luna changes in her address and telephone number.

13. In February 2001 Ms. Quintana Luna learned from the INS that her appeal brief was due March 28, 2001. When she was still unable to reach respondent, Ms. Quintana Luna hired a new lawyer. Ms. Quintana Luna's new lawyer requested from respondent the transcript of the immigration court hearing, which Ms. Quintana Luna believed respondent had.

14. By letter dated March 22, 2001, respondent informed Ms. Quintana Luna's new lawyer of her inability to continue with the representation and that she had not, in fact, received the transcript. Exhibit 6. Respondent stated that she had moved in December 2000 and "have had many problems with the post office in getting my mail forwarded."

15. Respondent's conduct in the Aguilar and Quintana Luna matters violated Rules 1.3, 1.4, and 1.16, MRPC, and the terms of respondent's private probation.

SECOND COUNT

Failure to Cooperate

With Probation Supervisor

16. Among the conditions of respondent's September 20, 1999, and January 22, 2001, probation were that she be supervised by a licensed Minnesota attorney, cooperate fully with her supervisor and submit to the supervisor an inventory

of all active client files by the first day of each month. The Director appointed attorney Lesley Guyton to serve as respondent's supervisor.

17. Respondent last met with Ms. Guyton on October 13, 2000. During their meeting, respondent agreed to fax to Ms. Guyton her file inventory by November 15, 2000, and agreed to meet again with Ms. Guyton on December 15, 2000.

18. Respondent failed to provide the inventory to Ms. Guyton by November 15, 2000. On November 29, 2000, respondent sent Ms. Guyton an e-mail in which she stated, "I know the client list is late," and updated Ms. Guyton on the status of two client matters.

19. On December 2, 2000, Ms. Guyton e-mailed respondent asking her to state when in December she was available to meet. Respondent responded by e-mail on December 13, 2000. Respondent stated that she was unable to meet in December and would contact Ms. Guyton in January to reschedule. Respondent provided Ms. Guyton with her new address and telephone number.

20. On December 13 or 14, 2000, Ms. Guyton e-mailed respondent and stated she would like to meet by January 15, 2001. Ms. Guyton asked respondent to advise of dates on which she was available to meet. Respondent failed to respond.

21. Ms. Guyton again e-mailed respondent on January 8, 2001, stating, in particular, that the telephone number respondent had recently provided was disconnected and asking her to advise of her availability to meet. On January 10, 2001, respondent sent a responsive e-mail in which she explained that she was in the process of withdrawing from all of her cases, but had been unable to complete that process. Respondent provided Ms. Guyton with a corrected telephone number. Respondent authorized Ms. Guyton to communicate her address and telephone number to the Director's Office, but to no one else.

22. Having heard nothing further from respondent, Ms. Guyton again e-mailed respondent on February 10, 2001. Ms. Guyton asked respondent to state when

she was available to meet and asked for respondent's file inventory. Respondent responded by e-mail on February 20, 2001, stating that she was "in the middle of a family emergency" and would call by the end of the week. Also on February 20, Ms. Guyton wrote to respondent asking respondent to call within ten days to schedule a meeting. Exhibit 7. Respondent did not respond.

23. On March 6, 2001, Ms. Guyton telephoned respondent, leaving a voicemail message for her. On March 7, 2001, respondent returned Ms. Guyton's call, stating that she would call to schedule a meeting.

24. On March 12 and 14 or 15, 2001, Ms. Guyton telephoned respondent, leaving voicemail messages for her. Respondent returned Ms. Guyton's call stating that Ms. Guyton should disclose her telephone number only to attorneys.

25. On March 31, 2001, Ms. Guyton e-mailed respondent and requested respondent's reply by April 2. Respondent failed to respond.

26. On April 3, 2001, Ms. Guyton telephoned respondent, leaving a voicemail message for her. Respondent responded by April 3 e-mail, stating that she was working in downtown Minneapolis, "but let's work something out." Respondent also called Ms. Guyton on April 3 and arranged to meet on April 9.

27. On April 9, 2001, respondent faxed Ms. Guyton a file inventory and drafts of closing letters. Respondent stated that she hoped her fax would eliminate the need for a meeting because she did not have time. Ms. Guyton reached respondent by telephone later in the day. Respondent stated that she would have no open files once she mailed the closing letters. On information and belief, respondent mailed the closing letters on April 12, 2001.

With the Director's Office

28. Among the conditions of respondent's September 20, 1999, and January 22, 2001, stipulations for probation were that she fully cooperate with the

Director's Office's efforts to monitor compliance with the probation and with the Director's investigation of any new complaints of unprofessional conduct.

29. On January 18, 2001, the Director's Office sent to respondent notice of investigation of a complaint in the Aguilar matter. Exhibit 8. The notice of investigation requested respondent's response to the complaint with 14 days.

30. Respondent called the Director's Office on January 19, 2001. Respondent stated that she would respond to the complaint and that she would file a motion to withdraw in the Aguilar matter. Respondent thereafter failed to respond to the complaint or to seek withdrawal from the Aguilar matter.

31. On January 24, 2001, the Director's Office wrote to respondent asking her to explain her failure to pay her January 1 attorney registration fee and to describe her practice since January 1. Exhibit 9. Respondent failed to respond.

32. On February 16, 2001, the Director's Office again wrote to respondent requesting her response to the Aguilar complaint. Exhibit 10. Respondent failed to respond.

33. Also on February 16, 2001, the Director's Office again wrote to respondent regarding her unpaid attorney registration fee. Exhibit 11. Respondent failed to respond.

34. On March 2, 2001, the Director's Office wrote to respondent for a third time requesting her response to the Aguilar complaint. Exhibit 12. Respondent failed to respond.

35. On March 9, 2001, the Director's Office wrote to respondent for a third time regarding her unpaid attorney registration fee. Exhibit 13. Respondent failed to respond.

36. On April 2, 2001, the Director's Office sent to respondent notice of investigation of a complaint in the Quintana Luna matter. Exhibit 14. The notice of

investigation requested respondent's response to the complaint with 14 days.

Respondent failed to respond.

37. On April 23, 2001, the Director's Office sent to respondent notice of investigation of a complaint in the Nery and Julia Delcompare immigration matter. Exhibit 15. Respondent failed to respond.

38. Respondent's conduct in failing to cooperate fully with her probation supervisor and the Director's Office violated Rule 8.1(a)(3), MRPC, Rule 25, RLPR, and the terms of respondent's probation.

WHEREFORE, the Director respectfully prays for an order of this Court imposing appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: May 16, 2001.



EDWARD J. CLEARY
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY
Attorney No. 17267
25 Constitution Avenue, Suite 105
St. Paul, MN 55155-1500
(651) 296-3952

and



MARTIN A. COLE
SENIOR ASSISTANT DIRECTOR
Attorney No. 148416