

FILE NO. C3-97-2009

STATE OF MINNESOTA

IN SUPREME COURT

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In Re Petition for Disciplinary  
Action against ALBERTO O. MIERA, JR.,  
an Attorney at Law of the  
State of Minnesota.  
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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 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 September 26, 1975. Respondent currently practices law in St. Paul, Minnesota.

DISCIPLINARY HISTORY

Respondent's history of prior discipline is as follows:

- a. On December 8, 1981, respondent was issued a private warning for not clearly identifying himself as the defendant's attorney to witnesses in a criminal matter.
- b. On July 5, 1988, respondent was publicly reprimanded as an attorney and publicly censured and suspended for one year as a judge for making unwelcome sexual advances to a court reporter. *In re Miera*, 426 N.W.2d 850 (Minn. 1988).
- c. On January 12, 1996, respondent was issued an admonition for failing to diligently pursue a client's case and failing to deliver the client's file to her.
- d. On March 11, 1998, respondent was publicly reprimanded and placed on two years unsupervised probation for trust account books and record deficiencies and non-cooperation with the Director's Office. *In re Miera*, 575 N.W.2d 834 (Minn. 1998).

Respondent has committed the following unprofessional conduct warranting public discipline:

COUNT I

Non-Cooperation

1. As stated above, respondent was placed on two years public probation on March 11, 1998. On March 27, 1998, the Director wrote to respondent setting out his obligations under his probation which, among other things, required respondent to maintain his trust account books and records in compliance with Rule 1.15, Minnesota Rules of Professional Conduct (MRPC), and Lawyers Professional Responsibility Board (LPRB) Opinion No. 9 and periodically submit his trust account books and records for the Director's review. Respondent was directed to provide by April 30, 1998, his complete trust account books and records for January 1998 through March 1998. Respondent did not do so.

2. Respondent called the Director's Office on May 1, 1998, stating he was having family problems but would contact the Director's Office on May 11 or May 12, 1998. On May 18, 1998, respondent contacted the Director's Office stating he was unable to provide the requested trust account books and records because his godmother had died and he had continuing family problems.

3. On May 26, 1998, respondent met briefly with the Director, but did not submit the requested trust account books and records. Respondent stated his trust account books and records had been left in another car and were inaccessible. Respondent stated he would provide the books and records as soon as possible, but did not do so.

4. On June 19, 1998, the Director wrote to respondent requesting the records no later than June 26, 1998. On June 24, 1998, respondent called stating he was traveling, his response was delayed due to family problems, but he was putting his

books and records in the mail that night. The Director did not receive respondent's trust account books and records.

5. On July 1, 1998, respondent called stating he was in trial in New Ulm, but would provide his books and records early the next the week.

6. On July 9, 1998, respondent met with the Director and provided only bank statements for January, May and June 1998. On August 4, 1998, the Director wrote to respondent requesting he provide by August 14, 1998, the balance of his trust account books and records for the period of January 1998 through July 1998. Respondent did not provide the requested records.

7. The Director wrote to respondent on October 7, 1998, November 30, 1998, and February 12, 1999, reminding him of the requested records. Respondent did not respond. On March 15, 1999, the Director wrote to respondent requesting that he appear for a meeting.

8. Respondent appeared in the Director's Office on April 20, 1999, and provided some additional trust account books and records. The Director wrote to respondent on May 6, 1999, requesting that respondent obtain and provide certain bank records and create and provide a trust account check register, subsidiary ledgers, monthly trial balances, and proper monthly reconciliations of his checkbook balance, subsidiary ledger trial balance total and adjusted bank statement balance for the months of January 1998 through March 1999. Respondent did not do so.

9. On June 2 and June 23, 1999, the Director wrote to respondent reiterating the request for trust account records. Other than a telephone call on July 2, 1999, indicating that he had contacted his bank for information, respondent did not respond.

10. Due to respondent's failure to cooperate with the requirements of his probation, the Director opened a discipline file and mailed to respondent a notice of investigation on September 21, 1999. Respondent was requested to provide a written

explanation of his failure to cooperate with the supervision of his public probation within two weeks.

11. On November 8, 1999, respondent wrote to the Director stating that he admitted the allegations of the notice of investigation, that he had been unable to reconcile his trust account and that he was prepared to accept the consequences.

12. On December 9, 1999, respondent met with the Director and agreed to provide, among other things, additional bank records and client subsidiary ledgers, subsidiary ledger trial balances and monthly trust account reconciliations.

13. During the next several months, respondent did cooperate with the Director in obtaining additional trust account information, but did not create and provide the required trust account books.

14. On June 22, 2000, respondent met with the Director and produced some additional trust account books and records.

15. Respondent's conduct violated the terms of his March 11, 1998, public probation, Rule 8.1(a)(3), MRPC, and Rule 25, Rules on Lawyers Professional Responsibility.

## COUNT II

### Trust Account Books and Records Deficiencies

16. Respondent's March 11, 1998, public probation required that respondent maintain his law office and trust account books and records in compliance with Rule 1.15, MRPC, and LPRB Opinion No. 9.

17. Despite meetings with the Director, numerous letters, telephone calls and being provided with pamphlets concerning the proper maintenance of a lawyer's trust account, respondent failed during the course of his public probation to create and maintain the required trust account books and records.

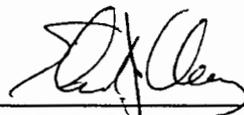
18. As of June 22, 2000, respondent continued to fail to maintain a trust account check register, client subsidiary ledgers, a separate subsidiary ledger for his

personal trust funds, monthly subsidiary ledger trial balances and accurate monthly trust account reconciliations.

19. Respondent's conduct violated the terms of his March 11, 1998, public probation, Rule 1.15, MRPC, and LPRB Opinion No. 9.

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.

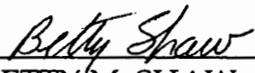
Dated: September 27, 2000.



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and



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