

FILE NO. A05-0719  
STATE OF MINNESOTA  
IN SUPREME COURT

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In Re Petition for Disciplinary Action  
against ALBERT A. GARCIA, JR.,  
a Minnesota Attorney,  
Registration No. 219472.  
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FINDINGS OF FACT,  
CONCLUSIONS  
AND  
RECOMMENDATION

The above-captioned matter came duly on for hearing before the undersigned Judge of District Court, appointed by the Minnesota Supreme Court to serve as referee herein, on August 19, 2005, at the Minnesota Judicial Center in St. Paul, Minnesota.

Martin A. Cole, First Assistant Director, appeared for the Office of Lawyers Professional Responsibility (the Director).

Douglas H. R. Olson, Attorney at Law, appeared with and for Albert A. Garcia, Jr. (the Respondent), who was present throughout the hearing.

Based upon the Petition and the Answer filed by the parties, the Stipulation of Testimony, and the evidence received at the hearing, the undersigned finds the following facts to have been proven by clear and convincing evidence:

FINDINGS OF FACT

1. Respondent is an attorney at law licensed to practice in the State of Minnesota.
2. On May 21, 1999, Robyn Lezer (Lezer) retained Respondent and his law firm, Garcia and Associates, to represent her with respect to a criminal proceeding in Stearns County, Minnesota, in which Lezer had been charged with controlled substance

crimes.

3. Lezer paid Respondent \$10,000.00 and signed a Representation Agreement (Appendix A) in which she agreed that the \$10,000.00 paid was to secure Respondent's general availability for such representation and that it was non-refundable.

4. On June 27, 2000, Lezer retained Respondent and his law firm, Garcia and Associates, to represent her with respect to an additional criminal proceeding in Stearns County, Minnesota, in which Lezer had been charged with further controlled substance crimes. Lezer paid Respondent an additional \$20,000.00 on that date.

5. On June 27, 2000, while Lezer was still in Respondent's law office, Respondent instructed his legal administrative assistant, Gabriela Maria Pineda (Pineda), to prepare a second representation agreement. In accordance with Respondent's instructions, Pineda prepared the second Representation Agreement (Appendix B) using a word processing template, and printed the document. Respondent picked up the document as it came out of the printer and took it into his office. Because it was office policy to execute representation agreements in triplicate, Pineda printed a second copy, made a photocopy for the third copy, stapled the documents, and placed them on her desk. When Respondent failed to pick up the second and third copies of the document, Pineda assumed that Respondent and Lezer had executed only the single copy of the agreement which Respondent had taken into his office. Pineda placed the two unsigned copies which remained on her desk in the client's file.

6. Either later on June 27, 2000, or on the following day, Pineda looked for but was unable to find any signed copy of the second Representation Agreement.

7. Because she considered employment by Respondent to be a "nightmare" and because she considered Respondent's treatment of her to be "outright abusive," Pineda had previously submitted her resignation and by June 27, 2000, had only a short time left to work for Respondent. Wanting to avoid yet another "screaming match" with Respondent, Pineda decided to create a second representation agreement containing Lezer's signature by cutting and pasting Lezer's signature from the first Representation Agreement (Appendix A) and running the signature page through the copy machine. Having done this, Pineda then placed the "Representation Agreement" (Appendix B) containing Lezer's photocopied signature in the file. Pineda did not inform Respondent of what she had done until she was contacted by or on behalf of Respondent following the initiation of this disciplinary proceeding.

8. Sometime later in the summer of 2000, Lezer's criminal case was called for trial in Stearns County. On the Friday prior to the scheduled trial date, Lezer spoke with Respondent on the telephone regarding a plea of guilty pursuant to a plea agreement. The following Monday, Lezer appeared in Court in Stearns County with one of Respondent's associates and entered a plea of guilty pursuant to the plea agreement that had been discussed. Sentencing was scheduled to occur later in the fall of that year.

9. After entering her plea of guilty, Lezer had second thoughts. Lezer then met with Respondent and the associate who had been present at the time of the guilty plea to discuss Lezer's dissatisfaction with the "deal" and a possible withdrawal of her guilty plea. In addition to talking about the criminal aspects of the situation, they also discussed a civil forfeiture proceeding that had been initiated by the Stearns County

Attorney. When it was explained to Lezer that she would be able to keep her house and that certain items of personal property would be returned to her, Lezer decided that she would not seek to withdraw her guilty plea.

10. Resolution of the civil forfeiture proceeding involved the execution of a Stipulation to Entry of Judgment (Appendix C). One of the signatures required on the stipulation was that of Lezer. Rather than obtaining Lezer's signature, Respondent directed his office manager, Jennifer Bakkom (Bakkom), to sign Lezer's name on the stipulation. Never having done nor been asked by Respondent to do anything of that nature before, and assuming that Respondent would not direct her to do anything improper or illegal, Bakkom signed Lezer's name on the stipulation. The stipulation was thereafter presented to and accepted by District Court Judge Elizabeth Hayden. Having accepted the stipulation, Judge Hayden issued an order pursuant to the terms of the stipulation.

11. After being sentenced, Lezer requested a refund of a portion of the money she had paid to Respondent.

12. Respondent initially declined to refund any portion of the money he had been paid, but at some point apparently expressed a willingness to discuss the issue with Lezer.

13. Lezer submitted a complaint to the Director.

14. An investigation of Lezer's complaint was initiated.

15. The district ethics committee's recommendation was that discipline was not warranted.

16. In spite of the recommendation of the district ethics committee, the Director

elected to pursue the matter further.

17. Lezer was contacted during the course of the investigation and at that time maintained that she had not signed a second representation agreement contemporaneously with the payment of the \$20,000.00. After being shown a copy of the second representation agreement (Appendix B), Lezer did acknowledge that the signature on the document appeared to be her signature, but still maintained that she had not signed the document. Further, after being shown a copy of the stipulation in the forfeiture proceeding (Appendix C), Lezer denied signing that document or authorizing Respondent or anyone else to sign her name on that document.

18. Respondent responded to the Director's further inquiry by maintaining that Lezer had signed two fee agreements and offered to locate his former "administrator" (Ms. Pineda) to verify that fact (See: Appendix D). Respondent further represented that he "believed and was led to believe that Ms. Lezer signed the stipulation" which was also at issue (See: Appendix D).

19. At this point in the proceeding, Pineda was located and acknowledged cutting and pasting Lezer's signature on the second representation agreement (Appendix B).

20. When contacted during the investigation by the Director, Bakkom acknowledged that she had signed Lezer's name on the stipulation (Appendix C) at Respondent's direction.

21. Approximately two weeks prior to the hearing in this matter, Lezer and Respondent resolved their fee dispute. Upon resolution of the fee dispute, Lezer remembered that she authorized Respondent to "sign the paperwork" and take care of

the resolution of the forfeiture proceeding for her. Specifically, Lezer stated:

I do not recall a specific discussion that he would sign my name to the "stipulation" agreement but I do not dispute that he was authorized to sign my name to whatever paperwork was necessary in order to settle the forfeiture and get my property back. In short, he had my authorization to sign my name to get my property back.

(Lezer statement of 8/5/05 - ¶ 8). In addition, Lezer stated:

While Mr. Garcia and I have resolved the matter of the fee dispute, this in no way has influenced my position in this matter or coerced me into signing this statement. \* \* \*  
Having reached a resolution concerning the attorney fee dispute with Mr. Garcia which was the basis of my initial complaint, I have no interest in seeing Mr. Garcia disciplined.

(Lezer statement of 8/5/05 - ¶ 11). In view of Lezer's initial representations as set out in Finding of Fact No. 17, and in spite of the foregoing, the undersigned finds Lezer's recovery of memory to be too conveniently tied to the settlement of the fee dispute and finds that Respondent, in fact, had no authorization to sign, or to direct someone else to sign, the Stipulation to Entry of Judgment (Appendix C) at the time that document was signed.

#### CONCLUSIONS

1. Respondent's conduct with respect to the Stipulation to Entry of Judgment (Appendix C) violated Rule 5.3 (c) (1).
2. Respondent's conduct with respect to the Stipulation to Entry of Judgment (Appendix C) violated Rule 8.4 (c).
3. Respondent's conduct with respect to the Stipulation to Entry of Judgment (Appendix C) violated Rule 8.4 (d).

4. Respondent's conduct with respect to the Stipulation to Entry of Judgment (Appendix C) violated Rule 3.3 (a) (1).

5. Respondent's conduct with respect to the second Representation Agreement (Appendix B) violated Rule 5.3 (b).

#### RECOMMENDATION

As discipline for his conduct in this matter, it is respectfully recommended:

1. That Respondent be suspended from the practice of law for a period of thirty days.
2. That Respondent's reinstatement be pursuant to Rule 18 (f), Rules on Lawyers Professional Responsibility.
3. That Respondent be required to successfully complete the written examination required for admission to the practice of law on the subject of professional responsibility within one year of his reinstatement.
4. That, prior to his reinstatement, Respondent provide the Director a written plan satisfactory to the Director outlining office procedures designed to ensure that Respondent is properly training and supervising all non-lawyer employees.

Dated: November 2, 2005

**COPY**

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Frederick J. Casey  
Judge of District Court / Referee

# APPENDIX A

## REPRESENTATION AGREEMENT

I retain and employ Garcia and Associates, Albert A. Garcia Jr., Esq., 310 Fourth Avenue South, Suite 1120, Minneapolis, Minnesota 55415, to represent my interests as a Defendant against the State of Minnesota, having been charged with the offense of:

Charge:                      Controlled Substances/Conspiracy in the Second Degree

Date of Offense:          December 15, 1997.

I agree to pay Albert A. Garcia Jr., Esq., for his services a total amount of \$10,000.00, if the matter goes to trial the total amount will be \$12,500.00.

It is understood and agreed that said fee will cover all attorney's costs for handling this case up to the arraignment, pretrial, case negotiations and sentencing. It is further understood that this fee does not cover attorney's expenses, fees, or costs in the event this matter is actually taken to trial.

This fee does not include representation on appeal, or for a retrial following a deadlocked jury or a reversal by an appellate court. This fee is a retainer, which prohibits my attorney from undertaking any representation which might appear to conflict with my interests, and is not refundable.

Any expenses for investigation fees will also be billed in addition to the retainer. Albert Garcia, Jr., retains the right to associate with other legal counsel concerning this matter and compensate such attorneys for services. Such association shall not increase the fee to be paid by the client. Any incidental costs that our office may incur in your representation are the responsibility of the client. These cost may include but are not limited to the following: police reports, transcripts, long distance phone calls, messenger service, copies.

Either party to this Agreement may terminate it at any time upon written notice to the other party, and in such event, I shall pay Albert Garcia, Jr., for expenses advanced and services rendered to date.

Garcia & Associates has agreed to represent me in only the matters stated above and that its representation is contingent on my truthful and complete cooperation with them. If I have been untruthful as to a material fact, fail to cooperate in any significant way, or fail to meet the entire financial obligation stated above, then my attorney may declare this contract void and withdraw from my representation. Withdrawals by counsel shall be by giving notice to me in writing addressed to my last known address.

I certify that none of the money paid, or promised, for legal fees and expenses, is or will be proceeds from unlawful activities. In addition, the moneys paid for fees and expenses are for

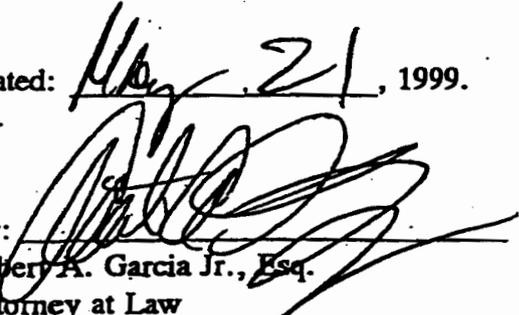
the benefit of legal advice or protection solely for myself, and those with whom I may have entered into a joint defense.

The monies as stated above advanced to Garcia shall be to secure Garcia & Associates, specifically, Albert A. Garcia, Jr's general availability for said representation and are non-refundable at anytime. I acknowledge that I have read the foregoing Representation Agreement, agree to its terms, and have received a copy of the same.

**THE FUNDS WILL NOT BE HELD IN A TRUST ACCOUNT; AND THE CLIENT MAY NOT RECEIVE A REFUND OF THE FEES IF THE CLIENT LATER CHOOSES NOT TO HIRE THE LAWYER OR CHOOSES TO TERMINATE THE LAWYER'S SERVICES.**

Dated: May 21, 1999.

By:

  
Albert A. Garcia Jr., Esq.

Attorney at Law

310 Fourth Avenue South, Suite 1120

Minneapolis, Minnesota 55415

(612) 342-2980

By:

  
Robin Lezer

## APPENDIX B

## REPRESENTATION AGREEMENT

I retain and employ Garcia and Associates, Albert A. Garcia Jr., Esq., 310 Fourth Avenue South, Suite 500, Minneapolis, Minnesota 55415, to represent my interests as a Defendant against the State of Minnesota, having been charged with the offense of:

Criminal Matter: 1<sup>st</sup> Degree Drug Charges

Date of Incident: April 7, 2000

I agree to pay Albert A. Garcia, Jr., Esq., for his services a total amount of \$20,000, which will include the trial fee for the 12/97 case and \$17,500 for the above case. Upon signing of this fee agreement, said fees are earned by Garcia and Associates by said client securing Garcia and Associates for representation. It is further understood that since said fee is a flat fee non-refundable general availability retainer, Garcia and Associates will not provide a detailed accounting of their time spent in representation of this matter, and the client specifically agrees that he understands and will not expect such an accounting.

It is understood and agreed that said fee will cover all attorney's costs for handling this case up to the arraignment, pretrial, case negotiations, trial and sentencing. It is further understood that this fee does not cover attorney's expenses, or costs in the event this matter is actually taken to trial.

This fee does not include representation on appeal, or for a retrial following a deadlocked jury or a reversal by an appellate court. This fee is a retainer, which prohibits my attorney from undertaking any representation which might appear to conflict with my interests, and is not refundable.

Any expenses for investigation fees will also be billed in addition to the retainer. Albert Garcia, Jr., retains the right to associate with other legal counsel concerning this matter and compensate such attorneys for services. Such association shall not increase the fee to be paid by the client. Any incidental costs that our office may incur in your representation are the responsibility of the client. These costs may include but are not limited to the following: police reports, transcripts, long distance phone calls, messenger service, and copies.

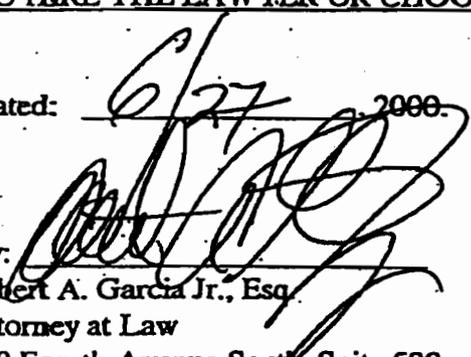
Garcia & Associates has agreed to represent me in only the matters stated above and that its representation is contingent on my truthful and complete cooperation with them. If I have been untruthful as to a material fact, fail to cooperate in any significant way, or fail to meet the entire financial obligation stated above, then my attorney may declare this contract void and withdraw from my representation. Withdrawals by counsel shall be by giving notice to me in writing addressed to my last known address.

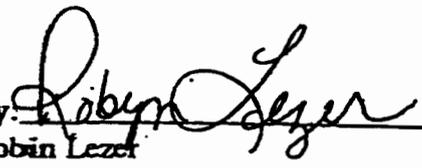
I certify that none of the money paid, or promised, for legal fees and expenses, is or will be proceeds from unlawful activities. In addition, the moneys paid for fees and expenses are for the benefit of legal advice or protection solely for myself, and those with whom I may have entered into a joint defense.

The monies as stated above advanced to Garcia shall be to secure Garcia & Associates, specifically, Albert A. Garcia, Jr's general availability for said representation and are non-refundable at anytime. I acknowledge that I have read the foregoing Representation Agreement, agree to its terms, and have received a copy of the same.

**THE FUNDS WILL NOT BE HELD IN A TRUST ACCOUNT; AND THE CLIENT MAY NOT RECEIVE A REFUND OF THE FEES IF THE CLIENT LATER CHOOSES NOT TO HIRE THE LAWYER OR CHOOSES TO TERMINATE THE LAWYER'S SERVICES.**

Dated: 6/27 2000.

By:   
Albert A. Garcia Jr., Esq.  
Attorney at Law  
310 Fourth Avenue South, Suite 500  
Minneapolis, Minnesota 55415  
(612) 342-2980

By:   
Robin Lezer

# APPENDIX C

STATE OF MINNESOTA

STEARNS COUNTY  
COURT ADMINISTRATION

IN DISTRICT COURT

COUNTY OF STEARNS

FEB 5 2 23 PM '01

SEVENTH JUDICIAL DISTRICT

CASE TYPE: CIVIL OTHER

Robin Alice Lezer,

Court File No. C2-00-2471

Plaintiff,

vs.

**STIPULATION TO ENTRY  
OF JUDGMENT**

\$17,830.09 in U.S. Currency,

Defendant.

THIS AGREEMENT, made and entered into by and between Robin Alice Lezer, a/k/a Robyn Alice Lezer, hereinafter referred to as "Plaintiff", and the Stearns County Attorney.

WHEREAS, Plaintiff was in possession of \$17,830.09 in U.S. Currency, and other miscellaneous personal property which was sized by the St. Cloud Police Department on April 7, 2000, pursuant to a search warrant; and

WHEREAS, said U.S. Currency and personal property was seized in proximity to controlled substances and drug distributing equipment; and,

WHEREAS, the St. Cloud Police Department has served Albert Garcia, attorney for Robyn Alice Lezer, with Notice of Seizure and Intent to Forfeit Property consisting of said \$17,830.09 in U.S. Currency on April 10, 2000; and,

WHEREAS, Plaintiff Robyn Alice Lezer, has served the Stearns County Attorney with a civil complaint contesting this administrative forfeiture on June 13, 2000; and,

WHEREAS, the Stearns County Attorney intends to bring forfeiture proceedings against the other seized miscellaneous personal property, consisting of Ruger pistol, scanner, night vision goggles, electronic scale, and laptop computer, as well as the real property located at 238-33<sup>rd</sup> Avenue North, St. Cloud, Stearns County, Minnesota; and,

WHEREAS, the parties to this action have mutually agreed to compromise and settle this and any future forfeiture, without costs, expenses, or attorney fees;

IT IS HEREBY AGREED AS FOLLOWS:

1. The St. Cloud Police Department shall retain the sum \$17,830.09 in U.S. Currency and the Ruger pistol, which shall be forfeited and disposed of pursuant to Minn. Stat. § 609.5315.

2. The scanner, night vision goggles, electronic scale, and laptop computer, shall be returned to Plaintiff in "as is" condition.

3. The Stearns County Attorney shall release Plaintiff from any and all forfeiture claims resulting from the search warrant executed on April 7, 2000, including any claim against the real property at 238-33<sup>rd</sup> Avenue North, St. Cloud, Stearns County, Minnesota.

4. All past, present, or future claims which Plaintiff may have against the Stearns County Attorney or the St. Cloud Police Department in connection with the seizure and return of said property are forever waived by Plaintiff, her agents, heirs or assigns, and this matter shall be dismissed with prejudice and without costs, disbursements, or attorney fees.

5. This agreement shall have no bearing on any criminal proceedings but shall be considered independent in all respects from any such action and shall not be considered an admission by either party. This agreement shall not be admitted into evidence in any criminal proceedings.

6. The sum \$2000 in U.S. in U.S. Currency seized on 97040496, by the St. Cloud Police Department in an unrelated matter shall be returned to Plaintiff; that firearms seized therewith shall be forfeited to the St. Cloud Police Department to be disposed of pursuant to Minn. Stat. § 609.5315.

7. Each of the parties agree that Judgment in accordance with the terms of this Stipulation may be entered forthwith and without further notice to either party.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree that this agreement shall fully compromise and settle all claims with regard to the property herein described.

STEARNS COUNTY ATTORNEY

By: William S. MacPhail  
William S. MacPhail, Reg. No. 66151  
Assistant Stearns County Attorney  
Administration Center, RM 448  
705 Courthouse Square  
St. Cloud, MN 56303  
(320) 656-3880

Dated: August 24, 2000

Robin Alice Lezer  
Robin Alice Lezer, a/k/a  
Robyn Alice Lezer

GARCIA & ASSOCIATES, P.A.

By: David L. McCormick  
Albert A. Garcia, Esq, Reg. No. 219472  
David L. McCormick, Reg. No. 259500  
310 Fourth Avenue South, Suite 1120  
Minneapolis, MN 55415  
(612) 342-2980  
ATTORNEYS FOR PLAINTIFF

Dated: 8/20/00

ORDER FOR JUDGMENT

Let Judgment be entered accordingly.

William A. Hoyle  
Judge of District Court

Dated: 2-5-01

DISTRICT COURT  
STEARNS COUNTY, MN  
FILED

2001

KARL E. THOENNES, III  
COURT ADMINISTRATOR  
By: Brenda Grant  
DEPUTY

JUDGMENT

I hereby certify that the foregoing Order/Conclusions of Law constitutes that Judgment of the Court.

Dated: 2-5-01  
KARL E. THOENNES, III, Court Administrator  
By: Brenda Grant Deputy

# APPENDIX D

**GARCIA AND ASSOCIATES, P.A.**  
ATTORNEYS AND COUNSELORS AT LAW  
310 FOURTH AVENUE SOUTH, SUITE 1020  
MINNEAPOLIS, MN 55415



July 7, 2003

Martin A. Cole  
First Assistant Director  
Office of Lawyer Professional Responsibility  
1500 Landmark Towers  
345 St. Peters Street  
St. Paul, MN 55102

Dear Mr. Cole:

I would like to thank you and your office for time to respond to your May 8, 2003, letter and findings of the local district ethics committee investigator's findings and committee recommendation.

First, I agree with the recommendations that discipline is not warranted. I also believe that the matter should be closed on that recommendation. The Claimant in this case signed two fee agreements. I resent, but understand, the implication that either or just one of the agreements was forced by me, my office or anybody. It simply did not occur. If need be I will find my former administrator who prepared both documents to attest, if she can, to the accuracy of the documents. I believe she is now residing in New Mexico.

At no time during my representation did Ms. Lezer ever ask or expect an accounting of time. Under both agreements our representation was general availability and non-refundable. Further, the second agreement tried to further clarify this issue. Nevertheless, Ms. Lezer never expressed or need for a fee accounting. In fact why would she? She was concerned about going to prison, not "fee accounting". It simply was never discussed.

In talking with my former staff regarding this matter, one former associate recalls the exchange of the checks occurring at the office. He recalls that Ms. Lezer's file was being worked on by McCormick. He recalls the checks because of the large size of the dollars involved. This former associate was asked to resign or was to be terminated by Garcia and Associates in December of 2002. I believe my former administrator can also attest to the check exchange meeting occurring at our office if I can reach her at her new residence.

I disagree with the investigator's conclusion that my office was overpaid \$2,500.00 since the initial case never went to trial. We had prepared the case for trial. We were ready for trial and believe that said fee was earned. The trial didn't occur only because of the actions of the Defendant, herself, when she was charged with a new case days for the first case was set to go to trial. This was discussed with the client when we negotiated and signed the second fee agreement. Long before the filing of the ethics case, I always told the claimant that I would negotiate the fee if she was not satisfied with the fee (please see my May 7, 2001, letters to Ms. Lezer). I remain amenable to discussing this matter with her regarding the fee.

I am troubled by the civil forfeiture case and the stipulation. As you are aware, Mr. McCormick handled the forfeiture case. When I asked Mr. McCormick about the situation he

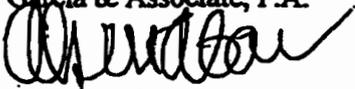
DIRECTORS  
EXHIBIT \_\_\_\_\_

would only tell me that he now does not recall the situation. Obviously, this is different than what was told to the investigator. I always believed and was led to believe that Ms. Lezer signed the stipulation. I have no reason to believe otherwise.

If I need to make a detailed response to the report I certainly will be cooperative. Hence, this letter is a summary response to your inquiry.

Cordially,

Garcia & Associate, P.A.



Albert A. Garcia, Jr.

Dictated but not read

AAG/mli MLI