**FILE NO. C3-00-451**

STATE OF MINNESOTA

IN SUPREME COURT

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| In Re Petition for Disciplinary Action against MICHAEL LEE MARTINEZ, an Attorney at Law of the State of Minnesota. | **STIPULATION FOR DISCIPLINE** |

THIS STIPULATION is entered into by and between Edward J. Cleary, Director of the Office of Lawyers Professional Responsibility, hereinafter Director, and Michael Lee Martinez, attorney, hereinafter respondent.

WHEREAS, respondent has concluded it is in respondent's best interest to enter into this stipulation,

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between the undersigned as follows:

1. Pursuant to the Rules on Lawyers Professional Responsibility (RLPR), the parties agree to dispense with further proceedings under Rule 14, RLPR, and respondent agrees to the immediate disposition of this matter by the Minnesota Supreme Court under Rule 15, RLPR.

2. Respondent understands this stipulation, when filed, will be of public record.

3. It is understood that respondent has certain rights pursuant to Rule 14, RLPR. Respondent waives these rights, which include the right to a hearing before a referee on the petition; to have the referee make findings and conclusions and a

recommended disposition; to contest such findings and conclusions; and to a hearing before the Supreme Court upon the record, briefs and arguments.

4. Respondent withdraws the answer filed herein and unconditionally admits the allegations of the attached petition.

5. Respondent understands that based upon these admissions, this Court may impose any of the sanctions set forth in Rule 15(a)(1) - (9), RLPR, including making any disposition it deems appropriate. Respondent understands that by entering into this stipulation, the Director is not making any representations as to the sanctions the Court will impose.

6. The Director and respondent join in recommending that:

a. The appropriate discipline is a 60-day suspension pursuant to Rule 15, RLPR;

b. The reinstatement hearing provided for in Rule 18(a) through (d), RLPR, be waived;

c. Respondent be required to successfully complete the professional responsibility portion of the state bar examination within one year of the date of this Court's order;

d. Respondent comply with Rule 26, RLPR;

e. Respondent pay $900 in costs pursuant to Rule 24(a), RLPR, and $441.95 as disbursements pursuant to Rule 24(b), RLPR;

f. Prior to reinstatement, respondent enters into agreements satisfactory to the Internal Revenue Service (IRS) and the Minnesota Department of Revenue (DOR) for the payment of all unpaid employer withholding taxes. Respondent shall provide to the Director copies of the payment agreements and proof of currency on payments required by the agreements. If, prior to

reinstatement, agreement with the IRS and/or DOR has not been reached despite diligent effort by respondent, respondent shall report to the Director concerning his progress in reaching agreement. Such report shall continue after reinstatement on a monthly basis until written agreements have been signed by both the IRS and DOR; and

g. At least 15 days before the expiration of the suspension period, respondent files an affidavit with the Clerk of Appellate Courts and the Director's Office establishing that respondent is current with Continuing Legal Education, has fully complied with Rules 24 and 26, RLPR, and has satisfactorily completed all other conditions imposed by the Court in its decision.

6. Upon reinstatement, respondent shall be on probation for two years under the following conditions:

a. Respondent shall cooperate fully with the Director's Office in its efforts to monitor compliance with this probation and promptly respond to the Director's correspondence by the due date. Respondent shall cooperate with the Director's investigation of any allegations of unprofessional conduct which may come to the Director's attention. Upon the Director's request, respondent shall provide authorization for release of information and documentation to verify compliance with the terms of this probation.

b. Respondent shall abide by the Minnesota Rules of Professional Conduct.

c. Respondent shall be supervised by a licensed Minnesota attorney, appointed by the Director to monitor compliance with the terms of this probation. Respondent shall provide to the Director the names of four attorneys who have agreed to be nominated as respondent's supervisor at least two weeks

prior to respondent being reinstated to the practice of law. If, after diligent effort, respondent is unable to locate a supervisor acceptable to the Director, the Director will seek to appoint a supervisor. Until a supervisor has signed a consent to supervise, the respondent shall on the first day of each month provide the Director with an inventory of active client files described in paragraph d. below. Respondent shall make active client files available to the Director upon request.

d. Respondent shall cooperate fully with the supervisor in his/her efforts to monitor compliance with this probation. Respondent shall contact the supervisor and schedule a minimum of one in-person meeting per calendar quarter. Respondent shall submit to the supervisor an inventory of all active client files by the first day of each month during the probation. With respect to each active file, the inventory shall disclose the client name, type of representation, date opened, most recent activity, next anticipated action, and anticipated closing date. Respondent's supervisor shall file written reports with the Director at least quarterly, or at such more frequent intervals as may reasonably be requested by the Director.

e. Within 30 days after his being reinstated to the practice of law, respondent shall provide to the Director and to the probation supervisor, if any, a written plan outlining office procedures designed to ensure that respondent is in compliance with probation requirements. Respondent shall provide progress reports as requested.

f. Respondent shall initiate or continue current treatment by a licensed consulting psychologist or other mental health professional acceptable

to the Director, and shall complete all therapy programs recommended by the therapist.

g. Respondent shall timely file all required employer withholding returns and timely pay the taxes due thereon. Respondent shall affirmatively report to the Director, on or before the due date of the required returns, his compliance with filing and payment requirements. Such reports shall include copies of the required returns. On or before the filing deadline, respondent shall provide the Director with copies of all applications for filing extension and proof of approval of such applications. Respondent shall provide all of the documents and information required herein without specific reminder or request.

h. If at any time during the period of probation, after giving respondent an opportunity to be heard by the Director, the Director concludes that respondent has violated the conditions of the probation or engaged in further misconduct, the Director may file a petition for disciplinary action against respondent in the Minnesota Supreme Court without the necessity of submitting the matter to a Panel or Panel Chair. Respondent waives the right to such consideration by the Panel or Panel Chair.

7. This stipulation is entered into by respondent freely and voluntarily, without any coercion, duress or representations by any person except as contained herein.

8. Respondent hereby acknowledges receipt of a copy of this stipulation.

9. Respondent has been advised by the undersigned counsel concerning this stipulation and these proceedings generally.

IN WITNESS WHEREOF, the parties executed this stipulation on the dates indicated below.

Dated: June 2, 2000.

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

Dated: June 1, 2000.

CRAIG D. KLAUSING
SENIOR ASSISTANT DIRECTOR
Attorney No. 202873

Dated: 6/21, 2000.

MICHAEL LEE MARTINEZ
RESPONDENT

Dated: 6/16/, 2000.

EDWARD F. KAUTZER
ATTORNEY FOR RESPONDENT
Attorney No. 54112
Suite 510, Spruce Tree Centre
1600 University Avenue West
St. Paul, MN 55104-3829

## MEMORANDUM

Neglect of client matters, failing to communicate with clients, failing to cooperate with disciplinary investigations and failure to file tax returns, have resulted in public discipline and suspension for Minnesota lawyers. *See In re Beiter*, 557 N.W.2d 206 (Minn. 1997) (neglecting client matters, non-communication and miscommunication with clients, and failing to cooperate in disciplinary investigation resulted in a 30-day suspension followed by two-year probation). In addition, failure to file and pay employer withholding returns alone has resulted in a 60-day suspension. *In re Gurstel*, 540 N.W.2d 838 (Minn. 1995). As the Court noted in *Gurstel*, it has expressed particular concern about the failure to pay employer withholding taxes "because an attorney essentially converts to his own use temporarily money belonging to his employees which he withheld from paychecks . . . ." *Id.* at 842.

However, in the case that appears to most closely approximate the facts in the present case, the Court approved a 60-day suspension followed by probation. *In re Westby*, 572 N.W.2d 278 (Minn. 1997). As in the present case, the lawyer had a number of allegations of client neglect and non-communication. As in the present case, there was a period of several months when the respondent lawyer failed to cooperate with the Director's investigation. The lawyer in *Westby* also failed to file and pay employer withholding taxes. Finally, Westby's prior disciplinary history (as does respondent's in this case) consisted of an admonition. For this reason the Director determined that discipline in the range of what was imposed in *Westby* would be appropriate.

In addition, the Director considered the impact of respondent's claimed mitigation. Respondent provided to the Director the report of a psychologist that he recently began seeing. In that report, the psychologist opined that respondent was clinically depressed and should be on an antidepressant. Respondent had planned to

have the psychologist testify at the referee hearing regarding the relationship between respondent's misconduct and his psychological condition.

Because the primary purpose of the attorney disciplinary system is the protection of the public, the Director concluded that three factors needed to be met in any agreement in this case. First, that respondent receives discipline consistent with that received by lawyers engaging in similar misconduct. Second, that respondent is placed on probation to ensure, to the extent possible, that he avoids future problems with neglect and non-communication with clients. Third, that respondent continues with course of treatment to address his psychological problems. The proposed settlement addresses each of these concerns.

For the foregoing reasons, the Director would request that the Court approve the discipline set out in the attached stipulation.