FILE NO. C3-00-451

STATE OF MINNESOTA

IN SUPREME COURT

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

PETITION FOR DISCIPLINARY ACTION

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

Upon the approval of a Lawyers Professional Responsibility Board Panel Chair, the Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition pursuant to Rules 10(d) 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 October 18, 1985. Respondent is currently suspended from the practice of law by order of the Minnesota Supreme Court. *In re Martinez,* 615 N.W.2d 272 (Minn. 2002).

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

On July 25, 2000, the Minnesota Supreme Court ordered respondent suspended from the practice of law for 60 days based upon his failure to file or pay employee withholding tax returns, failure to adequately communicate with clients, failure to diligently pursue several client matters, and failure to cooperate with an investigation of the Director's Office. *In re Martinez,* 615 N.W.2d 272 (Minn. 2002).

On February 4, 1994, respondent received an admonition for failing to investigate the possibility of a third party liability claim, failing to become knowledgeable about New York workers' compensation law and third party claims, having his client execute

a workers' compensation fee agreement which appeared to violate New York law, failing to pursue his client's third party claim in a timely manner, failing to communicate with his client for an eight-month period and failing to properly enter into a fee-splitting agreement with New York counsel in violation of Rules 1.1, 1.3, 1.4 and 1.5(e), Minnesota Rules of Professional Conduct (MRPC).

FIRST COUNT
Client Matters

Heyer Matter

1. In March of 1989 Patricia Heyer retained respondent to represent her in a workers' compensation matter. Respondent completed his work on Heyer's case and subsequently closed her file. However, after the representation was completed Heyer experienced problems having some of her outstanding medical expenses paid.

2. In late 2000 Heyer contacted the Department of Labor and Industry (DOLI) regarding the difficulties she was experiencing with her medical bills. It was at that time that Heyer was informed that respondent was suspended from the practice of law. Heyer then contacted respondent asking that he return her file.

3. On November 14, 2000, Heyer received correspondence from respondent in which he acknowledged her request to have her file returned. However, respondent did not return the file.

4. On December 20, 2000, Heyer received a second letter from respondent concerning her file. Respondent indicated that he had been unable to locate the file, but would be following-up with her shortly. Respondent did not contact Heyer.

5. In early January 2001 Heyer attempted to contact respondent. When she was not able to reach him by telephone she left a message on his answering machine requesting that he contact her and return the file. Again, respondent did not reply.

6. On January 15, 2001, when she still had not heard from respondent, Heyer filed an ethics complaint with the Director's Office. On January 30, 2001, the Director

sent respondent a notice of investigation regarding his failure to return Heyer's file. The notice of investigation required respondent to reply within fourteen days.

7. Respondent did not reply to the notice of investigation nor return Heyer's file until April 18, 2001. On April 23, 2001, respondent wrote to the Director informing him that he had returned Heyer's file.

8. Respondent's conduct in failing to return his client's file, failing to diligently pursue the representation and failing to communicate with his client violated Rules 1.16(d), 1.3 and 1.4, MRPC.

Buckner Matter

9. In approximately November of 1998 Emmanuel Buckner retained respondent to represent him in two cases arising out of personal injuries Buckner sustained in separate motor vehicle accidents. By August 8, 2000, the effective date of his suspension from the practice of law, respondent still had not completed the Buckner representation. However, respondent did not inform Buckner of his suspension.

10. On January 30, 2001, when his cases still had not been resolved, Buckner met with attorney William Walker. Walker agreed to undertake the Buckner representation and on February 7, 2001, Walker wrote to respondent informing him that Buckner was discharging respondent and asking that respondent provide Buckner's file. Respondent did not reply to that letter nor to several telephone calls from Walker and did not return the file.

11. On February 28, 2001, Walker wrote to respondent again, repeating his request for the file. Respondent failed to respond.

12. On March 22, 2001, Buckner wrote to the Director's Office concerning respondent's failure to return his file. On April 2, 2001, the Director sent respondent a notice of investigation regarding the Buckner complaint. Later, when calling to check on the status of his complaint, Buckner first learned that respondent was suspended from the practice of law.

13. Subsequent to receiving the notice of investigation from the Director's Office, respondent provided Buckner's file to Walker.

14. Respondent's conduct in failing to communicate with his client and in failing to return his client's file violated Rules 1.4 and 1.16(d), MRPC.

Ibarra Matter

15. On March 10, 1993, Angel Ibarra was injured at work. He subsequently retained respondent to represent him in a workers' compensation proceeding. The Director has been unable to determine when Ibarra retained respondent or what work respondent initially did on the representation. On September 26, 1997, respondent filed a claim petition on Ibarra's behalf with the DOLI.

16. On May 14, 1999, Administrative Law Judge Kathleen Behounek, of the Office of Administrative Hearings (OAH), issued an order referring Ibarra's matter to probate court for appointment of guardian or conservator for Ibarra. This was based upon an April 29, 1998, order by the Social Security Administration determining that Ibarra was an incapacitated person. Judge Behounek ordered respondent to apply to the district court for the appointment of a guardian or conservator to act on Ibarra's behalf in the workers' compensation claim. Respondent failed to comply with the court's order.

17. On July 21, 1999, Judge Behounek ordered Ibarra's workers' compensation matter stricken from the trial calendar based upon respondent's request for a continuance. The order provided that the matter could be reinstated by motion of Ibarra showing compliance with the May 14, 1999, order.

18. On May 12, 2000, Judge Behounek wrote to both respondent and opposing counsel concerning the status of the case.

19. On May 17, 2000, the attorney for the employer and insurer wrote to Judge Behounek indicating that there had been no activity on the file. He further stated that it was his clients' position that the case should be dismissed without prejudice, but

he would refrain from bringing a formal motion until there had been a reply by respondent. Respondent never responded.

20. On September 14, 2000, the attorney for the employer and insurer filed a motion for dismissal without prejudice with the OAH. Respondent was sent a copy of that motion, but never responded.

21. On November 9, 2000, Judge Behounek dismissed Ibarra's claim. Respondent was sent a copy of the judge's order. Respondent never provided Ibarra with a copy of the court's order. After numerous unsuccessful efforts to reach respondent regarding the status of his case, on March 5, 2001, Ibarra filed an ethics complaint with the Director's Office.

22. Respondent's conduct in failing to diligently pursue his client's case and failing to communicate with him regarding the matter violated Rules 1.3 and 1.4, MRPC.

Diaz Matter

23. On November 6, 1993, Rudy Diaz was injured in a motor vehicle accident. Several weeks later, Diaz retained respondent to represent him in a personal injury action.

24. For at least the next year, the case appeared to progress normally. Within that time, Diaz appeared at respondent's office so that his statement could be taken. Later, Diaz was referred by the defendant for an independent medical examination.

25. It is not clear what, if any, work was done for a period of time after that. Respondent did eventually send Diaz to a doctor for an opinion regarding whether Diaz had sustained a permanent injury. On May 1, 1995, the doctor opined that Diaz had not suffered such an injury. However, there was apparently a subsequent doctor's report finding that Diaz had suffered a permanent injury.

26. For the next several years Diaz' case languished. During that same period, Diaz placed a number of calls to respondent concerning the status of his case.

Respondent never provided Diaz with an explanation regarding the status of the litigation.

27. In the summer of 2001, Diaz was able to contact respondent and ask about his case. Respondent told Diaz that he was negotiating a settlement of the case. However, Diaz was never provided with any information concerning a settlement.

28. On September 16, 2001, Diaz' new lawyer wrote to respondent asking about the status of the case. On December 13, 2001, respondent sent Diaz' new lawyer Diaz' "file." However, the file appeared to be missing a number of documents and there was no evidence that respondent was negotiating a settlement of Diaz' case.

29. Respondent's conduct in failing to diligently pursue this matter, failing to respond to inquiries from his client and in falsely advising him that he was in settlement negotiations violated Rule 1.3, 1.4 and 8.4(c), MRPC.

Larson Matter

30. In the early 1990s Robert Larson was injured while at work. He later retained respondent to represent him in a claim for workers' compensation benefits. For the next several years, Larson received assurances from respondent that the matter was proceeding. Respondent also told him that he had filed a claim with Crawford Insurance Company.

31. In early 1998, Larson began writing to respondent informing him that if they were not going to court on his claims, Larson was going to seek a new attorney. After this, respondent stopped replying to telephone messages that Larson left for him. Eventually, respondent returned Larson's file.

32. When he obtained the file, Larson discovered that contrary to his assertions, respondent had never filed a claim with Crawford.

33. Respondent's conduct in this matter violated Rules 1.3, 1.4 and 8.4(c), MRPC.

SECOND COUNT
Unauthorized Practice of Law

Pendzimas Matter

34. At the time of his August 8, 2000, suspension, respondent represented Thomas L. Pendzimas in a workers' compensation proceeding. On August 28, 2000, attorney Joel Monke wrote to the attorney for Pendzimas' employer, Denise Lemmon. Although respondent was suspended from the practice of law, he permitted Monke to write to Lemmon on his law firm stationery and permitted Monke to sign the letter "for: Michael L. Martinez Attorney at Law."

35. On November 14, 2000, Lemmon, unaware that respondent was suspended from the practice of law, spoke to him regarding the status of negotiations with a potential intervenor. Respondent told Lemmon that the intervenor was willing to waive its intervention interest. Respondent never told Lemmon he was no longer able to represent Pendzimas because he was suspended from the practice of law. Lemmon subsequently learned that the intervenor contended that it had not spoken to respondent.

36. On or about December 23, 2000, Lemmon followed up with respondent asking that he contact the intervenor. Again, respondent never told Lemmon that he was suspended from the practice of law or was unable to represent Pendzimas.

37. Respondent's conduct was a violation of Rule 5.5, MRPC.

Jenniges Matter

38. While he was still licensed to practice law, respondent had filed a claim petition for workers' compensation benefits on behalf of Jeanne Jenniges. On February 13, 2001, respondent contacted the OAH to inform them that Jenniges was dismissing the claim petition.

39. At that time he contacted OAH, respondent was not licensed to practice law. Respondent never told OAH that he was not licensed to practice law.

40. Respondent's conduct was a violation of Rule 5.5, MRPC.

Meyer Matter

41. On March 7, 2001, respondent permitted another attorney to sign a stipulation for settlement in the Meyer matter with the signature line "Michael L. Martinez, Attorney for Employee."

42. On March 15, 2001, respondent contacted the OAH regarding a stipulation for settlement in the claim of Patricia Meyer.

43. Respondent's conduct was a violation of Rule 5.5, MRPC.

THIRD COUNT
Non-Cooperation

44. On January 18, 2001, the Director received the complaint from Patricia Heyer. On January 30, 2001, the Director issued a notice of investigation regarding the Heyer complaint. Respondent failed to reply to the notice of investigation and also failed to respond to follow-up letters sent by the Director's Office on February 28, 2001, and March 15, 2001.

45. In February 2001 the Director received information in the course of investigating a complaint against another lawyer that respondent was possibly in engaging in the unauthorized practice of law. The Director opened a file and on March 14, 2001, the Director's Office sent respondent a notice of investigation. Respondent failed to reply to the notice of investigation or to a follow-up letter sent on April 3, 2001.

46. On March 15, 2001, the Director issued a notice of investigation in the Ibarra complaint. Respondent did not reply to either the notice of investigation or a follow-up letter sent by the Director on April 2, 2001.

47. On April 2, 2001, the Director issued a notice of investigation in the Buckner complaint. Respondent did not reply to the notice of investigation.

48. On April 12, 2001, the Director issued a notice of investigation in the complaint of Chief Administrative Law Judge Ken Nickolai from the OAH. Respondent did not reply within the required 14 days, but did subsequently provide a written reply to the Director's Office.

49. On April 23, 2001, respondent wrote to the Director's Office regarding the allegation of the unauthorized practice of law raised in the Director's March 14, 2001, notice of investigation. However, respondent did not provide any information concerning the other complaints.

50. On May 3, 2001, the Director's Office wrote to respondent to set up a meeting with him concerning the various investigations. Respondent agreed to meet with the Director's Office and on May 16, 2001, sent a written response to the complaint of the Honorable Ken Nickolai.

51. On June 4, 2001, the Director sent respondent a notice of investigation based upon the complaint of M. B. Skic. Respondent never responded to the notice of investigation.

52. On June 13, 2001, respondent met with representatives of the Director's Office concerning the various complaints against him as well as respondent's desire to resume the practice of law. Respondent did not provide responses to the outstanding complaints. However, respondent agreed to return to the Director's Office the following week, on June 21, 2001, and to provide the required information.

53. Respondent failed to appear for the June 21, 2001, meeting and failed to contact the Director's Office regarding his inability to attend.

54. On July 5, 2001, the Director's Office again wrote to respondent. In that letter, a representative of the Director's Office scheduled another meeting for July 12, 2001. Respondent was told that if he could not meet at that time, he should contact the Director's Office so that the matter could be rescheduled. Respondent failed to appear for the July 12, 2001, meeting and failed to contact the Director's Office.

55. On February 26, 2002, the Director again wrote to respondent regarding his failure to comply with the various investigations. Respondent was given another opportunity to appear at the Director's Office for a meeting on March 13, 2002, to discuss the outstanding complaints. On March 4, 2002, respondent wrote to the Director's Office concerning the March 13 meeting. Respondent thanked the Director for scheduling the meeting and indicating that he would attend the meeting and would bring the requested materials.

56. Respondent failed to appear for the meeting and failed to contact the Director about his inability to attend.

57. On March 20, 2002, the Director sent respondent a notice of investigation in the Robert Larson complaint. Respondent was instructed to provide a written response within 14 days of the notice of investigation. Respondent never provided the required response.

58. On April 15, 2002, sent respondent a notice of investigation concerning his representation of Rudy Diaz. Respondent was directed to provide a response with 14 days. Respondent never provided the required response.

59. Respondent's conduct in failing to cooperate with the investigations of the Director's Office violated Rule 8.1(a)(3), MRPC, and Rule 25, RLPR.

FOURTH COUNT

Non-Compliance with Supreme Court Order

60. On July 25, 2000, the Supreme Court issued its order suspending respondent from the practice of law. As part of that order, respondent was required to comply with Rule 26 of the Rules on Lawyers Professional Responsibility (RLPR).

61. Rule 26, RLPR, obligates suspended lawyers to provide notice to clients, opposing counsel, and the tribunal involved in pending litigation or administrative proceedings of the lawyer's suspension. Respondent never provided the required notice.

62. On September 11, 2000, Senior Assistant Director Timothy M. Burke filed an affidavit of non-compliance with the Court. As of the date of this petition, respondent has not provided evidence of compliance with Rule 26, RLPR.

63. Respondent's conduct in failing to cooperate with an order of the Supreme Court violated Rule 3.4(c), MRPC, and Rule 26, RLPR.

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 6, 2002.

EDWARD J. CLEARY
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY
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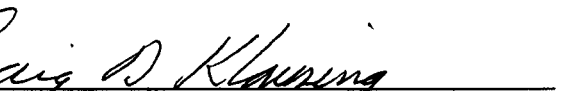
and



CRAIG D. KLAUSING
SENIOR ASSISTANT DIRECTOR
Attorney No. 202873

This petition is approved for filing pursuant to Rules 10(d) and 12(a), RLPR, by the undersigned Panel Chair.

Dated: May 15, 2002.

TIMOTHY M. O'BRIEN
PANEL CHAIR, LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD