

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.

**STIPULATION
FOR DISCIPLINE**

THIS STIPULATION is entered into by and between Kenneth L. Jorgensen, 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 following allegations:

Client Matters

Buckner Matter

- a. In approximately November of 1998 Emmanuel Buckner retained respondent to represent him in two cases arising out of personal injuries sustained in separate motor vehicle accidents. By August 8, 2000, the effective date of his suspension from the practice of law, *In re Martinez*, 615 N.W.2d 272 (Minn. 2000), respondent still had not completed the Buckner representation.
- b. 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.
- c. On February 28, 2001, Walker wrote to respondent again, repeating his request for the file. Respondent failed to respond.
- d. 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.
- e. After receiving the notice of investigation from the Director's Office, respondent provided Buckner's file to Walker.
- f. Respondent's conduct in failing to promptly return his client's file violated Rule 1.16(d), Minnesota Rules of Professional Conduct (MRPC).

Ibarra Matter

g. 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 Department of Labor and Industry.

h. 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.

i. 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.

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

k. 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.

l. 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.

m. 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.

n. 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, 1.4, and 3.2, MRPC.

Diaz Matter

o. 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.

p. 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.

q. 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.

r. 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.

s. 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. Respondent, who was suspended from the practice of law, was not negotiating a settlement of Diaz' case.

t. 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.

u. 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 Rules 1.3, 1.4, 4.1, and 8.4(c), MRPC.

Beasley Matter

v. In the fall of 1992, Jean Beasley was injured when she slipped and fell on an icy sidewalk.

w. Beasley subsequently met with respondent concerning possible legal action. Respondent agreed to represent Beasley and instructed her to continue meeting with her physician. It is not clear what work, if any, respondent did to further Beasley's case. However, in November of 1998, respondent told Beasley that he had an offer and was ready to settle her case. Beasley never heard from respondent again.

x. Beasley left numerous telephone messages for respondent, but he failed to return any of those calls. On September 17, 2002, Beasley filed an ethics complaint with the Office of Lawyers Professional Responsibility.

y. Respondent's conduct in failing to diligently pursue his client's case and failing to communicate with his client regarding a potential settlement violated Rules 1.3 and 1.4, MRPC.

Non-Cooperation

z. On January 18, 2001, the Director received a complaint from Patricia Heyer, respondent's former client. 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.

aa. In February 2001 the Director received information in the course of investigating a complaint against another lawyer that respondent was possibly 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 initially failed to reply to the notice of investigation and the Director sent a follow-up letter on April 3, 2001. Respondent replied on April 23, 2001.

bb. On March 15, 2001, the Director issued a notice of investigation in the Angel 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.

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

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

ee. On May 3, 2001, the Director's Office wrote to respondent to set up a meeting concerning the various investigations. Respondent agreed to meet with the Director's Office.

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

gg. 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.

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

ii. 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.

jj. 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.

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

ll. 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.

mm. On April 15, 2002, the Director 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.

nn. On September 26, 2002, the Director mailed to respondent a notice of investigation concerning Jean Beasley's complaint. Respondent was instructed to respond within 14 days. Respondent failed to respond.

oo. On October 25, 2002, the Director wrote to respondent regarding the Beasley complaint. In that letter, the Director referenced the notice of investigation and informed respondent that he had not received respondent's reply. The Director informed respondent that if he did not reply, the Director would seek to amend the pending petition for disciplinary action to include the Beasley complaint. Respondent did not reply.

pp. On November 13, 2002, the Director again wrote to respondent regarding the Beasley complaint. Respondent was reminded that the information was being requested pursuant to Rule 8.1(a)(3), MRPC, and Rule 25, RLPR, and he was again directed to provide a response. Respondent did not provide a response to the complaint.

qq. 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.

Non-Compliance with Supreme Court Order

rr. 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, RLPR.

ss. 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 did not provide notice as required by Rule 26, RLPR.

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 an indefinite suspension pursuant to Rule 15, RLPR;

b. Respondent, who has been suspended since August 8, 2000, may not apply for reinstatement until four months from the date of Court's order approving this stipulation;

c. The reinstatement hearing provided for in Rule 18(a) - (d), RLPR, is not waived;

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

e. Respondent shall comply with Rule 26, RLPR;

f. Respondent shall pay \$900 in costs pursuant to Rule 24(a), RLPR, and \$135 as disbursements pursuant to Rule 24(d), RLPR;

g. As part of his reinstatement proceeding, respondent must demonstrate that he is psychologically fit to practice law.

7. 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. At the time he is reinstated, respondent shall provide to the Director the names of four attorneys who have agreed to be nominated as respondent's supervisor. 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. At the time of 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.

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

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

10. Respondent has been advised of the right to be represented herein by an attorney but has freely chosen to appear *pro se*.

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

Dated: December 23, 2002.



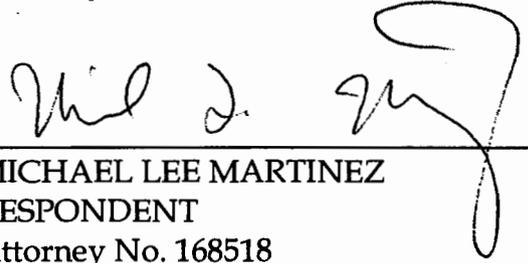
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Dated: December 23, 2002.



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Dated: 12/24/02.



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